

STATE OF SABAH

WAKAF (STATE OF SABAH) ENACTMENT 2018

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II POWERS AND RESPONSIBILITIES OF MAJLIS

3. Majlis as sole trustee for all *mawquf*
4. Vesting of *mawquf*
5. Power of Majlis to purchase property
6. Power of Majlis to *istibdal*
7. Power to delegate

PART III APPOINTMENT OF CHIEF REGISTRAR OF WAKAF AND REGISTRAR OF WAKAF

8. Chief Registrar of *Wakaf* and Registrar of *Wakaf*

PART IV CREATION OF WAKAF

9. Creation of *wakaf*
10. Commencement of *wakaf*
11. Restriction on *wakaf khas*
12. Registration of *mawquf*

Section

13. Publication of list of *mawquf*
14. Invalid *wakaf*
15. *Wakaf* to some heirs is invalid
16. *Wakaf ta'liq*
17. *Wakaf irsod*, *wakaf muabbad*, *wakaf musyak* or *wakaf musyatarak*
18. Determination of *mawquf*
19. Construction of instruments creating or affecting *wakaf*

PART V
MAWQUF

20. Conditions of *mawquf*
21. Cash *wakaf*
22. *Wakaf* scheme
23. *Wakaf* of proceeds from premise and products from agriculture on land owned, rented or leased
24. Right of *waqif* on the benefit, profit or interest of a *mawquf*
25. *Istibdal mawquf*
26. Abandoned *mawquf* in *wakaf khas*
27. Power of Majlis to claim rental
28. Redevelopment of *mawquf*

PART VI
MAWQUF 'ALAIH

29. Right of *waqif* to determine the conditions of *mawquf 'alaih*
30. Non-existence of *mawquf-alaih*
31. The distribution of benefit, profit or interest

PART VII
WAKAF BY WAY OF WILL

32. *Wakaf* to heirs
33. *Wakaf* to non-heirs
34. *Wakaf* by way of will

Section

- 35. Rate of *wakaf* by way of will
- 36. *Wakaf* by way of will which is not executed

PART VIII
WAKAF FUND

- 37. *Wakaf* Fund
- 38. Benefit, profit or interest of *wakaf am* and *wakaf khas*
- 39. Utilization of *Wakaf* Fund
- 40. Accounts and reports of *Wakaf* Fund.

PART IX
OFFENCES AND PENALTIES

- 41. Occupying *wakaf* land or *wakaf* building without permission of the Majlis or the Board
- 42. Administering or managing of *wakaf am* or *wakaf khas* without permission of the Majlis or the Board
- 43. Preventing *mawquf 'alaih* from enjoying benefit, profit or interest of *mawquf*
- 44. Giving false information

PART X
ENFORCEMENT AND INVESTIGATION

- 45. Authorization
- 46. Power of investigation
- 47. Obstruction of authorized officer
- 48. Prosecution
- 49. Power of Chief *Syar'ie* Prosecutor not affected
- 50. Other order by the Court
- 51. Application of Chapter 6 Part VII of the Syariah Criminal Procedure Enactment 2004
[No. 9 of 2004]

PART XI
GENERAL

Section

- 52. Reference to State Fatwa Council
- 53. Power to make regulations
- 54. Declaration
- 55. Saving and transitional

SCHEDULE

Sabah Lawnet

I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR
HAJI MAHIRUDDIN,
Yang di-Pertua Negeri.

13TH DECEMBER 2018.

No. 7 of 2018

An Enactment to provide provisions for matters relating to *wakaf* and for other matters connected therewith.

