

SABAH BIODIVERSITY ENACTMENT 2000

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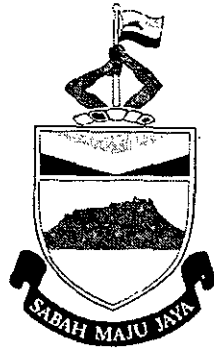
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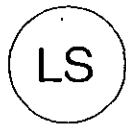
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STATE OF SABAH

I assent,



TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

29 DECEMBER 2000.

No. 7 of 2000

An Enactment to establish the Sabah Biodiversity Council and the Sabah Biodiversity Centre and for purposes incidental thereto.

ENACTED by the Legislature of the State of Sabah as follows:

PRELIMINARY

1. This Enactment may be cited as the Sabah Biodiversity Enactment 2000, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

Short title
and
commence-
ment.

Interpreta-
tion.

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

“access” means all activities relating to the prospecting, collection, commercial utilisation and research and development of biological resources or associated relevant knowledge;

“access licence” means a licence granted by the Council to any Collector for access to biological resources;

“associated relevant knowledge” means any innovation or individual or collective practice with actual or potential value associated with biological resources contained therein;

“biodiversity” means biological diversity, being the variability among living organisms from all sources, including plants materials, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part of, and the diversity within species, between species and ecosystems, and includes biological resources;

“Biodiversity Centre” means the Sabah Biodiversity Centre established under section 9;

“biological resources” include genetic resources or materials of plant, animal or microbial origin or any other biotic components of the ecosystem, with actual or potential use or value for humanity;

“biotechnology” means any technological application that uses biological resources or derivatives thereof, to make modify products or processes for specific use;

“Collector” means any individual, a group of individuals, educational and research institution or corporate entity seeking access to biological resources or the associated relevant knowledge and where the context so requires, the aforementioned to whom the access licence is granted;

“Council” means the Sabah Biodiversity Council established under section 3;

“*ex situ* collection” includes biological resources that are housed, planted, stored, kept or found outside their natural habitats such as in herbariums, research institutions, univer-

sities, botanical gardens, private collections and any other similar conservation centres;

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

“indigenous or local community” means any group of natives as define under section 2 of the Interpretation (Definition of Native) Ordinance who share a knowledge tradition and have common interest in the utilisation and conservation of biodiversity;

“Minister” means the Minister for the time being responsible for matters relating to natural resources;

“premises” includes any building, store, shed, vehicle, vessel or structure, whether enclosed or otherwise;

“Secretary” means the Secretary of the Council who is to be appointed by the Minister.

ESTABLISHMENT OF SABAH BIODIVERSITY COUNCIL

3. (1) There shall be established for the purpose of this Enactment a body by the name of the Sabah Biodiversity Council (hereinafter called “the Council”) whose functions shall be:

Establishment of the Sabah Biodiversity Council.

- (a) generally to advise the State Government on matters relating to the conservation and sustainable use of biological resources;
- (b) to promote the establishment and strengthening of the management of biological resources of the State;
- (c) to consider, formulate and review State policy with regards to biotechnology and application of biotechnology;
- (d) to co-ordinate local, state and national activities relating to conservation research and sustainable use of biological resources and biodiversity;
- (e) to co-ordinate preparations for regional and international activities relating to the conservation, research and sus-

- tainable use of biological resources and biodiversity;
- (f) to undertake all activities which appear to the Council to be necessary for, or in connection with the discharge of its duties; and
 - (g) to perform any other functions as the Minister may require for the implementation and administration of this Enactment.
- (2) The Council shall consist of the following members:
- (a) a Chairman who shall be the Minister;
 - (b) the Attorney-General or his authorised representative;
 - (c) the Secretary of Natural Resources or his authorised representative;
 - (d) the Director of Forestry Department or his authorised representative;
 - (e) the Director of Sabah Parks or his authorised representative;
 - (f) the Director of Wildlife Department or his authorised representative;
 - (g) the Director of Environmental Conservation Department or his authorised representative;
 - (h) the Director of Water Resources or his authorised representative; and
 - (i) not more than 7 other members who shall be persons having extensive experience and expertise in biodiversity, conservation and management and all of whom shall be appointed by the Minister.
- (3) The Minister shall appoint a Secretary to the Council who shall be a member of the State Public Service and the Secretary shall be entitled to attend all meetings of the Council but has no right to vote at such meeting.
- (4) The Minister may in respect of each member appointed under paragraph (i) of subsection (2) appoint one person to be an alter-

