

STATE OF SABAH

MAJLIS HAL EHWAL ANAK NEGERI SABAH ENACTMENT 1998

(Sabah No. 13 of 1998)

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Sabah LawNet

An Enactment to provide for the establishment of the Majlis Hal Ehwal Anak Negeri Sabah and for matters connected therewith and incidental thereto.

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

Short title and commencement.

1. This Enactment may be cited as the Majlis Hal Ehwal Anak Negeri Sabah Enactment 1998 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint. [4-1-1999]

Interpretation.

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

“*ada*” means a native custom or body of native customs to which lawful effect has not been given thereto under any written law and shall be deemed to include the tradition and culture of the natives;

“committee” means a committee appointed under section 10;

“Council” means the Majlis Hal Ehwal Anak Negeri Sabah established under section 3;

“Fund” means the Central Fund established under section 11;

“member” includes the President;

“Minister” means the Minister charged with responsibility for matters relating to native affairs;

“native” means any native as defined in the Interpretation (Definition of Native) Ordinance [Cap. 64.];

“native system of personal law” means the customary law applying to any community being a community forming the whole or part of any native community;

“President” means the President of the Majlis Hal Ehwal Anak Negeri Sabah;

“Secretary” means the Secretary of the Council appointed under section 8;

“Unit” means the Unit of Native Affairs in the Ministry of Local Government and Housing.

Establishment of Council.

3. (1) There shall be established a council called “The Majlis Hal Ehwal Anak Negeri Sabah” which shall be a body corporate with perpetual succession and may sue and be sued in its corporate name and perform such acts and things as a body corporate may do by law and as are necessary for, or incidental to, the carrying out of its objects under this Enactment.

(2) The Council shall have a common seal and such seal may from time to time be broken, changed, altered and made anew as the Council deems fit.

(3) The Council shall be deemed to be a native for the purpose of any written law.

Objects and functions of the Council.

4. (1) The objects of the Council shall be—
- (a) generally to advise the State Government on all matters pertaining to the native system of personal law and *adat* in Sabah;
 - (b) to examine the various *adat* of the natives and make recommendations for their application and enforcement;
 - (c) to review from time to time the customary laws of the natives and make recommendations for their amendments;
 - (d) to work towards the abolition of non-productive *adat* which is detrimental to the progress of the State;
 - (e) to explain or elucidate the different forms of *adat* of the natives; and
 - (f) to serve as a centre for the collection and dissemination of information and advice on the *adat* of the natives.

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

- (a) to initiate preliminary studies and research into the various *adat* of the natives and make recommendations to the State Government on the need to standardize and codify the *adat*;
- (b) to conduct study and research on such matters relating to the customary laws and *adat* of the natives as the Council may think fit;
- (c) to control and co-ordinate all activities relating to research on customary laws and *adat* of the natives;
- (d) to provide facilities for research and reference;
- (e) to co-operate with or to give assistance to any person or body of persons undertaking research or study on the customary laws and *adat* of the natives;
- (f) to promote and to carry out programmes for study and research on the customary laws and *adat* of the natives;
- (g) to maintain relationship with other bodies, both public and private, which are engaged in the study and research concerning the customary laws and *adat* of the natives;
- (h) to hear and resolve conflicts and disputes on matters relating to the customary laws and *adat* of the natives;
- (i) to furnish guidance in the interpretation of the customary laws and *adat* of the natives; and
- (j) to do all acts which the Minister considers desirable or expedient.

(3) Without prejudice to subsection (1) or (2), it shall also be the function of the Council to advise any person or body of persons, either on its own motion or on being

referred to it by such person or body of persons, on matters relating to the customary laws and *adat* of the natives, and shall in all such matters be the authority in the State.

(4) The Council shall be responsible to the Minister and the Minister may, from time to time, issue directives on any aspect of the functions of the Council and such directives shall be binding on the Council.

Powers of the Council.

5. (1) For the purpose of carrying out any of the objects and functions set out in section 4, the Council may—

- (a) acquire or accept leases, purchase, take, hold and enjoy any land, building, messuage or tenement of whatsoever nature or kind;
- (b) invest moneys on deposit in any bank or on mortgage of any land, building, messuage or tenement in the State or any part of Malaysia or in or upon mortgages, debentures, stocks, funds, shares or securities or any corporation or company carrying on business in the State or elsewhere;
- (c) purchase and acquire all manners of goods and chattels whatsoever;
- (d) grant, sell, convey, assign, surrender, yield up, mortgage, demise, reassign, transfer or otherwise dispose of any land, building, messuage and tenement, mortgage, debenture, stock, fund and security, goods and chattels for the furtherance of the objects of the Council;
- (e) receive Government grants, donations or accept any gift of property, whether subject to any special trust or not;
- (f) take such steps by personal or written appeals, public meetings, or otherwise, as may from time to time be deemed expedient, for the purpose of procuring contributions to the Fund;
- (g) enter into any contract or undertake and execute any trust; and
- (h) generally do such acts as it thinks fit for the purpose of achieving any of the objects of the Council.