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

PART I
PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the Wakaf (State of Sabah) Enactment 2018.
- (2) This Enactment comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

- 2 (1) In this Enactment, unless the context otherwise requires:-
“Board” means the Wakaf Management Board (State of Sabah) 2018 established by the Establishment of Wakaf Management Board (State of Sabah) Order 2018;
“cash *wakaf*” means any cash contribution, gold value or those similar thereto from any person for any purpose of *wakaf*;

“Chief Registrar of *Wakaf*” and “Registrar of *Wakaf*” means the Chief Registrar of *Wakaf* and Registrar of *Wakaf* appointed under subsection 8(1);

“Court” means the Syariah Courts established under section 4 of Syariah Courts Enactment 2004 [No. 6 of 2004];

“*hibah*” means a voluntary *akad* containing the surrender and transfer of title of any property of a person to another person during his lifetime without consideration or damages where the benefit of his property may be enjoyed in accordance with *Hukum Syarak*;

“*heir*” means a person who is entitled to inherit an estate pursuant to *Hukum Syarak*;

“*Hukum Syarak*” means *Hukum Syarak* according to *Mazhab Shafie* or according to any one of the *Mazhab Hanafi, Maliki or Hanbali*;

“*istبدال*” means substituting a *mawquf* with another property or money having the same value as or higher value than the *mawquf*, by exchanging, purchasing, selling or any other manner in accordance with *Hukum Syarak*;

“Majlis” means Majlis Ugama Islam Negeri Sabah established under the Majlis Ugama Islam Negeri Sabah Enactment 2004 [No. 5 of 2004];

“*marad al maut*” means a fatal disease which fulfils the following conditions:

- (a) the disease normally resulting in death
- (b) the disease causes the fear of death in the patient’s mind to the extent of affecting the soundness of mind;
- (c) shall possess some external signs showing that the disease is a serious disease; and
- (d) the disease is suffered continuously for a period of not more than one year;

“*mawquf*” means any property given by way of *wakaf*;

“*mawquf ‘alaih*” means a person who is entitled to receive any benefit, interest or profit from a *mawquf*;

“Minister” means the Minister charged with the responsibility for the administration of Islamic affairs in the State of Sabah;

“property” includes –

- (a) movable property, immovable property or intellectual property;
- (b) any benefit, profit or interest in any movable property, immovable property or intellectual property;
- (c) any right, interest, title or otherwise in connection with movable property, immovable property or intellectual property; and
- (d) expertise and services having value in accordance with *Hukum Syarak*;

“*sighah*” means a declaration of *wakaf* whether orally, in writing or by way of sign;

“State Fatwa Council” means the committee established under section 6 of the Fatwa Enactment 2004 [No. 7 of 2004];

“*wakaf*” means –

- (a) to surrender the title of any property from which its benefit, profit or interest may be enjoyed;
- (b) to surrender the benefit, profit or interest which may be enjoyed from any property; or
- (c) to contribute the expertise and services from which its benefit or interest may be enjoyed,

whether as *wakaf am* or *wakaf khas*, pursuant to *Hukum Syarak*, but does not include a trust defined under the Trustee Act 1949 [Act 208];

“*wakaf am*” means a *wakaf* that is created for a general charitable purpose in accordance with *Hukum Syarak*;

“*Wakaf Fund*” means the *Wakaf Fund* established under section 37;

“*wakaf khas*” means a *wakaf* that is created for a specific charitable purpose in accordance with *Hukum Syarak*;

“*Wakaf shares*” means the creation of *wakaf* through the issuance of shares which are subsequently endowed as a *wakaf* by the purchaser to the Majlis;

“*wakaf ta’liq*” means a *wakaf* which only comes into effect upon conditions determined by the *waqif* are fulfilled;

“*waqif*” means the person who creates a *wakaf*;

“*wasi*” means a person to whom the execution of a will is entrusted including a person appointed as a *wasi* by the Court;

(2) All words and expressions used in this Enactment and not defined in this Enactment but defined in Part I of the Interpretation and General Clauses Enactment 1963 [*Sabah 34 of 1963*] shall have the meanings assigned to them in that Part to the extent that such meanings do not conflict with *Hukum Syarak*.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expressions used in this Enactment that are listed in the Schedule, reference may be made to the Arabic Script for those words and expressions as shown against them therein.

