



LAWS OF SARAWAK

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Chapter 7

CHARITABLE TRUSTS ORDINANCE, 1994

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CHARITABLE TRUSTS ORDINANCE, 1994

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LAWS OF SARAWAK

Chapter 7

CHARITABLE TRUSTS ORDINANCE, 1994

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement
2. Interpretation
3. Charitable trust
4. Board of Trustees
5. Procedure
6. List of property and statements of account to be kept and exhibited
7. Powers and duties of the Board
8. Liability of trustees
9. Power of Minister to institute inquiries
10. Result of inquiry
11. Power to act for protection of trust property
12. Additions to trust property
13. Variation of charitable purposes
14. Application to High Court
15. Winding up
16. Rules of High Court to apply to any petition under this Ordinance
17. Who may prosecute
18. Regulations
19. Repeal and saving

SCHEDULE — Regulations of the Board of Trustees

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LAWS OF SARAWAK

Chapter 7

CHARITABLE TRUSTS ORDINANCE, 1994

An Ordinance to repeal and replace the Charitable Trusts Ordinance [Cap. 102 (1958 Ed.)] and to make better provision in the law with respect to the creation, administration and management of charitable trusts and to provide for matters connected therewith and incidental thereto.

[1st March, 1995]

**(Swk. L.N. 52/94)*

Enacted by the Legislature of Sarawak—

Short title and commencement

1. This Ordinance may be cited as the Charitable Trusts Ordinance, 1994, and shall come into force on such date as the Minister may, by notification in the **Gazette*, appoint.

Interpretation

2.—(1) In this Ordinance—

“Amanah Raya Berhad” means the corporation under such name incorporated under the Companies Act 1965 [*Act 125*] pursuant to section 3 of the Public Trust Corporation Act 1995 [*Act 532*];

“authorized investments” means the authorized investments specified in section 4 of the Trustee Act 1949 [*Act 208*], and includes any investment authorized by the Board subject to the trust created under section 3;

“beneficiaries” means any institution, person, community or class of persons deriving or receiving or entitled to any benefit from a charitable trust;

“Board” means a Board of Trustees appointed by the Minister under section 4 to administer and manage a charitable trust declared and constituted under section 3;

“charitable purpose” means any purpose relating to the support and advancement of education, religion or sports and for the relief of poverty and the aged and for purposes which are exclusively charitable and for the public benefit according to the laws of Malaysia;

“charitable trust” means any trust or endowment over movable or immovable property which is held, administered or managed for the furtherance of any charitable purpose;

“contributor/donor” means any contributor, donor, benefactor, testator or provider of any property which is subject to a charitable trust, and includes any executor or administrator of the estate of such person;

“High Court” means the High Court in Sabah and Sarawak;

“Minister” means the Minister of the Government of Sarawak for the time being responsible for charitable trusts in Sarawak;

“Public Trustee”.....[Omitted.]

“trustee” means any member of the Board of Trustees appointed under section 4 to administer and manage a charitable trust declared and constituted under section 3.

(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 in accordance with the advice of the Majlis Mesyuarat Kerajaan Negeri or of a member thereof acting under the general authority of the Majlis.

Charitable trust

3.—(1) If the Yang di-Pertua Negeri is of the opinion that a trust should be created in respect of any property, movable or immovable, which is to be contributed, donated or provided—

(a) for any religious, educational, literary, scientific or other charitable purposes; and

(b) for the benefit of any institution, community or class of persons in any particular area in Sarawak,

he shall declare that such trust shall be a charitable trust to be administered and managed by a Board appointed by the Minister under section 4, subject to such conditions and directions generally as he shall think fit to insert in the declaration, and such declaration shall be published in the *Gazette*.

(2) The declaration made under subsection (1) shall—

(a) fix a date on which it shall come into effect;

(b) provide the proposed name of the charitable trust;

(c) include a statement and short description of all the properties which are to be held now or hereafter by the Board for the benefit of the charitable trust;

(d) specify the names and description of the person or body of persons who are contributors or donors (if any) of the property;

(e) specify the beneficiaries or intended beneficiaries thereof; and

(f) specify the charitable purposes of the trust.

