

STATE OF SABAH

(Sabah No. 1 of 1997)

SABAH ENERGY CORPORATION (SUCCESSOR COMPANY) ENACTMENT 1997

ARRANGEMENT OF SECTIONS

PART I PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.

PART II

VESTING OF PROPERTY, ETC., IN SUCCESSOR COMPANY

3. Vesting provisions.
4. Initial Government holding in the successor company.
5. Government investments in securities of the successor company.
6. Exercise of the functions of the Chief Minister, State of Sabah through nominees.
7. Financial structure of the successor company.

PART III
PROVISIONS RELATING TO STAFF

8. Staff.
9. Continuation and completing of disciplinary proceedings.
10. Existing agreements and pending proceedings.
11. repeal of Enactment No. 31 of 1981 and transitional provisions.

Sabah LawNet

An Enactment to provide for the vesting of the property, rights and liabilities of the Sabah Energy Corporation, relating to the development of energy resources of the State of Sabah and the promotion, stimulation, facilitating and undertaking of agricultural, industrial, commercial, economic and other development projects in a company, to make financial arrangements for that company, to provide for matters relating to staff and for other matters connected therewith, and to repeal the Sabah Energy Corporation Enactment 1981.

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

PART I
PRELIMINARY

Short title and commencement.

1. This Enactment may be cited as the Sabah Energy Corporation (Successor Company) Enactment 1997 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint. [01.08.1997]

Interpretation.

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

"Corporation" means the Sabah Energy Corporation established under the Sabah Energy Corporation Enactment 1981 [En. No. 31 of 1981];

"Chief Minister, State of Sabah" means the body corporate under the name of "Chief Minister, State of Sabah" incorporated by the Chief Minister (Incorporation) Ordinance [Cap. 23.];

"debenture" includes debenture stock;

"liabilities" means liabilities, debts, charges, duties and obligations of every description and howsoever arising (whether present or future, actual or contingent, and whether payable or to be observed or performed in Malaysia or elsewhere);

"Minister" means the Chief Minister appointed for the time being in the State of Sabah and includes a Minister for the time being performing the duties of the Chief Minister in his absence as may be assigned by the Yang di-Pertua Negeri;

"Permanent Secretary of the Ministry of Finance" means the principal officer in charge of the financial affairs of the State of Sabah;

"property" includes all properties, movable or immovable, and all estates, interests, easements and rights, whether equitable or legal in, to or out of property, contracts, choses-in-action, money and goodwill, and "vested", in relation to property, includes rights to property which are future or contingent and rights in reversion and remainder;

"rights" means all rights, licences, powers, privileges and immunities, whether actual, contingent or prospective;

"securities", in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

"shares", in relation to the company, means shares in, or stock forming part of, the capital of the company;

"State Government" means the Government of the State of Sabah;

"subsidiary" has the same meaning as in the Companies Act 1965 [Act 125.];

"successor company" means the company nominated by the Minister under subsection (1) of section 3;

"undertakings", in relation to the Corporation, means all lands, buildings, assets, powers, rights, interests, privileges, debts, liabilities and obligations and other property, movable or immovable, vested in or held by the Corporation immediately before the vesting date for the purposes of the Corporation in respect of the development of energy resources of the State of Sabah and the promotion, stimulation, facilitation and undertaking of agricultural, industrial, commercial, economic and other development projects in the State of Sabah;

"vesting date" means the date on which the property, rights and liabilities comprised in the undertakings of the Corporation and which are specified by the Minister under subsection (1) of section 3 become, by virtue of that section and without further assurance, the property, rights and liabilities of the successor company.

PART II

VESTING OF PROPERTY, ETC., IN SUCCESSOR COMPANY

Vesting provisions.

3. (1) Subject to this Enactment, the Minister may from time to time, by order published in the *Gazette*, appoint a vesting date and on such date, such property, rights and liabilities comprised in the undertakings of the Corporation specified by the Minister in such order shall become, by virtue of this section and without any conveyance, assignment, transfer or other assurance whatsoever, the property, rights and liabilities of a company nominated for the purposes of this section by the Minister (referred to in this Enactment as the "successor company") and which shall be initially owned by the Chief Minister, State of Sabah.

(2) Any immovable property to be transferred to and vested in the successor company under subsection (1) shall be held by the successor company on such title, estate, interest and tenure as that held by the Corporation immediately before the vesting date.

(3) Every chose-in-action to be transferred to and vested in the successor company under subsection (1) may, on or after the vesting date, be sued on, recovered or enforced by the successor company in its own name and it shall not be necessary for the successor company or the Corporation to give notice to the person liable under the chose-in-action of the vesting effected by subsection (1).

(4) Every right and liability to be transferred to and vested in the successor company under subsection (1) may, on or after the vesting date, be sued on, recovered or enforced by or against the successor company in its own name and it shall not be necessary for the successor company to join or include the Corporation in any legal action with regard to any such right or liability.

