



LAWS OF SARAWAK

ONLINE VERSION

Chapter 35 (1958 Edition)

PERBADANAN PEMBANGUNAN EKONOMI SARAWAK ORDINANCE

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CHAPTER 35
(1958 Edition)

PERBADANAN PEMBANGUNAN EKONOMI
SARAWAK ORDINANCE

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This Ordinance was — (a) Revised as Chapter 35 of 1958 Edition
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CHAPTER 35
(1958 Edition)

PERBADANAN PEMBANGUNAN EKONOMI
SARAWAK ORDINANCE

An Ordinance to provide for the establishment, constitution, powers, duties and functions of the Perbadanan Pembangunan Ekonomi Sarawak and for connected and incidental matters.

[1st July, 1958]

Short title

1. This Ordinance may be cited as the Perbadanan Pembangunan Ekonomi Sarawak Ordinance.

Interpretation

2. In this Ordinance—

“agriculture” includes fisheries, forestry, horticulture and the use of land for any purpose of husbandry;

“Chairman” means the Chairman of the Corporation and includes any temporary Chairman appointed under section 4;

[Am. Ord. No. 8/64; Sub. Ord. No. 19/71; Am Cap. A41.]

“the Corporation” means the Perbadanan Pembangunan Ekonomi Sarawak established under section 3.

[Sub. Ord. No. 19/71.]

“financial institution” means—

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

(b) an Islamic bank licensed under the Islamic Banking Act 1983 [Act 276]; or

(c) a licensed offshore bank licensed under the Offshore Banking Act 1990 [Act 443],

or any modification or substitution of the said Acts for the time being in force;

[Ins. Cap. A41.]

“General Manager” means the General Manager of the Corporation appointed under section 39(1), and includes any person who for the time being is appointed pursuant to section 39 to discharge temporarily the duties of the General Manager;

[Ins. Cap. A41.]

“husbandry” includes the keeping or breeding of livestock, poultry or bees and the growing of fruit, vegetables and the like;

“industry” includes any kind of commercial undertaking;

[Ins. Ord. No. 19/71.]

“land” includes any estate or plantation usually, or about to be, cultivated or cleared for purposes of cultivation for producing at least one annual crop, or some permanent crop, or land used otherwise in connection with agriculture;

[Am. Cap. A41.]

“member” includes the Chairman and the Deputy Chairman;

[Am. Ord. No. 8/64.]

“Minister” means the State Minister responsible for the Corporation;

[Ins. Ord. No. 19/71.]

“official member” means a person who is the holder of an office of emolument under the Government and is appointed a member of the Corporation under section 4(1):

[Am. Ord. No. 19/71; Am. Cap. A41.]

Provided that no member of the Corporation shall be deemed by reason of that fact only to hold an office of emolument under the Government; “owner” includes guardians, executors and administrators who are, by the instrument appointing them or otherwise, registered under the Land Code [*Cap. 81 (1958 Ed.)*] as the proprietors of any land.

PART I

CONSTITUTION AND ADMINISTRATION

Establishment and incorporation of the Perbadanan Pembangunan Ekonomi Sarawak

3.—(1) There is established for the purposes of the Ordinance a body by the name of “Perbadanan Pembangunan Ekonomi Sarawak”.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its said name and subject to and for the purposes of this Ordinance, may enter into contracts, and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yeild up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Corporation upon such terms as it deems fit.

[Sub. Ord. No. 19/71.]

Constitution of the Corporation

4.—(1) The Corporation shall consist of the following members appointed by the Minister:

(a) a Chairman;

(b) *[Deleted Cap. A41];*

(c) two official members; and

(d) not less than three but not more than eight other members who in the opinion of the Minister are qualified, by reason of their experience of, and capacity in, matters relating to agriculture, industry, commerce, finance or science, to undertake the duties appertaining to members of the Corporation.

[Sub. Ord. No. 19/71; Am. Ord. No. 6/84.]

(2) *[Deleted Cap. A41].*

(3) A member shall unless his appointment is sooner resigned or revoked, hold office for such term and subject to such conditions as the Minister may decide, and shall be eligible for reappointment.

[Am. Cap. A41.]

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

(5) The appointment of any member may at any time be revoked by the Minister without assigning any reason for it.

(6) The Chairman shall devote such time to the business of the Corporation as may be necessary to the discharge of his duties.

[Am. Cap. A41.]

(7) The Minister may appoint any member of the Corporation to be temporary Chairman of the Corporation during the temporary incapacity through illness or during the temporary absence from the State, of the Chairman.

[Am. Cap. A41.]

(8) If any member of the Corporation, other than the Chairman, is temporarily absent from the State or temporarily incapacitated through illness or any sufficient cause for the performance of his duties as a member of the Corporation, another person may be appointed in his place by the Minister but shall hold office only during such absence or incapacity of such member.

Disqualification from membership and vacation of seat

4A.—(1) A person shall be disqualified from being appointed or being a member of the Corporation—

(a) if he has been convicted by a court of law of:

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

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

(iii) any other offence for which he has been sentenced to imprisonment for a term of not less than six months and has not received a free pardon;

(b) if he is an undischarged bankrupt; or

(c) if he is of unsound mind or is otherwise incapable of performing his duties.

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

(a) on his death;

(b) if he fails to attend three consecutive meetings of the Corporation without the permission in writing of the Minister;

(c) if he is absent from Sarawak without the approval of the Minister for more than three months;

(d) if he becomes subject to any of the disqualifications specified in subsection (1);

(e) on the revocation of his appointment as a member; or

(f) if he shall resign his seat.

(3) Where any member ceases to be a member by reason of any of the provisions of this Ordinance, a person shall be appointed in his place in accordance with the provisions applying in the case of the person who ceases to be a member for the residue of the term for which such person might have held office if he had not ceased to be a member.

[Ins. Ord. No. 19/71.]

Remuneration of members

5. The Corporation may pay to the Chairman or to all or any members of the Corporation, such remuneration and allowances, if any, as the Majlis Mesyuarat Kerajaan Negeri may determine.

