



LAWS OF SARAWAK

ONLINE VERSION OF UPDATED TEXT OF REPRINT

Chapter 31

LOANS AND LOAN GUARANTEES ORDINANCE, 1999

Incorporating all amendments up to 31st December, 2006

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

**LOANS AND LOAN GUARANTEES
ORDINANCE, 1999**

Date Passed by Dewan Undangan Negeri	6th December, 1999
Date of Assent	8th December, 1999
Date of Publication in <i>Gazette</i>	23rd December, 1999

Sarawak LawNet

LAWS OF SARAWAK

Chapter 31

LOANS AND LOAN GUARANTEES ORDINANCE, 1999

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

BORROWING BY THE STATE

3. Power to borrow from the Federation
4. Borrowings within Sarawak
5. Borrowings from outside Sarawak
6. Issue of bonds or other securities by Government
7. Loan agreements, *etc.*
8. Details of agreements and borrowings to be laid before Dewan Undangan Negeri
9. Application of loan proceeds
10. Repayment of loans
11. Moneys for payment of bonds

PART III
LOAN GUARANTEES

12. Body corporate
13. Guarantee to the Federation *Section*
14. Power to guarantee loans
15. Details of guarantees to be laid before Dewan Undangan Negeri
16. Appropriation of sums raised
17. Issue of bonds or other securities by body corporate
18. Restriction on borrowing powers of body corporate so long as guarantee outstanding
19. Powers exercisable by Government in event or prospect of default by body corporate
20. Body corporate to repay to Government sums paid under guarantee
21. Terms and conditions which may be agreed to or approved

PART IV
MISCELLANEOUS

22. Power to appoint bankers, *etc.*
23. Directions
24. Regulations
25. Repeal

SCHEDULE — Ordinances to be repealed

LAWS OF SARAWAK**Chapter 31****LOANS AND LOAN GUARANTEES
ORDINANCE, 1999**

An Ordinance to consolidate and make better statutory provisions for authorizing borrowings and provision of guarantees by the State and matters connected therewith.

[23rd December, 1999]

*(Swk. L.N. 4/2000)

Enacted by the Legislature of Sarawak—

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

1. This Ordinance may be cited as the Loans and Loan Guarantees Ordinance, 1999, and shall come into force on such date as the Minister may, by notification in the **Gazette*, appoint.

Interpretation

2.—(1) In this Ordinance—

“bank” means—

(a) a bank or a financial institution licensed under the Banking and Financial Institutions Act 1989 [*Act 372*];

(b) any bank licensed to conduct offshore banking business under the Offshore Banking Act 1990 [*Act 443*];

or

(c) any corporation licensed to conduct business of banking or lending by the laws of the country in which that Corporation is incorporated;

“body corporate” means a corporation or company declared by the Minister under section 12 to be subject to Part III;

“bonds” means any bond issued by the Government or a body corporate for the purposes of this Ordinance, and includes any right or option in regard thereto;

“borrow” includes the raising of money for State purposes through arrangement or agreement whereby the Government is obligated to repay or refund any money or benefits that may accrue or which it enjoys under the said arrangement or agreement, and “loan” shall be construed accordingly;

“Central Bank” means the Central Bank of Malaysia established by section 3 of the Central Bank of Malaysia Act 1958 [*Act 519*];

“Consolidated Fund” means the State Consolidated Fund formed or established under Article 29(1) of the Constitution of the State of Sarawak [*G.N.S. 163/63*];

“Development Fund” means the Development Fund established by the Financial Procedure (Contingencies and Trust Funds) Ordinance, 1963 [*Cap. 37*];

“federal Government” means the Government of the Federation;

“Federation” means the Federation of Malaysia, and includes the Government of the Federation;

“Government” means the State Government of Sarawak;

“guarantee” includes any undertaking or promise to pay, but does not include any instrument which does not impose a liability on the Government to answer for the default of another person;

“Minister” means the Chief Minister or, subject to such authority as may be vested or assigned to him, generally or specially, by the Chief Minister, the Minister in the Government charged with the responsibilities for the financial affairs of the State;

“securities” shall have the meaning assigned to it in the Securities Industry Act 1983 [*Act 280*];

“State financial authority” shall have the meaning assigned to it in the Financial Procedure Act 1957 [*Act 61*];

“State purpose” includes any matter with respect to which the Dewan Undangan Negeri has powers to make laws and any matter enumerated in the Concurrent List in the Ninth Schedule to the Federal Constitution;

(2) In this Ordinance, any 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 any member thereof acting under the general authority of the Majlis.

