

# STATE OF SABAH

## RUBBER INDUSTRY REPLANTING FUND ORDINANCE (Sabah Cap. 170)

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### ARRANGEMENT OF SECTIONS

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### LIST OF AMENDMENTS

<i>Ordinance / Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
9/1957	7 (2), 12 (3)	10-09-1957
14/1958	10 (1) (d), (e)	11-10-1958
4/1961	10 (1) (d) to (j), 11 (5)	29-04-1961
G.N.S. 87/1965	2 (definition of "rubber plant") 4 (d), 7 (1), (4), 8 (1), (2), 10 (1) (b) (ii) and (iii), (c) (ii), (g), (h), 11 (2) (b), 12 (2)	16-09-1963
6/1968	10 (1) (h), 12 (3)	23-08-1968
11/1974	7 (2), (3), 10 (1)( a)	01-01-1975
5/1975	7 (2), (3), 10 (1) (a)	01-01-1975
Act 160	7 (2), 13 (1)	29-08-1975
6/1978	7 (2)	04-05-1978
9/2012	PART I PRELIMINARY 2 (definition of "Cess", "conveyance", "enforcement officer" "export", "rubber"), PART II RUBBER INDUSTRY REPLANTING FUND, 5 (2), 6, 7 (6), (8), (9), 10 (1) (b), (c), 13 (1), PART III ENFORCEMENT,	22-11-2012

14, PART IV  
MISCELLANEOUS, 15, 16, 17,  
18, 19, 20

8/2016

5 (2)

01-09-2016

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To provide for the collection of cess on the export of rubber and for the establishment of a Fund into which money collected as cess is to be paid and for the administration of the Fund by the Rubber Industry Board.

[1st January, 1955.]\*

**Short title**

1. This Ordinance may be cited as the Rubber Industry Replanting Fund Ordinance.

**Interpretation**

2. In this Ordinance-

“cess” means the cess imposed under section 7;

“conveyance” means any aircraft, vehicle, vessel or any other mode of transport whether by land, sea or air;

“enforcement officer” means any officer appointed by the Board under section 14;

“export” means to take or cause to be taken out of Sabah any rubber by land, sea, inland waters or air;

“Minister” means the Minister for the time being charged with responsibility for matters relating to agriculture;

“the Board” means the Rubber Industry Board constituted under section 3 of the Rubber Industry Board Enactment 1981 [No. 25 of 1981].

“the Fund” means the Rubber Industry Replanting Fund established under section 3;

“rubber” shall have the same meaning assigned to it by the Rubber Industry Board Enactment 1981 [No. 25 of 1981];

“rubber plant” includes any of the following plants:-

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\* In force 1st January, 1955 - See G.N.S. 33/1955.

- (a) Hevea Brasiliensis (para rubber);
- (b) Manihot Glaziovii (Ceara rubber);
- (c) Castilloa Elastica;
- (d) Ficus Elastica (Rambong);
- (e) any plant which the Yang di-Pertua Negeri<sup>‡</sup> may by notification in the *Gazette* declare to be a rubber plant for the purposes of this Ordinance.

PART II  
RUBBER INDUSTRY REPLANTING FUND

**Establishment of Fund**

3. For the purposes of this Ordinance, there shall be a Rubber Industry Replanting Fund.

**Moneys of the Fund**

4. The Fund shall consist of-
- (a) all moneys collected under section 7;
  - (b) all moneys raised under section 8;
  - (c) all interest on investments; and
  - (d) such other receipts as the Yang di-Pertua Negeri may direct to be part of the Fund.

**Object of the Fund**

5. (1) The object of the Fund shall be to finance in the manner set out in section 10 the

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<sup>‡</sup> Throughout the Ordinance "Yang di- Pertua Negeri" substituted for "Yang di-Pertua Negara" by virtue of Enactment No. 17 of 1976.

cost of replanting or new planting of rubber plants or the planting of other crops in substitution for rubber plants as approved by the Board.