6. *[Repealed Ord. No. 19/71].*

Common seal

7.—(1) The Corporation shall have a common seal, which shall bear such device as the Corporation shall approve and such seal may from time to time be broken, changed, altered or made anew, as the Corporation may think fit.

(2) Until a seal is provided by the Corporation a stamp bearing the description “Perbadanan Pembangunan Ekonomi Sarawak” may be used and shall be deemed to be the common seal.

(3) The common seal or the stamp referred to in subsection (2) shall be kept in the custody of the Chairman or the General Manager, and shall be authenticated by either of them or by any officer authorised by either of them in writing; and all deeds, documents and other instruments purporting to be sealed with the said seal or stamp, authenticated as aforesaid, shall until the contrary is proved be deemed to have been validly executed:

[Am. Cap. A41.]

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 Corporation.

(4) The seal or stamp of the Corporation shall be officially and judicially noticed.

[Sub. Ord. No. 19/71.]

Procedure and meetings of the Corporation

8.—(1) The Corporation shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the Corporation may determine.

[Am. Ord. No. 19/71.]

(2) The Chairman may at any time call a special meeting of the Corporation, and shall call a special meeting within seven days of a requisition for that purpose addressed to him by any three members of the Corporation.

(3) The quorum at all meetings of the Corporation shall be a majority of the members among whom there shall be the Chairman who shall preside at such meetings.

[Am. Cap. A41.]

(4) The decisions of the Corporation shall be by a majority of votes. In any case in which the voting is equal the Chairman shall have a casting vote in addition to his original vote.

[Am. Cap. A41.]

(5) The Corporation may act notwithstanding any vacancy among the members of it.

(6) Proper minutes of each meeting shall be kept by the Secretary and shall be confirmed by the Chairman as soon as practicable after that at a subsequent meeting.

[Am. Ord. 19/71; Am. Cap. A41.]

(7) The Corporation may co-opt any one or more persons to attend any particular meeting of the Corporation on any matter for the purpose of assisting or advising the Corporation, but such co-opted person shall not have the right to vote.

(8) Subject to subsections (1) to (7), the Corporation shall have power to regulate its own proceedings.

[Am. Ord. No. 19/71.]

Information obtained as a member or officer of the Corporation to be secret and confidential

9.—(1) Every member of the Corporation and every officer of the Corporation—

(a) shall regard and deal with as secret and confidential all information, documents and matters which, or knowledge of which, he may obtain as a member or an officer of the Corporation, as the case may be, which relates to any of the proceedings of the Corporation; and

(b) shall not make use of any documents, matters or information which, or knowledge of which, he may obtain as a member or an officer of the Corporation, as the case may be, for the benefit of himself or any other person, or otherwise than for the purposes of his duties as a member or an officer of the Corporation,

and shall make and subscribe a statutory declaration to such effect.

[Am. Ord. No. 4/64; Am. Ord. No. 19/71.]

(2) No fee or stamp duty shall be payable or chargeable in respect of any declaration made under subsection (1).

(3) If any member or officer of the Corporation contravenes subsection (1)(a) or (b), he shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

[Am. Ord. No. 8/64; Am. Ord. No. 19/71.]

(4) Nothing in this section shall be deemed to preclude the Corporation from making, with the consent of an applicant, such inquiries as the Corporation may deem fit in connection with an application made to it by that applicant.

Disclosure by member of the Corporation of interest in transaction with the Corporation, and disqualification

10.—(1) Subject to this section, it shall be the duty of a member of the Corporation who is in any way, whether directly or indirectly, interested in an application to the Corporation for a loan or guarantee under the provisions of this Ordinance, or in a contract or proposed contract with the Corporation, or in any company or firm which is in receipt of, or applying for, such a loan or guarantee or which is so interested in such a contract or proposed contract, to declare the nature of his interest at a meeting of the Corporation.

(2) In the case of such application or proposed contract, the declaration required by this section to be made by a member of the Corporation shall be made at the meeting of the Corporation at which the question of granting or refusing the application or entering into the contract is first taken into consideration, or if such member is not present at such meeting then at the next meeting which he attends, or if such member was not at the date of such meeting interested in the application or proposed contract or did not on the said date have an interest in any such firm or company as is referred to in subsection (1), the said declaration shall be made at the next meeting of the company after he became so interested or acquired such an interest.

(3) For the purpose of this section, a general notice given to the other members of the Corporation by a member to the effect that he is also a member of a specified company or firm and is to be regarded as interested in any application for a loan or guarantee from the Corporation or in any contract which may, after the date of the notice, be made by or with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any application or contract so made:

Provided that no such notice shall be of effect unless either it is given at a meeting of the Corporation or the member of the Corporation concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the Corporation after it is given.

(4) No member of the Corporation shall sit or take part in proceedings or vote on the decision of any application to the Corporation for a loan or guarantee or in respect of any contract or arrangement in which he is interested, whether directly or indirectly, and whether personally or by virtue of an interest in any company or firm, and if he shall vote his vote shall not be counted, nor shall he be counted in the quorum present at that meeting.

(5) A contravention of this section shall constitute an offence: Penalty, a fine of two thousand ringgit.

Power of the Corporation to establish offices or agencies

11. The Corporation may establish offices or agencies in any part of Sarawak to be managed in accordance with such rules and directions as may, from time to time, be made by the Corporation.

Power of the Corporation to appoint district committees

12.—(1) The Corporation may subdivide the State of Sarawak into areas for the purposes of this Ordinance, and may, in each of the areas so created, constitute a local committee consisting of such members or other persons as the Corporation may appoint.

(2) The Corporation may, as it thinks fit, at any time and from time to time, alter the boundaries of any area or make a new subdivision of the State of Sarawak into areas.

(3) The Corporation may, as it thinks fit, revoke any appointment made by the Corporation to any local committee, and increase or reduce the number of members of any local committee.

(4) A local committee shall perform such functions as the Corporation may direct, but not including the grant of a loan or guarantee.