nate member to attend in place of the member at meetings of the Council if the member is for any reason unable to attend.

(5) When attending meetings of the Council, an alternate member shall for all purposes to be deemed to be a member of the Council.

(6) An alternate member shall, unless he sooner resigns or his appointment is sooner revoked, cease to be an alternate member when the member in respect whom he is an alternate member ceases to be a member of the Council.

4. Every appointed member of the Council shall unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years and shall be eligible for reappointment.

Duration of office and eligibility for reappointment.

5. (1) The following persons shall be disqualified from being appointed as, or if appointed, remaining a member -

Disqualification from membership.

- (a) a person who is of unsound mind or otherwise incapable of performing his duties;
- (b) a person who is prohibited from being a director of a company under the provisions of any written law relating to companies;
- (c) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude; or
- (d) a person who is a bankrupt or who has made an arrangement with his creditors.

(2) An appointed member of the Council shall be deemed to have vacated the office:

- (a) upon his death;
- (b) upon his resignation;
- (c) upon his failure to attend three consecutive meetings of the Council without the permission from the Minister; or
- (d) if he becomes disqualified under subsection (1),

and a new member shall be appointed in his place for the unexpired period of his terms in accordance with the provision of this Enactment.

Calling of meeting, quorum, voting, procedure and minutes.

6. (1) The Council shall meet once during every four months of the year and shall, in addition, meet as and when convened by the Chairman.

(2) Ten members shall be a quorum at any meeting of the Council.

(3) Decisions of the Council shall be taken by the votes of the majority of the members present and voting thereon.

(4) If on any question to be determined by the Council there is an equality of votes, the Chairman or if the Chairman is absent the presiding member shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Enactment, the Council shall determine its own procedure.

(6) Minutes shall be kept of all proceedings of the Council.

(7) The Minister may invite or request a person, who is not a member of the Council, to attend any meeting of the Council for the purpose of advising it on a matter under discussion but the person so attending has no right to vote at the meeting.

Presiding at meetings of Council.

7. (1) The Chairman of the Council shall preside at all meetings of the Council.

(2) If, owing to absence or inability to act due to illness or any other cause, the Chairman of the Council is unable to preside at any meeting the members present shall elect one of their number to preside at that meeting.

(3) No business shall be transacted at any meeting of the Council in the absence of the Chairman until a member has been elected to preside over that meeting.

Powers of the Council.

8. The Council shall have the following powers for the discharge of its functions and duties under this Enactment:

(1) to approve and issue access licence which shall be

prescribed by the Council;

(2) to regulate the access to the biological resources of the State including the removal of any biodiversity from the State;

(3) to manage the Biodiversity Centre or to appoint any person or body to manage the same on its behalf;

(4) to receive donations, grants, gifts of movable or immovable property from any source or to raise funds by any lawful means; and

(5) any other powers as may be assigned to the Council by the Minister.

9. (1) There shall be established for the purpose of this Enactment a centre by the name of the Sabah Biodiversity Centre (hereinafter called "the Centre") to be managed and maintained by the Council for the purpose of:

Sabah
Biodiversity
Centre.

