

(c.i.f - 01.06.2017)

# STATE OF SABAH

## FOREST (TIMBER) ENACTMENT 2015

(Sabah No. 2 of 2015)

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### ARRANGEMENT OF SECTIONS

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#### PART I PRELIMINARY

*Section*

1. Short title and commencement
2. Interpretation

#### PART II FUNCTIONS AND POWERS

3. Functions and powers of the Director
4. Power to delegate

#### PART III REGULATION OF THE TIMBER INDUSTRY

5. Prohibition against carrying out activities without registration
6. Application for registration
7. Registration and refusal of registration
8. Power to impose additional conditions or to vary conditions
9. Renewal of registration

10. Cancellation of registration
11. Register
12. Duty to declare
13. Presumption as to export

PART IV  
ENFORCEMENT

14. Appointment of enforcement officers
15. Power of investigation
16. Authority card
17. Power of arrest
18. Search and seizure with warrant
19. Search and seizure without warrant
20. Power to enter premises or conveyance
21. Access to computerized data
22. Power to stop, examine and seize conveyances
23. List of timber, machinery, contrivance, *etc.*, seized
24. Temporary return of conveyance, *etc.*, seized
25. Sale and disposal of timber seized
26. Release of timber, *etc.*, seized
27. No costs or damages arising from seizure to be recoverable
28. Cost of holding timber, *etc.*, seized
29. Obstruction
30. Power to require attendance of persons acquainted with case
31. Examination of persons acquainted with case
32. Admissibility of statements in evidence
33. Forfeiture of timber, *etc.*, seized
34. Property right in forfeited timber, *etc.*
35. Enforcement officer may seek assistance to examine things related to offence
36. Power to take sample
37. Power of the Director to require information on timber, *etc.*
38. Additional powers
39. Appointment of analyst

40. Certificate of analysis

PART V  
MISCELLANEOUS

41. Offences by body corporate  
42. General penalty  
43. Compounding of offences  
44. Prosecution  
45. Protection against suit and legal proceedings  
46. Public Authorities Protection Act 1948  
47. Protection of informers  
48. Reward to informers  
49. Power to exempt  
50. Regulations  
51. Amendment of Schedule

PART VI  
SAVINGS AND TRANSITIONAL

52. Savings and transitional

SCHEDULES

An Enactment to provide for registration of activities relating to timber industry in the State of Sabah and for matters connected therewith.

ENACTED by Legislature of the State of Sabah as follows:

PART I  
PRELIMINARY

**Short title and commencement**

1. (1) This Enactment may be cited as the Forest (Timber) Enactment 2015.  
  
(2) This Enactment comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Interpretation**

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

"Director" has the meaning assigned to it in section 2 of the Forest Enactment 1968 [No.2 of 1968];

"export" means to take or cause to be taken out of Sabah, by land, sea or air or to place any timber in a vessel, barge, conveyance or aircraft for the purpose of the timber being taken out of Sabah by land, sea or air;

"exporter" means a person who exports timber;

"forest officer" has the meaning assigned to it in section 2 of the Forest Enactment 1968;

"Government" means the State Government of Sabah;

"import" means to bring or cause to be brought any timber into Sabah, by land, sea or air but does not include *bona fide* transit of timber and transhipment of timber;

"importer" means a person who imports timber;

"jetty" means any area or place, whether on land or sea, from which timber may be directly removed for shipment, or for receiving or unloading imported timber;

"jetty operator" means a person who operates a jetty who is involved in any activity relating to the exportation or importation of timber;

"Minister" means the Minister charged with the responsibility for natural resources;

"licence", in relation to the exportation or importation of timber, means a certificate of approval issued by the Director;

"premises", in relation to timber, means any place, whether open or enclosed or whether on land or sea or whether movable or immovable and includes any house, mill, shop, store, room, hall, shed, container, jetty, yard, estate, farm, warehouse, port or airport;

"proper officer of customs" has the meaning assigned to it in section 2 of the Customs Act 1967 [Act 235];

"supplier" means a person who supplies timber for the purpose of export;

"timber" means the products, or any of the products, listed in the Schedule;

"timber industry" means any activity which involves trade, processing, manufacturing and production of timber.