Execution of document

13. Any charge, lease, assignment, transfer, agreement or other document requiring to be executed by the Corporation, or any cheque, bill of exchange or order for the payment of money requiring to be executed by the Corporation, shall be deemed to be duly executed if signed by a person or persons specially or generally authorised by resolution of the Corporation so to sign.

The Corporation deemed to be a native

13A. For the purpose of, the Land Code [(*Cap. 81 (1958 Ed.)*)], the Corporation shall be deemed to be a native.

[Ins. Ord. No. 19/71.]

PART II

GENERAL FUNCTIONS AND DUTIES OF THE CORPORATION

General functions and duties and powers of the Corporation

14.—(1) It shall be the duty of the Corporation to promote the economic development of the State of Sarawak and with that object to carry out economic activities, and to stimulate and facilitate private investment in of the State of Sarawak by local and external capital.

(2) The Corporation shall have power to do all things expedient or reasonably necessary or incidental to the discharge of its duties, and in particular, but without prejudice to the generality of the foregoing—

(a) to carry out economic, including industrial, projects on its own account or in association with others;

(b) to provide loans for agriculture, industry, commerce, housing, transport, and any other economic undertakings;

(c) to provide loans for the purchase of shares and debentures of companies and corporations in Malaysia;

(d) to guarantee, within such limits as shall be fixed by the Minister, any loans made by any financial institution or other financial source to any applicant approved by the Corporation for any purpose for which the Corporation might itself have granted such loan;

[Am. Ord. No. 1/79; Am. Cap. A41.]

(e) to promote research and useful innovations in such economic activity as the Corporation may consider necessary and desirable;

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

(g) whether on its own account or in association with other persons (including the Government of Malaysia or of Sarawak and any public body and any body corporate or unincorporate), or as managing agents or otherwise on their behalf—

(i) to carry on all activities the carrying on of which appears to the Corporation to be requisite, advantageous or convenient for or in connection with the discharge of its duties, including the processing and marketing of products and research activities; and

(ii) to establish or expand, or promote the establishment or expansion of, other bodies to carry on such activities either under the control or partial control of the Corporation or independently, and to give assistance to such bodies or to other bodies or persons appearing to the Corporation to have facilities for the carrying on of any such activities, including financial assistance by the taking of share or loan capital, or by loan or otherwise; and

(h) to take over from time to time any credit activities of the State Government including outstanding loans to private enterprises or the liability of the State Government to any financial institution or other financial source in respect of any guarantee of any loan made by such financial institution or other financial source, but excluding advances of salaries to public officers and advances to any local authority.

[Am. Ord. No. 1/79; Am. Cap. A41.]

(3) Where an officer in the public service, who holds a pensionable office within the meaning of the Pensions Act 1980 [*Act 227*], is appointed to be an officer of the Corporation, the Corporation shall pay to the Government an annual pension contribution at such rate per cent of the officer's annual emoluments from the Corporation as may, from time to time, be approved by the Majlis Mesyuarat Kerajaan Negeri and the service of such person while in the employment of the Corporation shall be deemed to be service under the Government and shall be subject to the Pensions Act 1980 as amended from time to time.

[Am. Ord. No. 19/71.]

General powers of Corporation to transact business

15. The Corporation shall have power to do anything and to enter into any transaction (whether or not involving expenditure, borrowing, granting of loans or guarantees or investment of money in accordance with the provisions of this Ordinance in that behalf, the acquisition of any property or rights or, subject to section 19, the disposal of any property or rights) which in its opinion is calculated to facilitate the proper discharge of its functions, or is incidental or conducive thereto.

Power to appoint committees

16.—(1) The Corporation may appoint a committee of the Corporation to examine and report to the Corporation on any matter whatsoever arising out of or connected with any of its powers and duties under this Ordinance.

(2) Any such committee shall consist of at least two members of the Corporation together with such other persons, whether members of the Corporation or not, whose assistance or advice the Corporation may desire.

(3) Where persons, not being members of the Corporation, are members of a committee appointed under this section or where any person is co-opted under section 8(7), the Corporation may by resolution declare the remuneration and allowances of such persons, and such sums shall properly be payable out of the funds and resources of the Corporation.

[Am. Ord. No. 19/71.]

(4) The Corporation may by resolution reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as the Corporation may think fit.

Delegation of powers of the Corporation

17.—(1) The Corporation may, subject to such conditions, limitations or restrictions as it thinks fit, delegate to any committee or to the Chairman the power and authority to carry out on its behalf such powers, duties or functions by this Ordinance vested in the Corporation as the Corporation may determine, except the power to borrow money, raise loans or make regulations; and any power or function so delegated may be exercised or performed by such committee, or the Chairman, as the case may be, in the name and on behalf of the Corporation.

[Am. Cap. A41.]

(2) Without prejudice to the generality of subsection (1) the Corporation may delegate to the Chairman, any of its other members, committees or any officer or servant, authority to sanction expenditure from the funds or any other money under the control of the Corporation up to such limit as the Corporation shall in such case specify.

[Sub. Ord. No. 19/71; Am. Cap. A41.]

Appointment of valuers and inspectors

18.—(1) The Corporation may from time to time appoint and employ valuers and inspectors at such remuneration and on such terms as the Corporation may determine, and may in its discretion remove any person so appointed.

(2) The fee of any valuer or inspector shall be fixed by the Corporation.

(3) Any valuer or inspector appointed under this section may, at all reasonable times, enter upon any lands or premises in respect of which a loan or guarantee has been made or granted under this Ordinance, and may value or inspect the same, and any person obstructing or causing to be obstructed any valuer or inspector in making such valuation or inspection, whether by force or by threats or in any other manner, shall be guilty of an offence: Penalty, imprisonment for three months and a fine of five hundred ringgit.

Balancing of revenue account and surplus revenue

19.—(1) It shall be the duty of the Corporation so to exercise and perform its functions as to secure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue account, taking one year with another.

(2) Any excess of the revenues of the Corporation for any financial year thereof over the sums properly chargeable to its revenue account for that year shall be applied by the Corporation for such purposes as it may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, determine.