- (a) providing the Government and other institutions approved by the Government with accurate information or data on the status, magnitude, distribution, usage and value of the biodiversity in the State;
- (b) managing and sustaining utilisation of the biodiversity of the State, including determining policies and guidelines for scientific research or experiment related to the access to and use of biological resources of the State for pharmaceutical, medicinal and other specific purposes;
- (c) carrying such activities in association or collaboration or in joint venture with other bodies or persons including the departments or agencies of the Government or the Federal Government for the improvement and enhancement of conservation and management of biological resources of the State;

- (d) formulating programmes for systematic surveys of biodiversity and the collection and analysis of data thereto;
- (e) identifying the priorities for research on biodiversity in order to enhance undertaking, conservation and sustainable utilisation of biodiversity and biological resources, including ethnobotany, taxonomy and traditional uses;
- (f) promoting the identification of new natural and biotechnological products derived from the biodiversity and biological resources of the State;
- (g) planning and initiating programmes for the utilisation, conservation, protection and sustainable development of biological resources;
- (h) establishing a database system of all exhibits, published and written records regarding the use, cultivation and management of biological resources of the State;
- (i) establishing a network of researchers in institutions of higher learning, research institutes, libraries and documentation centres to assist in building or be part of the system of recording such knowledge;
- (j) establishing or caused to be established a system for the protection of biological resources so that the indigenous and local communities shall, at all times and in perpetuity, be the legitimate creators, users and custodian of such knowledge, and shall collectively benefit from the use of such knowledge;
- (k) establishing linkages with other institution or bodies, within or outside the State, with a view to enhancing the management, protection, preservation, research and utilisation of the biodiversity and traditional knowledge of the indigenous or local community of the State;

- (l) carrying on of all activities of which appears to the Council to be necessary, advantages or convenient for or in connection with the discharge of its duties; and
- (m) generally to promote education and knowledge of the biodiversity of the State.

(2) There shall be such number of other officers as may be necessary and expedient for the due administration of this Enactment who shall be appointed by the Minister from amongst the members of the State Public Service.

10. (1) The Minister may give the Council such directions, not inconsistent with the provisions of this Enactment, as he thinks fit, as to the exercise and performance by the Council of its powers, duties and functions under this Enactment, and the Council shall give effect to any direction so given.

Directions
of the
Minister.

(2) The Council shall furnish the Minister with such information with respect to its property and activities as he may from time to time require.

11. (1) The Council may, at its discretion appoint from among its own members or other persons who are not members of the Council one or more committees consisting of persons who may or may not be members of the Council for purpose which in the opinion of the Council, would be better regulated and managed by means of such committees.

Appoint-
ment of
committee
and
advisers.

(2) The Council may appoint any person with the requisite experience, expertise and knowledge in biological resources, as adviser or consultant for the Council, and may form a Panel of Advisers or Consultants to advise the Council on the discharge of its functions or duties.

12. (1) The Council may, subject to such conditions or restrictions as it thinks fit, delegate to any committee referred to in section 11(1) or the Chairman of the Council thereof or the secretary all or any of the powers, functions and duties vested in the Council by this Enactment, (other than the power to delegate con-

Delegation
of powers,
functions
and duties.

ferred by this section) and any power, function or duty so delegate may be exercised or performed by the committee or the Chairman thereof or the secretary in the name and on behalf of the Council:

Provided that nothing in this section shall authorise delegation of any power to make subsidiary legislation.

(2) The Council may continue to exercise any power conferred upon it, or perform any function or duty under this Enactment, notwithstanding the delegation of that power, function or duty under this section.

Protection
from
personal
liability.

13. No action, suit, prosecution or proceeding shall be brought or instituted against any member of the Council in respect of any act done *bona fide* in pursuance or execution or intended execution of this Enactment.

ESTABLISHMENT OF THE FUND

Biodiversity
Centre
Fund.

14. (1) For the purpose of this Enactment, there shall be established a fund known as "the Biodiversity Centre Fund".

(2) The Fund shall consist of-

- (a) such sums as may be provided by the State Legislative Assembly from time to time;
- (b) grants from the Federal Government;
- (c) donations and contributions paid into the Fund by any statutory body, body corporate, associated or individual person; and
- (d) collections from the public.

