



# **LAWS OF SARAWAK**

## **Chapter 71**

### **FORESTS ORDINANCE, 2015**

**FORESTS ORDINANCE, 2015**

Date Passed by Dewan Undangan  
Negeri ... .. 22nd April, 2015

Date of Assent ... .. 19th May, 2015

Date of Publication in *Gazette* ... 21st May, 2015

Sarawak LawNet

**LAWS OF SARAWAK**  
**Chapter 71**  
**FORESTS ORDINANCE, 2015**

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

*Section*

1. Short title and commencement
2. Interpretation

PART II

ADMINISTRATION

3. Appointment of Director, *etc.*
4. Direction of Minister
5. Exercise of powers, *etc.*
6. Delegation of powers and duties

PART III

FOREST RESERVES, PROTECTED FORESTS AND  
COMMUNAL FORESTS

*Chapter 1 — Forest Reserves and Protected Forests*

7. Constitution of forest reserves and protected forests
8. Procedure for constituting forest reserves and protected forests
9. Effect of notification
10. Rights or privileges
11. Claim

*Section*

12. Enquiry into claim
13. Report
14. Rights or privileges admitted, *etc.*
15. Assessment of compensation
16. Decision on compensation
17. Appeal
18. Proclamation
19. Proposal may be withdrawn
20. Effect of Proclamation
21. Exercise of subsisting rights, *etc.*
22. Extinguishment of subsisting rights, *etc.*
23. Acquisition of rights or privileges
24. Transfer of rights or privileges
25. Inclusion of alienated land
26. Acts prohibited in forest reserve and protected forest
27. Saving
28. Protection of forest reserve and protected forest
29. Revocation of forest reserve and protected forest

*Chapter 2 — Communal Forests*

30. Power to constitute communal forest
31. Resident to publish notification
32. Claims to be heard

*Section*

33. Procedure after hearing
34. Proposal may be withdrawn
35. Proclamation
36. Community to maintain communal forest
37. Removal of forest produce
38. Cessation of communal forest

PART IV  
FORESTS MANAGEMENT AND DEVELOPMENT

*Chapter 1 — Proprietary Rights over Forest Produce in Permanent  
Forests and State Land*

39. All forest produce property of the State
40. Powers of Director
41. Appeal
42. Cancellation or suspension of licence
43. Return of licence upon expiry
44. Deposit

*Chapter 2 — Royalty, Premium, Cess and Fees*

45. Payment of royalty
46. Payment of premium
47. Payment of cess
48. Payment of fees

*Chapter 3 — Workmen**Section*

- 49. Registration of workmen
- 50. Employers to insure
- 51. Employment of trained workmen

*Chapter 4 — Miscellaneous*

- 52. Special licences may be issued in certain cases
- 53. Timber trees not to be used as fuel
- 54. Government reserves
- 55. Alienated land
- 56. Saving
- 57. Licences to be produced
- 58. Renewal
- 59. Removal of forest produce after expiry of licence
- 60. Timber, *etc.* for domestic use
- 61. Power to declare protected tree or species of tree
- 62. Sawmills to be licensed
- 63. Power to provide that timber exported shall be accompanied by a Certificate of Inspection
- 64. Power to impose production limit and restriction on sales of timber

*Chapter 5 — Special Provisions for Planted Forests*

- 65. Licence for establishment of planted forests
- 66. Planted forests part of permanent forests

*Section*

- 67. Duration of licence
- 68. Rules for planted forests
- 69. Licence as security document
- 70. Director to maintain Register

PART V  
ENFORCEMENT

*Chapter 1 — Arrest*

- 71. Power of arrest

*Chapter 2 — Search, Seizure and Forfeiture*

- 72. Power to search
- 73. Power to seize forest produce and other property
- 74. Search and seizure with warrant
- 75. Search and seizure without warrant
- 76. Power to stop and search conveyances
- 77. Temporary release of things seized
- 78. Power of Director to dispose of seized property
- 79. Forfeiture of things seized
- 80. Power to stop, examine and detain forest produce

*Chapter 3 — Investigation*

- 81. Power to investigate
- 82. Examination of person acquainted with case
- 83. Admissibility of statements in evidence

*Section*

- 84. Where investigation cannot be completed within twenty-four hours
- 85. Diary of proceedings in investigation

*Chapter 4 — Compound*

- 86. Power to compound offences

## PART VI

## OTHER OFFENCES AND PENALTIES

- 87. Penalty for trespassing in forest reserves and protected forests
- 88. Penalty for offences in forest reserves and protected forests
- 89. Penalty for other offences in forest reserves and protected forests
- 90. Penalty for illegal collection of forest produce
- 91. Penalty for revenue offence
- 92. Penalty for converting timber trees to fuel
- 93. Penalty for illegal export of logs and excess of production limit
- 94. Penalty for offence concerning marks and property marks
- 95. Penalty for non-payment of royalty, *etc.*
- 96. Penalty for unlawful possession of forest produce
- 97. Double penalty in certain cases
- 98. Offences committed by corporations
- 99. Offences committed by partner, servant or agent
- 100. Eviction from forest reserves, protected forests and State land
- 101. Forest officers to exercise powers of eviction, *etc.*
- 102. Offences relating to obstruction of road
- 103. Offence of assaulting or obstructing an officer

*Section*

104. Abettors liable to penalties

105. False declaration

PART VII  
MISCELLANEOUS

106. Conduct of prosecution

107. Jurisdiction

108. Protection against suit and legal proceedings

109. Protection of informers

110. Rewards, *etc.*111. Certificate of the Director as to the value of forest produce, *etc.*

112. Power of Minister to amend Schedules

113. Rules

PART VIII  
REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

114. Repeal, savings and transitional provisions

FIRST SCHEDULE	—	Forest produce taken under licence (Rates of royalty)
SECOND SCHEDULE	—	Forest produce taken under licence (Rates of fees)
THIRD SCHEDULE	—	Issuance or renewal of licence (Rates of fees)
FOURTH SCHEDULE	—	Seizable offences

Sarawak LawNet

**LAWS OF SARAWAK****Chapter 71****FORESTS ORDINANCE, 2015**

*An Ordinance to provide for the protection and management of forests in Sarawak and to regulate the taking of forest produce and for matters connected therewith.*

[ 1<sup>st</sup> June, 2015 ]  
(Swk. L.N. 248/2015)

Enacted by the Legislature of Sarawak—

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

1.—(1) This Ordinance may be cited as the Forests Ordinance, 2015.

(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 different provisions of this Ordinance.

**Interpretation**

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

“alienated land” means land in respect of which there is a subsisting alienation within the meaning of the Land Code [*Cap. 81 (1958 Ed.)*];

“boundary mark” includes any beacon, post, peg, plate or other object used to define the boundary of a forest reserve or protected forest or communal forest;

“cattle” includes elephants, buffaloes, horses, ponies, mules, pigs, sheep and goats;

“civil debt” means any order made by the court under this Ordinance for the payment of money to the Government and shall be deemed to have been made in a civil proceeding for the purposes of the Government Proceedings Act 1956 [*Act 359*] and the Rules of Court 2012 [*P.U. (A) 205/2012*];

“communal forest” means a communal forest constituted over State land under Part III of this Ordinance;

“company” means a company incorporated and registered under the Companies Act 1965 [*Act 125*];

“controlling shares” means shares in a company which, when aggregated, would give the holder of such shares the rights to exercise or control the exercise of more than thirty-three per centum of the voting power of that company;

“conveyance” includes ship, boat, vessel, train, vehicle, aircraft or any other means of transport by which persons or goods can be carried;

“Director” means the Director of Forests, appointed under section 3 and includes any person appointed by the Minister to act or to discharge temporarily the duties and functions of that office;

“domestic use” means any use for the purpose of construction, repair or extension of a dwelling house or for use as firewood or for the making of furniture or any other household goods or utensils in a person’s own dwelling house and not for sale, barter or profit;

“firewood” means wood, round or cleft, cut into short lengths for use as fuel;

“forest offence” means an offence punishable under this Ordinance or any rules made thereunder;

“forest officer” means any person appointed under section 3 as a forest officer;

“forest produce” includes—

(a) the following when found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land—

- (i) guano, peat, rock, sea-shell and surface soil;
- (ii) trees and all parts and produce not hereinafter mentioned of trees;
- (iii) plants including grass, climbers, creepers and all parts and produce of such plants; or
- (iv) tusks, horns, silk-cocoons, honey, wax and edible birds' nests;

(b) the following when found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land —

- (i) timber;
- (ii) firewood;
- (iii) charcoal;
- (iv) bark;
- (v) wild rubbers; or
- (vi) cordwood;

“forest reserves” means forest reserves constituted over State land under Part III of this Ordinance;

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

“Government reserves” means land reserved to the Government under the Land Code [*Cap. 81 (1958 Ed.)*];

“hammer mark” means the Government hammer mark “F.D.” or any other mark as may be determined by the Director;

“Magistrate” means a Magistrate of the First Class as provided under the Subordinate Courts Act 1948 [*Act 92*];

“mangroves” means all trees belonging to the genera *Avicennia*, *Bruguiera*, *Ceriops*, *Kandelia*, *Rhizophora* and *Xylocarpus*;

“medicinal compound” means any extract, tissue, organism, part or constituent, isolated, taken, derived or extracted from any tree which has the properties for the cure, treatment or relief of any disease or ailment;

“Minister” means the Minister for the time being charged with the responsibility for forestry matters;

“permanent forests” means all forests reserves, protected forests, communal forests, Government reserves and planted forests in the State;

“pharmaceutical product” means any drug or medicine, in liquid, concentrated, tablet or any other form, used for the treatment of human beings or animals, prepared from or through the use of any medicinal compound, including any drug or medicine made by way of synthesis of such compound and other chemical or chemical products;

“planted forests” means a crop of trees planted or maintained on State land or alienated land under a licence issued pursuant to section 65 and forming part of the permanent forests in the State;

“prescribed” means prescribed by rules made under section 113;

“property mark” means a mark which a licensee is entitled to place on timber to denote that he is entitled to the ownership of such timber, for which payment of all royalty, premium, cess and other payments are payable to the Government;

“protected forests” means protected forests constituted over State land under Part III of this Ordinance;

“public authority” means the Government, a department of the Government, a corporation or body established or constituted by or under State law and includes any officer appointed or acting on behalf of such Government, department, corporation or body;

“Regional Forests Officer” means any forest officer appointed or assigned to administer the provisions of this Ordinance and any rules made thereunder in one or more Administrative Divisions in Sarawak and to discharge any duties as may be assigned to him by the Director;

“removal pass” means a pass for the removal of timber issued in such form as may be determined by the Director;

“sawbench” means the frame carrying a power driven saw and, in the absence of a saw carriage, the table on which the timber is sawn;

“sawmill” means any factory or any premises where timber is cut or sawn or hewn or converted into small sizes or marketable products and includes any machinery, equipment or plant for the manufacture of veneers, plywood, moulding or any other products from timber;

“State land forests” means any forests in the State other than forest reserves, protected forests, communal forests, Government reserves and planted forests;

“State land” means State land within the meaning of the Land Code [*Cap. 81 (1958 Ed.)*];

“timber” includes trees when they have fallen or been felled, and all woods whether or not cut up, fashioned or hollowed out for any purpose but does not include firewood;

“tree” includes any part of a tree, its fruits, buds, leaves, branches, stems, stumps, bark, trunk, seeds, seedlings, exudates, roots and any plants, palms, bamboos, canes and brushwoods.

