



# **LAWS OF SARAWAK**

—  
ONLINE VERSION  
—

## **Chapter 84**

### **SARAWAK OMBUDSMAN ORDINANCE, 2023**

**SARAWAK OMBUDSMAN ORDINANCE, 2023**

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SARAWAK OMBUDSMAN ORDINANCE, 2023

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## LAWS OF SARAWAK

## Chapter 84

## SARAWAK OMBUDSMAN ORDINANCE, 2023

*An Ordinance to establish the Sarawak Ombudsman, appointment of the Chief Ombudsman and Ombudsman to ensure proper administration and to provide for measures against maladministration by the public service agency and for matters connected therewith.*

[ 1<sup>st</sup> April, 2024 ]  
( Swk. L.N. 264/2024 )

ENACTED by the Legislature of Sarawak—

PART I  
PRELIMINARY**Short title and commencement**

1.—(1) This Ordinance may be cited as the Sarawak Ombudsman Ordinance, 2023.

(2) This Ordinance shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint, and the Minister may appoint different dates for the coming into force of different parts or provisions of this Ordinance.

**Interpretation**

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

“authorized officer” means any person authorized by the Chief Ombudsman by notification in the *Gazette*;

“Chief Ombudsman” means the Chief Ombudsman appointed under section 5;

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

“maladministration” means inefficient, bad, or improper administration and, without derogation from the generality of the foregoing, includes—

(a) unreasonable conduct, including delay, discourtesy, and lack of consideration for a person affected by any action;

(b) abuse of any power (including any discretionary power) or authority including any action or omission which—

(i) is unreasonable, unjust, oppressive, wrong or improperly discriminatory or is in accordance with a practice which is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

(ii) is based wholly or partly on a mistake of law or fact; or

(iii) appears to have been contrary to law; or

(c) unreasonable, unjust, oppressive, wrong or improperly discriminatory procedures,

by public service agency for purposes connected therewith;

“Member of the Administration” shall have the same meaning assigned to it in Article 160(2) of the Federal Constitution;

“Minister” means the Minister charged with the responsibility of Integrity and Ombudsman;

“Ombudsman” includes the Chief Ombudsman, Deputy Chief Ombudsman and Ombudsman appointed under section 5;

“public servants” means any person holding any appointment or discharging the duties of any office the emoluments of which are wholly or in part derived from the revenues of the State and any employee or member of a public service agency whether temporary or permanent and whether paid or unpaid;

“public service agency” means any Government agencies, public authorities, statutory bodies, local authorities and any public service agency that carries public services functions under the State or any office the emoluments of which are wholly or in part

derived from the revenues of State including its officers, employees, servants, representatives and agents; and

“State” means the State of Sarawak.

### **Application**

3. This Ordinance shall apply to any public service agency defined under section 2.

## PART II SARAWAK OMBUDSMAN

### **Establishment of the Sarawak Ombudsman**

4. There shall be established an office of Ombudsman to be known as the “Sarawak Ombudsman” to provide for proper administration and to provide measures against any maladministration by the public service agency.

### **Appointment of Chief Ombudsman, etc.**

5.—(1) The Sarawak Ombudsman shall consist of a Chief Ombudsman, a Deputy Chief Ombudsman and not less than three or not more than five other Ombudsmen, all of whom shall be appointed by the Yang di-Pertua Negeri, by notification in the *Gazette*.

(2) The Ombudsman shall hold office for a term of not exceeding three years but is eligible for reappointment.

(3) Notwithstanding subsection (2), the appointment of Ombudsman shall cease—

- (a) upon his death;
- (b) if his appointment is revoked by the Yang di-Pertua Negeri;
- (c) if he has been adjudged a bankrupt by a court of competent jurisdiction;
- (d) if because of health or unsoundness of mind, he is unable to discharge his duties as an Ombudsman;
- (e) if he has been convicted of any criminal offence; or



(f) if he resigns by a letter addressed to the Yang di-Pertua Negeri.