Act 61.

(3) The Fund shall be operated in accordance with the Financial Procedure Act 1957 and any subsidiary legislation made thereunder.

(4) The Fund shall be expended for the purpose of-

- (a) the payment of the expenses of, or connected with, the administration of the Council;

- (b) the administration, management and operation of the Biodiversity Centre; and
- (c) the payment of all expenses necessary for carrying out the purpose of this Enactment.

ACCESS APPLICATION

15. (1) Any Collector who intends to obtain access to biological resources shall apply in writing to the Council for an access licence.

Access licence.

(2) Provided that this section shall not apply to public officers obtaining access to biological resources as part of their prescribed duties and responsibilities in their respective organisation and as provided for in their respective Ordinance or Enactment which do not involve any collaboration with the second and third party.

(3) Without prejudice to the provisions of this Enactment, the Council upon application may exempt individual, academic and research institution from the access application seeking to undertake any pure academic and non-profit oriented research.

16. An application for an access licence shall be in respect of access to biological resources found on:

Application for an access licence.

- (a) State lands;
- (b) any reserves, natives customary lands or any other sites over which indigenous and local communities exercise community-based or customary rights; or
- (c) any other areas, including rivers, tributaries, waterways or areas covered by water, marine parks or territorial waters of the State, and shall also include any *ex situ* collections maintained by the State.

17. The application for an access licence shall include the following information:

Information for the application for an access licence.

- (a) the identity of the Collector and the documents which testify to his legal capacity to contract;

- (b) the details of the Collector's proposed access activity, which shall include:
- (i) the biological resources to which access is sought, including the intended uses;
 - (ii) the purpose for which access is requested, including the intention to commercialise any information resulting from the access activity, and the type and extent of such commercial use;
 - (iii) where appropriate, the name of the Malaysian institution that will collaborate in the collection, research and development and other activities in relation to the resource concerned, as the local collaborator;
 - (iv) where appropriate, the name of the foreign institution that will act as the sponsor organisation to be responsible for the action of Collector with regard to the access activity;
 - (v) the precise sites where the access activity is to be undertaken or where the resource is located, including where relevant the status of the land according to the categorisation as specified in section 16, as well as, the places where the proposed research and development activities will be carried out;
 - (vi) the time when the access activity is proposed to be carried out;
 - (vii) the primary destination of resource and its probable subsequent destinations;
 - (viii) the benefits, whether economic, technical, scientific, environmental, social or otherwise, that may derive to the state and the concerned communities and proposed mechanisms or arrangements for benefit sharing;
 - (ix) description of any biological resources; and

- (x) environmental and socio-economic impact assessment covering the likely long term impacts, where appropriate;

18. The application shall be submitted to the Council together with an application fee, the amount of which shall be prescribed by the Council.

Application fee.

19. The Collector shall bear the following costs and expenses incurred:

Costs.

- (a) in making an application for the access licence;
- (b) in complying with the conditions imposed by the Council; and
- (c) in meeting or fulfilling any other requirements or conditions as may be imposed by the provision of this Enactment.

20. The Council shall evaluate the application for the access licence, taking into account, *inter alia*, the following matters:

Evaluation of the application of an access licence.

- (a) the contribution of the access activity to the conservation and sustainable use of biological resources;
- (b) the impact of the access activity on biological diversity and the environment, including any adverse impacts, risks and dangers to any component of biological diversity and its sustainable use; and
- (c) the impact of the access activity on indigenous and local communities, their lifestyles and livelihoods.

21. (1) Upon evaluation of the application, the Council shall inform the Collector in writing of its decision that the application for access licence has been:

Decision making procedure.

- (a) approved, with or without such conditions as it may specify; or
- (b) rejected.

(2) The Council may request for further information as it may deem necessary before making its decision.

Appeals. **22.** Any person aggrieved by any decision of the Council may, at any time within the period of three (3) months beginning from the date of receipt of the decision, appeal to the State Cabinet.