(2) Where a licence is, by reason of its terms or the provisions of this Ordinance, declared not to be transferable, the licence shall, unless the Minister or a person authorized by him in that behalf otherwise directs, be liable to be cancelled or suspended in accordance with section 42 if—

- (a) the holder thereof transfers the licence;
- (b) in the case of a licence issued to a company, the controlling shares in the company are transferred;
- (c) in the case of a licence issued to a partnership, there is a change, save by operation of law, in the partnership; or
- (d) the holder thereof enters into an agreement with any other person, the effect of which is to enable the benefits conferred by the licence to be enjoyed by any other person.

(3) Notwithstanding subsection (2), the Minister may, in the event of death, incapacity, bankruptcy or, in the case of a company, liquidation of the holder of such licence, or where a receiver or manager is appointed in relation to the business of the holder of such licence, or where for any reason the Minister is satisfied that it would be unjust not to do so, authorize the transfer of such licence.

PART II  
ADMINISTRATION

**Appointment of Director, etc.**

3. This Ordinance shall be administered by a Director, who shall be assisted by such number of Deputy Directors and forest officers, all of whom shall be appointed by the Minister, by notification in the *Gazette*.

**Direction of Minister**

4. The Minister may from time to time give to the Director, general or special directions, not inconsistent with the provisions of this Ordinance, as to the exercise or discharge of the Director's powers and functions under this Ordinance, and any such direction shall become binding on the Director, who shall forthwith take all steps necessary or expedient to give effect thereto.

**Exercise of powers, etc.**

5.—(1) The Director shall, subject to the general or special directions of the Minister given pursuant to section 4, exercise the powers conferred and perform the functions and duties imposed on him under this Ordinance.

(2) The Deputy Directors shall assist the Director in the exercise of his powers and the discharge of his functions and duties and shall have such other functions and duties as may be assigned to them by the Director.

(3) The forest officers shall have such powers as may be conferred, and duties and functions as may be imposed, upon them by this Ordinance.

### **Delegation of powers and duties**

6. The Director may, with the written approval of the Minister, by notification in the *Gazette*, delegate to any public authority, any of the powers and duties conferred on the Director under this Ordinance or any rules made thereunder.

## PART III

### FOREST RESERVES, PROTECTED FORESTS AND COMMUNAL FORESTS

#### *Chapter 1 — Forest Reserves and Protected Forests*

### **Constitution of forest reserves and protected forests**

7. A forest reserve or protected forest may be constituted over any State land in the manner provided in this Part.

### **Procedure for constituting forest reserves and protected forests**

8.—(1) Where it is proposed to constitute a forest reserve or protected forest over any State land, the Minister shall publish in the *Gazette*, a notification—

(a) specifying as accurately as possible the description and limits of the land intended to be constituted a forest reserve or protected forest;

(b) directing any person claiming any right or privilege in or over such land to submit, within sixty days from the date of publication of such notification, to the Regional Forests Officer for the area in which the land is situated, his claim with evidence in support thereof; and

(c) stating that upon the expiry of a period of sixty days from the date of publication of the notification, all rights and privileges in or over the area intended to be constituted a forest reserve or protected forest shall, unless admitted under section

14, be deemed to be extinguished, and that compensation shall be paid to any person whose rights or privileges have been so extinguished in accordance with this Part.

(2) A copy of the notification shall be published in at least one newspaper circulating in Sarawak or in such medium as circumstances may permit, and displayed at any place or at the District Office for the area to be constituted a forest reserve or protected forest.

#### **Effect of notification**

9. From the date of the notification published under section 8 until the publication of the Proclamation under section 18, no person shall exercise any right or privilege which he intends to make a claim upon in or over the land proposed to be constituted a forest reserve or protected forest, and the taking of any forest produce therefrom is prohibited without the written approval of the Director.

#### **Rights or privileges**

10. The rights or privileges that may be claimed in an area to be constituted a forest reserve or protected forest shall be only those rights or privileges which have been enjoyed or exercised by or accrued to a native or his forefathers or a native community for an uninterrupted period beginning from a date prior to 1<sup>st</sup> January, 1954 to the date of the notification referred to in section 8.

#### **Claim**

11.—(1) Any person who fails to submit a claim to any right or privilege in or over the land to be constituted a forest reserve or protected forest within the period stipulated in the notification, shall be deemed to have abandoned or waived such right or privilege and shall not be entitled to any payment of compensation under this Part.

(2) A claim to such right or privilege may be submitted to the Regional Forests Officer by him or by a Headman on his behalf and shall be made in writing and in such form as may be determined by the Director.

### **Enquiry into claim**

**12.—**(1) The Regional Forests Officer shall, within sixty days upon the expiry date of the notification published under section 8(1) (b), conduct an enquiry into any claim or privilege in or over any land proposed to be constituted a forest reserve or protected forest.

(2) In any such enquiry, the onus of proving the existence of any right or privilege claimed shall be on the claimant.

(3) The Regional Forests Officer may call for and receive any evidence to verify, confirm or support any claim from any claimant or any public officer or any other person having knowledge of such claim. In the conduct of such enquiry, the Regional Forests Officer shall have the same powers to summon and examine witnesses as a Magistrate.

(4) Where it is considered necessary and expedient, any enquiry conducted pursuant to this section may be held in public at such time and on such date as may be specified in a notice to be issued by the Regional Forests Officer.

### **Report**

**13.—**(1) The Regional Forests Officer shall, upon conclusion of the enquiry, furnish a report thereof to the Director.

(2) The report shall contain the notes of proceedings and evidence recorded at the enquiry together with such findings and recommendations, as the Regional Forests Officer may deem fit or proper to make.

**Rights or privileges admitted, etc.**

**14.**—(1) Upon receipt of the report furnished under section 13, the Director shall make a decision as to—

- (a) the right or privilege that is to be admitted and subjected to section 21; or
- (b) the right or privilege that is to be extinguished.

(2) Where any right or privilege is to be extinguished under subsection (1)(b), the Director shall forthwith proceed to assess the compensation payable to the claimant in accordance with section 15.

**Assessment of compensation**

**15.** In assessing compensation payable under this Part for the extinguishment of any right or privilege under section 14, the Director shall take into account the following—

- (a) the nature and extent of the right or privilege claimed;
- (b) whether such right or privilege is still exercised or enjoyed by the claimant at the date of the notification published under section 8;
- (c) the degree of actual dependency, if any, of the claimant on such right or privilege as a means of his livelihood;
- (d) if the right or privilege relates to the planting of any crop, whether an alternative site or area has been provided by the Government for the person or the community to which he belongs, for farming; and
- (e) any other relevant factors or circumstances pertaining to the enjoyment or exercise of such right or privilege.

### **Decision on compensation**

**16.** The decision of the Director on the amount of the compensation payable to any claimant under this Part shall be served on the claimant at the address provided by him at the time of submission of his claim or if his claim is submitted by his Headman on his behalf, the decision shall be served on the claimant by handing a copy thereof to the Headman.

### **Appeal**

**17.—(1)** Any person aggrieved by the decision of the Director may, within thirty days from the date of service of the decision on him, appeal to a Sessions Court.

(2) An appeal to a Sessions Court shall be by way of an application as provided in the Rules of Court 2012 [*P.U. (A) 205/2012*].

(3) Subject to the Rules of Court 2012 [*P.U. (A) 205/2012*], a Judge of the Sessions Court may give such direction as he deems fit or necessary for the disposal or hearing of any appeal before him under this section.

### **Proclamation**

**18.—(1)** At any time after the Director has made a decision on the compensation for extinguishment of any right or privilege under section 15, the Minister may publish in the *Gazette*, a Proclamation to constitute the area specified in the notification referred to in section 8, a forest reserve or protected forest.

(2) Such Proclamation shall—

(a) provide a name for the forest reserve or protected forest;

(b) specify the limit of the forest reserve or protected forest;

(c) declare the date on which the Proclamation shall take effect;

(d) declare that all rights or privileges in the forest reserve or protected forest have been extinguished unless admitted under section 14; and

(e) stipulate the special conditions, if any, governing the reservation or protection thereof.

### **Proposal may be withdrawn**

**19.—**(1) The Minister may, at any time before the publication of the Proclamation under section 18, withdraw a proposal to constitute any State land as a forest reserve or protected forest.

(2) Upon such withdrawal, the Minister shall publish a notification accordingly, in the same manner as provided in section 8.

### **Effect of Proclamation**

**20.—**(1) From the date fixed in the Proclamation, the area stipulated therein shall be a forest reserve or protected forest and shall, together with all the forest produce therein and all things found thereon, belong absolutely to the Government.

(2) A forest reserve or protected forest constituted under this Part shall be managed, administered and controlled by the Director, subject to such direction as may be given to him from time to time, by the Minister.

(3) (a) From the date of the constitution of a forest reserve or protected forest, no person whose rights or privileges have been extinguished in accordance with this Part, shall exercise and enjoy such rights or privileges, and shall not, without the written approval of the Director or forest officer authorized by him, enter upon, remain in or occupy any part of the forest reserve or protected forest.

(b) Any person who fails to comply with paragraph (a), may, without notice, be removed or evicted therefrom by a forest

officer authorized by the Director, or by a police officer not below the rank of Inspector.

**Exercise of subsisting rights, etc.**

21. Where any right or privilege has been admitted but was not extinguished at the time of the constitution of the forest reserve or protected forest (referred to in this Part as “subsisting rights or privileges”), the exercise thereof shall be subject to the control of the Director and to such direction as he may make to regulate the limits or area within a forest reserve or protected forest, whereby the subsisting rights or privileges may be exercised, including the mode of exercising thereof and having regard to the natural capacity of the natives to enjoy such rights or privileges.

**Extinguishment of subsisting rights, etc.**

22.—(1) The Minister may, by notification in the *Gazette*, extinguish any subsisting rights or privileges over a forest reserve or protected forest.

(2) A copy of the notification shall be published in at least one newspaper circulating in Sarawak or in such medium as circumstances may permit, and displayed at any place or at the District Office for the area where the forest reserve or protected forest is situated.

(3) Any person who is affected by such notification shall, within thirty days from the date of publication thereof, inform the Regional Forests Officer in writing of the nature and extent of the exercise or enjoyment by him of the subsisting rights or privileges which are intended to be extinguished.

(4) The Regional Forests Officer shall, within thirty days from the date of receipt of the information under subsection (3), transmit the same to the Director who, if satisfied that any person has been affected by the extinguishment of any subsisting right or privilege, pay such compensation to him, as assessed in accordance with section 15.

### **Acquisition of rights or privileges**

**23.** No subsisting rights or privileges shall be acquired in or over a forest reserve or protected forest, except by succession or under a grant or contract made by the Government or by some persons in whom such rights or privileges, or the power to create such rights or privileges were vested, when the forest reserve or protected forest was constituted.