**Qualifications of the appointment of Ombudsman, etc.**

6.—(1) A person may not be appointed as an Ombudsman unless the Yang di-Pertua Negeri is satisfied that the person has substantial experience or expertise in one or more of the following fields, and has significant standing and credibility in such fields—

- (a) law;
- (b) professional accountancy;
- (c) public administration relating to the administration of public services; or
- (d) any other expertise or experience which is highly relevant to the effective performance of the functions of the Sarawak Ombudsman.

(2) A person shall not be appointed as an Ombudsman if he is, and shall cease to be an Ombudsman if he becomes—

- (a) a public servant,  
Provided that a public servant may be appointed to be a member of the Sarawak Ombudsman if he is on leave prior to retirement;
- (b) a member of either House of Parliament or of the Dewan Undangan Negeri;
- (c) a member, officer, or employee of any local authority;
- (d) a member of any trade union, or of any body or association affiliated to a trade union;
- (e) the holder of any office in any political association; or
- (f) a member of any board of directors or board of management, or an officer or employee, or engages in the affairs or business, of any organisation or body, whether corporate or otherwise, or of any commercial, industrial, or other undertaking,

whether or not he receives any remuneration, reward, profit, or benefit from it.

(3) The disqualification in paragraph (f) of subsection (2) shall not apply where such organisation or body carries out any welfare or voluntary work or objective beneficial to the community or any part thereof, or any other work or objective of a charitable or social nature, and the member does not receive any remuneration, reward, profit, or benefit from it.

#### **Oath of office of Ombudsman**

7. It shall be the duty of each Ombudsman appointed under this Ordinance to make and subscribe an oath before the Chief Judge of Sabah and Sarawak or of a judge of the High Court of Sabah and Sarawak in the form set out in the First Schedule.

#### **Appointment of temporary Ombudsman**

8. Where, during any period, an Ombudsman has been granted leave of absence by the Yang di-Pertua Negeri or is unable, owing to his absence from the State, illness or any other cause, to discharge his functions as an Ombudsman, the Yang di-Pertua Negeri may appoint any person who would be qualified to be appointed as an Ombudsman to exercise his functions temporarily during that period and the appointment of such temporary Ombudsman shall be made in the same manner as any other Ombudsman.

#### **Removal and Suspension of Ombudsman, etc.**

9.—(1) The Premier, or the Chief Ombudsman after consulting with the Premier, may represent to the Yang di-Pertua Negeri that an Ombudsman ought to be removed from office if he has breached any of the provisions of this Ordinance and any rules hereunder.

(2) The Yang di-Pertua Negeri shall appoint a tribunal and shall refer the representation to it and, if the tribunal so recommends, the Yang di-Pertua Negeri shall remove that Ombudsman from office by writing under his hand.

(3) The tribunal shall consist of not less than three persons who hold or have held office as Judge of the Federal Court, Court of Appeal or of any High Court in the Federation or, if it appears to the Yang di-

Pertua Negeri expedient to make such appointment, persons who hold or have held equivalent office in any other part of the Commonwealth.

(4) The tribunal may regulate its own procedure for that purpose.

(5) Where a representation has been made to the Yang di-Pertua Negeri under subsection (1), he may on the recommendation of the Premier or the Chief Ombudsman, as the case maybe, suspend the Ombudsman concerned from the exercise of his functions pending the recommendation of the tribunal on that representation.

(6) Notwithstanding subsection (5), the Premier or the Chief Ombudsman, as the case may be, may by notice in writing suspend any Ombudsman who is under investigation or charged in any court for any offence under any written law.

#### **Remuneration, allowances, etc.**

**10.**—(1) The Ombudsman shall be paid such remunerations, allowances, and other benefits as the Yang di-Pertua Negeri may, by Order published in the *Gazette*, determine.

(2) The sums required for the payment under subsection (1) shall be charged on and paid out under the State Consolidated Fund.

#### **Powers of Ombudsman**

**11.**—(1) The Ombudsman shall have the power to do all things expedient or reasonably necessary for or incidental to the discharge of his functions and exercise of his powers under this Ordinance.

