

STATE OF SABAH

STATUTORY BODIES (SUPPLEMENTARY PROVISIONS) ENACTMENT 1997 (Sabah No. 9 of 1997)

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LIST OF AMENDMENTS

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
G.N.S. 632/1998	Sch..	24-08-1998
G.N.S. 10/2002	Sch.	
4/2004	21	14-10-2004

Sabah LawNet

An Enactment to make supplementary provisions relating to the management of all statutory bodies incorporated pursuant to the provisions of State laws and to provide for all matters connected therewith.

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

PART I
PRELIMINARY

Short title, commencement and application.

1. (1) This Enactment may be cited as the Statutory Bodies (Supplementary Provisions) Enactment 1997, and shall come into force on the date of its publication in the *Gazette*. [c.i.f. 31.12.1997]

(2) Save as otherwise provided in this Enactment, the provisions of this Enactment shall apply to all statutory bodies listed in the Schedule and the members thereof and other persons in the service of the statutory bodies, and shall be read together and construed as one with the provisions of the State law pursuant to which a statutory body is incorporated.

Interpretation.

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

"accounting officer" means the accountant, the financial controller, or any other officer who is charged with the duty of collecting, receiving, custody, disposal of or accounting for the moneys of a statutory body;

"Auditor-General" means the Auditor-General of the Federation appointed under Article 105(1) of the Federal Constitution, and includes any person acting on his behalf or pursuant to authority issued by him;

"bank" means any bank licensed under the Banking and Financial Institutions Act 1989 [Act 372.] or under the Islamic Banking Act 1983 [Act 276.] to undertake the business of banking or to undertake merchant banking in Malaysia or to carry on off-shore banking business in the Federal Territory of Labuan under the Offshore Banking Act 1990 [Act 443.];

"bad debts" means any sum of money incurred by, or due, owing or payable to, a statutory body which had become irrecoverable for whatever reason, and includes sums expended by a statutory body on any project or investment which has been abandoned, failed or lost;

"capital assets" means any immovable property belonging to a statutory body, and any shares, securities, stocks and other forms of investment in any company held or registered in the name of a statutory body;

"Chairman", in relation to a statutory body, means the Chairman thereof appointed pursuant to the provisions of the State law under which that statutory body is constituted or established;

"Chief Executive Officer", in relation to a statutory body, means its principal executive officer, by whatsoever name or style designated, who is responsible for the day-to-day administration and management of that statutory body;

"company" shall have the same meaning assigned to it in section 4(1) of the Companies Act 1965 [Act 125.] and includes a foreign company and a corporation as defined in the said section of the Act;

"Deputy Chairman", in relation to a statutory body, means the Deputy Chairman thereof appointed pursuant to the provisions of the State law under which that statutory body is constituted or established;

"financial institution" means any company licensed under the Banking and Financial Institutions Act 1989 [Act 372.] to undertake the business of a finance company or to undertake a scheduled business as defined in the said Act;

"holding company" shall have the same meaning as that assigned to it in section 5(4) of the Companies Act 1965 [Act 125.];

"member" means any person appointed as a member of a statutory body or as a director or Trustee of the Board of that statutory body pursuant to the provisions of the State law establishing or constituting that body and includes the Chairman and Deputy Chairman;

"Minister", in relation to a statutory body, means the Minister for the time being responsible for the statutory body;

"related company", in relation to a statutory body, shall have the same meaning as that assigned to it in section 6 of the Companies Act 1965 [Act 125.];

"State Financial Authority" shall have the same meaning as assigned to that expression in the Financial Procedure Act 1957 [Act 61.];

"statutory body" means any body corporate listed in the Schedule incorporated pursuant to the provisions of a State law but does not include a local authority;

"subsidiary company" shall have the same meaning as that assigned to it in section 5 of the Companies Act 1965 [Act 125.] and includes a company wherein a statutory body holds or acquires in aggregate, directly or indirectly, more than one-half of the company's shares based on paid-up capital of such company.

Inconsistency with any other State law.

3. In the event of any inconsistency between the provisions of this Enactment and of the State law pursuant to which a statutory body is incorporated, the provisions of this Enactment shall prevail and the State law shall, to the extent of the inconsistency, be void.