### **Transfer of rights or privileges**

**24.** Notwithstanding anything herein contained, no subsisting rights or privileges in a forest reserve or protected forest shall be transferred by way of grant, sale, lease, mortgage or otherwise, except with the written approval of the Minister.

### **Inclusion of alienated land**

**25.—(1)** The inclusion in a forest reserve or protected forest of any alienated land shall be deemed to be a public purpose within the meaning of section 46 of the Land Code [*Cap. 81 (1958 Ed.)*].

(2) Where alienated land has been acquired for the purposes specified in subsection (1), the Minister may include the land so acquired in the Proclamation made under section 18.

### **Acts prohibited in forest reserve and protected forest**

**26.** Subject to section 27, no person shall in a forest reserve or protected forest—

- (a) trespass;
- (b) pasture cattle or permit cattle to trespass;
- (c) fell, cut, ring, mark, lop or tap any tree, or injure by fire or otherwise, any tree or timber;
- (d) cause any damage by negligence in felling any tree or cutting or dragging any timber;

(e) quarry stone, burn lime or charcoal or search for, collect or remove any forest produce or minerals;

(f) erect any building, or clear or break up any land for cultivation or for any other purpose; or

(g) kindle, keep or carry any fire or leave any fire burning.

### **Saving**

**27.** Nothing in section 26 shall be deemed to prohibit or render punishable—

(a) the exercise of any subsisting rights or privileges;

(b) the exercise of any right or privilege created by succession, grant or contract in the manner described in section 23; or

(c) any act done with the permission in writing of the Director.

### **Protection of forest reserve and protected forest**

**28.** No person shall do or cause to be done any act which is likely to damage or endanger the trees within a forest reserve or protected forest.

### **Revocation of forest reserve and protected forest**

**29.—(1)** The Minister may, by notification in the *Gazette*, direct that, from a date to be fixed by such notification, any forest reserve or protected forest, or any part thereof, shall cease to be reserved or protected.

(2) From the date so fixed—

(a) such a forest reserve or protected forest or part thereof shall cease to be reserved or protected, but the rights or privileges which have been extinguished therein shall not be revived; and

(b) any subsisting rights or privileges shall be deemed to be extinguished, and any person affected by such extinguishment may submit his claim for compensation to the Regional Forests Officer within thirty days from the date of publication of the notification.

(3) Sections 10, 11, 12, 13, 14, 15, 16 and 17 shall apply *mutatis mutandis* in relation to any claim for the amount of the compensation submitted under this section.

## *Chapter 2 — Communal Forests*

### **Power to constitute communal forest**

**30.** The Minister may, at the request of a community, constitute any State land, not being a forest reserve, protected forest or other Government reserve, a communal forest in the manner provided in this Part.

### **Resident to publish notification**

**31.—(1)** When the Resident is satisfied that it is the desire of a majority of the members of a community that a communal forest shall be constituted, he shall, with the written approval of the Minister, publish a notification which shall—

(a) specify as accurately as possible the situation and limits of the communal forest;

(b) declare that it is proposed to constitute it a communal forest; and

(c) call upon any person desirous of making a claim to any rights or privileges to lodge such claim with the District Officer within a period to be stated in the notification, which period shall not be less than three months.

(2) A copy of the notification shall be published in at least one newspaper circulating in Sarawak or in such medium as circumstances may permit, and displayed at any place or at the District Office for the area to be constituted a communal forest.

### **Claims to be heard**

**32.—**(1) At the expiration of the period prescribed by the notification, the District Officer shall give notice to the claimant and to the community responsible for the proposed constitution, and shall hear and determine any claim.

(2) The District Officer shall record the proceedings in writing, and may compel the attendance of witnesses and the production of documents.

(3) The District Officer shall make an order admitting or disallowing such claims as he deems fit, and shall thereupon forward to the Resident a statement of his decision.

(4) Any person aggrieved by a decision of the District Officer may within thirty days appeal to the Resident.

### **Procedure after hearing**

**33.—**(1) Having heard any appeal, the Resident shall consider the decision of the District Officer, and may affirm or vary it.

(2) A schedule of every approved claim shall be attached to the Proclamation under section 35.

### **Proposal may be withdrawn**

**34.—**(1) The Resident may, with the written approval of the Minister, at any time before the publication of the Proclamation under section 35, withdraw a proposal to constitute any land as a communal forest.

(2) Upon such withdrawal, the Resident shall publish a notification accordingly, in the same manner as provided under section 31.

### **Proclamation**

**35.—**(1) When the period fixed under section 31 has elapsed and any claims have been disposed of, the Resident shall, with the written approval of the Minister, publish in the *Gazette*, a Proclamation to constitute the area specified in the notification referred to in section 31, a communal forest.

(2) Such Proclamation shall—

- (a) provide a name for the communal forest;
- (b) specify the limits of the communal forest;
- (c) declare the date on which the Proclamation shall take effect;
- (d) state the rights and privileges admitted or conceded in respect of the said communal forest; and
- (e) state the special conditions, if any, governing the constitution of the said communal forest.

(3) From the date so fixed, the area shall be a communal forest and shall, together with all the produce therein and all things found thereon, be set aside for the sole use of the native community, by whom it shall be maintained and controlled, subject only to the rights and privileges set out in the Proclamation and to the conditions of section 36.

### **Community to maintain communal forest**

**36.—**(1) The native community shall undertake to maintain the communal forest in a condition of sustained yield in such a manner as the Director or any forest officer authorized by him may direct, and for this purpose, the Director or any forest officer authorized by him may regulate the method and extent of any fellings or other operations.

(2) It shall be an offence for any member of the native community to do any act which the Director or any forest officer authorized by him has the power to prohibit, and has expressly prohibited in writing under subsection (1).

### **Removal of forest produce**

**37.—**(1) Subject to any conditions imposed in writing by the Director or any forest officer authorized by him under section 36, any member of the native community may remove, free of royalty or fee, any forest produce for his own use and not for sale, barter or profit.

(2) No other person shall remove any forest produce from a communal reserve for any purpose whatsoever.

(3) A member of the native community shall be presumed to be taking forest produce for sale, barter or profit unless he can prove to the satisfaction of the court or the Director or any officer authorized by him to investigate an offence under section 81, that he requires the forest produce as firewood or for the construction, repair or extension of his dwelling house or for the making of any boat, furniture or any other household goods or utensils for the use of himself or his immediate family, and that the forest produce was taken by himself or a member of his family.

(4) Any person who contravenes subsection (1) or (2) shall, upon conviction, be punished with a fine of not less than five thousand ringgit and not exceeding fifty thousand ringgit or imprisonment for a term not exceeding two years or both, and for a subsequent offence, shall be punished with a fine of not less than ten thousand ringgit and not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding five years or to both.

(5) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of the forest produce in respect of which the offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

### **Cessation of communal forest**

**38.** The Minister may, by notification in the *Gazette*, direct that from the date specified in such notification, any communal forest or part thereof shall cease to be a communal forest, and any such direction shall have effect accordingly.

## **PART IV**

### **FORESTS MANAGEMENT AND DEVELOPMENT**

#### *Chapter 1 — Proprietary Rights over Forest Produce in Permanent Forests and State Land*

### **All forest produce property of the State**

**39.** All forest produce situated, lying, growing or having its origin within a permanent forest or State land shall be the property of the State except where the rights to such forest produce have been specifically disposed of in accordance with the provisions of this Ordinance or any other written law.

### **Powers of Director**

**40.—(1)** The taking of forest produce in permanent forests, State land and alienated land shall be controlled and regulated by the Director who may—

- (a) issue such licences in such form and under such terms and conditions as he may determine;
- (b) call for tenders, when necessary, for the right to take forest produce from a specified area;
- (c) collect the fees, royalties, premia or other payments to be made in respect of such forest produce in any particular case, including the payment for ecosystem services related thereto; and

(d) allow any other works or issue any order that he may deem necessary for the taking of such forest produce or for the management of the forest.

(2) A licence issued under this section shall be for a period of not exceeding one year, except with the written approval of the Minister.

(3) Subject to the power of the Minister to authorize otherwise under sections 2(2) and 2(3), a licence issued under this section shall not be transferable.

### **Appeal**

**41.** Where an application for a licence has been refused by the Director or his authorized officer, an appeal may be made to—

(a) the Minister, in the case of a decision by the Director;  
or

(b) the Director, in the case of a decision by the authorized officer, and whose decision shall be further appealable to the Minister:

Provided that the decision of the Minister shall be final and conclusive.

### **Cancellation or suspension of licence**

**42.—(1)** The Minister may, subject to subsection (2), by notice in writing to the holder of the licence, cancel or suspend for such period as he deems fit, a licence issued under this Ordinance, where he is satisfied that any of the following grounds exists:

(a) the holder of the licence has failed to pay royalties, premia, fees or cess as stipulated in the licence;

(b) the holder of the licence has contravened the provisions of this Ordinance relating to licences;

(c) the holder of the licence has failed to comply with any conditions specified in the licence;

(d) the holder of the licence has failed to comply with the written direction given by the Director;

(e) the holder of the licence has done any act specified in section 2(2) (a), (b), (c) or (d) without the authorization of the Minister;

(f) the holder of the licence has ceased to operate in the area in respect of which the licence was issued;

(g) it is advisable in the public interest to do so;

(h) the holder of the licence has contravened the provisions of section 50 relating to compulsory insurance; or

(i) the holder of the licence has been convicted of an offence under this Ordinance.

(2) The Minister shall, before cancelling or suspending any licence under subsection (1), give the holder of the licence notice in writing of his intention to do so and calling upon him to show cause why such licence should not be cancelled or suspended, as the case may be.

(3) Any person aggrieved by the decision of the Minister made under subsection (1) may, within thirty days after being notified of such decision, give notice of appeal in writing to the Majlis Mesyuarat Kerajaan Negeri, whose decision shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called into question in any court or before any other authority, judicial or otherwise whatsoever.

(4) Section 29 of the Government Proceedings Act 1956 [*Act 359*] shall apply to any legal proceedings instituted by the aggrieved party against the Government, the Minister and the Director in consequence of the cancellation or suspension of the licence under subsection (1).

(5) A person whose licence has been cancelled or suspended under this section shall, within thirty days of being informed of the

cancellation or suspension, surrender his licence to the Director, failing which he shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than ten thousand ringgit and not exceeding fifty thousand ringgit.

(6) The holder of a licence shall not have any claim whatsoever or be entitled to compensation for any loss caused to him by the cancellation or suspension of his licence.

(7) Subject to subsection (8), the holder of the licence shall, on the date of cancellation of his licence, cease to have any claim to, or ownership of, all properties (movable or immovable) and all forest produce cut or collected under such licence remaining within the area covered by the licence.

(8) The holder of the licence shall, within three months of the cancellation of his licence or such other period as the Director may allow, remove all his movable properties and all timber felled, hammer-marked and remaining in the area covered by the licence.

(9) In the event of the failure of the holder of the licence to remove any property or forest produce as aforesaid, all such property or forest produce remaining in the area covered by the licence shall be the property of the Government and free from all encumbrances, and shall not be removed from such area unless the Director otherwise directs.

(10) On the cancellation of the licence—

(a) the licence shall, as from the date thereof, be deemed to be null and void and of no effect so far as it relates to the holder of the licence and the area covered by the licence; and

(b) the Director may, with the written approval of the Minister, issue a licence to another person in respect of the said area.