Conditions of approval for an access licence. **23.** (1) The Council shall, as a condition for approval of an access licence, require the Collector to:

- (a) identify a Malaysian institution or body of Sabah origin, as the local collaborator that will collaborate and participate in the collection, research and development and other activities in relation to the biological resources concerned, where appropriate; and
- (b) identify the foreign institution that will act as the sponsor organisation, responsible for the actions of the Collector with regard to the access activity, where appropriate.

(2) The Government may impose or attach any other conditions to the approval of the application as it deems fit.

Terms of access licence. **24.** In approving an application for an access licence, the Council shall issue an access licence which shall be in the prescribed form and shall be subject to such terms and conditions as may be specified therein or as may be prescribed by the Council.

Review of decision made by the Council. **25.** (1) Any approval given may be subjected to further conditions in addition to those originally imposed, or restrictions on, access activities, including in case of:

- (a) adverse effects on the conservation of biological diversity, including where the access activity affects endangered taxa, endemism or rarity;
- (b) adverse effects upon the quality of life or the cultural values of the indigenous and local communities;
- (c) environmental impacts which are undesirable or difficult to control;
- (d) danger of genetic erosion or loss of ecosystem, their

resources or their components because of undue or uncontrolled collection of biological resources;

- (e) adverse effects upon human, animal and plant health; and
- (f) use or potential use of resource for purposes contrary to the interest of the State.

(2) The Council may withdraw its consent and terminate the access licence and further use of the biological resources where it is apparent that the Collector has violated any of the provision of this Enactment or the regulations thereto, or any other agreed terms under the access licence if public interest so demands.

(3) In the event of any revocation of the access licence, the Council shall not be subject to any claim for any loss, damage or compensation arising from the revocation of the access licence.

LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

26. Any person who:

Offences.

- (a) in contravention of the provisions of this Enactment engages in, carries out, or undertakes any access activity without having an access licence;
- (b) fails to provide or wilfully withholds any information required under the provisions of this Enactment; and
- (c) removes any biological resources out of the State without the prior written authorisation of the Council,

shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years, or to both.

27. Any person who by any act or by neglect, takes away, removes from or makes use of any biological resources, exhibit, data, material or information kept, stored or maintained in the Biodiversity Centre shall be guilty of an offence and shall, on conviction, be liable to a fine of thirty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Unauthorised taking of exhibits, data, resources from the Biodiversity Centre.

Prohibition
against
export of
Biological
Resources.

28. No export for research purposes of any biological resources collected from alienated land, conservation area, forest reserve, parks area, protected areas, State land, water protection areas or water conservation areas, wildlife area, rivers, tributaries, waterways, marine parks or territorial waters under the State, without a licence issued by the Council.

Powers of
entry and
investiga-
tion.

29. The Secretary, any police officer or customs officer or any other officer authorised in writing in that behalf by the Secretary may without warrant enter any land or premises upon which any access activity is being carried out on biological resources of the State with a view to ascertaining whether the provisions of this Enactment are being complied with, and may make such investigation and inspection of the land or premises or the activities describes above, and call any person to produce such materials, books, records, reports or other documents or things and to furnish any information as the Secretary or such officer authorised by him or a police officer or customs officer may consider necessary for the purpose of conducting such investigation:

Provided that any person not in uniform purporting to exercise any powers under this section shall on demand produce his written authority to the owner or occupier of premises demanding the same.

Powers of
search.

30. The Secretary, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may, without warrant and with or without assistance, enter any land or premises if he considers it to be necessary if he has reason to believe that an offence under this Enactment has been committed and may search any place and any person whom he reasonably believes to be concerned in the control or management or use of such land or premises, or to be an employee, servant or agent of the owner or occupier thereof.

Powers of
seizure.

31. (1) The Secretary, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may seize, remove and detain any goods, tool, equipment, document, material or any other thing which is used or employed in relation to any collection, study, research or

experiment being carried out on biological resources of the State, which he reasonably believes to be or has been used, in the commission of an offence or to contain evidence relating to such an offence under this Enactment.