(3) From the date fixed in the declaration made under subsection (1)—

(a) all movable and immovable property specified in the declaration shall be vested in the Board for the furtherance and support of the purposes and intent of such charitable trust;

(b) the person or persons in whose name or names such property is held shall thereupon transfer the same into the name of the Board, and all covenants and conditions relating to any such immovable property enforceable by or against the said person or persons before the declaration made under subsection (1) shall be enforceable to the same extent and by the same means by or against the Board after the date fixed in the declaration;

(c) a copy of the declaration shall be served on the Director of Lands and Surveys who shall cause the Register kept under the Land Code [*Cap. 81 (1958 Ed.)*] to be rectified in accordance with such declaration; and

(d) the charitable trust declared and constituted under this section shall—

(i) be a body corporate by the name described in the declaration;

(ii) have perpetual succession and power to sue and be sued in its corporate name;

(iii) have a common seal bearing the name of the charitable trust; and

(iv) provide an address (hereinafter called “the registered address”) where all notices and documents for the charitable trust may be served and, generally, where the affairs of the charitable trust are to be conducted.

Board of Trustees

4.—(1) A charitable trust shall be administered and managed by a Board of Trustees which shall consist of the following:

(a) a Chairman;

(b) a Deputy Chairman;

(c) a Secretary;

(d) a Treasurer; and

(e) not less than three and not more than seven other trustees,

who shall be appointed by the Minister:

Provided that the Minister may order that such charitable trust shall be administered and managed by a Board already appointed under this section to administer and manage some other charitable trust if the trustees of such Board agree and adequately represent the interest of the beneficiaries.

(2) The trustees appointed pursuant to subsection (1) shall hold office for a term of not more than three years, but their term may be renewed or extended by the Minister.

(3) A trustee may at any time resign his office by letter addressed to the Minister.

(4) The appointment of any person as trustee may be revoked by the Minister if—

(a) he has been adjudged a bankrupt;

(b) he has breached any of the provisions of this Ordinance or regulations specified in the Schedule or the Trustee Act 1949 [Act 208];

(c) he has been convicted of any criminal offence or any offence under the Companies Act 1965 [Act 125] and suffered a fine exceeding two thousand ringgit or imprisonment exceeding a term of one year;

(d) he has been convicted on a charge in respect of an offence under any written law relating to corruption;

(e) he has been absent from the State for a continuous period of more than twelve (12) months; or

(f) the Minister is of the opinion that that person has failed to discharge his duties as a trustee on account of his insanity, ill health or for any other good reasons.

(5) Where any vacancy in any Board shall have arisen by reason of—

(a) death;

(b) the removal, pursuant to subsection (4); or

(c) resignation,

of any trustee, the Minister may appoint any other person as trustee to fill such vacancy.

Procedure

5.—(1) The procedure for the meetings of the Board and the administration of any charitable trust shall be in accordance with the regulations specified in the Schedule.

(2) The Yang di-Pertua Negeri may by regulations made under section 18 amend the Schedule.

List of property and statements of account to be kept and exhibited

6.—(1) Every Board shall submit to the Minister in such form as may be approved by him, on or before the 31st day of March each year or within such extended period as the Minister may permit in writing—

(a) a list of all property subject to the charitable trust with full particulars of any property received, acquired, disposed of, leased, pledged or mortgaged during the preceding year;

(b) statements of account of the charitable trust, duly signed by the Chairman and Treasurer of the Board for the financial year preceding the date of submission of the said form to the Minister; and

(c) particulars on any change of the registered address of the charitable trust.

(2) Such list of property and statements of account shall be exhibited in a conspicuous place at the registered address of the charitable trust.

(3) The Minister may by notice in writing sent to the Board at the registered address require the Board to furnish him with any information, documents or other particulars relating to the charitable trust or its affairs.

(4) Any person who fails to comply with the provisions of this section shall be guilty of an offence: Penalty, a fine of five thousand ringgit and imprisonment for two years.