**Return of licence upon expiry**

**43.—**(1) The holder of the licence shall return the licence to the Director within thirty days upon its expiration.

(2) Any person who fails or refuses to comply with the requirement under subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than ten thousand ringgit and not exceeding fifty thousand ringgit.

**Deposit**

**44.—**(1) Before the issue of any licence under this Ordinance, the applicant shall deposit as security with the Director or forest officer authorized by him, such amount and in such form and within such period as may be determined by him for the performance of the terms and conditions of the licence or the provisions of this Ordinance or any rules made thereunder.

(2) Where default is made by the licensee in the payment at the prescribed time of any sum accrued due under the terms and conditions of such licence or the provisions of this Ordinance or any rules made thereunder, the sum so accrued due may be withdrawn from the sum deposited and shall then be credited to forest revenue:

Provided that the Director may at any time direct the licensee to furnish an equivalent amount that has been withdrawn pursuant to this subsection.

(3) Where withdrawal has been made pursuant to subsection (2), any balance from the deposit shall be refunded to the licensee upon the expiry of the licence.

(4) Where no default is made in any such payment, the sum deposited shall be refunded on the determination of the licence.

*Chapter 2 — Royalty, Premium, Cess and Fees*

**Payment of royalty**

**45.—**(1) Royalty shall be payable on forest produce taken from any permanent forest or alienated land, at the rates shown in the First Schedule:

Provided that—

(a) in the case of timber, no royalty shall be payable on such portions of a tree as may be declared by a forest officer, generally or specially authorized by the Director, to be unserviceable;

(b) no royalty shall be payable on forest produce taken under a licence issued by the Director for the purpose of any work of public utility, or other purposes to be specified in such licence, and expressed to be free from payment of royalty; and

(c) with the previous written approval of the Minister in each case, the Director may, if it appears to him desirable in the public interest, commute or reduce the royalty to be paid on any particular kind of forest produce in any specified locality and for any specified period, not exceeding two years.

(2) Notwithstanding subsection (1), in any special case, the Majlis Mesyuarat Kerajaan Negeri may—

(a) exempt any licensee from payment of royalty; or

(b) charge any licensee premium, in lieu of royalty, in respect of any forest produce taken from any specified locality.

**Payment of premium**

**46.—**(1) The Director shall, in addition to payment of royalty, charge premium in respect of any forest produce taken under licence as the Minister may approve.

(2) Any premium received on hill timber under subsection (1) shall be credited to the State Consolidated Fund and accounted in the State Consolidated Revenue Account to be applied for the benefit of the natives in Sarawak in such manner as the Minister may from time to time direct.

#### **Payment of cess**

47.—(1) The Director shall, in respect of any forest produce taken under licence, impose such cess as the Minister may approve.

(2) Any money collected as cess under subsection (1) shall be credited to the State Consolidated Fund and accounted in the State Consolidated Revenue Account to be applied in such manner and for such purpose as the Minister may from time to time direct.

#### **Payment of fees**

48.—(1) Fees on forest produce taken under licence shall be payable at the rates as specified in the Second Schedule.

(2) Fees for the issuance or renewal of a licence shall be payable at the rates as specified in the Third Schedule.

### *Chapter 3 — Workmen*

#### **Registration of Workmen**

49.—(1) (a) Every licensee or contractor appointed by a licensee with the written approval of the Director, shall keep and maintain at its principal place of business or registered office, a Register of all workmen engaged by him to take, collect, fell or remove forest produce or timber from the area described in the licence.

(b) The Register shall be in such form and contain such particulars of the workmen as may be determined by the Director.

(c) The Register shall be open for inspection, at all reasonable hours, by the Director, or any forest officer or public servant authorized by him, or any police officer, who may require copies of the Register or of any particulars in the Register to be furnished to him.

(d) The licensee or contractor, as the case may be, shall ensure that all particulars in the Register shall be true and accurate.

(2) No person shall take, collect, fell or remove any timber or forest produce from any area described in a licence unless his name is already on the Register kept and maintained by the licensee or his contractor under subsection (1).

(3) (a) Any person who contravenes subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than five thousand ringgit and not exceeding twenty thousand ringgit.

(b) Any person who contravenes subsection (2) shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than ten thousand ringgit and not exceeding fifty thousand ringgit or imprisonment for a term not exceeding three years or to both.

### **Employers to insure**

**50.—(1)** For the purpose of this section and section 51:

“employer” means any person or body of persons whether statutory or incorporated or not who holds a licence issued under this Ordinance to take, collect or remove timber from any State land, forest reserve, protected forest, Government reserve or alienated land or the establishment and management of any planted forest and includes a contractor under agreement with the holder of a timber licence, and a sub-contractor engaged by or associated with the contractor;

“policy of insurance” means a policy of insurance issued by an insurer registered under the Insurance Act 1996 [Act 89] and includes a covering note;

“workman” means any person who has entered into or works under contract of service or of apprenticeship with an employer, whether by way of manual labour or otherwise, whether the

contract is expressed or implied or is oral or in writing, whether the remuneration is calculated by time or by work done and whether by the day, week, month or any longer period.

(2) Every employer shall insure and keep insured all his workmen in respect of any personal injury or death caused by accident arising out of or in the course of their employment or any loss or damage which his workmen may suffer or sustain as a result of their employment with the employer.

(3) Subject to this section, no person shall be employed or continue to be employed as a workman to take, collect or remove timber from any State land, forest reserve, protected forest, Government reserve or alienated land, or the establishment and management of any planted forest, unless there is a policy of insurance or such a security or other benefits in respect of the workman as required by subsection (4).

(4) A policy of insurance issued for the purposes of this section shall be a policy which—

(a) insures the workman employed by the employer against any bodily injury, death, damage or loss suffered or sustained by the workman as a result of any accident arising out of his employment with the employer; and

(b) covers the following specific benefits payable to the employer's workmen, subject to such rates and on such terms and conditions and up to such amount as may be determined from time to time by the Director with the written approval of the Minister—

- (i) death benefit;
- (ii) medical and hospitalization benefit;
- (iii) temporary disablement benefit;
- (iv) permanent disablement benefit;
- (v) travelling and constant attendance benefit;

- (vi) dependants benefit;
- (vii) funeral benefit;
- (viii) rehabilitation benefit; and
- (ix) other benefits as may be considered necessary from time to time by the Minister.

(5) The fees and premia chargeable under the policy which complies with the requirements specified under subsection (4) shall be paid by the employer.

(6) An employer who has insured his workmen in accordance with this section shall furnish the Director with a copy of the policy of insurance which complies with the requirements specified in subsection (4) or evidence that he has so insured his workmen and has complied with the requirements of this section.

(7) Nothing contained in this section shall prejudice any workman from receiving benefits from other insurance policies or compensation under the Workmen's Compensation Act 1952 [*Act 273*] or the Employees' Social Security Act 1969 [*Act 4*].

(8) Any employer who—

- (a) fails to insure and keep all his workmen insured under subsection (2);
- (b) fails to comply with subsection (3); or
- (c) makes default in complying with the requirements of subsections (4), (5) or (6),

shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one thousand ringgit and not exceeding ten thousand ringgit and imprisonment for a term not exceeding two years.

(9) Where the contractor or sub-contractor is convicted of an offence under this section, the employer who engages the contractor or sub-contractor shall be liable to the same penalties as if he had committed the offence.

### **Employment of trained workmen**

**51.—**(1) No employer shall hire, engage or appoint any workman under a contract of service or of apprenticeship or under any other arrangement whatsoever, to carry out, undertake or perform any forestry activity unless that workman has successfully completed a course of training in such forestry activity which is conducted by an institution approved by the Director in consultation with the Minister.

(2) For the purpose of this section, “forestry activity” means any activity relating to the logging or transportation of timber or other forest produce, or associated with the sustainable management of any forest or the establishment and management of any planted forest and which is prescribed as a forestry activity by the Director with the written approval of the Minister, by notification in the *Gazette*, for reason that the carrying out, undertaking or performance of any such forestry activity may endanger the health and safety of the workmen or any other persons.

### *Chapter 4 — Miscellaneous*

#### **Special licences may be issued in certain cases**

**52.** Nothing contained in section 40 or sections 45 to 48 shall be deemed to prohibit the Director, with the written approval of the Minister, from issuing any licence under special conditions, and for a period exceeding one year, as he may deem expedient.

#### **Timber trees not to be used as fuel**

**53.** No person shall, except with the written approval of the Director, cut for conversion into firewood or charcoal, or convert into firewood or charcoal when cut, any timber included in items A, B and C of Class I (i) of the First Schedule, other than branchwood and timber which has been declared to be unserviceable for any other purposes by a forest officer authorized by the Director.

**Government reserves**

**54.** Sections 39 to 53 and sections 57 to 59 shall apply to the taking of forest produce from Government reserves:

Provided that no licence shall be issued without the written approval of the officer responsible for the maintenance of such reserve.

**Alienated land**

**55.** Sections 40 to 53 and sections 57 to 59 shall apply to the taking of forest produce from alienated land for purposes of sale or barter or to be sawn into marketable products or for the manufacture or production of any articles or furniture:

Provided that no licence shall be issued except to the registered proprietor of such land or with the written approval of the registered proprietor thereof or his authorized representative.

**Saving**

**56.** Nothing in section 55 shall be deemed to prohibit the cutting of trees, or the taking of timber and other forest produce, on alienated land for lawful works of improvement and management of such land or, with the permission of a forest officer authorized by the Director, of any other land of which he is the registered proprietor.

**Licences to be produced**

**57.** The person named in any licence issued under this Ordinance shall, within a reasonable time after demand by any forest officer, produce the same for inspection by such officer.

**Renewal**

**58.** No person shall have any right, upon the expiration of the period of a licence issued under this Ordinance, to any renewal thereof, whether upon the same terms and conditions or otherwise:

Provided that nothing in this section shall be deemed to prohibit a renewal of the licence by the Director on such terms and conditions as may be approved by the Minister.

**Removal of forest produce after expiry of licence**

59. On the expiry of a licence to take forest produce, the Director may grant to the licensee a period of not exceeding three months, or such other period as may be determined by the Minister, for the removal of such forest produce subject to payment of royalty. The licensee shall thereafter have no further right of possession in such forest produce remaining within the forest.

**Timber, etc. for domestic use**

60.—(1) Subject to section 53, and to any rules made under section 113, and any other written law, any resident of Sarawak may—

(a) without a licence, collect and remove from State land which is not a forest reserve or protected forest, any forest produce other than timber which is required exclusively for his own domestic use and not for sale, barter or profit; or

(b) with the written approval of the Director or any other forest officer authorized by him, cut and remove timber from any State land forest which is required exclusively for his own domestic use and not for sale, barter or profit.

(2) Any person who—

(a) contravenes subsection (1); or

(b) having obtained the written approval of the Director or any other forest officer under subsection (1)(b), uses or allows any timber to be used for purposes other than his own domestic use, or who sells or otherwise dispose of the timber for barter or profit,

shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than five thousand ringgit and not exceeding fifty thousand ringgit or imprisonment for a term not exceeding two years or to both, and for a subsequent offence, shall be punished with a fine of not less than ten thousand ringgit and not exceeding one

hundred thousand ringgit and imprisonment for a term not exceeding five years.