- (2) Notwithstanding subsection (1), the Board may utilise the moneys of the Fund, -
- (a) for the purpose of purchasing rubber from the owners of properties under the schemes set out in section 10 and such monies shall be deemed as an advance from the Fund and shall be reimburseable; or
  - (b) for any such activities as the Minister shall determine from time to time to improve the economic wellbeing of smallholders or relating to the improvement and welfare of smallholders.

(3) For the avoidance of doubt it is hereby declared that for the purposes of this Ordinance –

- (a) the replanting of rubber plants means the planting of rubber plants on any land which is already planted with rubber, or on any land on which after the thirty-first day of December, 1945 rubber plants have been planted; and
- (b) new planting of rubber plants means the planting of rubber plants on any land which has not at any time been planted with rubber.

#### **Vesting of Fund in the Board, and powers of the Board**

6. Subject to the provisions of this Ordinance, the Fund shall vest in the Board, and the Board shall have the general management, administration and control of the Fund and for that purpose may –

- (a) pending the division of the Fund under the provisions of subsection (1) of section 11 invest the moneys of the Fund;
- (b) notwithstanding anything contained in the Rubber Industry Board Enactment 1981 [No. 25 of 1981] employ wholly or partly for the purposes of this Ordinance any member of the staff of the Board employed under the Rubber Industry Board Enactment 1981 [No. 25 of 1981] and appoint such other officers and

employ such other persons as it may think necessary for the administration of the Fund, and every such member, officer and person while so employed shall be deemed to be public servant within the meaning of the Penal Code [F.M.S. Cap. 45.]; and

- (c) do all such things as the Board considers necessary or expedient for furthering the interests of the Fund or carrying out the object thereof.

**Power of the Yang di-Pertua Negeri to make orders imposing a cess or cesses on rubber**

7. (1) The Yang di-Pertua Negeri on the recommendation of the Board may, for the purposes of this Ordinance, make orders† providing for the imposition and collection of a cess or cesses on rubber exported from Sabah.

(2) The cess imposed under the provisions of subsection (1) or, if more than one cess is imposed, such several cesses may be expressed either as a percentage or percentages of the price of the rubber on the day it is exported as declared under and for the purposes of the Customs Act, 1967 [Act 235.] or as a fixed amount per kilogramme weight of such rubber:

Provided that any such imposed cess or cesses may not amount together to more than five percentum of such price, subject always to the further provision that when any cess has been imposed, howsoever expressed, the amount to be paid shall not be less than 4.4 sen per kilogramme.

(3) Unless otherwise prescribed in such orders, such cess or cesses shall be collected in the same manner as a duty imposed under the Customs Act, 1967 [Act 235.] and the provisions of that Act shall apply to the collection of such cess or cesses.

(4) Every order made under subsection (1) shall be laid on the table of the Legislative Assembly at the next meeting after the publication of such order in the *Gazette*.

(5) All moneys collected under an order made under subsection (1) shall be paid

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† See G.N.S. 50/1962.

into the Fund within sixty days from the end of the month to which such collection relates.

(6) An order made under this section may prescribe different amounts, rates and manner of collection for different types or grades of rubber.

(7) The amount of any cess imposed under this section shall be a debt due to the Board from the person on whom the cess is imposed and may be sued for and recovered in any court at the suit of the Board.

(8) The institution of proceedings under this section shall not relieve any person from liability for the payment of any cess for which he is or may be liable or from liability to make any return which he is required by this Ordinance to make.

(9) A person who fails or refuses to pay any cess imposed under this section commits an offence and shall, on conviction, be liable to a fine not exceeding ten times the amount of cess due or to imprisonment for a term not exceeding three years or to both.

#### **Power of the yang di-Pertua Negeri to make orders authorising loans**

8. (1) The Yang di-Pertua Negeri on the recommendation of the Board may, for the purposes of this Ordinance, make orders authorising the Board, subject to such conditions as may be specified in any such order to raise loans of such moneys as may be so specified.