Powers and duties of the Board

7.—(1) The Board may, subject to the conditions and directions contained in the declaration made under section 3, for the purpose or benefit of a charitable trust administered by it—

(a) receive, acquire, accept, purchase, hold and manage any property, movable or immovable, subject to that charitable trust;

(b) repair, alter, renovate, improve or rebuild any premises on land belonging to the charitable trust;

(c) invest any moneys in such authorized investments as the Board may determine;

(d) exchange any authorized investment with another;

(e) convey, assign, surrender and yield up, sell, pledge, mortgage, charge, demise, reassign, transfer or otherwise dispose of any movable or immovable property now or hereafter belonging to, or held for the benefit of, the charitable trust managed and administered by the Board or any interest therein;

(f) pay or allow any debt, claim or indebtedness of the charitable trust on any evidence of such debt, claim or indebtedness as the Board deems sufficient;

(g) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim, action or proceeding whatsoever relating to the charitable trust;

(h) authorize any change in the registered address of the charitable trust;

(i) make application to the High Court to change, amend, vary or alter the purpose for which the charitable trust is established, where the Board decides that such change, amendment, variation or alteration is beneficial to the contributor, beneficiaries or the charitable trust as a whole;

(j) appoint or engage such servants, agents, professional advisors or consultants to assist the Board in the discharge of its duties as trustees; and

(k) do or carry out or have such specific functions, activities or duties as the Yang di-Pertua Negeri may, by Order published in the *Gazette*, permit or allow.

(2) All such powers and duties shall be exercised by the Board collectively and any decision on the exercise of such powers or duties shall be made at a regularly convened meeting of the Board and agreed upon by a majority of the trustees present at such meeting.

(3) Nothing in this section shall deem to have authorized any trustee to do or carry out or exercise any power which is contrary to the purpose of the charitable trust or for a purpose which is not a charitable purpose.

Liability of trustees

8.—(1) No trustee of a charitable trust shall be personally liable for or in connection with any act or omission done or committed in good faith and without gross negligence nor for any debt, liability, act or omission of the Board.

(2) No trustee of a charitable trust shall be liable for breach of trust nor for any loss or damage by reason only of his continuing to hold an investment which has ceased to be an authorized investment.

Power of Minister to institute inquiries

9.—(1) The Minister may direct that inquiries be carried out with regard to any charitable trust, either generally or for particular purposes.

(2) When the Minister directs such inquiry, he shall appoint a person to conduct it and make a report to him.

(3) For the purpose of such inquiry, the person appointed by the Minister under subsection (2) to conduct the inquiry may by order direct any trustee or person having possession or custody thereof—

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which the trustee or person has or can reasonably obtain information, or to return answers in writing to any questions or enquiries addressed to him on any such matter, and to verify such accounts, statements or answers by statutory declaration; and

(b) to attend at a specified time and place and give evidence or produce documents in his custody or under his control which relate to any matter in question at the inquiry.

(4) Without prejudice to the provisions of subsection (3), evidence at any inquiry may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths.

(5) Any trustee or person who fails to comply with any requirement specified in the order made under subsection (3) or who wilfully alters, defaces, suppresses, conceals or destroys any document which he is required to produce under this section, shall be guilty of an offence: Penalty, a fine of five thousand ringgit and imprisonment for two years.

Result of inquiry

10.—(1) The report of the inquiry conducted under section 9 shall be delivered to the Minister.

(2) Where the Minister decides to take any action against any trustee, person or any Board in consequence of the inquiry conducted under section 9, he may publish the report of the person conducting the inquiry, or such other statement of the results thereof as he thinks fit, in any manner as the Minister deems fit or appropriate to enable the trustee, person or Board against whom action is taken to conduct their defence.

Power to act for protection of trust property

11.—(1) Where the Minister is satisfied as to the result of an inquiry instituted by him under section 9—

(a) that there has been in the administration of a charitable trust any misconduct or mismanagement; and

(b) that it is necessary or desirable to act for the purpose of protecting the property of the charitable trust or securing a proper application for the purposes of the charitable trust of that property or of property coming to the charitable trust, then for that purpose the Minister may do all or any of the following things:

(i) he may by order remove any trustee, officer, agent or employee of the charitable trust who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;

(ii) he may make an order with respect to the vesting in or transfer to the Amanah Raya Berhad of property held by or in trust for the charitable trust;

(iii) he may order any bank or other person who holds money or securities on behalf of the charitable trust or of any trustee for it not to part with the money or securities without his approval;

(iv) he may, notwithstanding the conditions or directions contained in the declaration made under section 3, by order restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charitable trust without his approval.