## PART II FUNCTIONS AND POWERS

### **Functions and powers of the Director**

3. The Director shall have the following functions and powers:
  - (a) to implement control and monitor export and import of timber;
  - (b) to gather information on, and maintain records of all relevant matters relating to, the timber industry;

- (c) to carry out research, review and investigation, that are beneficial or appropriate to the carrying out of his functions;
- (d) to issue licences, certificates and approvals in respect of the timber industry;
- (e) to keep and maintain the register;
- (f) to impose fees or charges; and
- (g) to do all things expedient and necessary for or incidental to the performance of his functions and powers under this Enactment.

**Power to delegate**

4. (1) The Director may in writing delegate any of his functions or powers subject to such conditions, limitations or restrictions as he thinks fit, to any forest officer, and such person to whom the functions or powers is delegated shall perform the functions and powers in the same manner and with the same effect as if the functions or powers had been conferred on him under this Enactment.

(2) A person purporting to act pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) A delegation made under this section may at any time be revoked by the Director.

(4) A delegation made under this section shall not preclude the Director himself from carrying out at any time the delegated functions or powers.

PART III

REGULATION OF THE TIMBER INDUSTRY

**Prohibition against carrying out activities without registration**

5. (1) No person shall carry on any activity relating to timber industry as -

- (a) an exporter;
- (b) an importer;
- (c) a supplier; or
- (d) a jetty operator,

unless he is registered in accordance with this Enactment.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

#### **Application for registration**

6. (1) An application for registration under this Enactment shall be made to the Director in the prescribed manner.

(2) Every application under subsection (1) shall be accompanied by the prescribed fee and such documents and information as maybe specified by the Director.

(3) The Director may, in writing, at any time after the receipt of an application under subsection (1), request the applicant to give to the Director within the period specified in the request, additional information, particulars or document on the application.

(4) If any additional information, particulars or document required under subsection (3) is not given by the applicant within the period specified in the request or any extension of time granted by the Director, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

#### **Registration and refusal of registration**

7. (1) Upon receipt of an application made under section 6 and after given due consideration, the Director may -

(a) register the applicant and issue a certificate of registration to the applicant in such form as prescribed by the Director; or

(b) refuse the application.

(2) The certificate of registration may be issued subject to such conditions as the Director thinks fit to impose.

(3) Where the Director refuses the registration of application in pursuance of subsection (1), he shall inform the applicant by a written notice that the application has been refused and the reasons for the refusal.

(4) Every registration under this section shall be valid for a period of one year, or for such longer period but not exceeding five years as the Director may determine, from the date of registration and may be renewable, unless sooner cancelled under section 10, at the discretion of the Director for such further period of not less than one year but not exceeding five years as the Director thinks fit.

(5) No person who is not an incorporated person shall be registered under this section unless there is in respect of his business a valid certificate of registration of business issued under any written law in force in Malaysia relating to the registration of businesses.

(6) Any person who carry on any activity relating to timber industry without registration in pursuance to paragraph (1) (a) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

**Power to impose additional conditions or to vary conditions**

8. The Director may, at any time -

(a) impose any additional condition on the registration of timber industry; or

(b) vary any of the conditions imposed on the registration of timber industry.



### **Renewal of registration**

9. (1) Any registered person may make an application for the renewal of a registration not later than sixty days before the expiry date of the registration in the manner and form as may be determined by the Director and the application shall be accompanied with the prescribed renewal fee and such documents as may be required by the Director, but no application for renewal shall be allowed where the application is made after the expiry date of the registration.

(2) When renewing the registration, the Director may vary the conditions imposed upon the issuance of the certificate of registration or impose additional conditions.

(3) The Director may refuse to renew a registration if the registered person -

- (a) has contravened any provision of this Enactment or any regulations made under this Enactment;
- (b) has breached any condition in the certificate of registration; or
- (c) has been convicted of an offence under this Enactment or any regulations made under this Enactment.