PART II

ACCOUNTS OF STATUTORY BODIES

Time limit for submission of accounts for auditing.

4. (1) Every statutory body shall keep or shall cause to be kept proper accounts and other records in respect of its operations in accordance with generally accepted commercial accounting principles and practices and shall cause to be prepared a statement of its accounts in respect of each financial year and shall, not later than the 31st day of July of each year or such extension thereof as may be granted in writing by the State Financial Authority pursuant to section 5, submit its accounts for the preceding financial year to the Auditor-General for audit.

(2) A copy of the statement of accounts referred to in subsection (1) shall also be sent by the statutory body to the State Financial Authority within the same period provided therein.

(3) The Auditor-General shall cause the statement of accounts to be audited, and may authorise any person appointed by him to undertake, at the expense of that body, the audit of the statement of accounts on the Auditor-General's behalf or under his directions.

(4) The provisions of the Audit Act 1957 [Act 62.] shall apply to the audit of the accounts of every statutory body.

(5) The State Financial Authority may from time to time issue directions and instructions to statutory bodies regarding -

- (a) the manner in which books and accounts shall be kept;
- (b) the form in which statements of accounts shall be submitted for audit;
- (c) the accounting policies and principles to be followed; and
- (d) the keeping and disposal of accounting records.

Application for extension of time limit.

5. (1) Where a statutory body is unable to submit its accounts for the preceding financial year for audit not later than the 31st day of July of each year, it shall, before the expiry of such time limit, apply in writing to the State Financial Authority for an extension thereof setting out the reasons or grounds in support of such application.

(2) Where a statutory body applies under subsection (1) for an extension of the time limit for the submission of its accounts for audit, the State Financial Authority, if satisfied with the reasons or grounds for the application, may grant such extension of the time limit as may be deemed necessary but such extension shall not in any case exceed a period of three months in the aggregate in respect of each financial year, and the statutory body shall then submit its statement of accounts for audit within the time limit as extended.

Submission of report to Minister.

6. (1) Every statutory body shall, in respect of each financial year and within one month after the receipt of its audited statement of accounts and the Auditor-General's report thereon, if any, submit the same to the Minister together with a report of its activities.

(2) Where the Auditor-General has in his report pointed out any discrepancy, irregularity and abnormality in the accounts of a statutory body, the Chief Executive Officer shall submit, with the Auditor-General's report, an explanation for such discrepancy, irregularity and abnormality and the action taken or would be taken by the statutory body to rectify the same to the Minister.

(3) A copy of the report and explanation referred to in subsections (1) and (2) shall also be sent by the statutory body to the State Financial Authority who shall bring to the notice of the Minister any incompetence or repeated negligence on the part of the officers of the statutory body in the discharge of their financial duties for appropriate action to be taken under section 16.

Minister to cause audited statement of accounts to be laid before the Legislative Assembly.

7. The Minister shall, as soon as may be practicable on receipt of the audited statement of accounts, the Auditor-General's report thereon, if any, and the report of activities of a statutory body and the explanation by the Chief Executive Officer referred to in section 6, cause the same to be laid before the Legislative Assembly.

Restrictions on acts of statutory bodies.

8. (1) A statutory body shall not, without the prior written of the Cabinet –
- (a) undertake or authorise the undertaking of any work or service or purchase in excess of such sum as may be directed by the Cabinet generally or in any particular case;
 - (b) dispose of any of its capital assets with a market value in excess of such sum as may be directed by the Cabinet generally or in any particular case;
 - (c) write off bad debts or of any arrears of revenue in excess of such sum as may be directed by the Cabinet;
 - (d) permit the take-over, dissolution or winding up (except in the case of compulsory winding up by the court or its creditors) of any of its holding or subsidiary companies;

- (e) enter into any joint-venture agreement involving any land vested in the statutory body or alienated to it by the State Government for the purposes of the execution of its duties or the discharge of its functions under the State law pursuant to which it is incorporated; and
- (f) provide loans, credit facilities or financial assistance to any of its members or the Directors of any of its holding or subsidiary or related companies.

(2) No outstanding items of revenue of a statutory body shall be carried to a revenue sub-head as a charge against an advance or suspense account pending the collection of the amount.