(2) Without prejudice to the generality of subsection (1), the Ombudsman may—

(a) receive, investigate, and resolve complaints including to dismiss any baseless and frivolous complaint;

(b) recommend corrective or preventive action to be taken by a public service agency;

(c) monitor the implementation of the recommendation made by the Ombudsman;

(d) prepare and publish reports relating to maladministration in public service agency;

(e) direct the production or inspection of any document, record or file kept by or in the possession of any public service agency or any person which can materially assist the Ombudsman in the investigation into any complaint;

(f) make factual finding based on oral or documentary disposition or evidence procured in the course of investigation;

(g) enter and inspect the premises, any building, site, area or place related to any complaint or matter under investigation; and

(h) to do all such matters and things as may be incidental to or consequential upon the exercise of its powers under this Ordinance.

### **Functions of Ombudsman**

**12.—(1)** The functions of the Ombudsman are —

(a) to receive, investigate and resolve complaint relating to maladministration of public service agency;

(b) to promote, enhance, and instill in public service agencies the principles and practices of good governance, integrity and accountability;

(c) to recommend any corrective, remedial and other appropriate measure or action based on the findings and results of the analysis of complaints, to public service agency;

(d) to determine and specify the time frame within which the measure or action recommended in paragraph (c) shall be implemented by the public service agency who shall report to the Ombudsman upon implementation of the said measures or action;

(e) to report to the State Secretary for his appropriate action if the recommendation made under paragraph (c) is not implemented;

(f) to submit to the Dewan Undangan Negeri annually a report of the activities and affairs of the Ombudsman;

(g) to publicise the results of analysis or investigation of complaint if the Ombudsman thinks fit;

(h) to make recommendation for the strategic planning in public service agency for improvement based on the result of analysis or investigation complaint;

(i) to monitor the implementation of complaint resolution actions by public service agency;

(j) to advise the Government on strategies, direction and measures to be adopted for public service agency to promote principles and practices of good governance, transparency, integrity, accountability and effective or efficient public service delivery system;

(k) to act as mediator to reach an agreement towards fair and equitable resolution of any complaint; and

(l) to do all such matters and things as may be incidental to or consequential upon the exercise of its powers under this Ordinance.

(2) Notwithstanding any provision under this Ordinance, the Ombudsman may initiate any action, review and analyse any issues relating to maladministration in the public interest either on its own initiative or on the basis of public complaints.

### **Delegation of powers by the Chief Ombudsman**

**13.** The Chief Ombudsman may, by direction, delegate to any person appointed under section 5 any of his powers under this Ordinance, or where it appears to the Chief Ombudsman that he has or may have an interest in any matter which is the subject of an investigation under Part III of this Ordinance, shall so delegate his powers and shall not undertake personally or continue that investigation or report thereon.

## **PART III COMPLAINT, INVESTIGATION, ETC.**

### **Mode of Complaint**

**14.—(1)** The Chief Ombudsman may investigate and take any measure or action provided in this Ordinance, on any complaint made to him in relation to maladministration of public service agency where such complaint:

(a) has been reported to but not acted upon by the public service agency;

(b) has been reported to and acted upon, but not resolved, by the public service agency; or

(c) has been resolved but the complainant is not satisfied with the finding and result of the resolution by the public service agency.

(2) The Chief Ombudsman shall, when receiving a complaint that has never been made to the public service agency, direct such complaint to the relevant public service agency for their action.

### **Restrictions on investigation of complaint**

**15.**—(1) Notwithstanding the generality of the powers conferred on the Ombudsman by this Ordinance, the Ombudsman shall not undertake or continue an investigation into a complaint—

(a) if it relates to any action of which the complainant has had actual knowledge of the cause, facts or circumstances upon which the complaint is founded for more than twelve months before the complaint is received by the Ombudsman or if the complaint had already been made to a public service agency twelve months after he had been notified of the action or decision of the public service agency thereon, whichever is the later;

(b) if the complaint is made anonymously or the complainant cannot be identified or traced;

(c) if the complaint is not made by the individual aggrieved himself or, where the individual by whom the complaint might have been made has died or is for any reason unable to act for himself, by his personal representative or by a member of his family or other individual suitable to represent him;

(d) if the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Ombudsman was of the opinion that there had been no maladministration;

(e) the subject matter of the complaint is trivial; or

(f) the complaint is frivolous or vexatious or is not made in good faith,

unless the Ombudsman is satisfied that in the particular circumstances, it is proper to conduct an investigation into a complaint.