(2) Every order made under subsection (1) shall be laid on the table of the Legislative Assembly at the next meeting after the publication of such order in the *Gazette*.

(3) All moneys borrowed under an order made under subsection (1) shall be paid into the Fund forthwith upon receipt.

#### **Expenses of the Fund**

9. All costs, charges and expenses of administering the Fund (including the costs of servicing and repaying any loan raised under an order made under subsection (1) of section 8 but not including costs, charges and expenses arising from the implementation of schemes made under section 10) shall be chargeable to the Fund and may be paid by the Board thereout from time to time



### Utilisation of the Fund

10. (1) The Board may make a scheme or schemes\* for the utilisation of the moneys in the Fund for the object mentioned in section 5 in accordance with the following provisions: -

- (a) Separate schemes shall be made on behalf of –
  - (i) owners of properties (whether consisting of one parcel of land or made up of two or more parcels) of which an area of not less than one hundred acres is planted with or set apart for the planting of rubber plants or on which at any time after the thirty-first day of December, 1954, rubber plants have been planted and in respect of which certificates of production and statements of expenditure on replanting or new planting are submitted to the satisfaction of the Board, which shall be known as “Account A Schemes”; and
  - (ii) owners of properties (whether consisting of one parcel of land or made up of two or more parcels) of which an area of less than one hundred acres is planted with or set apart for the planting of rubber plants, and of such owners of properties of which an area of not less than one hundred acres is planted with or set apart for the planting of rubber plants as have not been admitted to participate in any Account A Scheme or, having been admitted to participate in an Account A Scheme have been removed therefrom in accordance with the provisions of such scheme, which shall be known as “Account B Schemes”.
- (b) Account A Schemes shall be administered on behalf of the Board by five Administrators, being-
  - (i) the Chairman of the Board;
  - (ii) a person nominated by Sabah Planters Association;

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\* See G.N.S. 71/1955, 15/1981.

- (iii) a member of the Board;
- (iv) the General Manager of the Board; and
- (v) a participant of Account A Schemes nominated by the participants of Account A Schemes,

who shall be responsible to the Board for the division, distribution and general administration of Account A established as provided under section 11, the investment of any moneys in such Account, and the verification of all accounts, particulars and evidence received from persons applying for admission or admitted to participate in any Account A Schemes.

- (c) Account B Schemes shall be administered on behalf of the Board by five Administrators, being-

- (i) the Chairman of the Board;
- (ii) the General Manager of the Board; and
- (ii) three members of the Board (neither of whom shall be an Administrator of Account A Schemes),

who shall be responsible to the Board for the division, distribution and general administration of Account B established under section 11, the investment of any moneys in such Account, and the verification of all accounts, particulars and evidence received from the persons applying for admission or admitted to participate in any Account B Schemes.

- (d) Account A Schemes shall be based on the principle that owners admitted to participate in such schemes shall be eligible-

- (i) to recover all or such part as may be specified in any such scheme of the moneys actually expended by them or, in such circumstances as the Board may approve, by any of their predecessors in title –

- (aa) in the period beginning on the first day of January, 1946, and ending upon the commencement of this Ordinance, on the planting or replanting of their properties with rubber plants specified in such scheme or any other crop or crops to the satisfaction of the Board; and
  - (bb) after the commencement of this Ordinance, on the planting or replanting of their properties with rubber plants specified in such scheme to the satisfaction of the Board or on the planting, with the approval of the Board of any other crop or crops; and
- (ii) to receive such other moneys as the Board may approve having regard to the sums contributed by such owners to the Fund by way of cess and to the extent to which their properties have been planted or replanted with rubber plants or any other crop or crops approved by the Board.
- (e) For the purposes of paragraph (d) expenditure incurred by the tenant or lessee of any land on the replanting or new planting of rubber plants or the planting of other crop or crops in substitution for rubber plants on such land shall be deemed to be moneys actually expended by the owner:

Provided that the paragraph shall not apply unless proof of such expenditure has been established to the satisfaction of the Board either by the submission of audited and certified statements prepared by accountants approved by the Board or by other evidence of a character approved by the Board.