Gifts

19A. The Corporation may accept gifts, legacies or donations and apply them for the purpose of any of its functions or duties.

[Ins. Ord. No. 19/71.]

Additional functions of the Corporation

19B. In addition to the duties imposed upon and powers vested in the Corporation by this Ordinance, the Corporation may undertake such other functions, exercise such other powers and administer and expend such other moneys for such purposes as the Minister may assign or give to it and in so doing the Corporation shall be deemed to be fulfilling the purposes of this Ordinance and this Ordinance shall apply to the Corporation in respect of such functions and the administration and expending of such moneys:

Provided always that the accounts of such moneys shall be kept separate and apart from those relating to the funds of the Corporation specified in section 20.

[Ins. Ord. No. 19/71.]

Power of Minister to give directions

19C.—(1) The Corporation shall be responsible to the Minister, and the Minister may, from time to time, give directions not inconsistent with this Ordinance and the Corporation shall, as soon as possible, give effect to all such directions.

(2) Without prejudice to the generality of subsection (1) and subject to consultation with the Corporation, the power of the Minister to give directions shall extend to the giving to it of directions regarding the disposal of capital assets.

[Ins. Ord. No. 19/71.]

PART III

FINANCIAL PROVISIONS

Funds and resources of the Corporation

20.—(1) The funds and resources of the Corporation shall consist of—

(a) such sums as may be provided from time to time for the purposes of the Corporation by the Dewan Undangan Negeri;

[Am. Ord. No. 19/91.]

(b) such sums as may be allocated from time to time to the Corporation from the proceeds of loans raised by Sarawak;

(c) moneys earned from any project, scheme or enterprise financed from such funds and resources;

[Sub. Ord. No. 19/71.]

(d) all sums from time to time received by or falling due to the Corporation in respect of the repayment of any loan made by the Corporation, and the interest payable in respect of any such loan;

(e) moneys earned or arising from any property, investments, charges and debentures acquired by or vested in the Corporation;

(f) any property, charges, debentures or investments acquired by or vested in the Corporation;

(g) sums borrowed by the Corporation for the purpose of meeting any of its obligations or discharging any of its functions; and

(h) all other sums or property which may in any manner become payable to or vested in the Corporation in respect of any matter incidental to its powers and duties.

(2) Interest on any amount specified in subsection (1)(a) shall be paid by the Corporation to the State Government at such rate, if any, as may be determined by the Majlis Mesyuarat Kerajaan Negeri.

[Am. Ord. No. 19/71.]

(3) The annual charges on any amount which may be allocated to the Corporation from the proceeds of loans raised by Sarawak under subsection (1)(b) shall be met by the Corporation:

Provided that all or any part of such charges may, subject to the approval of the Dewan Undangan Negeri, be met from the general revenue of Sarawak.

Borrowing powers

21.—(1) Subject to subsection (2), the Corporation may borrow sums required by the Corporation for meeting any of its obligations or discharging any of its functions.

(2) The power of the Corporation to borrow shall be exercisable only with the approval of, and subject to such conditions as may be imposed by, the Minister. Any approval given in any respect for the purposes of this subsection may be either general or limited to a particular borrowing or otherwise.

[Am. Ord. No. 19/71.]

Investments

22. Moneys standing to the credit of the Corporation may from time to time be invested in securities approved either generally or specifically by the Minister, and the Corporation may, from time to time, with the approval of the Minister, sell any or all of such securities.

[Am. Swk. L.N. 68/64; Am. Ord. No. 19/71.]

Power of the Corporation to make loans

23. Subject to such conditions as it may deem fit to impose in particular cases, the Corporation may, out of its funds and resources, make loans in accordance with this Ordinance in that behalf, in the execution of its duty or in the discharge of its functions under section 14.

Other powers of expenditure

24. The Corporation may from its funds and resources—

(a) pay any expenses lawfully incurred by the Corporation, including survey, legal and other fees and costs;

(b) pay any other expense, cost or expenditure properly incurred or accepted by the Corporation in pursuance of its purposes under the provisions of this Ordinance;

(c) pay any amounts which it may lawfully be called upon to pay in respect of its liability under any guarantee assumed or granted under section 14(2)(d) and (h); and

(d) purchase plant, equipment, stores and any other materials, or acquire land or erect buildings, or carry out any other works and undertakings, in the execution of its duty or in the discharge of its functions under section 14, in contemplation of loans to be made for any of those purposes under section 23 so, however, that any sums expended by the Corporation under this paragraph shall be set off against the loans in contemplation of which they were expended upon the actual making of such loans.

[Am. Ord. No. 19/71.]

Expenditure and preparation of Estimates

24A.—(1) The expenses of the Corporation up to such amount as may be authorized by the Minister for any one year shall be defrayed out of the funds of the Corporation.

(2) Before the beginning of September of each year the Corporation shall submit to the Minister an estimate of the expenses (including those for development projects) for the following year in such form and containing such particulars as the Minister may require, and the Minister shall before the beginning of the following year notify the Corporation of the amount authorized for expenses generally or of the amounts authorised for each description of expenditure.

(3) The Corporation may at any time submit to the Minister a supplementary estimate for any one year and the Minister may allow the whole or any part of the additional expenditure included in it.

[Ins. Ord. No. 19/71.]

Interest on loans made by the Corporation

25. In making loans under the provisions of this Ordinance, the Corporation may charge such rate of interest as it may deem fit in any particular case.

Repayment of loans made by the Corporation

26. Subject to sections 27 and 28 and section 58(3), every loan shall be repaid to the Corporation in accordance with the terms and conditions under which such loan was made, and the moneys so paid shall immediately after that be taken into the accounts of the Corporation.

[Am. Ord. No. 19/71.]

Suspension of payment of principal and interest and power to extend time, compound or release

27. The Corporation may—

(a) postpone the payment of any sum due for principal or interest to it in respect of a loan made by the Corporation upon such terms and conditions, for the carrying out of the purposes for which such loan was made and for the ultimate repayment of such principal or payment of such interest, as it may deem necessary; and

(b) from time to time, extend the period for the repayment of any loan, or compound or release any loan, or any part of it, subject to such terms and conditions as it may deem fit.