(3) No revenue of a statutory body collected in any one year shall be placed on deposit or held in suspense with the object of transferring it to revenue in the following year.

PART III
HOLDING OR SUBSIDIARY OR RELATED COMPANIES
OF STATUTORY BODIES

Formation of holding and subsidiary companies.

9. No statutory body shall be allowed to form, establish or incorporate any holding or subsidiary company without the prior approval of the Cabinet.

Restrictions of certain acts of holding or subsidiary or related companies.

10. No statutory body shall, without the prior written approval of the Cabinet -
- (a) cause an increase or reduction of the issued or paid-up capital of any of its holding or subsidiary companies;
 - (b) permit borrowings by any of its holding or subsidiary companies beyond such limit as the Minister may, after consultation with the State Financial Authority, determine generally or in any particular case or from a source other than a bank or financial institution;

- (c) guarantee or provide any form of security for any loan, liability or obligation, contractual or otherwise, of any of its holding or subsidiary or related companies;
- (d) appoint or cause to be appointed any consultant, contractor, project manager or professional adviser to undertake or execute any work, project or scheme which is funded by moneys provided from the State Consolidated Fund or any loan or credit facilities in respect of which the State Government has provided security in any form whatsoever;
- (e) cause or permit any of its members and nominees on the Board of Directors of any of its holding or subsidiary or related companies, to be paid or to receive salaries, allowances or other privileges in excess of the amount approved by the Cabinet;
- (f) cause or permit any of its officers or employees to acquire or hold, directly or indirectly, any shares in any of its holding or subsidiary or related companies; and
- (g) cause or permit any of its holding or subsidiary or related company to merge or amalgamate with another company which is not a holding subsidiary or related company of that statutory body.

Audited statements of accounts of holding or subsidiary or related companies to be submitted to the Minister and the State Financial Authority.

11. (1) Every statutory body shall submit to the Minister and the State Financial Authority the audited statements of accounts of its holding or subsidiary or related companies within seven months after the end of the financial year of the companies.

(2) The Minister or the State Financial Authority may request the Chief Executive Officer of a statutory body to furnish to him such explanations or clarifications as he may deem necessary on the audited statement of accounts of any holding or subsidiary or related company of that statutory body.

(3) The Minister may request the Chief Executive Officer of a statutory body to furnish to him for inspection by him or the State Financial Authority any financial statement or accounting record of any holding or subsidiary or related company of that statutory body.

(4) The Chief Executive Officer shall comply with the request of Minister or State Financial Authority made in pursuance of subsection (2) or (3) as soon as practicable.

Power of Minister to direct the winding up of holding or subsidiary companies or replacement or removal of nominees or employees.

12. (1) Where the Minister is of the opinion that any holding or subsidiary company of a statutory body -

- (a) is insolvent or is unable to pay its debts;
- (b) has irregularities in the management of its affairs; or
- (c) has failed to submit its accounts for auditing in accordance with the provisions of the Companies Act 1965 [Act 125.] or with the requirements of this Enactment,

the Minister may by order direct the statutory body –

- (i) to take steps to wind up that holding or subsidiary company;
- (ii) to replace or remove any of its nominees on the Board of Directors of that holding or subsidiary company, responsible for the irregularities;
- (iii) to require its nominees on the Board of Directors of that holding or subsidiary company to request the Board of Directors to take disciplinary action against any officer or employee responsible for such irregularities with a view to termination of his employment; or
- (iv) take such action as the Minister may deem appropriate in the circumstances of the case.

(2) The statutory body to which an order is issued by the Minister pursuant to subsection (1) shall comply with the directions contained in the order as soon as practicable.

(3) The statutory body shall exercise all voting rights attached to the shares which it holds in the holding or subsidiary company concerned to ensure that the terms or requirements of the order issued by the Minister are complied with.

(4) If a statutory body shall fail to comply with such order, the Chief Executive Officer and each and every member of the statutory body shall be held jointly and severally liable for any loss or damage suffered or incurred by the State Government, the statutory body or the holding and subsidiary company to which the order relates.

PART IV
FINANCIAL ACCOUNTABILITY AND CONTROL

Members', officers' and servants' responsibilities.

13. It shall be the duty and responsibility of every member of a statutory body, its officers, employees and servants to comply with the provisions of this Enactment and any direction made hereunder and such instructions relating to financial or accounting procedure as may be issued from time to time by the State Financial Authority.