[Am. Act 532.]

(2) The references in subsection (1) to misconduct or mismanagement shall extend to the employment for the remuneration or reward of persons acting in the affairs of the charitable trust, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charitable trust.

(3) Before exercising any jurisdiction under this section, the Minister shall give notice of his intention to do so to each of the trustees of the charitable trust except those who cannot be found or who have no known address in Sarawak; and the notice may be given by post and, if given by post, may be addressed to the trustee's last known address in Sarawak.

(4) If any person contravenes an order under subsection (1) (b) (iii), he shall be guilty of an offence: Penalty, a fine of five thousand ringgit and imprisonment for two years.

Additions to trust property

12. After having constituted a charitable trust pursuant to this Ordinance, any further donation, gift and disposition of land, or any interest therein, therefore lawfully made (but not having actually taken effect) or hereafter lawfully made by deed, will or otherwise to or in favour of the charitable trust for the purposes thereof, shall take effect as if the same had been made to, or in favour of, the charitable trust for the like purposes.

Variation of charitable purposes

13. There shall be no change, variation or amendment of any of the purposes of a charitable trust as set out in the declaration made by the Yang di-Pertua Negeri under section 3 without the approval of the High Court.

Application to High Court

14.—(1) Any application for any change, variation or amendment of any of the purposes of a charitable trust shall be made by originating petition to the High Court in the name of the Board.

(2) A copy of such originating petition shall be served on the State Attorney-General, and exhibited at the registered address of the charitable trust.

(3) Notice of the presentation of such a petition shall be published by the Board in at least one issue of a local newspaper circulating at the place where the charitable trust has its registered office, at least ten clear days before the hearing of the petition. Such notice shall state that any contributor or beneficiary of the charitable trust may attend the hearing of the petition either in person or by advocate to raise any objection to the application by the Board to vary, change or amend the purposes of the charitable trust.

(4) Any Order made by the High Court to vary, change or amend the purposes of a charitable trust shall be served on the Minister and published by the Board in one (1) issue of the *Gazette* within ninety (90) days from the date of the making thereof.

(5) Any Order which is not served or published in accordance with subsection (4) shall be deemed to have lapsed after the expiry of ninety (90) days from the making thereof unless the Board shall have obtained within the said period an Order from the High Court to extend the service or publication of such Order.

(6) No person shall be entitled to be heard at the hearing of any petition presented to the High Court under this section except the State Attorney-General or any person duly authorized in that behalf by writing under his hand, a trustee, contributor or beneficiary of the charitable trust on whose behalf the petition is presented.

Winding up

15.—(1) Where the Board considers that—

(a) the purposes in respect of which that trust was declared and constituted have been fulfilled or ceased to be charitable in character;

(b) all the property subject to the trust have been utilized or expended for the purposes thereof, or have been lost, destroyed or depreciated to a degree which rendered the fulfilment or achievement of the purposes of the trust impossible; or

(c) for any other reasons the charitable trust should be dissolved or wound up,

the Board shall, after securing the approval of the Minister, apply to the High Court, by originating petition to wind up that charitable trust.

(2) A copy of such petition shall be served, exhibited and published in the manner set out in section 14(2) and (3).

(3) The High Court if it grants the Order to wind up the charitable trust may also order or direct that—

(a) the property or any interest therein subject to the charitable trust be vested in the Amanah Raya Berhad;

(b) the manner in which the assets of the charitable trust may be accounted for;

(c) the discharge of certain duties or the carrying out of certain acts or functions by the Board before the Order of winding up of the charitable trust shall take effect; and

(d) such other order or direction that the High Court deems fit or necessary or expedient to make.

[Am. Act 532.]

Rules of High Court to apply to any petition under this Ordinance

16.—(1) The rules of the High Court relating to the filing and hearing of originating petition and the presentation of evidence relating thereto shall apply to any petition presented under this Ordinance.

(2) The rules of the High Court regulating appeals from the High Court shall apply to any petition presented under this Ordinance.