(4) Where the Director refuses to renew the registration in subsection (3), he shall inform the registered person by a written notice that the application for renewal has been refused and the reasons for the refusal.

### **Cancellation of registration**

10. (1) Subject to subsection (2), the Director may cancel the registration of a registered person who -

- (a) has contravened any provision of this Enactment or any regulations made under this Enactment;
- (b) has breached any condition in the certificate of the registration;
- (c) has given a false representation which induced the registration; or

(d) has been convicted of an offence under this Enactment or any regulations made under this Enactment.

(2) Before the cancellation of the registration under subsection (1), the Director may, by notice in writing, give the registered person an opportunity to show cause against the cancellation.

(3) Where the registration of the registered person is cancelled, the Director shall issue a notice of cancellation of registration to the registered person.

(4) A person whose registration is cancelled shall not be entitled to any compensation for any loss caused to him by the cancellation and shall not be entitled to any refund of the prescribed registration fee paid.

(5) A person whose registration has been cancelled and who continues to carry on any timber industry activity thereafter commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

#### **Register**

11. The Director shall keep and maintain a register relating to the registration under section 6 in such form and manner as may be determined by the Director.

#### **Duty to declare**

12. (1) An exporter or importer shall make a declaration to the Director in respect of timber to be exported or imported, before the exportation or importation of such timber.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

#### **Presumption as to export**

13. In relation to export, timber shall be deemed to be taken or caused to be taken out of Sabah if -

- (a) a licence or certification for its exportation has been issued by the Director;
- (b) it has been cleared by a proper officer of customs at the last customs station on its route out of Sabah;
- (c) it has been loaded onto a vessel or aircraft which is about to depart from a port or jetty in Sabah; or
- (d) it has been cleared by a proper officer of customs at an inland clearance depot or at an inland customs station on its route out of Sabah through a port or airport.

#### PART IV ENFORCEMENT

##### **Appointment of enforcement officers**

14. The Director may in writing appoint any number of enforcement officers as may be necessary for the purposes of this Enactment.

##### **Power of investigation**

15. (1) An enforcement officer may investigate the commission of any offence under this Enactment.

(2) For the avoidance of doubt, it is declared that for the purposes of this Enactment, the enforcement officer shall have all or any of the powers of a police officer of whatever rank in relation to police investigations in seizable cases as provided under the Criminal Procedure Code [Act 593], and such powers shall be in addition to the powers provided for under this Enactment and not in derogation thereof.

##### **Authority card**

16. (1) The Director shall issue to each enforcement officer appointed under section 14 an authority card which shall be signed by the Director.

(2) Whenever an enforcement officer exercises any of the power of enforcement under this Enactment, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

**Power of arrest**

17. (1) An enforcement officer or police officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Enactment.

(2) An enforcement officer making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of the police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

**Search and seizure with warrant**

18. (1) If it appears to the court, upon written information on oath from the enforcement officer and after such enquiry as the court considers necessary, that there is a reasonable cause to believe that -

(a) any premises or conveyance has been used or is about to be used for; or

(b) there is in any premises or conveyance evidence necessary to the conduct of an investigation into,

the commission of an offence under this Enactment, the court may issue a warrant authorizing the enforcement officer named in the warrant at any reasonable time by day or by night and with or without assistance, to enter the premises or conveyance and if need be by force.

(2) Without affecting the generality of subsection (1), the warrant issued by court may authorize the enforcement officer to -

- (a) search the premises or conveyance for, and to seize or remove from the premises any timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing that is reasonably believed to furnish evidence of the commission of such offence;
  - (b) take samples of any timber, or thing found in the premises or conveyance for the purposes of ascertaining, by testing or otherwise, whether the offence has been committed; and
  - (c) make copies of or take extracts from any book, record, document, computerized data or other thing found in the premises or conveyance,
- (3) An enforcement officer entering any premises or conveyance under this section may take with him such other persons and equipments as may appear to him to be necessary.
- (4) An enforcement officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises or conveyance.
- (5) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.
- (6) An enforcement officer may, in the exercise of his powers under this section, if it is necessary so to do -
- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;
  - (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and
  - (c) detain any person found in the premises or conveyance until the search has been completed.

