

## MAJLIS UGAMA ISLAM NEGERI SABAH ENACTMENT 2004

### ESTABLISHMENT OF WAKAF MANAGEMENT BOARD (STATE OF SABAH) ORDER 2018

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## MAJLIS UGAMA ISLAM NEGERI SABAH ENACTMENT 2004

### ESTABLISHMENT OF WAKAF MANAGEMENT BOARD (STATE OF SABAH) ORDER 2018

In exercise of the powers conferred by subsection 8(1) Majlis Ugama Islam Negeri Sabah Enactment 2004 [No.5 of 2004], Majlis with the consent of the Yang di-Pertua Negeri makes the following orders:

#### Citation and commencement

1. (1) This Order may be cited as the **Establishment of Wakaf Board (State of Sabah) Order 2018**.
- (2) This Order comes into operation on 1 January 2019.

#### Interpretation

2. In this Order, unless the context otherwise requires -
  - “Board” means Wakaf Management Board (State of Sabah) established under paragraph 3;
  - “Enactment” means the Majlis Ugama Islam Negeri Sabah Enactment 2004 [No.5 of 2004];
  - “*Istibdal*” means to substitute a *wakaf* property with another property or with money which is of the same or higher value than it either by substituting, purchasing, selling or any other means in accordance with *Hukum Syarak*;
  - “Majlis” means the Majlis Ugama Islam Negeri Sabah established under subsection 4(1) of the Enactment;
  - “Minister” means the Minister charged with the responsibility for the administration of Islamic affairs in the State of Sabah;

“property” includes –

- (a) moveable property, immoveable property or intellectual property;
- (b) any benefit, profit or interest in any moveable property, immoveable property or intellectual property;
- (c) any right, interest, title or otherwise in connection with moveable property, immoveable property or intellectual property; and
- (d) expertise and services having value in accordance with *Hukum Syarak*;

“Wakaf Enactment” means Wakaf (State of Sabah) Enactment 2018.

### **Establishment of the Board**

3. (1) For the purpose of carrying out the duties of the Majlis under subsection 7(1) of the Enactment, a Board by the name of “Wakaf Management Board (State of Sabah)” is established with perpetual succession and a common seal.

(2) The Board may sue or be sued in its Board name.

(3) Subject to and for the purposes of this Order, the Board may, upon such terms as it deems fit –

- (a) enter into contracts; and
- (b) in respect of movable and immovable property and interest in movable and immovable property of every description –
  - (i) acquire, purchase and take such property and interest; and
  - (ii) hold, enjoy, convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of or deal with, such property and interest vested in the Board in accordance with *Hukum Syarak*.

4. Save as expressly provided in this Order, nothing contained in this order shall derogate from or effect the rights and powers of Majlis as the sole trustee of all *wakaf* in the State of Sabah as provided in the Wakaf Enactment.

**Seal of the Board**

4. (1) The Board shall have a common seal and such seal may, from time to time, be broken, changed, altered or made anew as the Board deems fit –

Provided that until a seal is provided under this paragraph a stamp bearing the inscription “Wakaf Management Board (State of Sabah)” may be used and shall be deemed to be the common seal.

(2) All deeds, documents and other instruments requiring the seal of the Board shall be sealed accordingly in the presence of the Chairman or any member of the Board authorized by the Board who shall sign every deed, document or instrument to which the seal is affixed; and such signing shall without further attestation be sufficient evidence that the seal was duly and properly affixed and the same is the lawful seal of the Board.

(3) A deed, document or other instrument which if executed by a person not being a body corporate would not be required to be under seal may in like manner be executed by the Board and such deed, document or instrument may be executed on behalf of the Board by any officer or servant of the Board generally or specially authorized by the Board in that behalf.

(4) The seal of the Board shall be officially and judicially noticed.

