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SARAWAK FOUNDATION ORDINANCE, 1971

[Ord. No. 4/71]

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SARAWAK FOUNDATION ORDINANCE, 1971

[Ord. No. 4/71]

Date Passed by Dewan Undangan Negeri 26th May, 1971

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SARAWAK FOUNDATION ORDINANCE, 1971***[Ord. No. 4/71]***

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Establishment and objects of the Foundation
4. Establishment of the Fund
5. Establishment of the Board of Trustees
6. Incorporation of the Board and use of seal
7. Terms of appointment of Trustees
8. Procedure of the Board
9. Interest of members
10. Powers of the Board
11. Appointment, *etc.*, of Director and staff
12. Application of the Fund
13. Investment of the Fund
- 13A. Investment Panel
14. Liability of members
15. Accounts and audit
16. Board and corporations established under the Foundation
deemed to be a native

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SARAWAK FOUNDATION ORDINANCE, 1971

[Ord. No. 4/71]

An Ordinance to provide for the establishment of the Sarawak Foundation and for connected and incidental matters.

[29th May, 1971.]

Enacted by the Legislature of Sarawak—

Short title

1. This Ordinance may be cited as the Sarawak Foundation Ordinance, 1971.

Interpretation

2.—(1) In this Ordinance—

“Board” means the Board of Trustees of the Sarawak Foundation established under section 5;

“Chairman” means the Chairman of the Board;

“Director” means the Director of the Foundation appointed under section 11;

“financial year” means the period from the 1st January in any year to the 31st December of that year;

“Foundation” means the Sarawak Foundation or in Bahasa Malaysia “Yayasan Sarawak”, established by section 3;

“Fund” means the Sarawak Foundation Fund established under section 4;

“Government” means the Government of Sarawak or of Malaysia;

“member of the Board” includes the Chairman and the Deputy Chairman.

[Am. Ord. No. 4/86; Am. Ord. No. 6/72; Am Ord. No. 4/92.]

(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.

[Ins. Ord. No. 4/86.]

Establishment and objects of the Foundation

3. There is established the Sarawak Foundation and the objects for which the Foundation is established are—

(a) to grant scholarships or to provide financial assistance of any form to any person born in Sarawak, in particular, and to any Malaysian citizen, in general, to pursue their education in schools, colleges, universities or institutions of higher learning within Malaysia or abroad on such terms and conditions as the Board deems fit or proper;

(b) actively to promote improvement of opportunities for education for the peoples of Sarawak in particular and Malaysia in general, both locally and in any institution of higher learning throughout the world, but especially the universities in Malaysia;

(c) to grant, and arrange for the award by other bodies of, scholarships or other educational assistance for the peoples of Sarawak or any Malaysian citizen whenever it deems fit to do so;

(d) to give assistance and provide relief, to any person whose circumstances are, in the opinion of the Board, considered to be deserving of such assistance or relief;

(e) to provide assistance, by way of loans, grants or otherwise, to organizations or institutions which are organized and governed for scientific, medical, educational, welfare, social or charitable purposes;

(f) to make contribution and, provide assistance towards the relief of national emergencies or calamities.

[Am. Ord. No. 4/92.]

Establishment of the Fund

4.—(1) For the purposes of enabling the Foundation to carry out its objects, there shall be established a fund to be called the Sarawak Foundation Fund.

(2) The Fund shall consist of—

(a) such sums as the Government may from time to time contribute to the Fund;

(b) all other moneys which may be donated, contributed, loaned or in any other manner paid into the Fund by any authority or persons;

(c) all interest received by the Board upon such portion of the moneys of the Fund as may from time to time be invested or placed on deposit;

(d) all revenues from any property held by the Board;

(e) such sums as are credited to the Fund under the provisions of any written law.

[Am. Ord. No. 6/72.]

Establishment of the Board of Trustees

5.—(1) For the purpose of managing the Foundation and administering and controlling the Fund, there shall be established a Board of Trustees, to be called the Board of Trustees of the Sarawak Foundation and which shall consist of—

(a) a Chairman and a Deputy Chairman, to be appointed by the Yang di-Pertua Negeri;

(b) not less than four but not more than nine members may be appointed by the Chief Minister after consultation with the Chairman; and

(c) two members to be nominated by the Federal Government and appointed by the Chief Minister.

(2) At the discretion of the Yang di-Pertua Negeri, members of the Board may be paid such salary, fee, honorarium or allowance as it may deem fit.

[Am. Ord. No. 4/86; Am. Ord. No. 4/92; Am. Cap. A28.]