(7) If, by the reason of its nature, size or amount, it is not practicable to remove any timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized under this section, the enforcement officer shall, by any means, seal such timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing in the premises or conveyance in which it is found.

(8) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (7) or removes any timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing under seal or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

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

19. If an enforcement officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 18 the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the enforcement officer may enter the premises or conveyance and exercise in, upon and in respect of the premises or conveyance all the powers referred to in section 18 in as full and ample manner as if he was authorized to do so by a warrant issued under that section.

#### **Power to enter premises or conveyance**

20. An enforcement officer may at any time enter any premises or conveyance for the purpose of -

- (a) inspecting any timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing as he considers necessary;
- (b) verifying the accuracy of records or statements or any information given to an enforcement officer; or
- (c) collecting samples of any timber.

**Access to computerized data**

21. (1) An enforcement officer conducting a search under this Enactment shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purpose of this section, "access" includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable the comprehension of computerized data.

**Power to stop, examine and seize conveyances**

22. (1) If an enforcement officer has reasonable cause to suspect that any conveyance is carrying any timber, machinery, contrivance, equipment, book, record, document, computerized data or any other thing in respect of which an offence under this Enactment is being or has been committed, he may stop and examine the conveyance and may, if on examination he has reasonable cause to believe that such conveyance is or has been used for the commission of such offence, seize such conveyance and any timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing found in the conveyance that is reasonably believed to furnish evidence of the commission of such offence.

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

(a) stop the conveyance and allow the enforcement 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 enforcement officer considers necessary.

(3) Any person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**List of timber, machinery, contrivance, etc., seized**

**23.** (1) Except as provided in subsection (2), where any timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing is seized pursuant to this Enactment, the enforcement officer making the seizure -

- (a) shall prepare -
  - (i) a list of the timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized and shall sign the list; and
  - (ii) a written notice of the seizure containing the grounds for the seizure and shall sign the notice; and
- (b) shall as soon as practicable serve a copy of the list of the timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized and the written notice of the seizure to the occupier of the premises or the person in control or in charge of the conveyance which have been searched.

(2) The written notice of the seizure shall not be required to be served in pursuance of paragraph (1) (b) where the seizure is made in the presence of the person against whom proceedings under this Enactment are intended to be taken, or in the presence of the owner of such property, as the case may be.

(3) If the premises is unoccupied, the enforcement officer shall post a copy of the list of the timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized conspicuously on the premises.

(4) Where the seizure is made by an enforcement officer and the owner of the timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized is unknown, the Director may publish the list of timber, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized in any manner as he thinks fit.



**Temporary return of conveyance, etc., seized**

24. (1) Where any conveyance, machinery, contrivance or equipment is seized under this Enactment, the Director may temporarily return the conveyance, machinery, contrivance or equipment to the owner of the conveyance, machinery, contrivance or equipment or the person from whose possession, custody or control it was seized, subject to such terms and conditions as the Director may impose, and subject in any case, to sufficient security being furnished to the satisfaction of the Director that the conveyance, machinery, contrivance or equipment shall be surrendered to the Director on demand and that such terms and conditions, if any, shall be complied with.

(2) Where any seized conveyance, machinery, contrivance or equipment is temporarily returned under subsection (1), a person who -

- (a) fails, on demand, to surrender the conveyance, machinery, contrivance or equipment to the Director; or
- (b) contravenes any of the terms or conditions imposed under subsection (1),

commits of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Sale and disposal of timber seized**

25. (1) The Director may at any time direct that any timber seized under this Enactment be sold and the proceeds of the sale be held while waiting for the result of any prosecution under this Enactment where -

- (a) the timber easily deteriorates in quality;
- (b) the custody of the timber involves unreasonable expense and inconvenience;
- (c) there is a lack or absence of adequate or proper facilities for the storage of the timber; or