Who may prosecute

17. Proceedings for an offence against this Ordinance or regulations made thereunder shall be conducted by the State Attorney-General or any officer or person duly authorized in writing in that behalf by the State Attorney-General; and any writing purportedly to be signed by the State Attorney-General shall, until the contrary is proved, be evidence thereof.

Regulations

18. The Yang di-Pertua Negeri may make such regulations as he considers necessary or expedient for giving full effect to the provisions and purposes of this Ordinance and for the due administration thereof.

Repeal and saving

19.—(1) The Charitable Trusts Ordinance [*Cap. 102 (1958 Ed.)*] is repealed.

(2) All Charitable Trust Boards, notifications and orders issued or made under the repealed Ordinance shall, if still subsisting or in force at the commencement of this Ordinance, continue in force, and shall have effect as if made or issued under this Ordinance, until or unless wound up, dissolved, varied or amended under and by virtue of this Ordinance.

(3) All existing Charitable Trust Boards constituted or established under the repealed Ordinance shall, upon the coming into force of this Ordinance, be subject to the provisions of this Ordinance and to the regulations contained in the Schedule.

SCHEDULE

REGULATIONS OF THE BOARD OF TRUSTEES

(Section 5)

Duties of the Board

1.—(1) All trustees appointed under section 4 of the Ordinance shall devote such time to the business of the Board as may be necessary to the discharge of their duties under the Ordinance and any regulations made thereunder.

(2) The primary duty of a trustee is to administer and manage the trust in accordance with its terms in the interest of the intended beneficiaries.

(3) It is a breach of trust for trustees to divert a charitable fund given for one object to another not contemplated by the declaration made under section 3.

(4) Trustees have a general duty under the Ordinance to keep proper books of account with respect to the affairs of the charitable trust.

(5) The books and statements of account relating to a charitable trust must be preserved for at least seven years, unless the charitable trust ceases to exist and the Minister permits them to be destroyed or otherwise disposed of.

(6) Where the trustees of a charitable trust have defaulted for a period of more than 12 months in complying with the requirements to transmit or provide the Minister with statements of account or other information required under sections 6 and 9 of the Ordinance, it is open to the trustees to make representations to the Minister, who, if he thinks it a proper case for his intervention and after giving the trustees notice of the representations and inviting their comments, may exercise his jurisdiction under section 11 of the Ordinance.

(7) Trustees are under a duty to transmit statements of account and other documents containing prescribed information to the Minister every year or upon request.

(8) (a) The trustees must ensure that accounting records are kept which are sufficient to show and explain all the Board's transactions and which are such as to disclose at any time, with reasonable accuracy, the financial position of the charitable trust at that time.

(b) The information required to be given are as follows:

(i) the statements of account must contain entries showing from day to day all sums of moneys received and expended by the Board and the matters in respect of which the receipt and expenditure takes place, and a record of the assets and liabilities of the charitable trust;

(ii) the particulars of the assets and the persons in whom they are vested, on the date to which the accounts are made up, distinguishing between assets forming part of the permanent endowment and other assets;

(iii) the approximate amount of the liabilities on that date;

(iv) the amount of the receipts in the year ending on that date, classified according to the nature of the receipt, and distinguishing between receipts forming part of the permanent endowment and other receipts; and

(v) the amount of the payments made during that year, classified similarly and making the corresponding distinction.

(9) Statements of account so transmitted to the Minister must be open to inspection at all reasonable times by any contributor/donor of the trust property, any trustee or beneficiary thereof.

(10) Failure to transmit accounts or any information requested may be met by an order of the Minister to make good the default; disobedience to such an order is an offence under section 6(4) or 9(5) of the Ordinance. In addition, the Minister shall have power to require the condition and accounts of the charitable trust to be investigated and audited.

(11) The trustees must all be specifically aware of their statutory duties as stipulated in sections 4, 5, 6, 7, 13 and 15 of the Ordinance.

Meetings

2.—(1) The Board shall meet at least once every six months or whenever a meeting of the Board is requisitioned by the Chairman or Deputy Chairman.

(2) The quorum of the Board shall be a majority of the trustees thereof, but in any event must not be less than four.