(3) If the Ombudsman decides not to undertake or continue an investigation into a complaint he shall inform the complainant of that decision and of his reason.

(4) Notwithstanding section 14, the Ombudsman shall not investigate any matters specified in the Second Schedule.

### **Procedure to lodge complaint**

**16.**—(1) Any person may address a complaint to the Chief Ombudsman in writing and the Chief Ombudsman shall thereafter notify such complaint to the relevant public service agency in writing.

(2) Where a complaint is made orally—

(a) such complaint shall be reduced in writing by the Chief Ombudsman or his authorized officer and be read over and signed by the complainant; or

(b) the Chief Ombudsman may request the complainant to reduce such complaint in writing and submit to him,

and the Chief Ombudsman shall thereafter notify such complaint to the relevant public service agency in writing.

### **Preliminary inquiries**

**17.**—(1) Upon receiving the complaint, the Chief Ombudsman shall assess and evaluate the merits of such complaint.

(2) In assessing and evaluating the complaint, the Chief Ombudsman may conduct preliminary inquiry, including seeking information, documentary evidence, relevant records or files, or clarification from the public service agency named in the complaint.

(3) Any communication made during the preliminary inquiry shall be made in writing and may be copied and served to the complainant if the Chief Ombudsman thinks necessary.

**Determination of merits**

**18.**—(1) The Chief Ombudsman shall, upon determination of merits of the complaint, decide whether to:

- (a) investigate the complaint; or
- (b) dismiss such complaint on the ground that such complaint is baseless and frivolous.

(2) Where the Chief Ombudsman decides to dismiss such complaint pursuant to subsection (1)(b), such decision shall be notified to the complainant and the public service agency.

(3) Once the merits of such complaint have been determined and the decision pursuant to subsection (1) is made, the Chief Ombudsman may prepare a report or caused a report to be prepared and be kept in the office of the Ombudsman.

**Power to form Investigation Committee**

**19.**—(1) The Chief Ombudsman may, if he thinks necessary, upon deciding that a complaint has merits and that further investigation needs to be carried out, appoint an Investigation Committee to investigate the complaint.

(2) The Chief Ombudsman may appoint any relevant persons to be member of such Investigation Committee to assist in the investigation of such complaint.

**Power to investigate complaint**

**20.** —(1) The Ombudsman or any authorized officer may carry out investigation into any complaint lodged under section 16.

(2) The Ombudsman or any authorized officer may in writing require the attendance before himself of a person who appears to be acquainted with the facts and circumstances of that complaint or is suspected of being concerned with the complaint under investigation or to produce any document, record or file relevant for the investigation which is in his control or custody.

(3) The Ombudsman or any authorized officer referred to in subsection (1) shall be issued with an authority card to be signed by the Chief Ombudsman.



(4) Whenever such Ombudsman or any authorized officer exercises any of the power under this Ordinance, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (3).

**Power to examine, etc.**

**21.**—(1) An Ombudsman or any authorized officer making an investigation under this Part, may call and orally examine any person who may be acquainted with the facts and circumstances of the complaint.

(2) Such person shall be legally bound to answer all questions put to him by the Ombudsman or any authorized officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth whether or not the statement is made wholly or partly in answer to any question.

(4) The Ombudsman or any authorized officer shall first inform that person of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced to writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

**Procedure after investigation**

**22.**—(1) Where, upon completion of any investigation under section 20, the Ombudsman is of the opinion that there is maladministration, he shall—

- (a) refer to the appropriate authority for further action;
- (b) recommend that the action or omission should be rectified;
- (c) recommend that the decision should be reviewed or varied;

(d) recommend that any law or practice on which the decision, recommendation, act, or omission was based should be reviewed;

(e) recommend that reasons should be given for the decision to the complainant; or

(f) recommend that any other steps should be taken.