- (f) Account B Scheme shall be based on the principle that owners admitted to participate in such schemes shall be eligible for such grants as may be payable under any such scheme on condition that they plant or replant their properties with such rubber plants as may be specified and in such manner as may be provided for in such scheme or, with the approval of the Board, replant their properties with another crop or crops and that they maintain any area so planted or replanted to the satisfaction of the Board :

Provided that grants may be made payable under any such scheme in respect of any rubber plants specified in such scheme planted in the period beginning on the first day of January, 1946, and ending upon the commencement of this Ordinance.

- (g) All schemes shall be submitted by the Board to the Yang di-Pertua Negeri for his approval and shall not come into operation until such approval is signified.
- (h) Any scheme shall as soon as it has been approved by the Yang di-Pertua Negeri as provided in paragraph (g) be transmitted without delay by the Board to the Chief Minister who shall publish in the *Gazette* such particulars of such scheme as it appears to him to be desirable in the public interest to publish.
- (i) The Board may remove from participation in Account A Schemes any owner of land who ceases to be qualified for admission to participate under the provisions of subparagraph (i) of paragraph (a) and any owner of land who fails to conform to the requirements of these schemes.

(2) For the purposes of this section any land the title to which does not prohibit the planting of rubber shall be deemed to be set apart for the planting of rubber plants.

(3) Any decision of the Board as to whether any person is or is not entitled under this Ordinance or under any scheme made under subsection (1) to be admitted to participate in such scheme or receive any payment thereunder shall be final, but nothing in this subsection shall be deemed to prevent the Board at a later date, on the application of any person affected, from reviewing and, if it considers fit, altering such decision.

#### **Division of the Fund**

11. (1) The Board, after setting aside from the Fund a sum calculated to be sufficient to cover the costs, charges and expenses mentioned in section 9, shall from time to time as the Board may by resolution decide but so that such division shall take place at least once in every calendar year, divide the moneys in the Fund into two parts to be known as "Account A" and "Account B" respectively.

- (2) The division mentioned in subsection (1) shall be made –
- (a) as to moneys in the Fund being moneys collected by way of cess under this Ordinance, in such proportions as in the opinion of the Board correspond to the amount of rubber produced by the owners who at the date of such division are admitted to participation in Account A Schemes and by owners who are not so admitted respectively; and
  - (b) as to all other moneys in the Fund, in such proportions as the Board may with the approval of the Yang di-Pertua Negeri determine.

(3) For the purposes of subsection (2) rubber produced on any land shall be deemed to have been produced by the owner of such land.

(4) The Board shall then make Account A available to the Administrators mentioned in paragraph (b) of subsection (1) of section 10 and Account B available to the Administrators mentioned in paragraph (c) of subsection (1) of section 10 for the purposes of Account A Schemes and Account B Schemes respectively, including the payment of all costs, charges and expenses arising from the implementation of such schemes.

(5) The Board may from time to time transfer from Account A to Account B any sums credited to Account A under the provisions of subsection (2) in respect of rubber produced by the owners of land removed from participation in Account A Schemes in accordance with the provisions of paragraph (i) of subsection (1) of section 10.

#### **Accounts of the Fund**

12. (1) The Board shall cause full and true accounts of the Fund to be kept which shall include separate accounts in respect of Account A and Account B and shall, as soon as possible after the thirty-first day of December of each year, issue a report of the Fund together with a balance sheet and an account of income and expenditure during the preceding year, calculated from the first day of January or from the date of the establishment of the Fund to the thirty-first day of December, and a list of the investments (if any) of the Fund showing their cost price and value at such last mentioned date.