**Membership of the Board**

5. (1) The Board shall consist of the following members –

- (a) a Chairman who shall be appointed by Majlis from amongst the member of the Majlis;
- (b) the Mufti of the State of Sabah;
- (c) the State Attorney General of Sabah or his representative;
- (d) the Permanent Secretary of the Ministry of Finance of the State of Sabah or his representative;
- (e) the Director of Lands and Surveys Department of Sabah or his representative;
- (f) the Chief Executive Officer of Baitulmal Corporation;

- (g) two (2) members shall be appointed by Majlis which in the opinion of the Majlis who shall have substantial expertise in Syariah Law and *Muamalat Islam*; and
- (h) three (3) members shall be appointed by Majlis which in the opinion of the Majlis who shall have knowledge, experience and expertise in the field of account, architect or engineering.

(2) The members under subparagraphs 5(1)(a), (g) and (h) shall be appointed after obtaining consent of the Minister.

(3) In the event that the members under subparagraph 5(1)(c), (d) or (e) are non-Muslim, that members shall appoint Muslim representatives to be members of the Board.

(4) The board shall pay to the members or any persons determined by Majlis, any salary, fee or allowance from any fund which have been or will be created by the Majlis for the said purpose that may be permitted from time to time.

(5) The provisions of the Schedule shall apply to the Board and its members.

#### **Duty of the Board**

6. It shall be the duties of the Board to promote, stimulate, facilitate, undertake and develop property and product of *wakaf* owned by Majlis consistent with *Hukum Syarak*.

#### **Function of the Board**

7. The functions of the Board are as follows -

- (a) to provide advice to the Majlis as to the policies, methods and measures to be taken to promote and facilitate the development of *wakaf* property and product;
- (b) to implement and give effect to any policies, directives or order of Majlis regarding *wakaf* property development and product;
- (c) to develop, use and implement policies, methods and measures on the property development and product of *wakaf*;
- (d) to act as coordinating agency to accelerate implementation on property development

and product of *wakaf*;

- (e) to plan, develop, implement and promote the development and implementation of *wakaf* property and product;
- (f) to manage and undertake the operation maintenance of *wakaf* property including the facilities, infrastructure, places and equipment in *wakaf* property areas;
- (g) to promote, co-ordinate and implement research and development in all aspect of *wakaf* property and product; and
- (h) to *Istibdal* any *wakaf* property with the consent of the Majlis and subject to the terms of such consent.

#### **Power of the Board**

8. The Board shall have the powers as follows -
- (a) to determine, adopt and implement guidelines and other measures to ensure the quality of development of *wakaf* property and product;
  - (b) to collect all proceeds resulting from *wakaf* property development and product on behalf of Majlis and to deposit it into any fund which have been or will be created by the Majlis for the said purpose;
  - (c) subject to any written law, to formulate and implement maintenance charges and fees and other payments which relate to the development of *wakaf* property and product and the usage of facilities in any *wakaf* property;
  - (d) to formulate and implement measures to ensure that management and maintenance of any *wakaf* property development is being carried out in accordance with the order of Majlis or any law for the time being in force;
  - (e) to construct, maintain, repair, restore, rehabilitate and use any structure, building or works within any property development plan;
  - (f) to appoint or employ agents, technical advisers, consultants, contractors, other

persons or body to manage any business or enter into contracts for the carrying out of any of its functions or duties or for sharing of profits or joint venture with any persons or group of persons;

(g) to adopt and implement policies and guidelines for premises in any *wakaf* property; and

(h) to exercise all functions and powers and perform all duties which under or by virtue of any other written law as may be vested or delegated to it.

**Power to borrow**

9. The Board may, from time to time, borrow at such rate of interest and for such period and upon such terms as to the time and method of repayment and otherwise as Majlis may approve, any sums required by the Board for meeting any of its obligations or discharging any of its functions or exercising any of its powers.