PART II

BORROWING BY THE STATE

Power to borrow from the Federation

3. Subject to this Part, the Government may, in such manner and subject to such terms and conditions as may be agreed upon between the Government and federal Government, borrow from the Federation from time to time, such sums as may be required by the Government for any State purpose.

Borrowings within Sarawak

4. Subject to the approval of the Central Bank and Article 112B of the Federal Constitution, the Government may borrow from any bank or financial source within Sarawak, such sum and upon such terms and conditions, as may be approved by the Majlis Mesyuarat Kerajaan Negeri.

Borrowings from outside Sarawak

5. Subject to Article 111(2) of the Federal Constitution and this Ordinance, the Government may, in such manner and subject to such terms and conditions as may be approved by the Majlis Mesyuarat Kerajaan Negeri, borrow such sum, as may be determined by the Majlis, from any bank or financial source outside the State as may be approved by the federal Government.

Issue of bonds or other securities by Government

6.—(1) The Government may, for the purpose of raising any loans or loan facilities under this Part, issue bonds or such other form of securities as may be determined by the Majlis Mesyuarat Kerajaan Negeri, on such terms and conditions as may be approved by the Majlis.

(2) All bonds or other securities issued under subsection (1) shall be signed or authenticated by the Minister or the State Financial Secretary.

(3) The State Financial Secretary shall keep a register, containing such particulars as may be required by regulations made under section 24, of all bonds and other securities issued pursuant to subsection (1).

Loan agreements, etc.

7. All agreements relating to any borrowings or loans or loan facilities made under this Part and the issue of any bonds or securities hereunder shall be approved by the Majlis Mesyuarat Kerajaan Negeri and signed by the Minister or the State Financial Secretary or any other public officer duly authorized by the Minister.

Details of agreements and borrowings to be laid before Dewan Undangan Negeri

8. The Minister shall cause to be laid before the Dewan Undangan Negeri, as soon as practicable, an instrument containing the following particulars pertaining to any agreement for any borrowings, loans or loan facilities made pursuant to this Part or in relation to any bonds or securities issued pursuant to section 6:

- (a) the date of the agreement;
- (b) the date of issue of any bonds or other securities, if any, issued pursuant to the agreement, and the date of maturity thereof;
- (c) the amount of borrowings, loans or loan facilities covered by the agreement;
- (d) the date or dates of drawdown of such borrowings, loans or loan facilities and, for the repayment thereof;
- (e) the rate of interest chargeable thereon;
- (f) the nature of any security, if any, provided by the Government or any other party, for such borrowings, loans or loan facilities;
- (g) the purpose of such borrowings, loans or loan facilities; and
- (h) any other relevant information or details pertaining to such agreement, borrowings, loans or loan facilities.

Application of loan proceeds

9. All moneys from borrowings, loans or loan facilities raised under this Part shall be paid or deposited into the Consolidated Fund or if so directed by the Majlis Mesyuarat Kerajaan Negeri into the Development Fund, and shall be applied as appropriated for the purpose for which they are borrowed as stipulated in the agreement pertaining to such borrowings, loans or loan facilities.

Repayment of loans

10. All moneys borrowed under this Part together with interests and other charges accrued thereon shall be repaid in accordance with the terms of the agreement relating to such borrowings, loans or loan facilities and out of moneys from the Consolidated Fund, and there shall be issued out of the Consolidated Fund such sums as may be required during any financial year to meet the repayment of the moneys borrowed and any interests or charges accrued thereon.

Moneys for payment of bonds

11. All moneys required for the payment of bonds upon their maturity or otherwise or for the redemption of securities issued under this Part, or any interests or charges payable or due thereunder, shall be paid out of moneys from the Consolidated Fund and there shall be issued out of the Consolidated Fund such moneys as may be required during any financial year, to meet such payment.

PART III

LOAN GUARANTEES

Body corporate

12. The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, declare by notification in the *Gazette* any body corporate to which this Part shall apply.