PART II

POWERS AND RESPONSIBILITIES OF MAJLIS

Majlis as sole trustee for all *mawquf*

- 3** (1) Notwithstanding any inconsistent provisions provided in any instrument or declaration which creates, governs or affects any *wakaf*—
- (a) Majlis shall be the sole trustee of all *mawquf* situated in the State of Sabah;
 - (b) Majlis, as the sole trustee of any *mawquf* situated in the State of Sabah, may be made a *mawquf ‘alaih* for any such *mawquf*;
 - (c) the Majlis may be made a *mawquf ‘alaih* for any *mawquf* situated elsewhere than in the State of Sabah, and for this purpose, the Majlis may make any arrangement with the trustee of such *mawquf*;
 - (d) Majlis may establish a corporation or a company under the Companies Act 2016 [*Act 777*] to carry out any activity by the Majlis in the execution of its duties and powers under this Enactment;

- (e) Majlis may appoint or give written permission to any party to manage, administer and hold any *mawquf* on its behalf;
 - (f) Majlis may declare the appointment of any administrator or manager in situation where *waqif* has appointed his own administrator or manager subject to the terms and conditions prescribed by the Majlis;
 - (g) Majlis may establish any *wakaf* scheme or approve any institution to establish any scheme related to *wakaf*, and
 - (h) Majlis shall be responsible to take any necessary action against any act of trespass of any *mawquf*.
- (2) It shall be the duties and responsibilities of the Majlis to ensure that all *wakaf* vested in it under this Enactment be registered, administered, managed, supervised and developed accordingly.
- (3) The Majlis shall have all the powers to do all matters expedient or reasonably necessary for or incidental to the performance of its duties and responsibilities under this Enactment.

Vesting of *mawquf*

- 4** (1) The Majlis shall take all necessary actions as soon as practicable to vest in it all *wakaf* which are created under this Enactment.
- (2) Any benefit, profit or interest from a *mawquf* shall be vested in the Majlis from the date of the commencement of the *wakaf* as provided under section 10, and the Majlis may claim any benefit, profit or interest of a *mawquf* from any person before the registration of the *mawquf* as provided under section 12.
- (3) All *mawquf* situated in the State of Sabah before the commencement of this Enactment shall, without any conveyance, assignment or transfer, and, in the case of immovable property, upon registration under the Land Ordinance [*Sabah Cap. 68*], vest in the Majlis, for the purpose of the *wakaf* affecting the property.
- (4) The Majlis shall take all necessary steps to vest in itself for the like purposes any such *mawquf* situated elsewhere than in the State of Sabah.

Power of Majlis to purchase property

5 (1) The Majlis may purchase any property for the purpose of *wakaf* by utilizing the monies from the *Wakaf* Fund or other sources permitted pursuant to *Hukum Syarak*.

(2) The Registrar of *Wakaf* shall register any property purchased by the Majlis under subsection (1) as *mawquf*.

Power of Majlis to *istibdal*

6 The Majlis may *istibdal* any *mawquf* subject to section 24.

Power to delegate

7 (1) The Majlis may, by resolution, and subject to the conditions and restrictions as the Majlis deems fit, delegate to the Board the discharge of any of its duties or the exercise of any of its powers under this Enactment.

(2) The performance of duties and the exercise of powers pursuant to the delegation under subsection (1) shall be subject to the control and direction of the Majlis.

(3) The Board shall inform the Majlis as to all actions and matters done by the Board pursuant to such delegation.

(4) No delegation made under this section shall exclude the Majlis from carrying out or exercise by itself any of the duties or powers so delegated.

PART III

APPOINTMENT OF CHIEF REGISTRAR OF *WAKAF* AND REGISTRAR OF *WAKAF*

Chief Registrar of *Wakaf* and Registrar of *Wakaf*

8 (1) The Board may appoint a Chief Registrar of *Wakaf* and such number of Registrar of *Wakaf* as it deems necessary for the purpose of this Enactment.