(3) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of the forest produce in respect of which the offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

#### **Power to declare protected tree or species of tree**

**61.—**(1) The Director may, with the written approval of the Minister, declare, by notification in the *Gazette*, any tree or species of tree found on any permanent forest or alienated land, as a protected tree or species of tree, on account that the tree or the species thereof has medicinal compound or properties upon which research could be carried out for the development or production of medicinal or pharmaceutical products.

(2) Upon the publication of the notification made under subsection (1), no person shall—

(a) cultivate, propagate or germinate any tree or species of tree specified therein; or

(b) remove such tree or species of tree from their natural habitat or locality where the same is found,

except with the written approval of the Director.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall, upon conviction, be punished with—

(a) in the case of an offence under subsection (2)(a), a fine of not less than two thousand ringgit and not exceeding ten thousand ringgit; or

(b) in the case of an offence under subsection (2)(b), a fine of not less than ten thousand ringgit and not exceeding thirty thousand ringgit or imprisonment for a term not exceeding two years or to both.

(4) When a person is convicted of an offence under subsection (2)(b), the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of the tree or species of tree in respect of which the offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

### **Sawmills to be licensed**

**62.—**(1) No sawmill shall be built or operated except under and in accordance with a licence issued by the Director.

(2) A licence under this section shall be valid for a period of not exceeding one year from the date of issue, or for such longer period as the Minister may, in any particular case, approve.

(3) A licence issued under this section shall contain the following conditions:

(a) the sawmill shall be built on a site approved by the Director in consultation with the State Planning Authority and in accordance with the plans approved by that Authority under Part X of the Land Code [*Cap. 81 (1958 Ed.)*];

(b) the minimum output of sawn timber from the sawmill;

(c) the keeping of true and proper records of timber and the sources thereof, purchased or obtained by the sawmill for its operation and that such records shall be provided for inspection whenever requested by the Director or a forest officer authorized by him;

(d) the number of sawbenches and other machineries that may be installed in the sawmill;

(e) the licence shall be displayed in a conspicuous place in the sawmill; and

(f) such other terms and conditions as the Director deems fit.

(4) Any licence issued under subsection (1) may, subject to subsection (5), be suspended for such period as the Director deems fit if—

(a) there has been a breach of any of the terms and conditions of the licence, or any of the provisions of this Ordinance or rules made thereunder;

(b) the holder of the licence or any of the person having charge of the management of the sawmill or plant has been charged or convicted of a forest offence; or

(c)(i) the holder of the licence is found to have employed in his sawmill any person who is a non-resident employee, unless that person has the requisite pass, permit or authorization under the Immigration Act 1959 [*Act 155*] or the Labour Ordinance [*Cap. 76 (1958 Ed.)*], to work in the sawmill, or to have permitted such person to remain or stay in the sawmill or any premises or property whatsoever belonging to or under his control; and

(ii) for the purpose of this sub-paragraph, the expression “non-resident employee” shall have the same meaning assigned to it in the Labour Ordinance [*Cap. 76 (1958 Ed.)*].

(5) The Director may, instead of suspending the licence under subsection (4), make recommendation for the cancellation or suspension of the licence by the Minister under section 42.

(6)(a) Any person who builds or operates a sawmill without a licence issued by the Director under subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with—

(i) in the case of a first offence, a fine of not less than five hundred thousand ringgit and not exceeding five million ringgit or imprisonment not exceeding five years or to both; and

(ii) in the case of a subsequent offence, a fine of not less than one million ringgit and not exceeding ten million ringgit, and imprisonment not exceeding seven years, and in the case of a continuing offence, a further fine of not exceeding five thousand ringgit for each day during which the offence continues after conviction.

Provided that where the accused person proves that the building or operation of the sawmill was exclusively for domestic use, the punishment shall, upon conviction, be a fine of not less than five thousand ringgit and not exceeding fifty thousand ringgit or imprisonment for a term not exceeding two years or to both and for a subsequent offence, shall be punished with a fine of not less than ten thousand ringgit and not exceeding one hundred thousand ringgit and imprisonment for a term not exceeding five years.

(b) Any person who commits a breach of any terms and conditions of his licence shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than ten thousand ringgit and not exceeding one hundred thousand ringgit, and in the case of continuing offence, a further fine of not exceeding five thousand ringgit for each day during which the offence continues after conviction.

#### **Power to provide that timber exported shall be accompanied by a Certificate of Inspection**

63. The Director may, pursuant to any rules made under section 113, prohibit the export from Sarawak of any timber, or of timber of a particular class or description or destination unless such timber is accompanied by a Certificate of Inspection in such form as may be determined by the Director.

**Power to impose production limit and restriction on sales of timber**

**64.—(1)** The Director may, with the written approval of the Minister, by notice in writing to every holder of a licence—

(a) fix or impose a limit on the volume of timber to be produced, taken, felled or removed from any area covered by such licence (hereinafter referred to as “the production limit”) for such period as may be specified in the notice and may, in like manner, cancel, vary or amend any such production limit;

(b) direct that a proportion of the production limit shall be reserved for use or processing by licensed sawmills within Sarawak (hereinafter referred to as “the reservation quota”); or

(c) direct that all or such quantity of the reservation quota be sold to an agency appointed by the Director with the written approval of the Minister (hereinafter referred to as “an authorized agency”) for such purposes as provided under subsection (5).

(2) The production limit and the reservation quota referred to in subsection (1) shall be in such proportion and calculated in such manner as the Director may, with the written approval of the Minister, from time to time, determine.

(3) Any person aggrieved by the production limit or the reservation quota fixed or imposed under subsection (1) may, within twenty-one days from the date of receipt of such notice, appeal to the Minister to review or reconsider or vary such production limit or reservation quota and the decision of the Minister shall be final and conclusive.

(4) Subject to any particular condition or limitation on reservation imposed in the notice under subsection (1), no holder of a licence to which the notice apply shall—

(a) fell, extract or remove from any forest area covered by his licence any time in excess of the production limit fixed or

imposed under subsection (1)(a) for the period specified in the notice; or

(b) export or caused to be exported or removed from Sarawak any timber forming or constituting part of the reservation quota referred to in subsection 1(b).

(5) An authorized agency—

(a) shall be charged with the responsibility for the purchase, collection, sale and transmission of timber to licensed sawmills in the State;

(b) may, subject to such terms and conditions, including the method, measure and manner to be adopted, as the Director may approve, enter into arrangements for the purchase of timber direct from the holder of a licence;

(c) shall observe and obey Part VII of the Sarawak Rivers (Traffic) Regulations, 1993 [*Swk. L. N. 130/93*], relating to the transmission and transportation of timber for licensed sawmills through any rivers and shall carry out such activities which appear to it to be requisite for or in connection with the discharge of its functions; and

(d) may appoint sub-agents or contractors for the purposes of carrying out its functions:

Provided that any sub-agents or contractors so appointed by an authorized agency shall not export or cause to be exported or removed from Sarawak or dispose of any timber purchased or otherwise acquired by it except to licensed sawmills or otherwise in accordance with instructions given by or on behalf of the authorized agency.

(6) Any sub-agent or contractor appointed by an authorized agency shall be entitled to receive such commission, fees or other considerations as the authorized agency deems fit in respect of the amount of timber purchased or otherwise acquired by it and delivered to the licensed sawmills or otherwise, but such commission, fees or other considerations may be varied by the Director, with the written approval of the Minister, from time to time.

(7) (a) No timber shall be loaded or transmitted onto any conveyance for export or removal from Sarawak until a certificate (hereinafter referred to as "Export Clearance Certificate") has been issued by the Director or any person authorized by him certifying that the timber does not form part of the reservation quota referred to in subsection 1(b).

(b) The master of every conveyance carrying or towing timber for export or removal from Sarawak shall not leave or attempt to leave any port until and unless he has in his possession an Export Clearance Certificate provided to him by the person exporting or removing the timber from Sarawak.

(c) An Export Clearance Certificate shall not be issued unless the Director or any person authorized by him is satisfied that—

(i) all royalties, premia, cess and other dues chargeable on any timber to be exported or removed from Sarawak have been duly paid;

(ii) such timber carried or towed by the conveyance have been taken under licence as indicated in the valid removal pass and other documents produced by the master of the conveyance in support of such claim; and

(iii) the master of the conveyance carrying or towing such timber has not contravened any of the requirements of Part VII of the Sarawak Rivers (Traffic) Regulations, 1993 [*Swk. L.N. 130/93*].

(8) The Export Clearance Certificate shall be in such form as may be determined by the Director.

(9) (a) The master of any conveyance in Sarawak waters shall obey any signal made to him from a preventive or police conveyance, or any instructions given by a forest officer or any person authorized by the Controller of Rivers from any conveyance or any place, requiring him to stop, or heave to or to perform any other act.

(b) Any timber found by a forest officer or any person authorized by the Controller of Rivers in any conveyance in Sarawak waters and not correctly accounted for in the log book required to be carried on board a conveyance under regulation 47 of the Sarawak Rivers (Traffic) Regulations, 1993 [*Swk. L.N. 130/93*], or in the Export Clearance Certificate or other documents shall be liable to seizure.

(10) Nothing in this section shall interfere with the operation of the Sarawak Rivers (Traffic) Regulations, 1993 [*Swk. L.N. 130/93*], relating to the navigation of any conveyance in any river.

(11) Any timber or conveyance seized or detained under this section shall be dealt with, sold or disposed of in accordance with such rules as may be prescribed under section 113.

(12) For the purpose of this section—

“Controller of Rivers” means the Controller of Rivers appointed under section 10 of the Sarawak Rivers Ordinance, 1993 [*Cap. 4*].

#### *Chapter 5 — Special Provisions for Planted Forests*

### **Licence for establishment of planted forests**

**65.—**(1) Subject to subsections (2) and (3), the Director may, with the written approval of the Minister, grant by way of licence, to any person to establish, maintain and harvest a crop of trees on land (whether State land or alienated land) to be specified in the licence together with any ancillary rights of constructing thereon and using such roads, tracks, culverts, bridges and buildings and other facilities as may be necessary to establish, maintain and harvest that crop.

(2) No licence for planted forests shall be granted over alienated land, except to the registered proprietor thereof, or with the written approval of the registered proprietor or his authorized representative.

(3) No licence for planted forests shall be granted over State land over which native customary rights have been lawfully claimed by the natives, except with their written approval or unless such rights have been extinguished pursuant to section 5(3) of the Land Code [*Cap. 81 (1958 Ed.)*].

### **Planted forests part of permanent forests**

66. All planted forests established under licence issued pursuant to section 65 shall form part of the permanent forests of the State.

### **Duration of licence**

67. A licence for planted forests shall be for such period as the Director may, with the written approval of the Minister, specify therein.

### **Rules for planted forests**

68. A licence for planted forests shall contain such terms and conditions as the Director may specify therein and the establishing, maintaining and harvesting of the trees in the tree plantation shall comply with such rules as the Minister may make under section 113.

### **Licence as security document**

69. A licence granted under section 65 may, with the written approval of the Minister, be pledged, assigned, charged or mortgaged by the holder thereof to any person.