Payment of loan before due date

28. The Corporation may at any time accept payment of the whole or any part of the amount representing the principal of a loan and interest thereon, before the time when such payment is due, upon such terms and conditions as it may think fit.

Power of the Corporation to dispose of crops

29.—(1) When any loan has been made for the cultivation of crops and the expenses of reaping and making merchantable such crops, all the crops and produce reaped or gathered from the land shall, until such advance has been repaid, be dealt with and disposed of as the Corporation may direct, and, until so disposed of, shall be held by the person obtaining the loan in trust for the Corporation. Any person to whom a loan has been made who disposes of any such crops or produce except in the manner directed by the Corporation or by this Ordinance, or permitted by the express provisions of any document executed by or with the authority of the Corporation affecting such loan, shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

(2) It shall be lawful for the Corporation to enter into agreement, with or without security and on such condition as it thinks fit to impose, with any person dealing in or processing agricultural produce of any kind for the disposal of produce belonging to any person to whom loans shall have been made under this Ordinance in respect of such produce. The Agreement shall provide for the sale without undue delay of such produce and the immediate payment to the Corporation of the proceeds of such sale, or such part of it as the Corporation shall think fit, to the credit of the person to whom the loan was made.

(3) Any person so entrusted with the disposal of the produce of any person obtaining a loan under this Ordinance who shall fail to pay the proceeds of sale to the Corporation as provided in subsection (2) shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

Charges to be approved by the Corporation

30. Every charge to secure a loan under this Ordinance shall be approved by the Corporation. The person to whom the loan is made shall pay the legal charges in connection with it, and shall also pay all necessary disbursements.

Examination as to application of moneys lent

31.—(1) Where the Corporation has made a loan or has guaranteed any loan of money under this Ordinance, it may—

(a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purposes for which it was made; and

(b) require financial statements, in such detail as it may determine, to be submitted by the person, body or authority in receipt of the loan bi-annually, or at shorter intervals at the discretion of the Corporation, and such person, body or authority shall comply with such request.

(2) The Corporation may authorize in writing any of its officers or any other person to make such examination, and the person, body or authority in receipt of the loan shall produce to such officer or person all the books, documents and other matters and things necessary for the purposes of the examination.

(3) Any person who fails to comply with subsection (1)(b) or subsection (2) shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

Order of the Corporation upon such examination

32. Where, upon any examination made under section 31, it appears to the Corporation that any sum, being the whole or any part of the loan, has not been applied for the purposes for which the loan was made, the Corporation may order that any such sum be, within the time mentioned in the order, applied to such purposes or that such sum together with any interest due thereon on the date of the order be repaid to the Corporation or the financial institution or other financial source, and such sum shall thereupon become a debt due to the Corporation or the financial institution or other financial source, as the case may be.

[Am. Ord. No. 1/79; Am. Cap. A41.]

Cancellation or modification of approval of loan

33. At any time after the approval of a loan or guarantee and before the actual payment of the money or completion of the guarantee, the Corporation may, at its discretion and without assigning any reason therefor, cancel or modify such approval and withhold payment of the whole or a portion of the money, or refuse to enter into such guarantee.

Power of the Corporation to direct that any part outstanding of an approved loan be not paid

34. In any case where the Corporation has approved the making of a loan by instalments or has guaranteed such a loan by a financial institution or other financial source and any part of such loan has not yet been advanced, if—

(a) any sum of money, whether principal or interest, due in respect of any loan made under this Ordinance remains unpaid;

(b) in the opinion of the Corporation, any prior loan made under this Ordinance has not been applied for the purpose for which it was made, or has not been carefully and economically expended;

(c) the borrower has become insolvent or has been sentenced to a term of imprisonment without the option of the

payment of a fine, or has assigned his estate for the benefit of creditors;

(d) there has been a breach or non-observance of any condition attached to the loan; or

(e) in the opinion of the Corporation, the sums already advanced were not applied to the purposes for which the loan was made within a reasonable time,

then, without prejudice to any other remedy, the Corporation may, or, as the case may be, the financial institution or other financial source may, refuse to advance any portion of the loan still outstanding.

[Am. Ord. No. 1/79; Am. Cap. A41.]

Misapplication of loan secured by charge or otherwise

35.—(1) No loan or part of it made under this Ordinance shall be applied otherwise than for such purposes as may be authorized by the Corporation under this Ordinance or by its regulations.

(2) If any loan made under this Ordinance or any part of such loan has been misapplied the Corporation may—

(a) where such loan has been secured by charge, by notice in writing addressed to the chargor, recall the said loan or any part thereof, and may require the loan or that part, together with any interest due on such loan or part thereof on the date of the notice, to be repaid on a date to be specified in the notice, and, in default of payment on such specified date, any security given for the purpose of the loan may thereupon be realised; and

(b) where such loan has been secured otherwise than by way of charge, by notice addressed to the borrower, require the loan or any part of it, together with any interest due on such loan or part of it on the date of the notice, to be repaid on a date to be specified in the notice, and, in default of payment on such specified date, any security given for the purpose of the loan may immediately after that of it be realised.

(3) Where any loan by a financial institution or other financial source is secured by a guarantee by the Corporation, no such loan or any part of it shall be applied otherwise than for such purposes as shall have been approved by the financial institution or other financial source, the State Government and the Corporation at the time of the grant of such loan, and, if such loan or any part thereof shall have been applied otherwise than for purposes so approved, then, the financial institution or other financial source may exercise any of the powers conferred on the Corporation by subsection (2).

[Am. Ord. No. 1/79; Am. Cap. A41.]

(4) Subsection (2) shall be in addition to any other proceedings under any written law.

Enforcement of securities

36. Where any property charged as security for a loan under this Ordinance is sold for the purpose of the enforcement of the security, the Corporation may buy such property, and may either manage and hold such property or sell or otherwise dispose of it as the Corporation may deem fit.