(2) The Ombudsman shall report his opinion, and his reasons therefor, to the appropriate public service agency and may make such recommendations as he thinks fit and in any such case he may request the public service agency to notify him, within a specified time, of the steps that it proposes to take to give effect to his recommendations.

(3) If within a reasonable time after the report is made, no action is taken which seems to an Ombudsman to be adequate and appropriate, the Ombudsman, may, after considering the comments made by or on behalf of any public service agency affected, make a report as provided for under section 44.

(4) In the event that the Ombudsman, after completing his investigation, is of the opinion that there is no maladministration, the Ombudsman shall notify the complainant through a written report on his decision and a copy of the report shall be given to the public service agency affected.

### **Mediation**

**23.—**(1) The Chief Ombudsman may decide to deal with a complaint by mediation after having taken into consideration all the circumstances of the complaint.

(2) The Chief Ombudsman may authorise any person to act as a mediator in any mediation.

(3) The complainant and the public service agency affected shall participate in the mediation on their own without undue pressure or influence from any other parties, and either or both the complainant and the public service agency may withdraw at any time.

(4) The mediator may, as circumstances warrant, decide to terminate the mediation at any time.

(5) In the event the mediation is unsuccessful:

(a) the complaint is to be treated as if the mediation had not taken place; and

(b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(6) Matters discussed and documents prepared for the purpose of such mediation, except for any document which has been in possession of the parties before the mediation, shall not:

(a) be admissible as evidence in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document related, consents to its admission; and

(b) be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of the mediation may be given against any person.

#### **Protection of complainant, witness**

**24.** Notwithstanding any written law to the contrary, any report through any means on a complainant or witness shall not reveal or contain—

(a) the name;

(b) the address;

(c) the picture of the complainant, witness, or any other person, place or thing which may lead to the identification of the complainant or witness; or

(d) any evidence or any other thing likely to lead to the identification of the complainant or witness.

#### **Evidence**

**25.—(1)** An Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any document or paper or thing which in his opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person.

(2) This section shall apply to any person who is an officer, employee, or member of any public service agency, and whether or not such documents, papers, or things are in the custody or under the control of any public service agency.

(3) The Ombudsman may administer an oath or affirmation to a person appearing as a witness before him and may examine the witness on oath or affirmation.

(4) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any court.

#### **Action taken by other relevant authorities**

26. Nothing in this Ordinance shall be construed to restrict other relevant authorities from taking any action under any written law.

### **PART IV OFFENCES AND PENALTIES**

#### **False information**

27. Any person who makes a statement which he knows to be false or does not believe to be true, or otherwise knowingly misleads the Ombudsman or any other person in the exercise of his powers under this Ordinance commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or imprisonment not exceeding one year, or to both.

#### **Failure to appear**

28. Any person who fails to appear upon receiving a notice requiring his attendance before the Ombudsman or any other person in the exercise of his powers under this Ordinance commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or imprisonment not exceeding six months, or to both.

#### **Improper influence, etc.**

29. Any person who is without lawful excuse, improperly influences, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Ordinance is guilty of an offence and shall, on conviction, be liable to a fine not exceeding

thirty thousand ringgit or imprisonment not exceeding one year, or to both.

### **Contempt**

**30.** Any person who uses any indecent, threatening, abusive or insulting words, or behaves in a threatening or insulting manner to the Ombudsman or any other person in the exercise of his duties and powers under this Ordinance shall be guilty of contempt and commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years, or to both.

### **Misrepresentation**

**31.—**(1) A person shall not directly or indirectly—

(a) where he is not an Ombudsman represent that he is an Ombudsman;

(b) where he is not a person to whom a delegation has been made pursuant to section 13 represent that he is such a person;

(c) where he is not an authorized officer of the Ombudsman represent that he is an authorized officer of the Ombudsman; or

(d) where he is not engaged in the administration or execution of this Ordinance represent that he is so engaged.