(2) The Chief Registrar of *Wakaf* and Registrar of *Wakaf* shall be responsible for –

(a) registering or causing to be registered all *mawquf* created under this Enactment;

- (b) keeping and maintaining or causing to be kept or maintained a register for all *mawquf* in any form or in any manner determined by the Board;
- (c) keeping and holding all instruments, document of titles or other documents relating to any *mawquf* vested in the Majlis;
- (d) informing the total of *mawquf* registered in the Register of *Wakaf* to the Majlis from time to time; and
- (e) performing any other functions as may be directed by the Majlis or Board from time to time.

(3) The Registrar of *Wakaf* shall act under the general control and direction of the Chief Registrar of *Wakaf*.

PART IV CREATION OF WAKAF

Creation of *wakaf*

9. (1) Except as provided otherwise in this Enactment, any person who—

- (a) have attained the age of eighteen years;
- (b) is of sound mind;
- (c) is not declared a bankrupt; and
- (d) is willing,

may surrender his property as a *wakaf* for any charitable purposes in accordance with *Hukum Syarak*.

(2) A *wakaf* may be created as *wakaf am* or *wakaf khas*.

(3) A *wakaf* shall be created by way of *sighah* before two witnesses in accordance with *Hukum Syarak*.

Commencement of *wakaf*

10. (1) A *wakaf* shall come into effect when all the requirements and conditions for the creation of a *wakaf* is fulfilled, unless it is specifically provided that a *wakaf* shall come into effect only after the death of the *waqif*.

(2) A *wakaf* which has come into effect cannot be sold, charged, transferred or endowed as *hibah* by the *waqif* or inherited by any person.

Restrictions on *wakaf khas*

11. A *wakaf khas* made after the commencement of this Enactment shall be void and invalid unless –
- (a) permission of the Majlis is obtained; or
 - (b) it has been made by the *waqif* in the state of *marad al maut* and he subsequently dies due to the illness, and provided that the *wakaf* has been made by way of *sighah* before two witnesses.

Registration of *mawquf*

12 (1) Any person who wishes to *wakaf* his property as a *mawquf* may do so by completing a form as may be determined by the Board.

(2) Any application for registration of a *mawquf* received by the Board under subsection (1) shall be registered by the Chief Registrar of *Wakaf* or the Registrar of *Wakaf* in the Register of *Wakaf* as soon as may be practicable.

(3) The Board shall provide a Register of *Wakaf* for –

- (a) any *mawquf* where the Majlis is the sole trustee; and
- (b) any *mawquf* where the Majlis is the *mawquf 'alaih*.

(4) The Register of *Wakaf* shall be the final proof as to the facts stated in the Register of *Wakaf*.

(5) All instruments which create, which become the evidence or which affect any *wakaf*, together with any document of title or other security relating thereto, shall be held and kept by the Chief Registrar of *Wakaf*.

(6) Notwithstanding subsection (2), no *wakaf* shall become invalid solely by reason of the *wakaf* is not registered.

Publication of list of *mawquf*

13. The Majlis shall prepare, issue and publish in the *Gazette* a list as to all properties, investments and assets vested in the Majlis in respect of any *wakaf* created under this Enactment from time to time.

Invalid *wakaf*

14. A *wakaf* is invalid if –

- (a) it is made for any immoral purpose;
- (b) it is made to any person for a purpose which is not being devoted to Allah;
- (c) it is made for self-benefit, profit or interest; or
- (d) it is inconsistent with *Hukum Syarak*.

***Wakaf* to some heirs is invalid**

15. A *wakaf* is invalid if it is made only to some of the heirs who are entitled to inherit the estate of a *waqif*, except with the consent of all the remaining heirs.

Wakaf ta'liq

16. (1) Any person may create *wakaf ta'liq* and which comes into effect upon the occurrence of all the conditions stipulated by the *waqif*.

(2) If a *wakaf ta'liq* is made to come into effect after the death of the *waqif*, the *wakaf* shall be valid to the extent of one-third of his property.

Wakaf irsod, wakaf muabbad, wakaf musyak or wakaf musytarak

17. (1) Any *waqif* may create *wakaf irsod, wakaf muabbad, wakaf musyak* or *wakaf musytarak* on any or whole part of his property.