- (d) the timber is believed to cause an obstruction or to be a hazard to the public.
- (2) The Director may, in his discretion -
  - (a) temporarily return the timber to the owner or to the person from whose possession, custody or control the timber was seized, subject to such terms and conditions as may be imposed by the Director and in any case, subject to sufficient security being furnished to the satisfaction of the Director that the timber shall be surrendered to the Director on demand being made by the Director and that the said terms and conditions, if any, shall be complied with;
  - (b) return the timber to the owner or to the person from whose possession, custody or control the timber was seized with liberty for the person to whom the timber is so returned to dispose of the same, such return being subject to security being furnished to the satisfaction of the Director in an amount of not less than an amount which, in the opinion of the Director, represents the open market value of such timber on the date on which it is so returned for the payment of the amount so secured to the Director in the event the court has made an order of forfeiture of such amount under section 33.
- (3) Notwithstanding subsection (1), where an analyst appointed under section 39 certifies, or if the results of such tests as certified by the analyst proved, that the timber tested by him deteriorates in quality, the Director may keep it in custody, or if no prosecution is instituted in respect of the timber, cause it to be disposed of in the manner determined by the Director.

**Release of timber, etc., seized**

26. (1) If any timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing has been seized under this Enactment, the enforcement officer who effected the

seizure, may at any time after that release the timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing to the person as he determines to be lawfully entitled to it, if the timber or the proceeds of sale of the timber, conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing is not liable to forfeiture under this Enactment, and is not otherwise required for the purpose of any proceedings under this Enactment or any regulations made under this Enactment, or for the purpose of any prosecution under any other written law, and in such event neither the enforcement officer effecting the seizure, nor the Government shall be liable to any proceedings by any person if the seizure and the release of timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing had been effected in good faith.

(2) A record in writing shall be made by the enforcement officer effecting the release of the timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing released under subsection (1) specifying in detail the circumstances of and the reason for the release.

**No costs or damages arising from seizure to be recoverable**

27. No person shall, in any proceedings before any court in respect of the seizure of any timber, conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized in the exercise or the purported exercise of any power conferred under this Enactment, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

**Cost of holding timber, etc. seized**

28. If any timber, conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized under this Enactment is held in the custody of the Director pending the completion of any proceedings in respect of an offence under this Enactment, the cost of holding it in custody shall, irrespective of whether any prosecution is instituted or otherwise against any person, be a civil debt due to the Government by such person and shall be recoverable accordingly.

**Obstruction**

**29.** Any person who –

- (a) refuses any enforcement officer access to any premises or conveyance which the enforcement officer is entitled to have access to under this Enactment or in the execution of any duty imposed or power conferred by this Enactment;
- (b) assaults, obstructs, hinders, prevents or delays any enforcement officer in effecting any entry which the enforcement officer entitled to effect under this Enactment, or in the execution of any duty imposed or power conferred by this Enactment; or
- (c) refuses any enforcement officer any information relating to an offence or suspected offence under this Enactment or any other information which may be reasonably required of him and which he has in his knowledge or power to give,

commits of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Power to require attendance of persons acquainted with case**

**30.** (1) An enforcement officer making an investigation under this Enactment may, by order in writing, require the attendance before himself of any person who appears to the enforcement officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses or fails to attend as so required, the enforcement officer may report such refusal or failure to a court who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

**Examination of persons acquainted with case**

**31.** (1) An enforcement officer making an investigation under this Enactment may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to the case put to him by the enforcement officer, but he 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 such a statement is made wholly or partly in answer to questions.

(4) The enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into 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 correction he may wish.

**Admissibility of statements in evidence**

**32.** (1) Except as provided in this section, no statement made by any person to an enforcement officer in the course of an investigation made under this Enactment shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to the enforcement officer in the course of the investigation under this Enactment and may then, if the courts thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of an investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32 (1) (a) (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to the making or the contents of any statement made by him to the enforcement officer in the course of an investigation made under this Enactment, that statement may be used as evidence in the prosecution's case.

**Forfeiture of timber, etc. seized**

**33.** (1) Any timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized in exercise of any power conferred under this Enactment shall be liable to forfeiture.