Special provision for charge of movable property in favour of the Corporation

37. Notwithstanding anything in any written law, a borrower obtaining a loan from the Corporation under this Ordinance may, with the approval of the Corporation, by instrument in writing create in favour of the Corporation a charge of such movable property belonging to him at the date of the charge as may be specified in the charge, and the First Schedule shall apply to every instrument made pursuant to this section.

PART IIIA

OFFICERS AND SERVANTS

[Added Ord. No. 19/71.]

Chairman to be the principal managing officer

38.—(1) The Chairman shall have overall control and responsibility over the affairs and business of the Corporation and shall be responsible for the preparation of programmes, schemes, or projects for the consideration of the Corporation, for the issue of policy guidance or of elucidation of decisions of the Corporation to the General Manager for the supervision and control over the implementation of such decisions by the General Manager.

[Added Ord. No. 19/71; Am. Cap. A41.]

(2) For the purpose of discharging his duties and functions under subsection (1), the Chairman shall—

(a) have access to all statutory books, records, accounts, reports and other information and data kept by the Corporation;

(b) give directions on policies of the Corporation to the General Manager or any officer of it;

(c) require the General Manager or any officer of the Corporation to submit to him such reports, studies or investigations pertaining to the affairs, business, undertakings, scheme or project carried out by the Corporation or in which the Corporation has any interest, directly or indirectly; and

(d) seek such direction as he may consider necessary from the Minister in relation to issue of policies of the State Government or of the Corporation, or from the State Secretary in regard to the implementation of any decision of the Corporation which requires the co-operation or assistance of or which affects any Department or agency of the State Government.

[Sub. Cap. A41.]

(3) The Chairman shall perform such other or further duties as the Minister may, from time to time, determine or prescribe.

(4) If the Chairman is temporarily absent from Sarawak or temporarily incapacitated through illness or for any other sufficient reason from the performance of his duties, the General Manager shall perform his duties (in addition to the General Manager's duties) during such temporary absence or other incapacity.

[Am. Cap. A41.]

General Manager to be principal executive officer

39.—(1) The General Manager shall be appointed by the Corporation with the approval of the Minister and he shall be the principal executive officer of the Corporation and shall be responsible for the execution of all programmes, schemes or projects, for the carrying out of the decisions of the Corporation and the directions of the Chairman, and for the supervision and control of the other officers of the Corporation in the performance of their duties under this Ordinance.

[Am. Cap. A41.]

(2) *[Deleted Cap. A41].*

(3) Subject to the direction of the Chairman, the General Manager shall have administrative control of the officers and servants of the Corporation.

(4) The General Manager shall perform such other or further duties as the Corporation or the Minister may from time to time determine or prescribe, or as the Chairman may from time to time direct.

[Am. Cap. A41.]

(5) If the General Manager is temporarily absent from Sarawak or temporarily incapacitated through illness, or any other sufficient reason from the performance of his duties, the Chairman, with the approval of the Minister, may appoint another officer of the Corporation to perform his duties during such temporary absence or other incapacity.

[Am. Cap. A41.]

Appointment of officers and servants

40. The Corporation may, for the purpose of discharging its functions, appoint and employ such number of executive officers and such other officers and employees, as the Corporation deems fit or necessary and upon such terms and conditions as to remuneration and other privileges as may be provided for under standing orders made pursuant to section 43.

[Sub. Cap. A41.]

Ineligibility for appointment as officers or servants of the Corporation

41.—(1) No person shall be eligible for employment as an officer or servant of the Corporation who has, directly or indirectly, by himself or his partner, any share or interest in any contract or proposed contract with, for or on behalf of the Corporation.

(2) Any officer or servant of the Corporation who has or acquires any such share or interest shall be liable in the discretion of the Corporation to summary dismissal without notice.

(3) If any officer or servant of the Corporation shall at the time of his appointment as such officer or servant already own or control any share or interest in any property which subsequent to his appointment as such officer or servant is included or is intended to be included in any contract or proposed contract with, for or on behalf of the Corporation, he shall disclose the same in writing to the Corporation.

Power to dismiss officers and servants and dispose of questions as to their pay, etc.

42.—(1) Subject to any standing orders made under section 43 the General Manager shall dispose of all questions relating to the service, pay, privileges and allowances of the officers and servants of the Corporation.

(2) Subject to any standing orders made under section 43, the power of promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the Corporation shall be exercised by the General Manager:

Provided that in the case of officers and servants whose monthly salary exceeds five hundred ringgit, such powers, with the exception of the power of suspension, shall not be exercised without the previous approval of the Corporation.

(3) The power of dispensing with the services of any officer or servant of the Corporation for any reason other than the misconduct of such officer or servant, or of permitting any such officer or servant to retire on a gratuity or compassionate allowance shall, subject to the aforesaid provisions, be exercised by the Corporation.

(4) Any officer or servant aggrieved by any decision of the General Manager in the exercise of his powers under this section may appeal to the Corporation.

[Am. Cap. A41.]

Standing orders governing conditions

43. The Corporation may, with the approval of the Minister, make standing orders to provide for the following matters:

(a) the terms and conditions of service, including loans and allowances and conduct and discipline, of officers of the Corporation;

(b) the pensions, gratuities, provident fund or other superannuation benefits, of officers of the Corporation; and

(c) housing accommodation for officers of the Corporation.

Acting appointment

44. Where leave of absence has been granted to any officer of the Corporation, or where any such officer is for any reason temporarily unable to perform his functions, the Corporation may appoint another person to act in his place.

PART IV
MISCELLANEOUS

Priority of loan

45. Where a loan is made or guarantee granted by the Corporation on or in respect of the security of a charge of any movable property under section 37, the property, from and after the date of the charge, shall be charged with the payment of such loan and interest as in the charge mentioned in priority, save so far as otherwise specified in the charge, to every other debt or charge whatsoever affecting the property, except any bill of sale or any other proper charge registered under any written law before that date.