(2) For the purpose of this section –

- (a) “*wakaf irsod*” means *wakaf* of any land by the government, any corporation, institution, organization or other bodies in accordance with *Hukum Syarak*;
- (b) “*wakaf muabbad*” means *wakaf* in perpetuity;

- (c) “*wakaf musyak*” means the *wakaf* of a right on any property which is jointly owned and undivided; and
- (d) “*wakaf musytarak*” means consolidation of several *wakaf* including any *wakaf* created by way of *istibdal* and *wakaf* scheme.

Determination of *mawquf*

18. Any person may apply to the Court to determine whether any property has become a *mawquf*.

Construction of instruments creating or affecting *wakaf*

19. Where, in the opinion of the Board, the meaning or interpretation of any instrument or declaration which creates or affects any *wakaf* is vague or ambiguous, the Board may refer the instrument or declaration to the Court to obtain its decision on the said meaning or interpretation thereof and the Board shall act pursuant to any order made by the Court.

**PART V
MAWQUF**

Conditions of *mawquf*

20. (1) A *mawquf* shall be a property which –
- (a) is owned by the *waqif*,
 - (b) may be transferred or surrendered without any obstruction; and
 - (c) may provide any benefit, profit or interest to the *mawquf ‘alaih*.
- (2) Notwithstanding subsection (1), a *wakaf* is valid even if at the time the *wakaf* is created –
- (a) the *mawquf* fails to provide any benefit, profit or interest; or
 - (b) the *mawquf* is still under tenancy or lease.
- (3) Any benefit, profit or interest obtained from a *mawquf* shall be deposited into the Wakaf Fund.

Cash wakaf

21. The Board may accept cash *wakaf* from any person, society or institution for the purpose of any *wakaf*.

Wakaf scheme

22. (1) The Board may establish any *wakaf* scheme or approve, subject to conditions determined by the Majlis, any institution to establish any scheme related to *wakaf* –

- (a) through cash contribution or any other financial contributions from any person, association or institution;
- (b) by offering for sale of *wakaf* shares, or by issuing *wakaf sukuk* or any other instrument for valuable securities as *wakaf*; or
- (c) for the purpose of investment, of or in any property acquired, or for development of any *mawquf*.

(2) The Board may accept shares endowed by any person, society or institution provided that the business carried out is consistent with *Hukum Syarak*.

(3) Any property acquired or developed from the proceeds of the sale under subsection (1) shall be a *wakaf*.

Wakaf of proceeds from premise and products from agriculture on land owned, rented or leased

23. (1) A *waqif* may *wakaf* –

- (a) the proceeds from rental or lease of any premise owned by him;
- (b) the proceeds from rental or lease of any premise owned by him on any land rented or leased by him; or
- (c) any product from agriculture, plantation, farming or others obtained from the land owned, rented or leased by him.

Right of *waqif* on the benefit, profit or interest of a *mawquf*

24. A *waqif* who creates a *wakaf* for general use are entitled to enjoy benefit, profit or interest of the *mawquf*.

Istibdal mawquf

25. (1) Subject to the decision of the State Fatwa Council, the Majlis may *istibdal* any *mawquf* in the following circumstances:

- (a) if any of the conditions of *wakaf* is inconsistent with any written law;
- (b) if the *mawquf* is taken by any authority in accordance with any written law;
- (c) if the usage of *mawquf* fails to provide benefit, profit or interest as required by the *waqif*;
- (d) if the usage of *mawquf* fails to fulfil the purpose of *wakaf*;
- (e) if any condition prescribed by the *waqif* cannot be executed by reason of lapse of time or changes in circumstances;
- (f) if the Majlis wants to *istibdal* a mosque or site of a mosque which is a *mawquf*;
- (g) if any of the conditions prescribed by the *waqif* cannot be executed and the Majlis intends to execute the *wakaf* in the manner as close as possible with the conditions prescribed by the *waqif*; or
- (h) in other circumstances as the Majlis deems necessary.

(2) The value of *mawquf* acquired by way of *istibdal* shall not be less than the current value of the original *mawquf*.