General fiduciary duties.

14. (1) A member of a statutory body shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) Sections 131, 132(1), 132E and 133(1) of the Companies Act 1965 [Act 125.] shall apply to all members of a statutory body in the same way and to the same extent as they apply to a Director of a company.

Prohibition against members, etc., holding shares.

15. (1) No member, officer, employee or servant of a statutory body shall, without the prior written approval of the Cabinet -

- (a) acquire, apply for allotment or cause to be issued to him, either directly or indirectly, any share or interest in any holding or subsidiary or related company of that statutory body;
- (b) enter into any contract or proposed contract with that statutory body or with any holding or subsidiary company of that statutory body;
- (c) acquire, directly or indirectly, any of the assets, movable or immovable, of that statutory body or any holding or subsidiary or related company of that statutory body; or

- (d) undertake to provide or carry out any work or render any services of whatever nature to that statutory body or any holding or subsidiary or related company of that statutory body.

(2) Any acquisition, contract, undertaking or allotment made in contravention of subsection (1) shall be voidable at the instance of the statutory body or the holding or subsidiary or related company thereof, as the case may be.

(3) Without prejudice to subsection (2), any member who contravenes subsection (1) shall have his appointment thereof revoked by the authority which appointed him, and the services of any officer, employee, or servant of the statutory body who acts in contravention of subsection (1) shall, notwithstanding any provision in his terms of his employment with the statutory body, be liable to be terminated in accordance with procedure provided in the Statutory Bodies (Conduct and Discipline) Regulations 1995 [G.N. No S3 of 1995.].

Surcharge.

16. (1) If it appears to a statutory body that any person who is or was in its employment –

- (a) has failed or neglected to collect any moneys owing to the statutory body for the collection of which he is or was responsible;
- (b) is or was responsible for any payment from the funds of the statutory body of moneys which ought not have been made or for any payment of money which is not duly approved or which would not have been paid by the statutory body but for his negligence;
- (c) is or was responsible, directly or indirectly, for any deficiency in, or for the destruction of, any moneys, stamps, securities, stores or other property of the statutory body;
- (d) being or having been an accounting officer, fails or has failed to keep proper accounts or records; or
- (e) has failed to make any payment, or is or was responsible for any unreasonable delay in the payment of moneys from the funds of the statutory body to any person to whom such payment is due under any

contract, agreement or arrangement entered into between that person and the statutory body,

the statutory body shall serve on him a written notice calling on him to show cause why he should not be surcharged, and if a satisfactory explanation is not, within fourteen days from the date of service of the notice aforesaid, furnished to the statutory body with regard to the failure to collect, payment which ought not to have been made, payment not duly approved, deficiency or destruction, or failure to keep proper accounts or records, or failure to make payment, or delay in making payment, the statutory body may surcharge against the said person a sum not exceeding the amount of any such sum not collected, such payment, deficiency, or loss or the value of the property destroyed, as the case may be, and with regard to the failure to keep proper accounts or records, or the failure to make payment, or the delay in making payment, the statutory body may, with the approval of the State Financial Authority, surcharge against the said person such sum as the statutory body may deem fit.

(2) The statutory body shall duly inform the person to be surcharged under subsection (1), and the amount of sum surcharged. A copy of such notice shall be extended forthwith to the Minister and the State Financial Authority.

(3) The statutory body may, with the approval of the State Financial Authority, at any time withdraw any surcharge in respect of which a satisfactory explanation has been received or if it otherwise appears that no surcharge should have been made, and the statutory body shall at once cause the person to be notified of such withdrawal.

(4) The amount of any surcharge made under subsection (1) and not withdrawn under subsection (3) shall be a debt due to the statutory body from the person against whom the surcharge is made and may be sued for and recovered in any court as the suit of the statutory body and may also be recovered by deduction –

- (a) from the salary of the person surcharged if the statutory body so directs;
- (b) from the pension of the person surcharged, if the statutory body with the approval of the Minister so directs, by equal monthly instalments not exceeding one-fourth of the total monthly salary or pension, as the case may be, of that person;

- (c) from the gratuity or other retirement benefits of that person if the statutory body, with the approval of the Minister, so directs; or
- (d) from any sum due and payable by the statutory body to the person surcharged.