(2) An order for the forfeiture of the timber or the proceeds of sale of the timber, or the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing shall be made if it is proved to the satisfaction of the court that an offence under this Enactment has been committed and that the timber or the proceeds of sale of the timber, or the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing was the subject matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) If there is no prosecution with regard to any timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized under this Enactment, such timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing shall be taken and deemed to be forfeited at the expiration of a period of one calendar month from the date of service of the notice to the last-known address of the person from whom the timber or the proceeds of sale of the timber, or any conveyance,

machinery, contrivance, equipment, book, record, document, computerized data or other thing was seized indicating that there is no prosecution in respect of such timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing unless before the expiration of that period a claim to it is made in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of the timber or the proceeds of sale of the timber, or of the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the enforcement officer in whose possession such timber or the proceeds of sale of the timber, or the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing is held that he claims the timber or the proceeds of sale of the timber, or the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing.

(5) On receipt of the notice referred to in subsection (4), the enforcement officer shall refer the matter to the Director who may direct that the timber or the proceeds of sale of the timber, or the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing be released or may direct the enforcement officer to refer the matter to a court.

(6) The court to whom a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the timber or the proceeds of sale of the timber, or of the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing and the person from whom it was seized to appear before the court, and when the owner of the timber appears or fails to appear, due service of the summons having been proved, the court shall proceed to the examination of the matter.

(7) If it is proved that an offence under this Enactment has been committed and that the timber or the proceeds of sale of the timber, or the conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing referred to in subsection (6) was the subject matter of or was used in the commission of such offence, the court shall order the timber or the proceeds of sale of the timber, or the

conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing to be forfeited, and shall, in the absence of such proof, order its release.

(8) Any timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing forfeited or deemed to be forfeited shall be disposed of in such manner as the Director thinks fit.

(9) The Director shall not be liable to any person for any deterioration, no matter how arising, in the quality of any timber seized under this Enactment.

**Property right in forfeited timber, etc.**

34. Any timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing forfeited or taken and deemed to be forfeited under this Enactment shall be the property of the Government.

**Enforcement officer may seek assistance to examine things related to offence**

35. An enforcement officer may seek the assistance of a qualified person to examine any timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized or detained under this Enactment if such person has the necessary qualification to examine such timber or the proceeds of sale of the timber, or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing for the purposes of an investigation under this Enactment.

**Power to take sample**

36. (1) An enforcement officer may demand, select, take or obtain samples of any timber for the purposes of analysis without payment from any person planting, producing, selling or having possession of such timber or his agent or servant from whom the samples is procured.

(2) The procedure for taking in dealing with the samples shall be as prescribed.



**Power of the Director to require information on timber, etc.**

37. (1) The Director may by notice in writing require any person undertaking any activity involving timber to furnish to the Director, within the time specified in the notice, information relating to timber.

(2) Any person who fails to furnish any information relating to timber as required under subsection (1) commits of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Additional powers**

38. (1) An enforcement officer shall, for the purposes of the implementation of this Enactment, have power to do all or any of the following acts:

- (a) to require the production of records, accounts and documents from any person in relation to any case or offence under this Enactment and to inspect, examine and copy any of them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Enactment; or
- (c) to make such enquiry as may be necessary to ascertain whether the provisions of this Enactment have been complied with.

(2) Any person who fails to comply with the request made under subsection (1) commits of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Appointment of analyst**

39. The Director may appoint any qualified person to be an analyst for the purposes of carrying out an analysis on any timber and to certify its grade, species, size and any specification relating to timber.

**Certificate of analysis**

**40.** (1) A certificate of analysis signed by an analyst shall, on production by the Director in any trial under this Enactment, be sufficient evidence of the facts stated in the certificate unless the accused requires that the analyst be called as a witness, in which case he shall give a written notice to the Director not less than three working days before the commencement of the trial.

(2) Where the Director intends to give in evidence any certificate referred to in subsection (1), he shall deliver a copy of such certificate to the accused not less than ten working days before the commencement of the trial.