**Power to establish companies**

10. The Board may, from time to time, with the approval of Majlis, establish companies by such name as the Board may determine to carry out and have the charge, conduct and management on behalf of the Board of any project, scheme or enterprise determined by the Board in the discharge of its functions and the exercise of its powers.

**Power to appoint committees**

11. (1) The Board with the consent of Majlis may appoint committees for any purpose arising out of or connected with any of its functions and powers; any committee so appointed shall include at least one member of the Board and there may be appointed to such committee such other persons as the Board thinks fit.

(2) The committee so appointed shall regulate its own procedure.

(3) Any committee so appointed shall conform to any instructions from time to time given to it by the Board and the Board may at any time discontinue or alter the constitution of any committee so appointed.



(4) The committee may invite any person who, in its opinion, who possesses special knowledge of advantage to it, to attend any meeting of the committee and the person so invited shall not be entitled to vote at any such meeting.

(5) The committee shall report its recommendations to the Board.

**Power of the Board to delegate**

12. (1) The Board may, subject to such terms and conditions, limitations or restrictions, as it thinks fit to impose, delegate to any committee, or to the Chairman, or to the Chief Executive Officer, or to any other person, the power and authority to exercise or perform on its behalf such powers or functions vested in or imposed on the Board under this Order as the Board may determine, except the power to borrow money or make regulations; and any power or function so delegated may be exercised or performed by such committee, or the Chairman, or the Chief Executive Officer or any other person, as the case may be, in the name and on behalf of the Board.

(2) Without prejudice to the generality of subparagraph (1) and to the other provisions of this Order, the Board may delegate to either the Chairman or to the Chief Executive Officer authority to sanction expenditure from any fund which have been or will be created by Majlis for the said purpose or any other monies vested in or under the control of the Board up to such limit as the Board shall specify.

**Power of Chairman to delegate**

13. (1) Subject to the provisions of this Order, the Chairman may in writing delegate to any member of the Board or to the Chief Executive Officer the power and authority to carry out on his behalf his duties, powers or functions as he may determine.

(2) The Chairman may at the time of delegating any power or authority under subparagraph (1) or at any time thereafter give directions as to the manner in which such delegated power or authority is to be exercised and may at any time revoke or modify such delegation.

**Appointment of the Chief Executive Officer**

14. (1) The Board may, with the approval of Majlis after obtaining consent of the Minister, appoint a Chief Executive Officer of the Board and vest him with such powers and impose upon him such duties as may be determined or delegated to him by the Board.

(2) The appointment of the Chief Executive Officer shall be on such terms and conditions as the Board may with the approval of Majlis, determine.

**Duties of the Chief Executive Officer**

15. (1) The Chief Executive Officer shall be responsible for –
- (a) the preparation of all programmes, policies and projects for the consideration of the Board;
  - (b) the execution of all programmes, policies and projects of the Board;
  - (c) keeping the Board fully informed of the progress of its programmes, policies and projects;
  - (d) the issue of policy guidance or elucidation of decisions of the Board to officers and servants of the Board;
  - (e) the carrying out of the decisions of the Board and directions of the Chairman;
  - (f) the supervision and control over the implementation of the decisions of the Board;
  - (g) the planning of all activities related to the functions of the Board;
  - (h) the maintenance of buildings and other structures or properties of *wakaf*; and
  - (i) the proper administration and management of the functions and affairs of the Board in accordance with the policy laid down by the Board.

(2) The Chief Executive Officer shall have general control of the other officers and servants of the Board.

(3) The Chief Executive Officer shall perform such further duties as the Board may from time to time direct.

(4) If the Chief Executive Officer is temporarily absent from Malaysia or is temporarily incapacitated through illness or for any other sufficient reason, from the performance of his duties, the Board, with the approval of Majlis, may direct any other officer to perform his duties during such temporary absence or in capacity.

#### **Appointment of Secretary and Deputy Secretary**

16. (1) The Chief Executive Officer of the Board shall be the Secretary.