(5) In the case of rights and liabilities arising under any loans which are to be transferred to and vested in the successor company on the vesting date, the successor company may enter into such arrangements or agreements over such rights and liabilities with the Corporation or any third party.

(6) Where by virtue of subsection (1) any land is transferred to and vested in the successor company, the delivery of a copy of the order concerned shall, notwithstanding any provision of any written law to the contrary, be sufficient authority to any public officer charged with the responsibility for registering dealings with land or the issue of title thereto, and any such officer shall thereupon, without payment of fee, take all necessary steps to perfect the title to the successor company to such land.

(7) If any question arises as to whether any particular property, right or liability of the Corporation has been transferred to or vested in the successor company under this Enactment, a certificate under the hand of the Minister shall be conclusive evidence that the property, right or liability was or was not so transferred or vested.

(8) It is hereby declared for the avoidance of doubt that –

(a) any reference in this Enactment to property comprised in the Corporation's undertakings is a reference to such property of the Corporation whether situated in Sabah or elsewhere; and

(b) any such reference to rights and liabilities comprised in the Corporation's undertakings is a reference to such rights to which the Corporation is entitled or, as the case may be, such liabilities to which the Corporation is subject, whether under the laws of Malaysia or any country outside Malaysia and includes rights and liabilities arising under loans raised in relation to the Corporation's undertakings.

(9) It shall be the duty of the Corporation and of the successor company to take all such steps as may be requisite to secure that the vesting in such company by virtue of this section of any foreign property, right or liability is effective under the relevant foreign law and until such time it shall be the duty of the Corporation to hold that property or right for the benefit of, or to discharge that liability on behalf of, such company.

(10) Nothing in subsection (9) shall be taken as prejudicing the effect under the laws of Malaysia of the vesting in the successor company by virtue of this section of any foreign property, right or liability.

(11) Any expenses incurred and liabilities discharged by the Corporation under subsection (9) shall be paid by the successor company.

(12) In subsections (9) and (10), references to any foreign property, right or liability are references, respectively, to any property, right or liability comprised in the Corporation's undertakings in respect of which any issue arising in any proceedings would have been determined (in accordance with the rules of conflict of laws) by reference to the law of a country or territory outside Malaysia.

Initial Government holding in the successor company.

4. (1) As a consequence of the vesting in the successor company by virtue of subsection (1) of section 3 of the property, rights and liabilities comprised in the Corporation's undertakings, the successor company shall issue such securities of the successor company as the Minister may from time to time direct –

- (a) to the Chief Minister, State of Sabah; or
- (b) with the approval of the Cabinet, to any person as the Minister may determine.

(2) The Minister shall not give a direction under subsection (1) at a time when the successor company has ceased to be wholly owned by the Chief Minister, State of Sabah.

(3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time and on such terms as to allotment as the Minister may direct.

(4) Shares in the successor company issued in pursuance of this section –

- (a) shall be of such nominal value as the Minister may direct; and
- (b) shall be issued as fully paid and treated for the purposes of the Companies Act 1965 [Act 125.] as if they had been paid up by virtue of the payment to the successor company of their nominal value.

(5) The Chief Minister, State of Sabah may, after consultation with the Cabinet, dispose of any securities issued or of any rights to securities initially allotted to the Chief Minister, State of Sabah in pursuance of this section.

(6) Any dividends or other sums received by the Chief Minister, State of Sabah as a right of, or on the disposal of, any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

Government investment in securities of the successor company.

5. (1) The Chief Minister, State of Sabah may, after consultation with the Cabinet, at any time, acquire –

- (a) securities of the successor company or of any subsidiary of the successor company; or
- (b) rights to subscribe for any such securities.

(2) The Chief Minister, State of Sabah may, after consultation with the Cabinet, dispose of any securities or rights acquired by virtue of this section.

(3) Any expenses incurred by the Chief Minister, State of Sabah in consequence of the provisions of this section shall be treated as investments and be authorised under section 8(3)(b)(iv) of the Financial Procedure Act 1957 [Act 61].

(4) Any dividends or other sums received by the Chief Minister, State of Sabah as a right of, or on the disposal of, any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.

Exercise of the functions of the Chief Minister, State of Sabah through nominees.

6. (1) The Chief Minister, State of Sabah may, after consultation with the Cabinet, appoint such persons as he thinks fit to act as his nominees for the purposes of section 4 or 5 and -

- (a) securities of the successor company may be disposed of by virtue of section 4 to any nominee of the Chief Minister, State of Sabah appointed

for the purposes of that section or to any person as the Minister may determine; and

(b) any such nominee appointed for the purposes of section 5 may acquire securities or rights in accordance with that section.

(2) Any person holding any securities or rights as a nominee of the Chief Minister, State of Sabah by virtue of subsection (1) shall hold and deal with them on such terms and in such manner as the Chief Minister, State of Sabah may direct.