(3) The Majlis shall *istibdal* any *mawquf* whether wholly or partly within a reasonable period accordingly.

(4) If involves immovable property evidenced by document of title issued under Land Ordinance [*Sabah Cap.68*] or any other law for the time being in force, the Registrar, after receiving a written application from the Majlis on the existence of *wakaf* for *istibdal*, shall endorse the word '*wakaf*' in the document of title in which title are subjected thereto.

Abandoned *mawquf* in *wakaf khas*

26. The Majlis may, after referring to State Fatwa Council, administer and manage the *mawquf* for *wakaf khas* which is abandoned in any manner as Majlis deems fit.

Power of Majlis to claim rental

27. (1) The Majlis may claim the rent or the value of any benefit, profit or interest acquired by any person from a *mawquf* of which he is not entitled to.

(2) For the purpose of subsection (1), the Majlis may determine the value of any benefit, profit or interest of the *mawquf*.

(3) If the claim mentioned in subsection (1) is not paid, it may be recovered as a civil debt due to the Majlis.

Redevelopment of *mawquf*

28. (1) Any *mawquf* which is destroyed whether wholly or partly may be redeveloped by utilizing the following sources:

- (a) *Wakaf* Fund;
- (b) Fund of the Majlis; or
- (c) other permitted sources pursuant to *Hukum Syarak*.

(2) If a *mawquf* is destroyed wholly and is redevelop, the property shall be a *wakaf*.

PART VI

MAWQUF 'ALAIH

Right of *waqif* to determine the conditions of *mawquf 'alaih*

29. A *waqif*, or the Board with the consent of the *waqif*, may determine any specific condition in relation to the *mawquf 'alaih* before the *mawquf 'alaih* becomes entitled to the benefit, profit or interest of the *mawquf*.

Non-existence of *mawquf 'alaih*

30. (1) Where in a *wakaf khas*–

- (a) the *waqif* has not named the *mawquf 'alaih*;
- (b) the *mawquf 'alaih* is dead;
- (c) in the case of a body corporate, the *mawquf 'alaih* has ceased to exist; or
- (d) the *mawquf 'alaih* cannot be located after a period of four years from the commencement of the *wakaf*,

Majlis shall, by order published in the *Gazette*, declare the *wakaf khas* to become a *wakaf am*.

(2) Any *mawquf 'alaih* whose *wakaf* has become *wakaf am* by order of Majlis made on the ground under paragraph (1)(d) may apply to the Court for an order that the *wakaf* be reverted as *wakaf khas*, and the Court may make any order as it deems just.

(3) Where the Court allows the application made under subsection (2), the *mawquf 'alaih* does not have any right to any benefit, profit or interest of the *mawquf* before an order made under that subsection.

The distribution of benefit, profit or interest

31. (1) Where there is more than one *mawquf 'alaih* in any *wakaf khas* and the *waqif* has not determined their respective proportion to the benefit, profit or interest of the *mawquf*, the benefit, profit or interest shall be distributed by the Board equally among them.

(2) If a *wakaf* is endowed to *asnaf zakat*, the benefit, profit or interest from the *mawquf* shall be divided according to the portion of the *asnaf zakat*.

(3) Section 30 shall apply to the benefit, profit or interest of any of the *mawquf 'alaih* as mentioned under subsection (1) of this section who is dead or cannot be located without the need for any order in the *Gazette*.

PART VII
WAKAF BY WAY OF WILL

Wakaf to heirs

- 32.** (1) Any person who intends to create *wakaf* may do so to his heir.
- (2) Where a *waqif* is in a state of *marad al maut*, he shall not *wakaf* to his heir except with the agreement of all heirs.
- (3) A *wakaf* is invalid if the *waqif* gives his property as *wakaf* by way of will to his heir except with the agreement of all heirs.