Incorporation of the Board and use of seal

6.—(1) The Board shall be a body corporate with perpetual succession and a common seal and may from time to time break, alter, change and make anew such seal if the Board shall think fit.

(2) The Board may sue and be sued by the name of the Board of Trustees of the Sarawak Foundation, and may for all purposes be described by that name.

(3) The common seal of the Board shall not be used except by the authority of the Board, and every document requiring the seal of the Board shall be sealed with such seal in the presence of any two members of the Board each of whom shall sign such document, and such signing shall be sufficient evidence that the common seal was duly affixed by authority of the Board.

Terms of appointment of Trustees

7.—(1) Subject to subsection (2), a person shall hold office as a member of the Board for such period as the appointing authority shall specify in the document of appointment and shall be eligible for re-appointment.

(2) The seat of a member of the Board shall become vacant—

(a) upon his death;

(b) if he is declared an insolvent or a bankrupt or enters into any composition with his creditors;

- (c) if he is declared to be of unsound mind;
- (d) if he is confined during the pleasure of the Yang di-Pertua Negeri under the provisions of any law in force relating to criminal procedure;
- (e) if he is sentenced to a term of imprisonment without the option of a fine by a court of competent jurisdiction; or
- (f) if, by writing under his hand addressed to the authority by whom he was appointed, he resigns his seat on the Board.

[Am. Ord. No. 9/76.]

- (3) The Board may continue to act notwithstanding any vacancy in the number of its members.

Procedure of the Board

- 8.—**(1) The quorum of the Board shall be five.

- (2) The Chairman shall preside at all meetings of the Board and in his absence the Deputy Chairman shall preside and perform the duties and exercise the powers of the Chairman.

[Sub. Ord. No. 4/86.]

- (3) All questions arising or coming before a meeting of the Board shall be decided by a majority of the members present and voting at that meeting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

- (4) The Director shall be entitled to attend all meetings of the Board and to speak, but not to vote, on any matter under discussion:

Provided that the Chairman may require the Director to withdraw from any meeting if he considers that the Director should not be present during the discussion of any particular matter.

- (5) Subject to this section, the Board may make standing orders governing its procedure and the procedure of any sub-committee appointed by it and specially with regard to the holding of

meetings, their proceedings and the keeping of their minutes, and may vary, suspend or revoke any such order.

Interest of members

9.—(1) Save as hereinafter provided, if any member of the Board—

(a) has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter; or

(b) is related within the second degree of consanguinity or affinity to any person to whom it is proposed that any scholarship should be granted or other educational assistance should be given, and is present at a meeting of the Board or a subcommittee at which such matter is the subject of consideration he shall, at such meeting and as soon as practicable after the commencement of it, disclose the fact of his interest or relationship, as the case may be, and, when such matter comes up for consideration, such member shall withdraw from the meeting and shall take no further part in the proceedings in so far as such matter is concerned.

(2) For the purposes of this section—

(a) the Director shall be deemed to be a member of the Board;

(b) a person shall not be deemed to have a pecuniary interest in any matter by reason only:

(i) of membership of or employment under any public body; or

(ii) of membership of a company or other body if such person has no beneficial interest in any shares of such company or body;

(c) in the case of married persons living together, the interest of one spouse shall be deemed also to be an interest of the other spouse.

(3) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and shall be liable to a fine of one thousand ringgit and imprisonment for six months:

Provided that a prosecution for an offence under this subsection shall not be instituted without the consent in writing of the Public Prosecutor.

Powers of the Board

10.—(1) The Board shall, in addition to any other powers conferred by this Ordinance, have power—

(a) to acquire, take, hold and enjoy, whether as owner or by way of security, and may sell, convey, transfer, assign, re-convey, re-assign, surrender or otherwise deal with or dispose of movable and immovable property of every description;

(b) to enter into or modify any contracts or agreements which may be necessary for carrying out the objects of the Foundation;

(c) subject to the Public Collections Ordinance, 1996 [*Cap. 21*], from time to time to raise public subscriptions or make public collections for the Fund;

[Am. Cap. 21.]

(d) generally to do all such things as a body corporate may by law perform and which are necessary for carrying out the objects of the Foundation;

(e) to carry on such activities as the Board deems fit and proper to generate income or revenue for the Fund;

[Sub. Ord. No. 4/92.]