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

(3) For the purpose of this section, a person represents that a state of affairs exists if the person does or says anything, or causes, permits, or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

### **General penalty**

**32.** Any person who fails to comply with any provision under this Ordinance or any rules made thereunder commits an offence and shall

upon conviction, be liable to a fine not exceeding thirty thousand ringgit or imprisonment for a term not exceeding one year, or to both.

### **Power to investigate an offence**

**33.**—(1) The Ombudsman or any authorized officer or any police officer not below the rank of Inspector or any police officer in charge of a police station (referred to in this section collectively as an “investigating officer”) may carry out investigation into any offence, and in carrying out such investigation, the investigating officer may exercise all or any of the special powers in relation to police investigation provided in the Criminal Procedure Code [*Act 593*].

(2) Any investigating officer may in writing require the attendance before himself of a person who appears to be acquainted with the facts and circumstances of the case or is suspected of being concerned with the offence under investigation.

(3) If the person who is so required to attend fails to comply therewith, the investigating officer may report such failure to a Magistrate who will issue a warrant to secure the attendance of that person.

(4) The Ombudsman or any Investigating Officer referred to in subsection (1) shall be issued with an authority card to be signed by the Chief Ombudsman.

(5) Whenever such investigating officer exercises any of the powers under this Ordinance, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (4).

### **Examination of persons acquainted with case**

**34.**—(1) An investigating officer making an investigation under this Part may examine orally any person who may be acquainted with the facts and circumstances of the case.

(2) Such person shall be legally bound to answer all questions put to him by the investigating officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth whether or not the statement is made wholly or partly in answer to any question.

(4) The investigating officer shall first inform that person of the requirements of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced to writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

#### **Power of Arrest**

**35.**—(1) Any offence under this Ordinance and rules made thereunder shall be a seizable offence within the meaning of the Criminal Procedure Code [*Act 593*].

(2) The Ombudsman or any authorized officer or any police officer not below the rank of Inspector or any police officer in charge of a police station may, without warrant, arrest any person reasonably suspected of having been concerned in any such seizable offence or if the person refuses to give his name and residence, or gives a name and residence which such officer has reason to believe is false, or that he will abscond.

(3) The Ombudsman or any authorized officer, or any police officer not below the rank of Inspector or any police officer in charge of a police station making an arrest under this section shall, without unnecessary delay, take or send the person arrested to the officer in charge of the nearest police station.

(4) Where the person arrested under this section is required, for the purposes of investigation, to be detained for more than twenty-four hours, section 38 shall apply.

#### **Power to release on personal bond**

**36.**—(1) Any person arrested under this Ordinance or any rules made hereunder, unless remanded, may be released on a personal bond with or without surety by the Ombudsman or any investigating officer.

(2) The amount of every personal bond executed shall be fixed with due regard to the circumstances of the case as being sufficient to secure the attendance of the person arrested when so required.

### **Search and Seizure**

**37.** If it appears to an investigating officer that there is reasonable cause to believe that in any building or place or on any land there is concealed or deposited any document or relevant materials in respect of which an offence is being or has been committed, the documents or relevant materials is likely to be removed, he may exercise, upon, and in respect of the building, place or land, all the powers available to him under any written law in full and ample manner as if he were authorized to do so by a warrant under such written law.

### **Where investigation cannot be completed within 24 hours**

**38.—**(1) Whenever any person who is arrested under section 35 or whose attendance is secured by a warrant under section 33(3) in connection with an offence under this Ordinance or any rules made thereunder, and the investigation cannot be completed within the period of twenty-four hours and there are reasonable grounds for believing that the accusation or information against him is well-founded, the investigating officer investigating the case under section 33 may deliver him to the nearest police station to be released on a bond or police bail or to be detained thereat pending arrangement to produce the person before a court of competent jurisdiction.

(2) Where a person is brought before a Court under subsection (1), the investigating officer shall comply with section 117(1) of the Criminal Procedure Code [*Act 593*] and the Court shall have the powers over that person as are provided in section 117(2) of that Code.