Wakaf to non-heirs

- 33.** (1) Any person who intends to create *wakaf* may do so to his non-heir.
- (2) If a *waqif* is in a state of *marad al maut*, he shall not *wakaf* to his non- heir more than one-third of his property except with the agreement of all heirs.
- (3) A *wakaf* is invalid if the *waqif* gives his property as *wakaf* by way of will to his non-heir more than one-third of his property except with the agreement of all heirs.

Wakaf by way of will

- 34.** (1) Any person who intends to make *wakaf* may create a *wakaf* by way of will and shall commence after his death.
- (2) A *wasi* who has been appointed shall execute the *wakaf* by way of will made by the *waqif*.
- (3) A *wasi* shall, after the death of a *waqif*, obtain the agreement from all heirs to execute the *wakaf* if the *waqif* named the heir as the recipient of *wakaf* by way of will.
- (4) A *wasi* shall, after the death of a *waqif*, obtain the agreement from all heirs to execute the *wakaf* if the *waqif* named the non-heir as the recipient of *wakaf* by way of will exceeding one-third of the property of *waqif*.
- (5) A *wakaf* by way of will shall be executed pursuant to the provisions of this Enactment.

Rate of wakaf by way of will

35. A *mawquf* by way of will to its non-heir shall not exceed one-third of the total of *waqif's* estate after deducting the debt and any liability according to *Hukum Syarak*, except with the agreement of all heirs.

Wakaf by way of will which is not executed

36. Where in a circumstances a *wakaf* by way of will is not executed, the interested party for a *mawquf* may apply for a Court order against the *wasi* to execute the said *wakaf* by way of will.

**PART VIII
WAKAF FUND**

Wakaf Fund

37. (1) For the purpose of this Enactment, the Majlis shall establish a fund to be known as the “*Wakaf Fund*”.
- (2) The *Wakaf Fund* shall be administered and managed by the Majlis through the Board.
- (3) The *Wakaf Fund* shall consist of –
- (a) all *mawquf*;
 - (b) benefit, profit or interest obtained from any *mawquf* in which the Majlis is the *mawquf 'alaih*;
 - (c) money or value acquired through *istibdal*;
 - (d) contribution and proceeds of *wakaf* shares, *wakaf sukuk* and any other valuable security instruments, and profits from investments, under any *wakaf* schemes;
 - (e) all compensations obtained under this Enactment;
 - (f) provisions or contributions received from any party for any purpose of *wakaf*; and
 - (g) all contributions or other monies lawfully received by the Board under this Enactment.

38. Benefit, profit or interest of *wakaf am* or *wakaf khas*

(1) All benefit, profit or interest from *wakaf am* shall be paid to and become part of *Wakaf Fund*.

(2) All benefit, profit or interest from *wakaf khas* shall be utilized in accordance with the terms as determined by the *waqif* except for terms which are inconsistent with *Hukum Syarak*.

(3) If –

(a) the terms of any *wakaf* does not specify any method of application of the property, benefit, profit or interest; or

(b) it is uncertain in what manner the property, benefit, profit or interest should be applied,

Majlis may direct that such property, benefit, profit or interest from the *wakaf* be added to and become part of *Wakaf Fund* provided that such property, benefit, profit or interest shall apply only for the purpose of the *wakaf*.

Utilization of *Wakaf Fund*

39. (1) The *Wakaf Fund* may be utilized for the purpose of –

(a) payment of all costs, charges and expenditure for administration of any *wakaf* including the cost for maintenance and repair of any *mawquf*;

(b) purchase of any property as a *wakaf* under section 5;

(c) execution of any *wakaf* and financing the development of any *mawquf* subject to any terms and conditions as the Majlis deems fit;

(d) payment of management expenses including allowance for the members of the Board;

(e) payment of any expenses incidental to the management of the *Wakaf Fund* which supposed to be done by the Board in discharging its functions and powers under this Enactment;

(f) make investment under the *wakaf* scheme; or

- (g) any other payment related to *wakaf* as the Board deems appropriate in implementing the provision of this Enactment.