Offences in respect of loans

46. Any person who—

(a) obtains a loan or guarantee from the Corporation under this Ordinance by means of any false representation;

(b) wilfully applies any loan made to him by the Corporation, or made to him by any financial institution or other financial source in pursuance of a guarantee given by the Corporation or the Government, to any purpose other than the purpose for which the loan was made; or

(c) having obtained a loan from the Corporation, or from a financial institution or other financial source in pursuance of a guarantee given by the Corporation, or the Government, wilfully destroys any security given in relation to any such loan,

[Am. Ord. No. 1/79; Am. Cap. A41.]

shall be guilty of an offence: Penalty, imprisonment for one year and a fine of two thousand ringgit.

False statements

47. Any applicant for a loan or guarantee who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true, shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

Persons authorized to prosecute on behalf of the Corporation

48. Any prosecution for an offence may be instituted by any person employed by the Corporation, or by any person authorized in writing in that behalf by the Corporation.

Jurisdiction

49. All sums due to the Corporation from any borrower shall be recoverable, at the option of the Corporation, either in a court in the Kuching district or in a court exercising jurisdiction in the district in which the borrower resides.

Limit of time for prosecution

50. Proceedings in respect of offences under this Ordinance or of any regulations made hereunder shall not be commenced at any time after five years from the date on which the offence was committed.

Fiat of Public Prosecutor

51. Proceedings for offences arising out of this Ordinance or in connection with any loan made under this Ordinance shall not be instituted without the consent in writing of the Public Prosecutor.

Burden of proof in cases of misapplication of loans

52. In any criminal proceeding in respect of an offence under section 46(b), the onus of proving that he acted in good faith and without knowledge that he was not entitled so to apply the loan, or any part of it, shall be upon the person charged.

[Am. Ord. No. 19/71.]

Minutes receivable in evidence

53. Any minutes made of meetings of the Corporation shall, if duly signed by the Chairman or other member presiding in his absence, be receivable in evidence in all legal proceedings without further proof, and every meeting of the Corporation in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all members at it to have been duly qualified to act.

Protection of the Corporation

54. No act done or proceeding taken under this Ordinance shall be questioned on the ground—

(a) of the existence of any vacancy in the membership of, or any defect in the constitution of, the Corporation;

(b) of the contravention by a member of the Corporation of section 10; or

(c) of any omission, defect or irregularity not affecting the merits of the case.

Protection of persons acting under this Ordinance

55. Any person acting in the execution of his office or duty under this Ordinance or its regulations shall be entitled to the protection afforded by any enactment in force in the State of Sarawak relating to the protection of public authorities.

Regulations

56. The Corporation, with the approval of the Majlis Mesyuarat Kerajaan Negeri, may, subject to this Ordinance, make regulations to provide for—

- (a) salaries, fees and allowances for members of the Corporation;
- (b) fees payable to the Corporation; and
- (c) generally for the exercise of its powers and duties under this Ordinance.

[Am. Ord. No. 19/71.]

Exemption of the Corporation from income tax

57. Notwithstanding anything contained in the Income Tax Act 1967 [*Act 53*], the income of the Corporation shall be wholly exempt from income tax.

[Am. P.U. (A) 449/92]

Accounts and audits

58.—(1) The Corporation shall keep accounts of its transactions to the satisfaction of the Majlis Mesyuarat Kerajaan Negeri, and its accounts shall be audited annually by an auditor appointed by the Minister.

[Mod. Swk. L.N. 68/64.]

(2) The members, and the officers and servants of the Corporation shall grant to the auditor appointed to audit the accounts of the Corporation under subsection (1) access to all books, documents, cash and securities of the Corporation, and shall give to him on request all such information as may be within their knowledge in relation to the operation of the Corporation.

[Am. Ord. No. 19/71.]

(3) The Corporation may, with the prior approval of the Minister, write off bad debts and for the purpose of this subsection, the expression “bad debt” shall have the same meaning assigned to it in the Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995 [*Cap. 15*].

[*Sub. Cap. A41.*]

Report

59.—(1) The Corporation shall not later than six months from the end of each calendar year submit to the Majlis Mesyuarat Kerajaan Negeri a report containing—

(a) an account of its transactions throughout the preceding calendar year in such details as the Majlis Mesyuarat Kerajaan Negeri may direct; and

(b) a statement of the accounts of the Corporation audited in accordance with section 58.

[*Am. Ord. No. 19/71.*]

(2) A copy of the report together with a copy of the auditor’s report shall be laid before the Dewan Undangan Negeri, and the balance sheet and auditor’s certificate shall be published in the *Gazette*.

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

Compulsory acquisition of land

60. When any immovable property, not being State land, is needed to be acquired by the Corporation for the purposes of this Ordinance, such property may be acquired in accordance with any written law for the time being in force in the State Sarawak relating to the acquisition of land for a public purpose, and any declaration required by any such written law that such land is so needed may be made notwithstanding that compensation is to be paid out of the funds of the Corporation; and such declaration shall have effect as if it were

a declaration that such land is needed for a public purpose in accordance with such written law.

Power to enter into contracts of guarantee or indemnity

61. The Corporation may, with the approval of the Minister, enter into contracts of guarantee or indemnity for the purpose of facilitating the acquisition or erection of dwelling houses by officers or other servants of the Corporation.

[Added Ord. No. 15/76.]

FIRST SCHEDULE

(Section 37)

PROVISIONS WHICH APPLY TO EVERY CHARGE CREATED UNDER SECTION 37

Rights conferred and obligations imposed by a charge on the Corporation

1. A charge shall, so long as it continues in force, confer the following rights and impose the following obligations on the Corporation:

(a) a right to take possession of any of the property subject to the charge—

(i) if the borrower shall fail to pay the Corporation any money which shall for the time being be owing under the charge within four days after the same, or any instalment thereof, shall become due;

(ii) if the borrower shall fail to discharge any of the obligations imposed upon him by any provision of this Schedule;

(iii) if the borrower shall become insolvent or make any arrangement or composition with his creditors;

(iv) if any distress or execution be issued or levied against or upon any of the property of the borrower;

(v) on the death of the borrower; or

(vi) if the borrower does any act prohibited by this Ordinance or regulations;

(b) where possession of any property has been so taken, a right, after an interval of five clear days or such less time as may be allowed by the instrument, to sell the property either at auction or, if the instrument so provides, by private treaty, and either for a lump sum payment or payment by instalments;

(c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the charge, and the cost of seizure and sale, and to pay the surplus, if any, of the proceeds to the borrower.