### **Diary of proceedings in investigations**

**39.—**(1) Every investigating officer making an investigation shall day by day enter in his investigation diary setting forth—

- (a) the time at which the instruction, if any, for investigation reached him;
- (b) the time at which he began and closed the investigation;
- (c) the place or places visited by him; and



(d) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Evidence Act 1950 [Act 56], an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect any such diary:

Provided that if the investigating officer who has made the investigation refers to the diary for the purposes of section 159 or 160 of the Evidence Act 1950 [Act 56], such entries only as the officer has referred to shall be shown to the accused, and the Court shall at the request of the officer cause any other entries to be concealed from view or obliterated.

### **Power to Compound**

40.—(1) The Ombudsman or any authorized officer, may, with the consent in writing of the Public Prosecutor or any person appointed by him under section 376(3) of the Criminal Procedure Code [Act 593], accept from any person who has committed an offence under this Ordinance or any rules made thereunder, a sum not exceeding one half of the maximum amount of the fine provided for the offence has been committed.

(2) All sums of money received under this section shall be credited to the State Consolidated Fund.

(3) Any power vested in an authorized officer may, at any time, be withdrawn by the Chief Ombudsman, by notification in the *Gazette*.

### **Power to Conduct Prosecution**

41. Prosecution of any offence under this Ordinance or any rules made thereunder may be conducted by the Public Prosecutor or any person authorized by him under section 377(b) of the Criminal Procedure Code [Act 593].

## **PART V REPORTING**

### **Annual Report**

42.—(1) The Chief Ombudsman shall, as soon as practicable after the end of each financial year, cause to be made and transmitted

to the Minister a report dealing generally with the Ombudsman's activities and its affairs during the preceding financial year.

(2) The Minister shall cause a copy of every such report to be laid before the Dewan Undangan Negeri.

(3) A Special Select Committee may be appointed upon a motion made under Standing Order of the Dewan Undangan Negeri to consider any matter relating to the report raised in the Dewan Undangan Negeri.

### **Publication of report**

**43.**—(1) Subject to subsection (2), the Ombudsman shall:

(a) make public by way of a written report the results of any enquiry carried out by him, including any finding, recommendation and opinion; and

(b) furnish the complainant with a copy of his report.

(2) The Ombudsman may decide to keep a report, or part of it, confidential to the person in charge of the public service agency the subject of the enquiry, on the grounds of public security or public interest.

(3) If the Ombudsman decides to keep a report, or part of it, confidential, he shall inform the complainant, if any, in writing of his findings without in any way prejudicing the grounds on which the Ombudsman decided to keep the report or the part thereof, confidential.

### **Other reports**

**44.**—(1) The Ombudsman may, at any time as he considers necessary or desirable, make and transmit to the Minister, for presentation to the Dewan Undangan Negeri, other reports on any matters of pressing importance or urgency that, in the Chief Ombudsman's opinion, shall not be deferred until the presentation of his annual general report.

(2) A report may include all or any of the following:

(a) the discharge of his functions;

(b) any action taken on his findings; or

(c) any defect which appears to the Ombudsman to exist in the administration of any public service agency over which he has jurisdiction under this Ordinance.

## PART VI

### OFFICERS AND EMPLOYEES

#### **Appointment of Chief Administrator**

**45.** There shall be appointed a Chief Administrator of the Sarawak Ombudsman by the Minister from among members of the public service of the State and shall be assisted by such number of officers.

#### **Duties of Chief Administrator**

**46.—(1)** The Chief Administrator shall—

(a) be the chief administrative officer of the Sarawak Ombudsman; and

(b) be responsible for the administration and management of the affairs of the Sarawak Ombudsman and to carry out such other duties and responsibilities as the Chief Ombudsman may, from time to time, assign to him.

## PART VII

### GENERAL PROVISIONS

#### **Immunity**

**47.** No Ombudsman, authorized officer, investigating officer, officer or employee of the Sarawak Ombudsman or any person acting under or carrying out the direction or executing or implementing the decision of the Ombudsman shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceeding in respect of any act, matter or thing done or omitted to be done for the purpose of executing this Ordinance or rules made thereunder unless the act, matter or thing was done or omitted to be done, in bad faith.