(2) The Board may appoint a Deputy Secretary who shall be responsible to the Secretary to implement particular duties and responsibilities of the Board as the Board may deem necessary.

(3) The Secretary is entitled to attend all meetings of the Board and take part in the discussion, but may not vote.

#### **Appointment of officers and servants of the Board**

17. (1) Subject to subparagraph (2), paragraph 15 and 16, the Board may appoint from time to time on such terms and conditions, such number of officers and servants as it may think desirable and necessary for carrying out the purposes of this Order.

(2) Notwithstanding subparagraph (1), the Board shall not establish or modify any post or scheme of service for officers and servants of the Board, including the terms and conditions of service and the salaries, without the approval of Majlis.

#### **Discipline of officers and servants of the Board**

18. (1) There shall be a Disciplinary Board which shall consist of –

- (a) two (2) members to be elected by and from the members of the Board, one of whom shall be elected as a Chairman; and

- (b) the Chief Executive Officer.
- (2) The Disciplinary Authority in respect of every officer and servant of the Board, other than the Chief Executive Officer, shall be the Disciplinary Board established under subparagraph (1).
- (3) The Disciplinary Board in respect of the Chief Executive Officer shall consist of three (3) members to be elected by and from members of the Board one of whom shall be appointed as Chairman.
- (4) The Chief Executive Officer shall not be a member of the Disciplinary Board or Disciplinary Committee established under subparagraph (6) in any proceedings before them in which he is the complainant; his place shall be taken by a member to be elected by and from members of the Board.
- (5) In the exercise of its disciplinary functions and powers, the Disciplinary Board shall have the power to impose such disciplinary punishment.
- (6) The Disciplinary Board may, subject to subparagraph (7), delegate any of its disciplinary functions and powers to any committee of officers or servants of the Board to be known as the Disciplinary Committee, in respect of any particular officer or servant of the Board, or in respect of any class or category of officers or servants of the Board, and the Disciplinary Committee delegated with such functions, and powers shall carry out, exercise or discharge them under the direction and control of the Disciplinary Board which shall have the power to review, rescind or vary any decision or finding of such Committee.
- (7) No delegation shall be made under subparagraph (6) so as to enable an officer or servant of the Board to be a member of any Disciplinary Committee which may exercise any disciplinary authority over an officer or servant who is superior to him in rank.

#### **Disciplinary Appeal Board**

19. (1) There shall be a disciplinary Board which shall consist of –
- (a) the Chairman of the Board as Chairman;
  - (b) the Majlis Secretary; and

(c) the Majlis Legal Advisor

(2) Any officer or servant of the Board who is dissatisfied with the decision of the Disciplinary Board or of any Disciplinary Committee delegated with functions and powers under paragraph 18 may, within fourteen (14) days, appeal in writing against such decision to the Disciplinary Appeal Board which may thereupon affirm, reverse or give such directions on the matter as it deems fit and proper.

(3) When the Disciplinary Appeal Board considers any appeal under subparagraph (2), no member of the Disciplinary Board or of the Disciplinary Committee, as the case may be, against whose decision the appeal is made, shall be present in any proceedings relating to that appeal.

(4) The decision of the Disciplinary Appeal Board upon such appeal shall be final and conclusive.

#### **Public Authorities Protection Act 1948**

**20.** The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the Board or against any member, officer, servant or agent of the Board in respect of any act, neglect or default done or committed by the Board or such persons in such capacity.

#### **Public servant**

**21.** All members, officers and servants of the Board, while discharging their functions as such members, officers and servants, shall be deemed to be public servants within the meaning of Penal Code [Act 574].

#### **Bank account**

**22.** All monies paid to the Board shall forthwith be paid into an account in such bank or banks as may be approved by the Board.

**Account and audit**

**23.** (1) The Board shall keep or caused to be kept proper accounts and other records of its activities in accordance with accepted accounting principles and shall cause to be prepared a statement of its account for every financial year.