PART V  
MISCELLANEOUS

**Offences by body corporate**

**41.** (1) If a body corporate commits an offence under this Enactment or any regulations made under this Enactment, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management –

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves –

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Enactment or any regulations made under this Enactment to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed –

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

#### **General penalty**

42. Any person who commits an offence under this Enactment for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

#### **Compounding of offences**

43. (1) The Director may compound any offence committed by any person under this Enactment or any regulations made under this Enactment and prescribed to be a compoundable offence by making a written offer to such person to compound the offence upon payment to the Director of such amount not exceeding fifty per centum of the amount of the maximum fine for that offence within such time as may be specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) If the amount specified in the offer made under subsection (1) is not paid within the time specified in the offer or within such extended period as the Director may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of such offence against the person to whom the offer to compound was made and any timber or any conveyance, machinery, contrivance, equipment, book, record, document, computerized data or other thing seized under this Enactment or any regulations made under this Enactment in connection with the offence may be released or forfeited by the Director, subject to such terms and conditions as the Director thinks fit to impose in accordance with the conditions of the compound.

#### **Prosecution**

**44.** No prosecution for any offence under this Enactment or any regulations made under this Enactment shall be instituted except by or with the consent in writing of the Public Prosecutor.

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

**45.** No action shall lie or be brought, instituted or maintain in any court against –

- (a) the Director, forest officers or enforcement officers; and
- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director, forest officers or enforcement officers,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provision of this Enactment.

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

**46.** The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against the Director, any forest officer or any enforcement officer appointed under section 14 in respect of any act, neglect or default done or committed by him in good faith or any commission omitted by him in good faith, in such capacity.

### **Protection of informers**

47. (1) Except as provided in subsections (2) and (3), no witness in any civil or criminal proceedings pursuant to this Enactment shall be obliged or permitted to disclose the name or address of an informer or the substance and nature of the information received from him or to state any matter which might lead to his discovery.

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

(3) If in a trial for any offence under this Enactment the court, after full enquiry into the case, is of the opinion that the informer wilfully 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 proceedings the court is of the opinion that justice cannot be fully done between the parties to the proceeding without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit an enquiry and require full disclosure concerning the informer.

### **Reward to informers**

48. The Director may order a reward as he thinks fit to be paid to an informer for services, information, statement or assistance in connection with the detection of any offence under this Enactment or any regulations made under this Enactment.

### **Power to exempt**

49. (1) The Minister may, if he considers it consistent with the purposes of this Enactment, by order published in the *Gazette*, exempt any person, class of persons or any activity in relation to timber from all or any of the provisions of this Enactment or any regulations made under this Enactment for such duration and subject to such conditions as the Minister may specify and he may alter or add the conditions so specified.

(2) The Minister may, at any time, by order published in the *Gazette*, revoke any order made under subsection (1) if he is satisfied that such exemption should no longer be granted.

### **Regulations**

**50.** (1) The Minister may make regulations as may be expedient or necessary for the better carrying out of the provisions of this Enactment.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations -

- (a) to prescribe all matters relating to registration under this Enactment;
- (b) to prescribe offences which may be compounded and the forms to be used in, and the method and procedure for, compounding such offences;
- (c) to prescribe the procedures for taking, analysing and dealing with samples;
- (d) to prescribe the procedure to be followed and the form to be used in the exportation or importation of timber;
- (e) to prescribe the procedure for the recognition, certification and endorsement relating to the timber industry;
- (f) to prescribe the procedure for timber verification services for any person who applies for any technical and timber verification advisory services;
- (g) to determine the standards of processing and methods of seasoning, preserving, bundling or packaging timber;
- (h) to provide for the maintenance of proper standards of conduct in the carrying out of the timber trade and for dealing with infringements thereof;

- (i) to prescribe the fees and charges payable under this Enactment; and
- (j) to all matters and things required or authorized by this Enactment to be prescribed or provided, for the carrying out of, or giving full effect to, the provisions of this Enactment.