PART V
MISCELLANEOUS

Exclusion of right to be heard.

17. Notwithstanding the provisions of any written law, no opportunity of being heard shall be granted to any member of a statutory body before the Yang di-Pertua Negeri or any appointing authority exercises the power conferred by the State law pursuant to which the statutory body is incorporated or established to revoke his appointment as such member thereof.

Power to amend the Schedule.

18. The Minister of Finance may by order published in the *Gazette* amend the Schedule.

Offences.

19. (1) Where a member, the Chief Executive Officer, any officer, employee or servant of any statutory body contravenes any provision of this Enactment, he shall commit an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding one year or to both.

(2) Where a statutory body contravenes any provision of this Enactment, every person who is for the time being a member or Chief Executive Officer of such statutory body shall commit an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment not exceeding one year or to both, unless he shall prove that the contravention was committed without his knowledge or consent or was not attributable to any neglect on his part.

Compounding of offences.

20. (1) The Chief Minister may compound any offence under this Enactment by making a written offer to such person to compound the offence upon payment to the State Government of such amount not exceeding the maximum fine for that offence within such time as may be specified in the offer.

(2) The offence which may be compounded under subsection (1) shall only be in respect of an offence committed for the first time.

(3) 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, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as may be granted by the Chief Minister, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where the amount specified in the offer is paid up within the time specified in the offer or within such extended period as may be granted by the Chief Minister, no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

Civil proceedings and prosecution.

21. (1) Notwithstanding anything contained in any written law, in any proceedings by or against a statutory body, the State Attorney-General or his representative, may institute proceedings or appear on behalf of the statutory body in any court if the State Attorney-General deems it necessary.

(2) Any legal officer of the State Attorney-General's Chambers duly authorized by the Public Prosecutor may conduct any prosecution in respect of any offence under this Enactment or any subsidiary legislation made thereunder.

Directions by Cabinet.

22. The Cabinet may give directions generally for the purpose of carrying out the provisions of this Enactment, and in particular, without prejudice to the generality of the foregoing, such directions may provide for all or any of the following matters:

- (a) the salaries, fees, allowances and privileges for the members of any statutory body;
- (b) the salaries, fees, allowances and privileges of members of Board of Directors of any holding or subsidiary company of any statutory body;
- (c) the terms and conditions of service including but not limiting to matters relating to salaries, allowances, privileges, working hours and other benefits of the officers, employees and servants of any statutory body;
- (d) the sum of any work, service or purchase which a statutory body may not undertake without the prior written approval of the Cabinet;
- (e) the market value of any of its assets which a statutory body may not dispose of without the prior written approval of the Cabinet;
- (f) the sum of any bad debt or arrears of revenue which a statutory body may not write off without the prior written approval of the Cabinet;
- (g) powers, duties and responsibilities of members of the board of management or trustees and officers, employees and servants of any statutory body in relation to the accounts and other records of the operation of that statutory body or any of its holding or subsidiary or related companies;
- (h) the appointment of consultants, professional advisers, contractors and project managers by any statutory body, its holding or subsidiary companies;
- (i) the disposal of capital assets by any statutory body; and
- (j) the writing off of bad debts and other losses of any statutory body.

SCHEDULE
(Section 2)

List of Statutory Bodies

1. Housing and Town Development Authority;
2. Korporasi Kemajuan Perikanan dan Nelayan Sabah (Ko-Nelayan);
3. Korporasi Pembangunan Desa Sabah;
4. Majlis Hal Ehwal Anak Negeri Sabah;
5. Majlis Ugama Islam Negeri Sabah;
6. Rubber Industry Board;
7. Sabah Council of Social Services;
8. Sabah Credit Corporation;
9. Sabah Cultural Board;
10. Sabah Economic Development Corporation;
11. Sabah Forestry Development Authority;
12. Sabah Land Development Board;
13. Sabah Ports Authority;
14. Sabah Sports Board;
15. Sabah Tourism Promotion Corporation;
16. The Board of Trustees of Sabah Foundation;
17. The Board of Trustees of Sabah Parks; and
18. The Board of Trustees of Tun Fuad Foundation.