- (2) The annual balance sheet, account of income and expenditure and list of

investments (if any) of the Fund shall, prior to the issue thereof, be audited by the Auditor-General or such auditor as the Yang di-Pertua Negeri may appoint.

(3) The annual report of the Board and the Auditor's report shall be transmitted by the Board to the Chief Minister as soon as possible after the thirty-first day of December of each year and shall be laid on the table of the Legislative Assembly by the Chief Minister and published in the *Gazette*.

### **Power of the Board and Administrator to require information**

13. (1) The Board or any Administrator or any person acting on behalf of either may require any person to submit any information which, in the opinion of the Board or of an Administrator, is necessary for the discharge of the duties of the Board or of such Administrator (as the case may be) under this Ordinance; and any person who wilfully or without reasonable excuse refuses to give such information to the Board or to such Administrator or person or who knowingly or negligently gives any information which is false in any material particular shall be guilty of an offence and shall be liable to a fine of twenty thousand ringgit.

(2) Where an offence under subsection (1) has been committed by a body corporate, any person who at the time of the commission of such offence was a director, general manager, secretary or similar officer of the body corporate or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

## **PART III ENFORCEMENT**

### **Enforcement officer**

14. (1) For the purpose of this Part, "enforcement officer" means any officer of the Board or any public officer appointed by the Board as an enforcement officer under section 25D of the Rubber Industry Board Enactment 1981 [No. 25 of 1981] and shall have the same powers provided for in PART VA of the said Enactment.

(2) PART VA of the said Enactment shall have effect as if they have been made under this Ordinance.

#### PART IV MISCELLANEOUS

##### **Presumption**

15. (1) For the purpose of export, rubber shall be presumed to be taken or caused to be taken out of Sabah if the rubber has been loaded on to a conveyance.

(2) Where any rubber is found in the state it shall be presumed unless the contrary is proved that such rubber has been produced in Sabah.

##### **Prosecution**

16. No prosecution for or in relation to any offence under this Ordinance shall be instituted without the sanction in writing by the Public Prosecutor.

##### **General Penalty**

17. Any person who commits an offence under this Ordinance for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

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

18. No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against the Board, any member of the Board, any member of a committee, any officer or servant of the Board, any enforcement officer or any other person engaged by the Board in respect of any act, neglect or default done or any omission by it or him in good faith in such capacity.

## **Public Authorities Protection Act 1948**

**19.** The Public Authorities Protection Act 1948 [Act 198.] shall apply to any action, suit, prosecution or proceeding against the Board, any member of the Board, any member of a committee, any officer or servant of the Board, any enforcement officer or any person engaged by the Board in respect of any act, neglect, or default done or any omission by it or him in such capacity.

## **Regulations**

- 20.** (1) The Minister may make regulations for all or any of the following purposes :
- (a) prescribing the manner of applying for licences, certificates, permits and approvals under this Ordinance, the particulars to be supplied by an applicant, the manner of licensing and certification, the fees payable therefor, the conditions or restrictions to be imposed and the form or forms of licences, certificates, permits and approvals;
  - (b) prescribing the standards of processing and methods of preserving, grading or packaging rubber including prescribing the marks to be stamped or otherwise inscribed on rubber or raw rubber packed for export;
  - (c) prescribing the procedure to be followed by exporters in exporting rubber;
  - (d) providing for the maintenance of proper standards of conduct in the carrying out of the rubber trade and the rubber industry and for dealing with infringements thereof;
  - (e) prescribing the procedure to be followed for the administration of the Fund;
  - (f) prescribing the forms for the purposes of this Ordinance;
  - (g) prescribing the fees and charges payable under this Ordinance and the manner for collecting and disbursing such fees;
  - (h) providing for the regulation of all or any of the activities of the Board and



generally the performance of the functions, the exercise of the powers and discharge of the duties of the Board under this Ordinance; and

- (i) providing for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Ordinance and for their due administration.

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