(f) to promote the carrying on of any such activities and for that purpose to establish or expand or promote the establishment or expansion of other bodies to carry on any such activities either under the control or partial control of the Board, or independently, and to give assistance to such bodies or

to other bodies or persons appearing to the Board to have facilities for the carrying on any such activities, including financial assistance by taking up of share or loan capital or by loan or otherwise;

(g) to purchase, underwrite or otherwise acquire any stock and shares in any public or private company, and to dispose of them on such terms and conditions as the Board may determine;

(h) to establish and maintain training institutions;

(i) to do all acts which the Board considers desirable or expedient;

(j) to borrow from time to time at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as the Board may approve any sums required by the Foundation for meeting any of its obligations or discharging any of its duties;

(k) to enter into any transaction (whether or not involving expenditure, borrowing, granting of loans or investment of money under this Ordinance, the acquisition, use and disposal of any movable or immovable property, including vehicles and vessels, or rights) which in the opinion of the Board is calculated to facilitate the proper discharge of its duty or is incidental or conducive to it;

(l) to become agent or to employ and pay agents and technical advisers including advocates, and solicitors, bankers, stockbrokers, surveyors or valuers or other persons, to transact any business or to do any act required to be transacted or done in the execution of its duties or for the better carrying into effect the purposes of this Ordinance;

(m) to establish from time to time a corporation by such name as the Board may think fit to carry out and have the charge, conduct and management of any project, scheme or enterprise which has been planned or undertaken by the Board in execution of its duty or discharge of its functions in pursuit of the objects of the Foundation;

(n) to make loans and any such loans may be granted subject to such terms and conditions as the Board may deem fit to impose in particular cases;

(o) to carry on the business of carriers by air, sea, river, canal, and otherwise; and

(p) to establish institutions of learning and to maintain them.

(2) The Board may delegate any of the powers and duties conferred or imposed upon it by any of the provisions of this Ordinance to any subcommittee consisting of members of the Board and the Director shall be entitled to attend the meetings of any such subcommittee and to speak, but not to vote, on any matter under discussion:

Provided that any such delegation shall be exercised by the subcommittee concerned subject to any general or special directions which may from time to time be given by the Board.

Appointment, etc., of Director and staff

11.—(1) The Board shall appoint a suitable person to be the Director of the Foundation, and may from time to time appoint such other officers, clerks and servants as may be necessary for conducting the business of the Foundation.

(2) Any appointment made under subsection (1) shall be on such terms and conditions as the Board may deem fit.

(3) The Director shall be the executive officer of the Foundation and shall exercise such powers and perform such duties and functions as the Board shall from time to time direct, and all other persons appointed under this section shall, subject to any general or special directions of the Board, exercise the powers and functions and perform the duties assigned to them by the Director.

Application of the Fund

12.—(1) Subject to the provisions of subsection (4), the Board shall apply the capital and income of the Fund whencesoever

derived to the carrying out of the objects for which the Foundation is established.

[Am. Ord. No. 4/92.]

(2) (a) The Board shall assign or provide or donate a minimum of seventy per centum (70%) of the surplus amount in the Fund for any financial year, to the special funds set up under section 12(3)(a), for scientific, medical, educational, welfare, social or charitable purposes.

[Sub. Ord. No. 4/92.]

(b) The surplus amount referred to in subsection (a) shall be derived upon after deducting from the moneys received by the Fund during any financial year, the sums required to meet the expenses incurred by the Board as provided in subsection (4).

(3) (a) The Board may set up or designate special funds out of moneys from the Fund established under section 4—

(i) to grant scholarships or to provide financial assistance of any form, to any person to pursue his or her education in schools, colleges, universities or institutions of higher learning within Malaysia or abroad;

(ii) to voluntarily give aid or assistance to organizations and institutions which are organized and governed for scientific, medical, educational, welfare, social or charitable purposes; and

(iii) to make such contributions or render such assistance towards the relief of national emergencies or calamities.

(b) The Board may appoint such persons, upon such terms and conditions and for such period of time, as it deems fit, to manage and administer the special funds set up under this subsection.

[Ins. Ord. No. 4/92.]

(4) All expenses incurred by the Board in the control and management of the Foundation or the Fund shall be defrayed out of the Fund and shall be a first charge on the assets of it.

[Am. Ord. No. 4/92.]

Investment of the Fund

13.—(1) The Board—

(a) may invest any moneys for the time being forming part of the Fund, or such part of it as it shall from time to time think fit, in any securities in which trustees are for the time being authorized by law to invest trust funds;

(b) shall deposit any such moneys which may from time to time be uninvested with any bank either upon fixed deposit or upon current account:

Provided that the Board shall have power to vary investments from time to time and to employ the bankers of the Fund or any other agency to invest the moneys of the Fund in such securities on its behalf.