Guarantee to the Federation

13.—(1) Where the federal Government has granted a guarantee (herein referred to as “the federal guarantee”) to guarantee the repayment of any loans or borrowings by—

- (a) the Government; or

(b) a body corporate to which this Part or the Loans Guarantee (Bodies Corporate) Act 1965 [Act 96] applies,

the Government may, if so required by the federal Government, issue or provide a guarantee to the federal Government, to guarantee the payment to the federal Government of all moneys which the federal Government may become liable under the federal guarantee.

(2) Any guarantee given to the federal Government pursuant to subsection (1) shall be in such form and contain such terms and conditions as may be approved by the Majlis Mesyuarat Kerajaan Negeri and signed by the Minister or State Financial Secretary or by any other public officer duly authorized by the Minister.

Power to guarantee loans

14.—(1) The Government may, in relation to any loans raised by any body corporate to which this Ordinance has been declared to apply under section 12, guarantee the discharge by the body corporate of its obligations under any agreement which may be entered into in connection with the raising of the loans or under any bonds or other securities issued pursuant to the agreement; and the said guarantee shall be in such form and on such terms and subject to such conditions as may be agreed between the Government and the bank or financial source from which the loan is raised.

(2) Any guarantee given under this section shall be given in writing in the name of the Government, and the guarantee and any endorsement on any bonds or other securities given under this section shall be approved by the Majlis Mesyuarat Kerajaan Negeri and may be signed on behalf of the Government by the Minister or State Financial Secretary or any other public officer authorized by the Minister.

Details of guarantees to be laid before Dewan Undangan Negeri

15. The Minister shall cause to be laid, as soon as practicable, before the Dewan Undangan Negeri, an instrument containing the following particulars of any guarantee issued under this Part:

(a) the date of the guarantee;

- (b) the person in whose favour the guarantee is issued;
- (c) the name of the body corporate whose liability is guaranteed;
- (d) the sums, including interest and other charges, covered by the guarantee;
- (e) the terms and conditions pertaining to any borrowings, loans or loan facilities covered by the guarantee;
- (f) the nature of any collateral or related security provided by the body corporate under section 17(2), in addition to the guarantee issued under this Part, for the borrowings, loans and loan facilities; and
- (g) any other relevant information or particulars relating to the guarantee.

Appropriation of sums raised

16. Any sums guaranteed under this Ordinance are appropriated first to the payment of expenses in connection with the raising of the loans or the issue of the bonds or securities relating thereto and, subject to payment of those expenses, to the purposes for which the loans are raised:

Provided that where any part of such sum cannot be applied to the purposes aforesaid the part may be applied to such other purposes as may be approved by the Majlis Mesyuarat Kerajaan Negeri.

Issue of bonds or other securities by body corporate

17.—(1) Notwithstanding anything contained in any written law, the body corporate may issue such bonds or other securities, on such terms and conditions as may be approved by the Majlis Mesyuarat Kerajaan Negeri for the purpose of giving effect to any agreement aforesaid.

(2) Notwithstanding anything contained in the written law by which a body corporate is established, the body corporate may charge or mortgage or pledge all or any of its assets (movable or immovable), undertaking or revenue to secure any sum raised by way of loan guaranteed under this Ordinance.

Restriction on borrowing powers of body corporate so long as guarantee outstanding

18.—(1) So long as the Government shall continue to be liable under any guarantee given under this Ordinance in respect of any sums raised by a body corporate, the body corporate shall—

(a) not, except with the written approval of the State financial authority upon consultation with the Minister, exercise any other power to borrow possessed by it or conferred on it by any other written law or by virtue of any rules, regulations, articles of association to which the body corporate is subject;

(b) submit to the State financial authority its audited accounts, at such intervals as he may determine; and

(c) furnish to the State financial authority, if so required by him in writing, all accounting records of the body corporate, for inspection by him or an approved company auditor appointed by him.

(2) For the purpose of this section, “accounting records” means—

(a) the accounting and other records which the body corporate is required to keep or maintain under section 167(1) of the Companies Act 1965 [*Act 125*] or any other written laws; and

(b) the accounting records which the body corporate is required by regulations made under section 24 to keep or maintain.