**Director to maintain Register**

70. The Director shall maintain a Register of all licences issued under section 65 and of all pledges, assignments, charges or mortgages affecting such licences.

**PART V****ENFORCEMENT***Chapter 1 — Arrest***Power of arrest**

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

(2) Any forest officer authorized by the Director or any police officer may, without warrant, arrest any person reasonably suspected of having been concerned in any such seizable forest 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) Every officer 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 or, if the offence is compoundable under section 86, to an officer empowered under that section to accept such composition:

Provided that, in the latter case, if the arrested person refuses to accept the offer to compound the alleged offence, he shall forthwith be sent 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 84 shall apply.

*Chapter 2 — Search, Seizure and Forfeiture*

**Power to search**

72. Whenever any forest officer authorized by the Director or a police officer has reasonable cause to believe that a forest offence has been committed, he may search any conveyance, building or facility under the control of the suspect, his agents or servants, and the provisions in this Ordinance relating to search and seizure, where appropriate, shall apply.

**Power to seize forest produce and other property**

73.—(1) Where there is reasonable cause to believe that a forest offence has been committed, any forest produce concerned, together with all machineries, tools, conveyances, documents and other things or property used in the commission of such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this section or section 101, shall place on such property, or on the receptacle, if any, in which it is contained, a mark or seal indicating that it has been so seized and shall, without undue delay, make a report of such seizure to a Magistrate:

Provided that in any case where such property has been seized in connection with an offence dealt with under section 86 or committed by some person unknown or who cannot be found, it shall not be necessary to report to a Magistrate the seizure thereof.

(3) Any person (other than a forest officer, police officer, officer of customs or other public servants in the course of discharging their duties under any written law) who tampers with, removes, damages or destroys anything marked under subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than five thousand ringgit and not exceeding fifty thousand ringgit or imprisonment not exceeding five years or to both.

### **Search and seizure with warrant**

**74.**—(1) If it appears to a Magistrate, upon written information on oath and after such enquiry as the Magistrate considers necessary, that there is reasonable cause to believe that in any building or place or on any land there is concealed or deposited any forest produce in respect of which a forest offence is being or has been committed, the Magistrate may issue a warrant authorizing any forest officer or any police officer named therein, by day or night and with or without assistance, to enter the building, place or land and there search for and seize, and therefrom remove, any forest produce in respect of which the forest offence has or is suspected to have been committed and any machinery, tool, conveyance, document or other things or property that is reasonably believed to have been used in the commission of the offence.

(2) Any forest officer or police officer acting under subsection (1) may—

(a) break open any outer or inner door of the building or place or any fence, enclosure, gate or other obstruction to the land, in order to effect entry thereinto;

(b) remove by force any obstruction to such entry, search, seizure, and removal as he is empowered to effect under subsection (1); and

(c) detain every person found in the building or place or on the land until it has been searched.

### **Search and seizure without warrant**

**75.** If it appears to a forest officer or a police officer that there is reasonable cause to believe that in any building or place or on any land there is concealed or deposited any forest produce in respect of which a forest offence is being or has been committed, and if he has reasonable grounds for believing that by reason of the delay in obtaining a warrant under section 74, the forest produce is likely to be removed, he may exercise, upon, and in respect of the building, place,

or land, all the powers mentioned in section 74 in as full and ample a manner as if he were authorized to do so by a warrant under that section.

### **Power to stop and search conveyances**

**76.—**(1) If any forest officer or any police officer has reasonable cause to believe that any conveyance is carrying forest produce in contravention of this Ordinance or in respect of which a forest offence is being or has been committed, he may stop and examine the conveyance.

(2) The person in control or in charge of the conveyance shall, if required to do so by the forest officer or police officer—

(a) stop the conveyance and allow the forest officer or police officer to examine it; and

(b) open all parts of the conveyance for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the forest officer or police officer considers necessary to make.

(3) Any person who fails or refuses to comply with any requirement of the forest officer or police officer under subsection (2) shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than five thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment not exceeding five years or to both.

### **Temporary release of things seized**

**77.—**(1) Where any thing has been seized under this Ordinance, a forest officer may, subject to terms and conditions as the Director deems fit to impose, temporarily release such thing to the owner on application and on security (as assessed by the Director) being furnished that such thing shall be surrendered to him on demand or to produce it before a court of competent jurisdiction.

(2) Where such owner fails to surrender the thing seized on demand by such forest officer, or fails to produce it before a court of competent jurisdiction in accordance with subsection (1), he shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty thousand ringgit or ten times the value of the thing so seized, whichever is greater, or imprisonment not exceeding two years or to both.

#### **Power of Director to dispose of seized property**

78. The Director may direct that any thing seized under this Ordinance be stored or kept in such place as he deems fit, or disposed of to any authorized person or body subject to such terms and conditions as he may determine and the proceeds of the disposal shall be held to abide by the result of any prosecution or claim under this section.

#### **Forfeiture of things seized**

79.—(1) Any thing liable to seizure under this Ordinance shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any thing liable to forfeiture under this Ordinance shall be made by the Sessions Court before which the prosecution with regard thereto has been held and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of the court that a forest offence has been committed and that the thing was the subject matter of, or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(3) If there be no prosecution with regard to any thing seized under this Ordinance, such thing shall be taken and deemed to be forfeited at the expiry of one calendar month from the date of seizure unless before that date a claim thereto is made in the following manner:

(a) any person asserting that he is the owner of such thing and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the forest

officer or police officer in whose possession such thing is held that he claims the same;

(b) on receipt of such notice, the forest officer or police officer, as the case may be, shall, unless the investigation into the offence is still pending, refer the claim to a Magistrate for decision; and

(c) the Magistrate to whom the claim is referred shall issue a summons requiring the claimant to appear before him and upon his appearance or default to appear, the Magistrate shall proceed to the examination of the claim and, on proof that a forest offence has been committed and that such thing was the subject matter of or was used in the commission of such offence, shall order the same to be forfeited or may in the absence of such proof order its release.

(4) All things forfeited or deemed to be forfeited shall be delivered to the forest officer and shall be disposed of in accordance with the direction of the Director.

(5) Notwithstanding the Criminal Procedure Code [*Act 593*], any application for release of things seized under this Ordinance shall be inquired into and disposed of according to the provisions herein contained.

(6) The Government shall not be liable to any person for any deterioration in the quality or diminution in value, howsoever caused, of any thing seized under this Ordinance:

Provided that the deterioration in the quality or diminution in value is not as a result of the negligent act of its officers in carrying out their duties under this Ordinance.

(7) When the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed, together with any machineries, tools, conveyances or other things or property seized pursuant to section 73 or 101 shall be forfeited to the Government and be taken delivery of by the forest officer.

**Power to stop, examine and detain forest produce**

**80.** A forest officer, police officer or officer of customs may stop any conveyance and examine any forest produce found therein or in any place in which such officer may lawfully be, and, if he has reason to believe that money is payable to the Government in respect thereof, he may detain such produce until such money is paid.

*Chapter 3 — Investigation***Power to investigate**

**81.—(1)** The Director or any forest officer or public servant authorized by him or any police officer not below the rank of Sergeant 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 forest 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 that case or is suspected of being concerned with the forest 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) Every forest officer and public servant referred to in subsection (1) shall be issued with an authority card to be signed by the Director.

(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 person acquainted with case**

**82.—**(1) An investigating officer making an investigation under section 81 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 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 corrections he may wish.

### **Admissibility of statements in evidence**

**83.—**(1) If any person is charged with a forest offence, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Ordinance or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an investigating officer referred to in section 81 and whether or not interpreted to him by another officer or any other person, shall be admissible in evidence at his trial and, if the person charged tenders

himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching him.

(2) No statement referred to in subsection (1) shall be admissible or used in any criminal proceedings—

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

(b) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned by any investigating officer or a police officer of or above the rank of Inspector in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence”.

(3) A statement made by a person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible after that.

**Where investigation cannot be completed within twenty-four hours**

**84.—**(1) Whenever any person who is arrested under section 71 or whose attendance is secured by a warrant under section 81(3) in connection with a forest offence, 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 81 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 investigation**

**85.—**(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.

*Chapter 4 — Compound***Power to compound offences**

**86.—**(1) The Director or any forest officer authorized by the Director by notification in the *Gazette*, may, subject to rules made under section 113, accept from any person who has committed a forest offence a sum not exceeding one half of the maximum amount of the fine provided for the offence or one half of ten times of the value (as assessed by the Director or any forest officer authorized by him) of the forest produce in respect of which the offence has been committed, whichever is greater:

Provided that the compounding shall only be in respect of an offence committed by the offender for the first time.

(2) Where any forest produce or other property has been seized under this Part, the officer compounding the offence may, with the written approval of the Director, release or return such forest produce or other property on payment of the value thereof as assessed by the Director.

(3) On the payment of such sum of money and value as assessed, the forest produce or other property seized shall be released and no further proceedings shall be taken against such person, forest produce or property.

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

(5) Any power vested in a forest officer by notification under subsection (1) may, at any time, be withdrawn by the Director, by notification in the *Gazette*.

**PART VI****OTHER OFFENCES AND PENALTIES****Penalty for trespassing in forest reserves and protected forests**

**87.** Any person who contravenes section 26(a), shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one thousand ringgit and not exceeding ten thousand ringgit.

**Penalty for offences in forest reserves and protected forests**

**88.** Any person who contravenes section 26(b) or (g) or section 28, shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one thousand ringgit and not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

**Penalty for other offences in forest reserves and protected forests**

**89.—(1)** Any person who contravenes section 9, or section 26(c), (d), (e) or (f) or section 36(2), shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than ten thousand ringgit and not exceeding one hundred thousand ringgit and imprisonment for a term not exceeding one year.

(2) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of the forest produce in respect of which the offence has been committed and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

**Penalty for illegal collection of forest produce**

**90.**—(1) Whoever collects forest produce in permanent forests, State land or alienated land without a licence issued to him under sections 40, 54 or 55, shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit, and imprisonment for a term not exceeding five years.

(2) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of such forest produce in respect of which such offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

(3) In any prosecution under this section, the onus of proving lawful authority or the possession of a licence shall be upon the accused.

**Penalty for revenue offence**

**91.**—(1) Any person who contravenes this Ordinance relating to licences, royalties, premium, cess and fees, as set forth in sections 40, 45, 46, 47, 48, 49, 52, 57 and 59, shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit and imprisonment for a term not exceeding one year.

(2) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum not less than ten times the royalty, premium, cess and fee, as the case may be, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

**Penalty for converting timber trees to fuel**

**92** Any person who contravenes section 53 shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one hundred ringgit and not exceeding one thousand ringgit.

**Penalty for illegal export of logs and excess of production limit**

**93.—(1)** Any person who—

(a) exports or causes to be removed from Sarawak any timber in contravention of section 63 without a Certificate of Inspection and section 64(7)(a) without an Export Clearance Certificate;

(b) knowingly assists in the transportation for export or removal from Sarawak any timber without an Export Clearance Certificate and the Certificate of Inspection; or

(c) attempts to export or remove from Sarawak any timber in excess of the volume or quantity stipulated in either a Certificate of Inspection issued under section 64 or an export clearance certificate issued under section 64(7)(a),

shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one hundred thousand ringgit and not exceeding five hundred thousand ringgit and imprisonment not exceeding five years and for a subsequent offence, shall be punished with a fine of not less than five hundred thousand ringgit and not exceeding one million ringgit and imprisonment not exceeding ten years.