(2) The Council may by writing, subject to such conditions or restrictions as it may impose, delegate the exercise of any of its powers or the performance of any of its functions under this Enactment to the President, Secretary or any other person as the Council may think fit: Provided that no such delegation shall preclude the Council itself from exercising any of the powers or performing any of the functions so delegated.

Members of the Council.

6. (1) The Council shall consist of the following members:
- (a) a President;
 - (b) the State Secretary or his authorised representative;
 - (c) the State Attorney-General or his authorised representative;
 - (d) the Permanent Secretary of the Ministry of Local Government and Housing or his authorised representative;
 - (e) the Secretary; and
 - (f) not more than six other members who shall have special knowledge of the customary laws and *adat* of the natives of Sabah.
- (2) Members of the Council referred to in subsection (1) except the *ex-officio* members referred to in paragraphs (b), (c), (d) and (e) shall be appointed by the Yang di-Pertua Negeri for a period of two years and may be reappointed.
- (3) Where any casual vacancy of the Council arises, the Yang di-Pertua Negeri may appoint a member to fill the vacancy.
- (4) The appointment of any member of the Council other than the *ex-officio* members may be revoked by the Yang di-Pertua Negeri at any time without giving him the opportunity of being heard.
- (5) The appointment of any member of the Council shall cease—
- (a) upon his death; or

- (b) if he resigns by notice in writing addressed to the Yang di-Pertua Negeri;
or
- (c) if he has been adjudged a bankrupt; or
- (d) if he has been absent from three consecutive meetings of the Council without leave of the President and the Council has passed a resolution declaring his membership vacant.

(6) The President and other members of the Council may be paid such allowance from the Fund and enjoy such benefits and privileges as may be determined by the Council with the approval of the Cabinet.

Meetings of the Council.

7. (1) The Council shall meet at least once in every three months or more often as is considered necessary.

(2) At least fourteen days' notice in writing shall be given to members.

(3) At least half of the total number of members of the Council present and entitled to vote at such meeting shall constitute a quorum.

(4) Subject to section 8(2), every member of the Council present shall be entitled to one vote.

(5) The President shall chair all the meetings of the Council. In the absence of the President, the members present shall elect one of their number to be Chairman of that meeting.

(6) Decisions of the Council shall be taken by the votes of the majority of the members present and voting thereon and, in the event of an equality of votes, the Chairman of the meeting shall be entitled to a second or casting vote.

Appointment of Secretary.

8. (1) The Council with the approval of the Minister may appoint a suitably qualified person who is a native to be the Secretary of the Council on such terms and conditions (including remuneration) as may be determined by the State Government.

(2) The Secretary shall be an *ex-officio* member of the Council and shall act as its secretary at all its meetings but shall not vote at such meetings.

Administration of the Council.

9. (1) The Secretary shall be responsible for the day-to-day administration and management of the affairs of the Council and to perform such duties and exercise such powers as may be entrusted or delegated by the Council.

(2) The Council may with the approval of the State Government appoint such other officers and servants as it may consider necessary for the efficient conduct of the affairs of the Council.

(3) The Secretary, other officers and servants of the Council shall be responsible to the Council.

(4) The officers and servants of the Council shall hold office for such period, or periods, receive such salaries and allowances, enjoy such privileges, be entitled to such benefits and subject to such conditions of service as may be determined by the Council with the approval of the State Government.

Power to appoint committees.

10. (1) The Council may, for any general or special purpose, appoint such committees as it thinks desirable.

(2) A committee may consist of such number of persons as may be determined by the Council and may consist of persons who are not members of the Council.

(3) A committee may invite to any of its meetings any person who in its opinion can contribute to its deliberations but such person shall have no right to vote at the meeting.

(4) The quorum for the meeting of a committee shall be not less than half the number of its membership and decision shall be taken by the votes of a majority of the members present and voting thereon and in the event of an equality of votes, the person chairing the meeting shall have a second or casting vote.

(5) The Council may make rules to regulate the procedure of committees.

Central Fund.