Obligations imposed by a charge on a borrower

2. A charge shall, so long as it continues in force, impose on the borrower the following obligations:

(a) if required by the Corporation, to insure and keep insured, so long as the charge continues in force, the property subject to the charge for a sum of money not less than the value of that property, and to assign the policy of insurance to the Corporation;

(b) to keep in good and substantial repair and condition the buildings, erections, plant, machinery and other property and equipment subject to the charge;

(c) not to sell or again encumber or charge any property subject to the charge, so long as the charge continues;

(d) to pay punctually, as the same shall become due and payable, any land rent, rate or tax payable by him in respect of the land on which the property stands, and upon demand in writing by the Corporation to produce his last receipts for such rent, rate or tax;

(e) not to have execution issued against his goods under any legal process;

(f) not to remove, dismantle or in any way alter any buildings, erections, plant, machinery, equipment or other property subject to the charge without the prior consent in writing of the Corporation.

Penalty for sale of security

3. Every person who sells any property subject to the charge, otherwise than in pursuance of the charge, shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

Charge not to be defeated by sale, etc., of property subject to it

4. A charge created under this Ordinance shall not be liable to be defeated by any sale of, or by a subsequent charge of any nature created upon, the property specified in the instrument creating it, and, upon the borrower committing an act of bankruptcy, the Corporation shall be at liberty to take possession of the property subject to the charge and sell the same in accordance with paragraph 1(b).

Charge not to be affected by Bills of Sale Ordinance

5. A charge created under this Ordinance shall have effect notwithstanding anything contained in the Bills of Sale Ordinance [*Cap. 68 (1958 Ed.)*], and an instrument made under this Ordinance shall not be deemed to be a bill of sale within the meaning of that Ordinance.

Property charged not affected by order or disposition section of the Bankruptcy Act 1967 [Act 360]

6. So long as a charge created under this Ordinance continues in force, property subject to the charge shall not be property divisible amongst the borrower's creditors in case of his bankruptcy as being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt in his trade or business by the consent and permission of the Corporation, except that any surplus after the proceeds of sale of such property have been applied in or towards the discharge of the moneys and liabilities secured by the charge shall be payable by the Corporation to the borrower's assignee in bankruptcy.

Mode of executing instrument creating charge

7. Every instrument creating a charge under this Ordinance shall be signed by the borrower and attested by two witnesses, if the borrower can read and write the English language, and, in case of a borrower who cannot read and write the English language, the instrument shall be made by affixing the borrower's mark thereto in the presence of two witnesses or a Magistrate, who shall attest the same after reading over and explaining the contents to the borrower.

Filing of instrument in Deeds Registry

8. The instrument to create a charge shall be signed also by an officer duly authorized by the Corporation and shall be filed by the Corporation in accordance with the Hire Purchase Registration Ordinance [*Cap. 71 (1958 Ed.)*], and the charge shall take effect as from the moment when it is so filed.

Registrar to file instrument on certificate of witness, etc.

9. The instrument shall be accepted and filed upon a certificate thereon by one of the witnesses to the signature of the borrower, or by the person or one of the persons in whose presence the borrower made his mark, to the effect that he knows the borrower and that the instrument was read over and explained by him to the borrower, who appeared perfectly to understand the same and signed it or made his mark to it.

Penalty for false certificate

10. Every person who makes a false certificate for the purposes of paragraph 9 shall be guilty of an offence: Penalty, imprisonment for one year and a fine of two thousand ringgit.

Penalty for fraudulent offer of security

11.—(1) No person shall offer to the Corporation as security for a loan applied for under this Ordinance any property which is not his own or which is already the subject of a charge created otherwise than in accordance with this Ordinance, and every person shall, on application for a loan, disclose to the Corporation the existence of any charge on the property offered as such security.

(2) Every person who contravenes subparagraph (1) shall be guilty of an offence: Penalty, imprisonment for one year and a fine of two thousand ringgit.

Form of instrument of charge

12. An instrument to create a charge under this Ordinance shall, subject to paragraph 13, be in the form and terms set out in the Second Schedule, and may be made with such other lawful terms and conditions as the parties may think fit.

Notice of this Schedule to form part of instrument of charge

13. A copy of this Schedule shall be printed on every instrument of charge created under section 37.

SECOND SCHEDULE

(Paragraph 12 of First Schedule)

INSTRUMENT CREATING CHARGE UNDER THIS ORDINANCE

THIS INSTRUMENT is made the day of
....., 20..... Between
..... of
("the Corporation") of the other part:

1. In consideration of the sum of
ringgit now advanced to the borrower by the Corporation, the borrower hereby
charges all the movable property particulars whereof are hereinafter set forth with
the payment to the Corporation of the said sum of ringgit and
the cost of realisation and enforcement of this security.

2. The loan secured by this charge and the interest thereon shall be
repayable as follows:

(Here fill in terms of repayment)

DESCRIPTION OF PROPERTY SUBJECT TO THIS CHARGE

*(Here enumerate and describe so as to identify the movable
property charged).*

IN WITNESS WHEREOF the parties have signed this instrument at
..... in the presence of the following witnesses:

.....
Borrower

.....
for and on behalf of the
Perbadanan Pembangunan Ekonomi Sarawak
[Am. Ord. No. 19/71.]

Witnesses to the signature or mark
of the borrower:

1.
2.

LAWS OF SARAWAK

CHAPTER 35
(1958 Edition)

**PERBADANAN PEMBANGUNAN EKONOMI
SARAWAK ORDINANCE**

LIST OF AMENDMENTS

Amending Law

Short Title

In force from

Sarawak LawNet