(2) The master of any conveyance who sends or attempts to send any conveyance out of the port without an Export Clearance Certificate in contravention of section 64(7)(b), and also the owner and any person who is party or privy to the offence, shall be guilty of an offence and shall, upon conviction, be punished with the same penalty as provided under subsection (1).

(3) Any person who knowingly fells, extracts or removes from any area, timber in excess of the production limit imposed under section 64(1)(a) or under section 64(4), shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one hundred thousand ringgit and not exceeding five hundred thousand ringgit or imprisonment not exceeding seven years or to both.

(4) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government—

(a) a sum of not less than ten times the royalty, premium and cess chargeable on the timber exported or removed from the State without an Export Clearance Certificate;

(b) a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by the Director) of the timber felled, extracted or removed in excess of the production limit; and

(c) any fees payable in accordance with this Ordinance, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

(5) Notwithstanding sections 173A and 294 of the Criminal Procedure Code *[Act 593]*, any offence under this section shall be inquired into and tried according to the provisions herein contained.

#### **Penalty for offence concerning marks and property marks**

**94.—**(1) Whoever, without the authority of the Director—

(a) alters, moves, defaces or destroys any boundary marks;

(b) knowingly counterfeits on any tree or timber, or has in his possession any instrument for counterfeiting, any hammer-mark; or

(c) alters, defaces or destroys any property mark registered with the Director,

shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit or imprisonment not exceeding five years or to both.

(2) Notwithstanding sections 173A and 294 of the Criminal Procedure Code [*Act 593*], any offence under this section shall be inquired into and tried according to the provisions herein contained.

**Penalty for non-payment of royalty, etc.**

**95.—**(1) Any person found in possession or having custody of any timber or forest produce upon which royalty or other payments due to the Government in respect of such timber or forest produce has not been paid shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit or imprisonment not exceeding five years or to both, and for a subsequent offence, shall be punished with a fine of not less than one hundred and fifty thousand ringgit and not exceeding five hundred thousand ringgit or imprisonment not exceeding ten years or to both.

(2) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order the person convicted of the offence to pay to the Government a sum of not less than ten times the royalty or other payments due in respect of which such offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

(3) In any prosecution under this section, the onus of proving that the royalty or other payments in respect of such forest produce has been made shall be upon the accused.

(4) Notwithstanding sections 173A and 294 of the Criminal Procedure Code [*Act 593*], any offence under this section shall be inquired into and tried according to the provisions herein contained.

### **Penalty for unlawful possession of forest produce**

**96.**—(1) Any person found in unlawful possession of any forest produce shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit or imprisonment not exceeding five years or to both, and for a subsequent offence, shall be punished with a fine of not less than one hundred and fifty thousand ringgit and not exceeding five hundred thousand ringgit or imprisonment not exceeding ten years or to both.

(2) The person shall be deemed to be in unlawful possession of any forest produce unless proven otherwise if—

(a) the forest produce does not bear his own registered property mark; or

(b) the forest produce does not bear any other mark as may be determined by the Director to denote that the person is entitled to the lawful possession thereof.

(3) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order the person convicted of the offence to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of the forest produce in respect of which the offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.

(4) Notwithstanding sections 173A and 294 of the Criminal Procedure Code [*Act 593*], any offence under this section shall be inquired into and tried according to the provisions herein contained.

**Double penalty in certain cases**

97. Any person who contravenes this Ordinance or any rules made thereunder—

- (a) after sunset and before sunrise; or
- (b) after a previous conviction of the offender for a like offence, except as provided under sections 37(4), 60(2), 62(5)(a) (ii), 93(1), 95(1) and 102(1)(b),

shall be liable to double the penalty provided for such offence.

**Offences committed by corporations**

98. Where a person charged with an offence under this Ordinance is a body corporate, every person who, at the time of the commission of such offence, is a director or officer of that body corporate may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such director or officer shall be deemed to be guilty of the offence.

**Offences committed by partner, servant or agent**

99. Any person who would have been liable to any penalty for anything done or committed if the thing had been done or committed by him personally shall be punished with the same penalty if the thing has been done or committed by his partner, agent or servant.

**Eviction from forest reserves, protected forests and State land**

100.—(1) When a person is convicted of an offence against sections 26 or 40 the court shall, if application is made to it in that behalf by or on behalf of the Director, issue a warrant addressed to all police officers or forest officers requiring them forthwith to evict such person from the forest reserve, protected forest or State land in which the offence was committed, and to take possession, on behalf of the Government, of all buildings, cattles, crops and other property used in

the commission of the offence, and the persons to whom it is addressed shall forthwith execute the warrant accordingly.

(2) An application under subsection (1) may be made without further process if made before the court recording the conviction adjourns but, if not so made, shall be made by summons before that court, and the court shall make no further order unless such summons has been served on the person convicted.

**Forest officers to exercise powers of eviction, etc.**

**101.**—(1) When there is reason to believe that an offence against section 26(a), (b), (c) or (f), has been committed, any forest officer authorized in writing by the Director may —

(a) remove from the forest reserve or protected forest any person whom he has reason to believe to be committing the offence;

(b) seize any vehicle, tractor, chainsaw or other implement or thing which he has reason to believe was used or is being used in the commission of the offence; and

(c) demolish or remove any building, or take possession in the name of the Government of all buildings, cattle, crops and other property which he has reason to believe was used or is being used or is connected howsoever in the commission of the offence.

(2) No forest officer or police officer shall be liable for any loss, injury or damage caused to any person or property consequent upon his taking action under section 73 or subsection (1).

(3) Every officer in the exercise of the powers conferred under subsection (1) may call upon any police officer or other forest officers for assistance and it shall be the duty of every such officer to comply with such request.

**Offences relating to obstruction of road**

**102.—**(1) Any person who—

(a) lays, erects or sets up or causes to be laid, erected or set up any structure, stone, log, tree, or any other article, on rail, canal or road or dig or create a trench or cavity on any road, used or intended to be used for logging or transportation of timber or for the establishment or maintenance of a planted forest so as to cause a barrier or obstruction to the passage of that rail, canal or road; or

(b) willfully prevents, obstructs or molests any forest officer or police officer or public servant in the execution of his duties or the holder of a licence or his employee or agent from removing the barrier or obstruction or in the exercise of his right within the area covered by the licence,

shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than one thousand ringgit and not exceeding ten thousand ringgit and imprisonment not exceeding two years and, in the case of a continuing offence, shall be punished with a further fine of not less than one hundred ringgit and not exceeding one thousand ringgit in respect of every day during which the offence continues.

(2) In the prosecution of an offence under paragraph (a) of subsection (1), where it is proved that the person charged was, at the time of his arrest, present at any structure, stone, log, tree or any other article or trench or cavity which had been laid, erected, set up or dug on any road used or intended to be used for logging or transportation of timber or for the establishment or maintenance of a planted forest, it shall be presumed until the contrary is proved, that the person charged had so laid, erected, set up or dug that structure, stone, log, tree or any other article or trench or cavity, as the case may be.

(3) When there is reason to believe that an offence against subsection (1) has been committed, any forest officer authorized by the Director or any police officer not below the rank of Assistant Superintendent of Police may in writing require any person whom he has reason to believe to be committing the offence to remove the

barrier or obstruction and that person shall forthwith comply with such requirement.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than five thousand ringgit and not exceeding fifty thousand ringgit and imprisonment for a term not exceeding two years.

(5) A person arrested under this section may be detained until his name or address is properly ascertained or until he can furnish security in the form of a bond or in such other form as may be acceptable to the officer arresting him to secure his attendance in court:

Provided that no person so arrested shall be detained longer than is necessary for bringing him before a court of competent jurisdiction, unless an order of such court for his continued detention is obtained.

(6) Every forest officer in the exercise of the powers conferred under subsections (3) and (4) may call upon any police officer for assistance and it shall be the duty of every such officer to comply with such request.

#### **Offence for assaulting or obstructing an officer**

**103.—(1)** Any person who—

(a) assaults, obstructs, impedes or interferes with any forest officer, police officer or public servant in the performance of his functions under this Ordinance;

(b) unlawfully takes away or endeavours to take away any forest produce, machinery, conveyance, document or other things or property seized under this Ordinance; or

(c) after any seizure, causes the disappearance of, or damages or destroys any forest produce, conveyance, document or other things or property in order to prevent the seizure thereto or the securing of the forest produce, conveyance, document or other things or property,

shall be guilty of an offence and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit or imprisonment not exceeding seven years or to both.

(2) Notwithstanding sections 173A and 294 of the Criminal Procedure Code [*Act 593*], any offence under subsection (1)(a) shall be inquired into and tried according to the provisions herein contained.

#### **Abettors liable to penalties**

**104.** Any person who aids or abets the commission of a forest offence shall, upon conviction, be punished with the penalty provided for the offence.

#### **False declaration**

**105.—**(1) Any person who makes, orally or in writing, signs or furnishes any declaration, return, certificate or other documents or information required under this Ordinance which is untrue, inaccurate or misleading in any particular, shall be guilty of an offence and shall, upon conviction, be punished with—

(a) where such person is an individual, a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit or to imprisonment not exceeding seven years or to both; or

(b) where such person is a body corporate, a fine of not less than two hundred and fifty thousand ringgit and not exceeding one million ringgit.

(2) Any person who—

(a) without lawful authority alters, forges, mutilates or defaces any certificate or registration; or

(b) knowingly makes use of any certificate or registration which has been so altered, forged, mutilated or defaced,

shall be guilty of an offence and shall, upon conviction, be punished with—

(i) where such person is an individual, a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit or to imprisonment not exceeding seven years or to both; or

(ii) where such person is a body corporate, a fine of not less than two hundred and fifty thousand ringgit and not exceeding one million ringgit.

## PART VII

### MISCELLANEOUS

#### **Conduct of prosecution**

**106.** 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*].

#### **Jurisdiction**

**107.** A Sessions Court shall have jurisdiction to hear and determine all prosecutions under this Ordinance and, notwithstanding anything to the contrary in any written law, a Sessions Court shall have power to impose the full penalty or punishment provided by this Ordinance.

#### **Protection against suit and legal proceedings**

**108.** No action shall be brought, instituted or maintained in any court against any forest officer, police officer, officer of customs or any public servant either personally or in his official capacity for or on account of or in respect of any act directed or done by him or purporting to have been directed or done by him for the purpose of carrying into effect this Ordinance and any rules made thereunder, and no suit or prosecution shall lie in any court against any other persons for or on account of or in respect of any act done or purporting to have

been done by him under direction or instruction of any forest officer, police officer, officer of customs or any public servant given for any such purpose as aforesaid:

Provided that the act of such officer or person was done in good faith and in the reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying out of the provisions of this Ordinance and any rules made thereunder.

### **Protection of informers**

**109.**—(1) Except as hereinafter provided, no witness in any civil or criminal proceeding shall be obliged or permitted to disclose the name or address of an informer or the substance and nature of the information received from the informer or to state any matter which might lead to the identification of the informer.