(2) The account of the Board shall be audited annually by the auditors appointed by the Board with the approval of Majlis.

(3) The Board shall within three (3) months after the end of each financial year have its account audited and transmitted to the Chairman of Majlis together with a copy of any observation made by the auditor appointed under subparagraph (2), as the case may be, on any account of the Board.

(4) The Chairman of Majlis shall cause a copy of every such account together with any observation made by the auditor appointed under subparagraph (2) on any statement or accounts of the Board to be laid on the meeting of the Majlis.

**Returns, reports, accounts and information**

**24.** (1) The Board shall furnish to Majlis such returns, reports, accounts and information with respect to its property and activities of the Board as the Majlis may from time to time require or direct.

(2) Without prejudice to the generality of subparagraph (1), the Board shall, as soon as practicable after the end of each financial year, cause to be made and transmitted to Majlis a report dealing with the activities of the Board during the preceding financial year and the report shall be in such form and shall contain such information relating to the proceedings and the policies of the Board as the Majlis may from time to time specify.

**Improper use of information**

**25.** Any member, officer or servant of the Board and any member of a committee shall not make use of any information acquired by virtue of his position as a member, officer or servant of the Board or a member of a committee to gain directly or indirectly an improper advantage for himself or for any other person or to cause detriment to the Board.

### **Indemnity and protection against suit and legal proceedings**

**26.** No action shall lie or prosecution shall be brought, instituted or maintained against Majlis, the Board, a committee, the members of the Board or a committee, the Chief Executive Officer, the officer and servants of the Board or any person acting under the direction of the Majlis or the Board in any court for any thing done or omitted to be done under this Order -

- (a) in good faith;
- (b) in the reasonable belief that it was necessary for the purpose intended to be served thereby; or
- (c) for carrying into effect the provisions of this Order.

### **Right of access**

**27.** (1) The Chief Executive Officer and all officers and servants of the Board shall, at any reasonable time, have free access to all lands for the purpose of implementing the provisions of this Order.

(2) Any person who in any way obstructs, hinders, prevents, delays or interferes with the Chief Executive Officer or any officer or servant of the Board in the lawful exercise of any of his powers or the performance of his functions or duties under this Order or who fails to afford such assistance as is reasonably required by the Chief Executive Officer or any officer or servant of the Board commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

### **Relationship between Board and Majlis**

**28.** Notwithstanding any provisions in this Order, Majlis as the sole trustee to all *wakaf* in the State of Sabah shall have power to all affairs and administration of the Board as provided in the Wakaf Enactment.

**Directives by Majlis**

29. (1) Majlis may give to the Board such directions of a general nature, not inconsistent with the provisions of this Order, as to the discharge of the functions and exercise of the powers of the Board and the Board shall give effect to such directions.

(2) Notwithstanding any subparagraph (1), Majlis shall have power to inspect or direct an inspection to be made on the Board at anytime considered reasonable by the Majlis.

SCHEDULE  
(SUBPARAGRAPH 5(5))

**Terms and conditions of appointment, revocation and resignation**

1. (1) Subject to such conditions as may be specified in the instrument appointing him, any member of the Board appointed under subparagraphs 5(1)(a), (g) and (h) shall unless he sooner resigns or vacates his office or his appointment is revoked, hold office for a term not exceeding three (3) years and shall be eligible for reappointment.

(2) The appointment of any member may at any time be revoked by Majlis without assigning any reason therefore.

(3) A member may at any time resign his office by letter addressed to the Chairman of Majlis.

(4) A member shall devote such time to the business of the Board as may be necessary for the discharge of his duties.