(3) At all meetings of the Board, the Chairman or, in his absence, the Deputy Chairman or, in his absence, such trustee as the trustees present may elect, shall preside.

(4) Subject to the Ordinance and the provisions contained in these Regulations, the Board shall determine its own procedure.

Committees

3.—(1) The Board may appoint such committees of its trustees with or without other persons as it may determine.

(2) Any committee so appointed shall conform to instructions that may from time to time be given to it by the Board and the Board may at any time discontinue or alter the constitution of such committee.

(3) Subject to the Ordinance and to the direction of the Board, the quorum and procedure of a committee shall be determined by the committee.

Board may invite others to meeting

4. The Board may request any person, other than a trustee, to attend any meeting or deliberation of the Board for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

Effect of signed resolution of trustees

5. The Board may, if it deems fit, transact any of its business by the circulation of papers, and a resolution in writing approved in writing by the majority of the trustees thereof shall be as valid and effectual as if it had been passed at a meeting of the Board by the votes of the trustees so approving the resolution.

Common seal

6.—(1) The common seal referred to in section 3(3)(d)(iii) of the Ordinance shall be kept in the custody of the Chairman or such other person as may be authorized by the Board, and shall be authenticated by either the Chairman or such authorized person or by any trustee authorized by either of them in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal, authenticated as aforesaid, shall until the contrary is proved be deemed to have been validly executed:

Provided that any document or instrument which if executed by a person not being a body corporate would not be required under seal may in like manner be executed by the Board and any such document or instrument may be executed on behalf of the Board by any trustee or servant of the Board generally or specifically authorized by the Board in that behalf.

(2) The seal of the Board shall be officially and judicially noticed.

Disclosure of interest

7. A trustee having, directly or indirectly, by himself or his partner, any interest in any company or undertaking with which the Board proposes to make any contract or having any interest in any such contract or in any matter under discussion by the Board shall disclose to the Board the fact of his interest and the nature thereof, and such disclosure shall be recorded in the minutes of the Board, and unless specifically authorized thereto by the Chairman, such trustee shall take no part in any deliberation or decision of the Board relating to the contract.

Minutes

8.—(1) The Board shall cause minutes of all meetings of the Board to be maintained and kept in a proper form. Copies of such minutes to be submitted to the Minister.

(2) Any minutes made of meetings of the Board shall, if duly signed, be receivable as evidence in all legal proceedings without further proof and every meeting of the Board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all trustees thereat shall have been duly qualified to act.

Validity of acts and proceedings

9. No act done or proceeding taken under the Ordinance or any regulations made thereunder shall be questioned on the ground—

- (a) of any vacancy in the trusteeship of, or of any defect in the constitution of, the Board;
- (b) of the contravention by any trustee relating to the disclosure of interest by such trustee; or
- (c) of any omission, defect or irregularity not affecting the merits of the case.

Responsibilities of the Secretary

10.—(1) The Secretary of the Board appointed under section 4 of the Ordinance shall be responsible for the preparation of programmes, schemes and projects for the consideration of the Board, for the issue of policy guidance or of elucidation of decisions of the Board and for the supervision and control over the implementation of such decisions.

(2) The Secretary shall ensure that no trustee shall take part in any proceedings of the Board upon the expiry of his term of office. The Minister should be informed at least one month before the expiry date of the term of office of a trustee. The Board may make recommendation for a person to be appointed to fill such vacancy.

(3) The Secretary shall perform such other duties and exercise such powers as may from time to time be determined by the Board.

Responsibilities of the Treasurer

11. The Treasurer of the Board appointed under section 4 of the Ordinance shall as may be agreed by the Board be responsible for the keeping of the accounts of the charitable trust and shall for and on behalf of the Board deliver or transmit such statements of account or information on or before the end of each year to the Minister in accordance with section 6 of the Ordinance.

LAWS OF SARAWAK

Chapter 7

CHARITABLE TRUSTS ORDINANCE, 1994

LIST OF AMENDMENTS

Amending law	Short title	In force from
Swk. L.N. 52/94	Date of Commencement of the Ordinance	1.3.1995.
Act 532	Public Trust Corporation Act 1995	1.8.1995.

Sarawak LawNet