**Protection from personal liability**

**48.** No Ombudsman, Chief Administrator, any officer assisting the Chief Administrator, authorized officer, investigating officer, officer or employee of the Sarawak Ombudsman or any person acting under or carrying out the direction or executing or implementing the decision of the Ombudsman shall be personally liable for any act or default done in good faith and without negligence in the ordinary course of the performance of their functions, duties or in the exercise of any powers conferred by this Ordinance or any rules made thereunder.

**Public servant**

**49.** All Ombudsman, Chief Administrator, officers, employees of the Sarawak Ombudsman, any committee, authorized officers, investigating officers, advisors, or consultants acting on behalf of the Ombudsman, while performing their functions or discharging their duties under this Ordinance shall be deemed to be “public servant” within the meaning of the Penal Code [*Act 574*].

**Legal representation**

**50.**—(1) In respect of any legal proceeding by or against the Ombudsman—

(a) the State Attorney-General or any State Legal Officer or public officers authorized by him; or

(b) an advocate appointed by the Chief Ombudsman in consultation with the State Attorney-General;

may appear and represent the Ombudsman in such proceedings before any court.

(2) For the purpose of this section, legal proceedings include an arbitration conducted under the Arbitration Act 2005 [*Act 646*] and any proceedings where the court exercises its additional powers under section 25(2) of the Courts of Judicature Act 1964 [*Act 91*].

**Public Authorities Protection Act 1948**

**51.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit or proceeding against the Ombudsman or against any officer, authorized officer, investigating officers, employee, any committee, agent, advisor, or consultant acting on behalf of the

Ombudsman in respect of any act, neglect or default done or committed by the Ombudsman or such person, as the case may be, in such capacity.

### **Obligation of Secrecy**

**52.**—(1) Except for the purpose of this Ordinance or of any criminal proceeding under this Ordinance, no Ombudsman, officer, authorized officer, investigating officer, employee, any committee, agent, advisor, or consultant acting on behalf of the Ombudsman shall disclose any information which has been obtained by him in the course of his duties and which has not been published in pursuant to this Ordinance.

(2) Any person contravening the provision of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years or, to both.

### **Power to make rules**

**53.**—(1) The Majlis Mesyuarat Kerajaan Negeri may make rules as may be expedient or necessary for carrying out the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), rules may be made for all or any of the following matters—

- (a) the prescription of offences and its punishments for any contravention of any rules made hereunder;
- (b) procedures and forms for compounding of offences;
- (c) the procedure for investigation;
- (d) code of conduct of the Ombudsman; and
- (e) such other purposes which may be considered necessary for the exercise of the powers and the performance of the functions of the Ombudsman under this Ordinance.

### **Amendment to the Schedule**

**54.** The Majlis Mesyuarat Kerajaan Negeri may, by notification in the *Gazette*, amend the Schedules.

*FIRST SCHEDULE*

(Section 7)

**OATH OF OFFICE OF OMBUDSMAN**

I, \_\_\_\_\_, having been appointed as a Chief Ombudsman/ Deputy Chief Ombudsman/ Ombudsman by the Yang di-Pertua Negeri and dated the day of \_\_\_\_\_ year  
\_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully, impartially, and to the best of my ability discharge my duties devolving upon me by virtue of the Sarawak Ombudsman Ordinance, 2023.

Sworn/affirmed by  
at  
this \_\_\_\_\_ day of

Before me:

Chief Judge of Sabah and Sarawak / High Court Judge of Sabah and Sarawak

*SECOND SCHEDULE*

(Section 15(4))

**INVESTIGATIONS OUTSIDE THE JURISDICTION OF OMBUDSMAN**

Any complaint or action against the:

- (1) Yang di-Pertua Negeri of the State
- (2) Members of the Administration of the State
- (3) Speaker and Deputy Speaker of the Dewan Undangan Negeri
- (4) Members of the Dewan Undangan Negeri
- (5) Judiciary (including the Syariah Courts and Native Courts)
- (6) Royal Malaysia Police, Malaysian Anti-Corruption Commission or any other Federal public service agency
- (7) State Public Service Commission

Sarawak LawNet