**Office deemed vacated**

2. (1) The office of a member of the Board shall be vacated –

(a) if he dies;

(b) if there has been proved against him, or he has been convicted on, a charge in respect of –



- (i) an offence involving fraud, dishonesty or moral turpitude;
- (ii) an offence under any law relating to corruption; or
- (iii) any other offence punishable with imprisonment (in itself only in addition to or in lieu of a fine) for more than two (2) years;
- (c) if he becomes a bankrupt;
- (d) if he is of unsound mind or is otherwise incapable of performing his duties;
- (e) if he absents himself from three (3) consecutive meetings of the Board without leave of the Board;
- (f) if the event of his resignation being accepted; or
- (g) if his appointment is revoked.

(2) Where any member appointed under subparagraphs 5(1)(a), (g), or (h) ceases to be a member of the Board by reason of any of the provisions of this Order, Majlis may appoint another person to replace him for the remainder of the term of appointment of the said member.

#### **Remuneration or allowances**

3. The member of the Board shall be paid such remunerations or allowances as the Board may determine after consultation with Majlis.

#### **Meeting**

4. (1) The Board shall meet at least four (4) times in every year at such times and places as the Chairman may determine.

(2) The quorum at all meetings of the Board shall be at least six (6) of the members of the Board be present except the quorum shall be at least two-thirds being present where the meeting deliberates or decides on matters referred to in paragraph 9 and 10.

(3) At all meetings of the Board the Chairman, or in his absence such member as the members present may elect, shall preside.

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

(5) Subject to subparagraph (1), (2), (3), and (4), the Board shall determine its own procedure.

**Board may invite other person into meetings**

5. (1) The Board may invite any person to attend any meeting or deliberation of the Board for the purpose of advising it on any other matter under discussions, but any person so attending shall have no right to vote at any such meeting or deliberation.

(2) Any person invited to attend any meeting or deliberation of the Board under subparagraph (1) may be paid such allowances or other expenses as the Board may from time to time determine.

**Disclosure of interest**

6. (1) A member of the Board who has or acquires a direct or indirect interest by himself, a member of his family or his associate in relation to any matter under discussion by the Board shall disclose to the Board the fact of his interest and its nature.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Board in which the matter is discussed and, after the disclosure, the member -

(a) shall not be regarded for the purpose of constituting a quorum of the meeting of the Board; and

(b) shall not take part in or present during any discussion or decision of the Board, when the matter is discussed or decided upon.

(3) For the purpose of this paragraph -

(a) "a member of his family", in relation to a member of the Board, includes –

(i) his spouse;

(ii) his parent (including a parent of his spouse);

(iii) his child (including an adopted child or stepchild);

(iv) his brother or sister (including a brother or sister of his spouse); and

(v) a spouse of his child, brother or sister;

- (b) “associate”, in relation to a member of the Board, means –
- (i) any person who is a nominee or an employee of such members;
  - (ii) any firm of which such member or any nominee of his is a partner;
  - (iii) a partner of such member;
  - (iv) a trustee of a trust under which such member or a member of his family is a beneficiary; or
  - (v) any Corporation within the meaning of the Companies Act 2016 [Act 777], of which such member or any nominee of his or a member of his family is a director or has a controlling interest of shares to the total value of not less than thirty (30) percent of the total issued capital of the said Corporation.

### **Minutes**

7. (1) The Board shall cause minutes of all meetings of the Board to be maintained and kept in proper form.

(2) Any minutes made of meetings of the Board shall, if duly signed, be receivable in evidence in all legal proceedings, without further proof and every meeting of the Board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members at the meeting to have been duly qualified to act.

### **Validity of act and proceedings**

8. No act done or proceedings taken under this Order shall be questioned on the ground –

- (a) of any vacancy in the membership of, or of any defect in the constitution of the Board;
- (b) of any contravention by any member of the Board relating to the disclosure of interest by Board; or
- (c) of any omission, defect or irregularity not affecting the merits of the case.

*FOR REFERENCE ONLY AS AT JANUARY 2019*

Dated 8 November 2018

By His Excellency's Command,

Datuk Seri Panglima Haji Hashim Paijan,  
*Clerk to the Cabinet*

*Sabah LawNet*