(2) No claim or action shall lie against the Secretary, police officer, customs officer or any other officer authorised in writing by the Secretary in that behalf in respect of the entry, investigation, seizure, removal or detention of any such goods, tool, equipment, document, material or other thing under subsection (1).

(3) Any goods, tool, equipment, document, material or other thing seized, removed or detained under subsection (1) may be sold by the Secretary by public auction or otherwise, disposed of as the court may order, and the proceed thereof shall, after being applied to cover the costs of such seizure, removal or detention and sale, be returned to the rightful owner.

32. (1) The Secretary, any police officer or customs officer or other officer authorised to exercise the powers of entry or investigation under section 29 may arrest without warrant any person whom he reasonably suspects of committing or attempting to commit or aiding any person to commit any offence under this Enactment and –

Powers of arrest.

- (a) who refuses to furnish his name and address;
- (b) who furnishes a name or address reasonably suspected of being false or who furnishes an address outside Malaysia; or
- (c) who is reasonably suspected of being likely to abscond.

(2) Every person so arrested shall as soon as practicable be delivered into the custody of a police officer to be dealt with according to law.

33. Any person who obstructs the Secretary, any police officer or customs officer or any other authorised officers lawfully exercising any powers conferred on him by or under this

Obstruction.

Enactment shall be guilty of an offence and shall, on conviction, be liable to a fine of ten thousand ringgit or to imprisonment for a term not exceeding one year, or to both.

Liability of director, etc.

34. Where an offence under this Enactment has been committed by a body of persons, corporate or unincorporate, any person who at the time of the commission of such offence was a director, manager, secretary or other similar officer of the body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent his commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Conduct of prosecution.

35. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code may conduct prosecuting for offences under this Enactment or the rules made thereunder.

Compounding of offences.

36. The Secretary or any authorised person in writing in that behalf, may in his discretion compound any offence under this Enactment by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding half of the fine stipulated for the offence, as the Secretary or authorised person may determine.

MISCELLANEOUS

Regulations.

37. The Yang di-Pertua Negeri may, after consulting the Council, by order published in the *Gazette* make rules generally for the purpose of carrying out the provision of this Enactment and, in particular, such regulations may provide for –

- (a) the payment of fees, honorarium, allowances and benefits to members of the Council, or adviser or consultants appointed under section 11;
- (b) the management and control of the Biodiversity Centre;

- (c) the terms and conditions for access to and use of the biological resources of the State or such resources, data, exhibit, information or materials kept, stored or maintained in the Biodiversity Centre;
- (d) prescribing the terms and conditions including fees for the access licence to be issued under this Enactment;
- (e) prescribing the amount of security deposit for the access licence;
- (f) the exercise of the Council's powers and functions under the provisions of this Enactment;
- (g) prescribing rewards to persons or body of persons for giving relevant information for the illegal activities that is being carried out;
- (h) prescribing incentives to persons or body of persons for carrying out measures which are necessary to protect and conserve natural resources for the protection and enhancement of the biodiversity;
- (i) prescribing the offence which may be compounded, the person who may compound, the limit of the sum of money to be collected for compounding such offences and the procedure and forms to be complied with in compounding;
- (j) prescribing rate of compensation that the Council may require any person to pay for damages caused to the biodiversity by the act, omission, neglect or default of that person;
- (k) prescribing the mode and manner of benefit sharing for access to biological resources or the associated knowledge;
- (l) prescribing the terms and conditions for the licence to export the biological resources; and
- (m) such other purposes which may be considered to be necessary for carrying out the provisions of this Enactment.

CERTIFIED by me to be a true copy of the Bill passed by the
Legislative Assembly on Thursday, the 2nd day of November 2000.

DATUK FRANCIS T.N. YAP,
Deputy Speaker,
State Legislative Assembly.