(2) All investments made under this section and section 13A shall be registered in the name of the Board.

[Am. Ord. No. 4/86.]

Investment Panel

13A.—(1) There shall be established an Investment Panel responsible for matters pertaining to the investment of the assets of the Board which shall be subject to such directions issued by the Board and approved by the Minister from time to time.

(2) The Investment Panel shall consist of—

(a) the Chairman of the Board who shall be the Chairman of the Investment Panel;

(b) the Deputy Chairman of the Board who shall be the Deputy Chairman of the Investment Panel;

(c) the State Financial Secretary or his representative;

(d) the Governor of Bank Negara Malaysia or his representative;

(e) three other members with business and financial experience appointed by the Minister.

(3) The Director of the Foundation may participate without the right to vote in any meeting of the Investment Panel.

(4) The appointment of any member made under subsection (2)(e) shall—

(a) be for such term not more than three years as the Minister may deem fit; and

(b) be determined—

(i) upon his death;

(ii) if he shall, by writing addressed to the Minister through the Chairman, resign such appointment;

(iii) if he is a bankrupt;

(iv) if he is declared to be of unsound mind, or

(v) if he is sentenced to a term of imprisonment without the option of a fine.

(5) The Minister may cancel the appointment of any member of the Investment Panel if his conduct, whether in connection with the duties of such appointment or otherwise, is in the opinion of the Minister such as to bring discredit upon the Investment Panel or the Board.

(6) The Chairman and three other members of the Investment Panel shall form a quorum at any meeting of the Investment Panel.

(7) The Investment Panel shall meet as and when required.

(8) The Chairman of the Investment Panel may invite to any of its meetings any person who can in his opinion contribute to its deliberation but such person shall have no right to vote at the meeting.

(9) There shall be paid to any person invited under subsection (8) and to each unofficial member of the Investment Panel out of the Fund such allowances, including out-of-pocket expenses necessarily and reasonably incurred by such person or member in and about the

business of the Investment Panel as the Board may determine subject to such limits and conditions as the Minister may impose.

(10) All members of the Investment Panel shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

(11) If any member of the Investment Panel is financially interested in any scheme, project or enterprise undertaken or is recommended by the Investment Panel to be undertaken by the Board, he shall forthwith declare to the Board in writing the nature and extent of his interest in such scheme, project or enterprise and of any subsequent change in the nature or extent of his interest therein.

[Ins. Ord. No. 4/86.]

Liability of members

14. No member of the Board shall be liable for any loss arising from or contingent upon any investment made unless such loss has been occasioned by his negligence, fraud or dishonesty; and no member of the Board and no agent or person acting under authority of the Board shall be personally liable to any action or proceeding for or in respect of any action made or thing done or omitted to be done in good faith and in the proper exercise of any of the powers of the Board or of the members thereof.

Accounts and audit

15.—(1) The Board shall keep proper accounts and other records in respect of its activities and shall cause to be prepared a statement of account in respect of each financial year.

(2) The accounts of the Board shall be audited by the Auditor General or any person authorized by him in that behalf.

[Sub. Ord. No. 4/86.]

(3) At the end of each financial year, as soon as the accounts of the Board have been audited, the Board shall cause a copy of the statement of account, together with a copy of any report of the auditor, to be transmitted to the Yang di-Pertua Negeri who shall cause the same to be laid before the Dewan Undangan Negeri.

[Am. Ord. No. 9/76.]

**The Board and corporations established under the Foundation
deemed to be a native**

16. For the purpose of any written law relating to land, the Board and every corporation established under the Foundation shall be deemed to be a native.

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SARAWAK FOUNDATION ORDINANCE, 1971**[Ord. No. 4/71]**

LIST OF AMENDMENTS

<i>Amending Law</i>	<i>Short title</i>	<i>In force from</i>
Ord. No. 6/72	Sarawak Foundation (Amendment) Ordinance, 1972	20.3.1972
Ord. No. 9/76	Sarawak Consitution (Amendment) (No. 2) Ordinance, 1976	26.8.1976
Ord. No. 4/86	Sarawak Foundation (Amendment) Ordinance, 1986	5.6.1986 <i>[Swk. L.N. 36/86].</i>
Ord. No. 4/92	Sarawak Foundation (Amendment) Ordinance, 1992	1.7.1992 <i>[Swk. L.N. 54/95].</i>
Cap. A28	Interpretation (Amendment) Ordinance, 1995	29.5.1995

Enacted in 1971 as Ordinance No. 4 of 1971