11. (1) For the purpose of this Enactment, there is hereby established a Central Fund to be administered and controlled by the Council—

(a) into which shall be paid—

- (i) such sums as may be provided from time to time by the Legislative Assembly;
- (ii) such grants as may be received from the State or Federal Government;
- (iii) all monies earned by the operation of any project, scheme or enterprise financed from the Fund;
- (iv) such sums as may from time to time be borrowed by the Council upon terms and conditions approved by Minister of Finance for the purpose of meeting any of its obligations or discharging any of its duties;
- (v) all monies earned or arising from any property, investment, mortgage, charge or debenture acquired by or vested in the Council; and
- (vi) all gifts, contributions, donations and bequests from individuals, companies, foundations and other sources;

(b) out of which shall be defrayed—

- (i) funds towards the promotion of the objects and general purposes of the Council;
- (ii) all expenditures incurred by the Council in carrying out its functions; and
- (iii) monies for the repayment of any loan made to the Council pursuant to its power to borrow.

(2) No portion of the Fund shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to any person.

Borrowing powers.

12. The Council may, upon the conditions approved by the Minister of Finance, borrow such sums as it may require for carrying out any of its functions under this Enactment.

Estimate of expenditure.

13. (1) The Council shall before the commencement of each financial year cause to be prepared and adopted the estimate of expenditure for the ensuing financial year and it shall be paid from the Fund.

(2) All moneys of the Fund shall be deposited with a bank approved by the Council.

(3) All cheques drawn on the account of the Fund shall be signed by such member or members of the Council and such other officer or officers as may be approved by the Council.

(4) The financial year of the Council shall be from the 1st January to the 31st December.

Account and audit.

14. (1) The Council shall keep proper accounts and other records in respect of its operations and shall prepare statement of accounts in respect of each financial year.

(2) The accounts of the Council shall be audited annually by the Auditor-General or his authorised representatives.

(3) The accounts of the Council shall be audited within seven months of the end of each financial year and within such period the Council shall cause a copy of the statement of accounts in such manner as the Minister may require to be transmitted to him together with a copy of any observation made by the Auditor-General or his authorised representatives.

Annual report.

15. The Council shall, not later than the 30th day of June of each year, cause to be made and transmitted to the Minister a report dealing with the activities of the Council during the preceding year and containing information relating to the proceedings and policy of the Council.

Secrecy and penalty.

16. (1) Except for the purpose of this Enactment or of any criminal proceedings, no member of the Council, and any committee thereof, and no officer or servant of the Council shall disclose any information with respect to any individual business, which has been obtained by him in the course of his duties and which is not published in pursuance of this Enactment.

(2) Any member knowingly contravening the provisions of subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Penal Code.

17. All members of the Council and any committee thereof and any officer or servant of the Council shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Council to determine procedure.

18. Subject to the provisions of this Enactment, the Council may determine its own procedure.

Vacancy not to invalidate acts etc.

19. (1) No act or proceeding of the Council or any committee thereof shall be questioned on account of any vacancy among the members, any defect in their appointment or in their qualification.

(2) Until the contrary is proved, every meeting of the Council, or any committee thereof shall be deemed to have been duly convened and held and all members present thereat shall be deemed to be duly appointed and qualified to be appointed.

Disclosure of interest.

20. If a member of the Council, or of any committee thereof is directly or indirectly interested in any contract, proposed contract, or other matter and is present at a meeting of the Council or of any committee thereof, at which the contract or other matter is the subject of consideration, such member shall, at the meeting or as soon as practicable after the commencement thereof, disclose the fact, and shall not thereafter be present during the consideration or discussion of and shall not vote on any question with respect to that contract or other matter.

Execution of documents.

21. All deeds, documents or other instruments requiring the seal of the Council shall be sealed in the presence of and authenticated by the President and the Secretary or such other person as the Council may from time to time appoint and such authentication shall be sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Council.

Transfer of property, liabilities, etc.

22. Upon the coming into operation of this Enactment—

- (a) all the assets and movable and immovable property of every description and all the powers, rights and privileges in connection therewith or appertaining thereto

which immediately before the date of the coming into operation of this Enactment were vested in the Unit shall forthwith vest in the Council;

- (b) all liabilities and obligations of the Unit which may have existed immediately prior to the date of the coming into operation of this Enactment shall be transferred to and vest in the Council; and
- (c) every officer of the Unit shall be transferred to hold a corresponding appointment in the Council, subject to any provision that may subsequently be made.

Rules.

23. The Minister may make rules generally for carrying out the provisions of this Enactment.

Binding effect of Statutory Bodies (Supplementary Provisions) Enactment 1997.

24. The Statutory Bodies (Supplementary Provisions) Enactment 1997 [*En. No. 9 of 1997.*] shall bind the Council.