Financial structure of the successor company.

7. (1) If the Minister so directs at any time before the successor company ceases to be wholly owned by the Chief Minister, State of Sabah such sum (not exceeding the accumulated realised profits of the Corporation in connection with its undertakings) as may be specified in the direction shall be carried by the successor company to a reserve (referred to in this section as "the statutory reserve").

(2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the successor company as fully-paid bonus shares.

(3) For the purpose of any statutory accounts of the successor company –

(a) the vesting effected by virtue of subsection (1) of section 3 shall be taken to have been a vesting of the property, rights and liabilities comprised in the Corporation's undertakings to which the Corporation was entitled or subject on the vesting date and which was vested in the successor company under that subsection; and

(b) the value of any asset or right or the amount of any liability of the Corporation taken to have been vested in the successor company by virtue of paragraph (a) shall be taken to be the value or, as the case may be, the amount assigned to the asset, right or liability in the statement of accounts prepared by the Corporation in respect of the last complete

accounting year of the Corporation ending on the date immediately before the vesting date.

(4) For the purpose of any statutory accounts of the successor company, the amount to be included in respect of any item shall be determined as if anything done by the Corporation (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision of reserve, or otherwise) had been done by the successor company.

(5) Without prejudice to the generality of subsection (4), the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Corporation had been realised and retained by the successor company.

(6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the Companies Act 1965 [Act 125].

(7) For the purposes of this section, "complete accounting year" means an accounting year ending with 31st December or a period to be determined by the Permanent Secretary of the Ministry of Finance.

PART III

PROVISIONS RELATING TO STAFF

Staff.

8. (1) As from a date to be appointed by the Minister by notification in the *Gazette* (referred to in this Enactment as the "staff transfer date"), every person who immediately before that date was a member of the staff of the Corporation shall be transferred to the service of the successor company on terms and conditions of service not less favourable than the terms and conditions of service to which he was entitled immediately before the staff transfer date.

(2) Until such time as contracts of service are drawn up by the successor company, the schemes and terms and conditions of service in the Corporation shall continue to apply to

every person transferred to the service of the successor company under subsection (1) as if he were still in the service of the Corporation.

Continuation and completion of disciplinary proceedings.

9. (1) Where, on the staff transfer date –
- (a) any disciplinary proceedings have been initiated against any employee of the Corporation transferred to the service of the successor company under subsection (1) of section 8 by the issue of a charge or charges to such employee under the relevant regulations in force immediately before the staff transfer date, and such proceedings are pending before the Corporation or in the course of being heard or investigated by the Corporation or had been heard or, investigated by the Corporation and no order or decision has been rendered thereon; or
 - (b) any such employee has been interdicted pending disciplinary proceedings,

the successor company shall carry on and complete the hearing or investigation and make an order or render a decision, as the case may be.

- (2) Where, on the staff transfer date, any penalty (other than dismissal) has been imposed on any employee of the Corporation transferred to the service of the successor company under subsection (1) of section 8 pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be served by such employee, he shall, on his transfer to the service of the successor company under that subsection, serve or continue to serve such penalty to its full term as if it had been imposed by the successor company, and the penalty shall remain valid against the employee on his transfer to the service of the successor company and shall continue in full force and effect until he has served the penalty in full.

Existing agreements and pending proceedings.

10. (1) All deeds, bonds, agreements, instruments and working arrangements subsisting immediately before the vesting date or the staff transfer date affecting the

undertakings transferred to the successor company under subsection (1) of section 3 or affecting any employee of the Corporation transferred to the service of the successor company under subsection (1) of section 8, as the case may be, whether or not in writing and whether or not such a nature that the rights and liabilities thereunder are capable of assignment by the Corporation shall continue in full force and effect on and after that date and shall be enforceable by or against the successor company as if instead of the Corporation or any person acting on behalf of the Corporation, the successor company had been named therein or had been a party thereto.

(2) Any proceedings or cause of action relating to the undertakings transferred to the successor company under subsection (1) of section 3 or to any employee of the Corporation transferred to the service of the successor company under subsection (1) of section 8 pending or existing immediately before the vesting date or the staff transfer date, as the case may be, by or against the Corporation or any person acting on its behalf may be continued and shall be enforced by or against the successor company.

Repeal of Enactment No. 31 of 1981 and transitional provisions.

11. (1) The Sabah Energy Corporation Enactment 1981 shall be repealed on such date as the Minister may, by notification in the *Gazette* appoint (referred to in this Enactment as the "repealing date").

(2) Any scheme, contract, document, licence, permission or resolution prepared, made, granted or approved under the repealed Enactment upon its repeal shall, so far as it is not inconsistent with the provisions of this Enactment, continue and be deemed to have been prepared, made, granted or approved under the corresponding provisions of this Enactment.

(3) In any written law, any reference to the repealed Enactment after the repealing date shall be read as a reference to this Enactment in so far as it is relevant and applicable.