(3) Any regulations made under this Enactment may provide for any act or omission in contravention of the regulations to be an offence and may provide for penalties of a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

#### **Amendment of Schedule**

51. The Minister may, after consultation with the Director, amend the Schedule by order published in the *Gazette*.

### PART VI SAVINGS AND TRANSITIONAL

#### **Savings and transitional**

52. (1) Every person who, immediately before the coming into operation of this Enactment, was registered under the Malaysian Timber Industry Board (Incorporation) Act 1973 [*Act 105*] shall be deemed to be registered under this Enactment until the expiry date of his registration and subject to the conditions and restrictions attached thereof.

(2) Every certificate by virtue of which a person is deemed, under subsection (1), to be registered under this Enactment shall be deemed to have been issued under this Enactment; and the Director may vary the conditions and restrictions attached to the certificate for the purpose of bringing them into conformity with this Enactment.

(3) Section 10 relating to the cancellation of registration shall apply to all persons deemed, under subsection (1), to be registered under this Enactment.

(4) If a person deemed, under subsection (1), to be registered under this Enactment desires to be registered under this Enactment, after the expiration for which he is deemed to be registered under this Enactment, he may apply to the Director for registration under section 6, and his application shall be made and treated as a fresh application and not as an application for renewal of registration.

(5) Any register kept and maintained immediately before the coming into operation of this Enactment shall, on the coming into force of this Enactment, be deemed to be register kept and maintained under section 11 and shall be deemed to form part of that register.

SCHEDULE  
[Section 2]  
DEFINITION OF TIMBER

*Timber Products*

Assembled parquet panels  
Bamboo  
Bamboo shoot  
Bark  
Barrels  
Battenboard  
Bio-composite product  
Blockboard  
Box pallets  
Briquette  
Broom  
Brush bodies and handles  
Cable drums  
Cases of jewellery or cutlery and similar articles  
Casks  
Cement bonded particle board



*Timber Products - (cont.)*

Charcoal  
Coconut trunk  
Coffin/Casket  
Cooperage  
Cordwood  
Core veneer  
Cork, Bark based product  
Crate  
Densified wood  
Door  
Door frame  
Doorskin  
Dowel  
Drum  
Dunnage  
Dye  
Fibreboard  
Flakeboard  
Flitch  
Fruit  
Fuel wood  
Furniture  
Furniture part  
Gaharu oil  
Gaharu wood/Sandalwood/Agarwood  
Glued laminated timber  
Ground wood (wood wool, wood flour)  
Handicraft  
Hardboard  
Hewn timber  
High density fibreboard  
Honey  
Hoopwood

*Timber Products - (cont.)*

Insecticide  
Joinery  
Joss-stick  
Laminated board  
Laminated post  
Laminated veneer lumber  
Latex  
Loardboard  
Log  
Low density fibreboard  
Lumber core  
Medium density fibreboard  
Moulding  
Nibong trunk  
Oil Palm trunk  
Oriented strand board  
Other thing of wood  
Packing block  
Packing cases  
Pallet  
Pallet collars  
Paper  
Particle block  
Particle board  
Pickets/Stakes  
Picture frame  
Piles  
Planed timber  
Plywood  
Pole  
Prefabricated buildings, of wood  
Railway sleeper

*Timber Products - (cont.)*

Rattan  
Resin  
Rotary cut veneer  
Rubberwood  
Sap sugar  
Sawdust  
Sawn timber  
Scented wood (Gaharu)  
Scrap  
Seed  
Shakes  
Shingle  
Skid  
Sliced veneer  
Statuettes and other ornaments, of wood  
Tableware and kitchenware, of wood  
Thatching  
Tools  
Tubs  
Turnery  
Vats  
Veneered panel  
Waferboard  
Window  
Window frame  
Wood chip  
Wood marquetry and inlaid wood  
Wood particle  
Wood pulp  
Wood residue  
Wood vinegar  
Wood wool (shaving)

*Timber Products - (cont.)*

Woodchipboard

Wooden box

Wooden fence

Wooden flooring

Wooden handle

Wooden lattice

Wooden sticks

Wooden toy

Woodplastic composite

Sabah LawNet