(3) A body corporate and any of its officers or agents who contravenes any of the provisions of subsection (1) shall be guilty of an offence: Penalty, a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding four years or both such fine and imprisonment.

Powers exercisable by Government in event or prospect of default by body corporate

19.—(1) Where it is made to appear to the Majlis Mesyuarat Kerajaan Negeri that there is reasonable cause to believe—

(a) that a body corporate is likely to fail or be unable to discharge any of its obligations under any agreement concluded by it under this Ordinance or under any bonds or other securities issued pursuant to any such agreement; and

(b) that the Government is or may become liable under any guarantee given under this Ordinance in respect of that obligation,

the Majlis Mesyuarat Kerajaan Negeri may by order give or authorize any other person to give such directions to the body corporate as he or that other person may from time to time think necessary or desirable to ensure that satisfactory arrangements are made by the body corporate to enable it duly to discharge its obligations under such agreement, bonds or other securities under this Ordinance.

(2) The body corporate shall, notwithstanding any provisions contained in the written law by which it is established, comply with any directions given by or under any such order.

Body corporate to repay to Government sums paid under guarantee

20.—(1) If any sum is paid out of the Consolidated Fund in respect of any liability incurred by the Government under a guarantee under this Ordinance, the body corporate shall repay that sum (together with interest thereon at the same rate as that payable on the loan under the agreement by the body corporate with the authority from which the loan is raised) to the Consolidated Fund in such manner and at such time or by such instalments as the Majlis Mesyuarat Kerajaan Negeri may direct.

(2) If any sum is so paid out of the Consolidated Fund, the Minister shall as soon as possible after the end of each financial year beginning with that in which the sum was paid and ending with that in which all liability in respect thereof and any interest payable thereon is finally discharged by the body corporate concerned, lay before the Dewan Undangan Negeri, a statement relating thereto.

Terms and conditions which may be agreed to or approved

21. Without prejudice to sections 7 and 14(1), the terms and conditions which may be agreed to by the Government or approved by the Majlis Mesyuarat Kerajaan Negeri under this Ordinance, as the case may be, may include, in respect of any guarantee given or agreement concluded under this Ordinance or under any bonds or other securities issued pursuant to any such guarantee or agreement, provision for submission by the body corporate or the Government or both of them to the jurisdiction of the courts of the country in which the loan is raised.

PART IV

MISCELLANEOUS

Power to appoint bankers, etc.

22. For the purposes of raising loans or undertaking any borrowings or the issue of bonds or other securities in pursuance of this Ordinance, the Government may appoint or engage investment or financial advisers, consultants, bankers, rating agencies or other agents or persons with the requisite knowledge or expertise, as the Government deems fit or proper, and pay them such fees, remuneration or expenses as may be agreed between them and the Government.

Directions

23. The State financial authority may, after consultation with the Minister, issue from time to time, direction on or relating to the procedure for the submission or evaluation of proposals or requests for borrowings, guarantees, bonds and other securities by the Government pursuant to this Ordinance and the presentation of any such proposals or requests to the Majlis Mesyuarat Kerajaan Negeri for its consideration, direction or approval.

Regulations

24. The Yang di-Pertua Negeri may make regulations generally for carrying out the provisions of this Ordinance and, in particular, such regulations may provide for—

- (a) the issue of bonds or other securities by the Government or a body corporate, and their redemption, and rights attached thereto;
- (b) the keeping of accounting records by a body corporate;
- (c) the keeping of records of bonds and other securities issued by the Government and a body corporate; and
- (d) any other matters which may be considered necessary for carrying out the provisions of this Ordinance.

Repeal

25. The Ordinances set out in the Schedule are repealed.

SCHEDULE

(Section 25)

ORDINANCES TO BE REPEALED

1. Loan (Government of the Federation) Ordinance, 1974 Ord. No. 4 of 1974.
2. Loans and Guarantees (Banks and Other Financial Source) Ordinance, 1976 Ord. No. 10 of 1976.
3. Loans Guarantee (Bodies Corporate) Ordinance, 1976 Ord. No. 11 of 1976.

Sarawak LawNet

[List of Amendments]

LAWS OF SARAWAK

Chapter 31

LOANS AND LOAN ORDINANCE, 1999

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 4/2000	Date of Commencement of the Ordinance	23.12.1999

Sarawak LawNet