(2) If any book, record, account, document or computerized data which is in evidence or liable to inspection in any civil or criminal proceeding contains any entry in which informer is named or described or which might lead to his identification, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may necessary to protect the informer from being identified.

(3) If on the trial for any offence under this Ordinance the court after full enquiry into the case believes that the informer willfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of opinion that justice cannot be fully done between the parties thereto without the identification of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit enquiry, and require full disclosure concerning the informer.

### **Rewards, etc.**

**110.** The Director, with the written approval of the Minister, may award such sums by way of reward or reimbursement as he deems fit to be paid to any officer or other persons for services

rendered or expenses incurred in connection with the detection, investigation and prosecution of offences or in connection with any seizures made under this Ordinance.

**Certificate of the Director as to the value of forest produce, etc.**

**111.**—(1) Where it is required in this Ordinance or the rules made thereunder for the Director or any forest officer authorized by him to make an assessment or to quantify the value of any forest produce or other property, compensation, royalty, premium, cess, fees or other payments, the Director or such forest officer shall issue a certificate stating—

- (a) the value of such forest produce or other property;
- (b) the amount of royalty, premium, cess, fees or other payments in respect of any forest produce; or
- (c) the amount of compensation for any damage caused by an offender,

as the case maybe.

(2) In any proceedings under this Ordinance, a certificate signed by the Director or any forest officer authorized by him under subsection (1) shall be admissible in evidence as to its authenticity and contents, including the facts stated therein, without proof of the signature to such certificate.

(3) The provision of this section shall apply notwithstanding any other written law to the contrary.

**Power of Minister to amend Schedules**

**112.** The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, by notification in the *Gazette*, amend the Schedules.

## Rules

**113.**—(1) The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, make rules generally for carrying out the provisions of this Ordinance and, in particular, such rules may provide for—

(a) prohibiting or regulating the felling, collection, removal or transport of timber and forest produce, including imposition of a charge for the provision of ecosystem services related thereto, and regulating the measurement and checking of timber and forest produce;

(b) the registration of property marks with the Director, and prescribing fees in respect thereof;

(c) the payment of the like royalties in the event of any contravention of such rules, or of the conditions of any licence, as would have been payable had such rules and conditions been observed;

(d) the procedure for the collection of any payment under this Ordinance including surcharge, in the event of failure to pay on the due date;

(e) granting exemption from anything provided by such rules;

(f) the survey and demarcation of forest reserves, protected forests and communal forests;

(g) exempting from the payment of royalty timber used for, or taken for use and subsequently used for, any purpose specified in such rules;

(h) requiring the holders of licenses to render returns and accounts, and to submit their books for inspection;

(i) restricting the kind or species of timber and other forest produce which may be used for the construction of any extraction route;

(j) appeal against, or review of, the exercise of any discretion vested by the rules in any forest officer;

(k) the procedure and form for compounding of offences under this Ordinance;

(l) the registration of holders of licences issued by the Director under this Ordinance and their contractors, sub-contractors or agents;

(m) the procedure for any arbitration to be conducted pursuant to any clause contained in any such licence;

(n) the use, cultivation, propagation or export of any tree or any medicinal compound from any tree for any research, study, test, experiment or process in connection with the development or manufacture of any pharmaceutical product;

(o) prohibiting, regulating or controlling the export or sale of forest produce;

(p) limiting the production on the volume of timber to be taken or trees to be felled or removed for export or sale;

(q) regulating or controlling the distribution and sale of timber to local sawmills;

(r) regulating the transportation of timber logs for export or sale including the delivery by the seller or purchaser under a contract of sale;

(s) regulating the construction, maintenance, usage or passage through or control over any road or bridges used for and in connection with logging or transportation of timber;

(t) regulating the registration of vehicles, machinery or equipment used or belonging to the holder of any licence or his contractor or sub-contractor in any forest area covered by such licence;

(u) regulating the disposal, sale, release or handling of any timber, conveyance or other things seized or detained under this Ordinance;

(v) regulating the establishment of planted forests and the harvesting of trees therein and the pledge, assignment, charge or mortgage of any licence issued under section 65 and the

procedure for the enforcement of such pledge, assignment, charge or mortgage;

(w) providing for the registration, control and administration of any nurseries and research facilities established for or to facilitate tree planting or cultivation of any species of trees in planted forests;

(x) providing for the training of workmen employed by any employer under section 51 in the felling, collection, removal, handling or transportation of timber or other forest produce or any other activity required for the sustainable management of any forest or the establishment and maintenance of planted forests; the nature and contents of courses prescribed by the Director for the training of such workmen; the approval of institutions for the conduct of the training courses; the qualification of persons conducting such training courses; and the award of certificates to persons who successfully completed the prescribed training courses;

(y) the imposition of or a requirement for a forest rehabilitation and management plan and other matters related thereto or in connection therewith; and

(z) anything which requires to be prescribed or provided for by rules.

(2) Such rules may be of general or special application:

Provided that, notwithstanding that any rules is not made applicable to a permanent forest, it shall be lawful to incorporate it in the conditions of any licence or workman permit by providing therein that such rules shall be applicable.

(3) Such rules may provide that the contravention of any particular rules shall constitute an offence and may provide for the punishment of any such offence by penalties not exceeding a fine of fifty thousand ringgit and imprisonment not exceeding five years or to both and payment of compensation to the Government of an amount equivalent to ten times the value (as assessed by the Director) of any timber, other forest produce or other property related to or involved in the commission of the offence.

**PART VIII****REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS****Repeal, savings and transitional provisions**

**114.**—(1) The Forests Ordinance [*Cap. 126 (1958 Ed.)*] is repealed.

(2) Notwithstanding subsection (1), all rules, orders, directions, appointments, proclamations, licences, rights, privileges or other acts or things made or done under or in accordance with the repealed Ordinance, shall continue in force until amended, revoked or replaced pursuant to this Ordinance.

(3) Any prosecution, action, suit, claim, proceeding or inquiry which has been instituted, filed, commenced or made under the repealed Ordinance and is still pending and not finally disposed of or existing immediately before the date of commencement of this Ordinance shall be continued and be determined or completed or disposed of in all respects under the provisions of the repealed Ordinance as if this Ordinance had not been enacted.

## FIRST SCHEDULE

## FOREST PRODUCE TAKEN UNDER LICENCE

## Rates of Royalty

(Section 45(1))

## CLASS I (i)

## A. Rates of royalty for logs:

Single (flat) rate of RM 65.00 per M<sup>3</sup> in round or RM 130.00 per M<sup>3</sup> converted.

## B. Rates of royalty for logs from planted forests:

Single (flat) rate of RM 5.00 per M<sup>3</sup> in round or RM 10.00 per M<sup>3</sup> converted.

## C. Rates of Royalty: RM5.00 per tonne green weight.

<i>Rhizophora</i> spp.	Bakau
<i>Bruguiera</i> spp.	Berus (Lenggadai)
<i>Excoecaria</i> spp.	Buta-Buta
<i>Carapa</i> spp.	Nyireh

Other mangrove species

## CLASS I (ii)

## Shingles

(i)	<b>Malagangai</b> ( <i>Eusideroxylon malagangai</i> ) and <b>Belian</b> ( <i>Eusideroxylon zwageri</i> ), per 1,000	...	...	...	RM 5.00
(ii)	Other timbers, per 1,000	...	...	...	RM 3.00
(iii)	Bark, per tonne green weight	...	...	...	RM 5.00

## CLASS I (iii)

## Bakau Poles

(i)	less than 10 cm in diameter overbark at bigger end, per piece	...	...	...	RM 0.50
(ii)	10 cm and less than 20 cm in diameter overbark at bigger end, per piece	...	...	...	RM 1.00
(iii)	20 cm and less than 30 cm in diameter overbark at bigger end, per piece	...	...	...	RM10.00

**CLASS II**

Firewood, per tonne	RM 0.50
Charcoal, per tonne	RM 5.00
Firewood, partly converted into charcoal, per tonne green weight	RM 2.00
Cordwood, other than for use as fuel, per tonne green weight	RM 5.00
Wood or timber of whatever species, used for the manufacture of wood chips and other wood products, per tonne green weight	RM 5.00

**CLASS III**

## Miscellaneous

Jelutong	10% of the current export value
Other forest produce not specified above	10% ad valorem

## SECOND SCHEDULE

## FOREST PRODUCE TAKEN UNDER LICENCE

## Rates of Fees

(Section 48(1))

<b>A. TIMBER:</b>	<b>Per Month</b>
(a) Logs, sawn and hewn stock	RM 5.00
(b) Poles	RM 2.00
<b>B. FIREWOOD:</b>	
(a) Mangrove and Casuarina (Ru)	RM 3.00
(b) Other sorts	RM 1.00
<b>C. CHARCOAL:</b>	
(a) Mangrove	RM 3.00
(b) Other sorts	RM 1.00
<b>D. GETAH:</b>	
(a) Jelutong	RM 1.00
(b) Other sorts	RM 1.00
<b>E. BAMBOO:</b>	RM 2.00
<b>F. BARK:</b>	
(a) Mangrove	RM 2.00
(b) Other sorts	RM 1.00
<b>G. NIBONG:</b>	RM 2.00
<b>H. OTHER FOREST PRODUCED:</b>	RM 1.00

Provided that where charcoal is produced in a kiln other than a kiln of a purely temporary nature there shall be charged in lieu of the fees specified for item C above a fee for such kiln of a sum in ringgit, calculated to the nearest ringgit, equivalent to one and a half times the square of the interior diameter of the kiln calculated in feet\*.

\* Now see also the Weights and Measures Act 1972 [Act 71].

## THIRD SCHEDULE

## ISSUANCE OR RENEWAL OF LICENCE

Rates of Fees

(Section 48(2))

TYPES OF FOREST TIMBER LICENCE	FEES (RM)		
	ISSUANCE	RENEWAL	PROCESSING (Issuance & Renewal)
Class A (F30 and LPF)	RM 20,000	RM 20,000	RM 1,000
Class B (F3 and OT)	RM 3,000	RM 3,000	RM 500
Class C (BT and PF)	RM 1,000	RM 1,000	RM 250
Class D (LA)	<b>Area (Hectares)</b>	<b>Fees (RM)</b>	-
	≤ 10	RM 100	
	> 10 – ≤ 50	RM 250	
	> 50 – 100	RM 500	
			RM 100

*FOURTH SCHEDULE*  
**SEIZABLE OFFENCES**  
*(Section 71(1))*

**A. Forests Ordinance, 2015**

- (a) Section 26
- (b) Section 28
- (c) Section 36(2)
- (d) Section 60(2)
- (e) Section 62
- (f) Section 90
- (g) Section 93
- (h) Section 95
- (i) Section 96
- (j) Section 102(1)
- (k) Section 102(4)
- (l) Section 102(5)
- (m) Section 103

**B. Forests Rules [G.N. 107/1953]**

- (a) Rule 22(1)
- (b) Rule 22(2)
- (c) Rule 22(5)

**C. Forests (Planted Forests) Rules, 1997 [Swk. L.N. 6/97]**

- (a) Rule 3(2)