Accounts and reports of *Wakaf* Fund

- 40.** (1) The Board shall –
- (a) cause to be kept a proper account and other records in respect of the administration of *Wakaf* Fund;
 - (b) cause to be prepared a statement of accounts of *Wakaf* Fund for each financial year;
 - (c) cause the statement of accounts of *Wakaf* Fund to be audited at the end of each financial year by an auditor; and
 - (d) immediately upon receipt of the statement of accounts of *Wakaf* Fund which have been audited under paragraph (c), submit the statement of accounts to the Majlis for approval.
- (2) Notwithstanding paragraph (1)(d), the Majlis may direct the Board to submit the financial reports of *Wakaf* Fund from time to time.
- (3) The financial year for *Wakaf* Fund shall begin on 1 January and end on 31 December each year.

PART IX

OFFENCES AND PENALTIES

Occupying *wakaf* land or *wakaf* building without permission of the Majlis or the Board

- 41.** (1) Any person who, without the permission of the Majlis or the Board –
- (a) occupies any *wakaf* land or *wakaf* building;
 - (b) constructs any building or structures on any *wakaf* land or *wakaf* building;
 - (c) clears, ploughs, digs, close off or plant on any *wakaf* land or cultivates on any *wakaf* land; or

- (d) cuts, takes, removes or extracts any proceed from any *wakaf* land,

commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a further fine not exceeding five hundred ringgit for everyday during which the offence continues after the conviction.

(2) The Court may, on the application of the prosecuting officer, order the person convicted of an offence under subsection (1) to demolish, destroy and clear all constructions, structures, obstructions or crops on the *wakaf* land or *wakaf* building, as the case may be, at the cost of such person convicted.

(3) If the person referred to in subsection (2) fails to obey the order of the Court, the Majlis or Board may cause to execute the order by expending monies from the *Wakaf* Fund or other financial resources, and the Majlis or Board may claim any expenses incurred from such person.

(4) If the claim referred to in subsection (3) is not paid, it may be recovered by civil action as a debt due to the Majlis or Board.

(5) Where no order of the Court is made under subsection (2), any construction, structure, obstruction or crop on the *wakaf* land or *wakaf* building, as the case may be, shall vest in the Majlis and no person shall make any claim against the Majlis or Board relating to such construction, structure, obstruction or crop.

Administering or managing of *wakaf am* or *wakaf khas* without permission of the Majlis or the Board

42. Any person who manages and administers *wakaf am* or *wakaf khas* without the written permission of the Majlis or the Board, commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Preventing *mawquf 'alaih* from enjoying benefit, profit or interest of *mawquf*

43. Any person who –

- (a) prevents any *mawquf 'alaih* from enjoying the benefit, profit or interest from a *mawquf* to which the *mawquf 'alaih* is entitled; or
- (b) cause the failure of any *mawquf 'alaih* to enjoy the benefit, profit or interest from a *mawquf* to which the *mawquf 'alaih* is entitled,

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

Giving false information

44. Any person who makes any statement which he knows or has reason to believe is not true, not accurate, or false, or conceals any material fact or furnishes any misleading information, or falsifies any document for the purpose of this Enactment, commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

PART X ENFORCEMENT AND INVESTIGATION

Authorization

45. The Majlis may authorize in writing the Chief Registrar of *Wakaf*, Registrar of *Wakaf*, an officer of the Majlis, or any public officer to carry out any enforcement, investigation and examination for the purposes of this Enactment as may be specified in the authorization.

Power of investigation

46. A Religious Enforcement Officer shall have full and necessary powers as provided in the Syariah Criminal Procedure Enactment 2004 [No. 9 of 2004] subject to subsection 31(1) of Syariah Courts Enactment 2004 [No. 6 of 2004] to carry out investigation and inspection of an offence under this Enactment.

Obstruction of authorized officer

47. Any person who –
- (a) obstructs any officer authorized under section 45 of this Enactment who is lawfully carrying out any power of investigation and inspection for the purposes of this Enactment;
 - (b) when required by an authorized officer to produce any evidence or thing which the authorized officer reasonably believes to have any connection with or is capable of furnishing information of the commission of an offence under this Enactment, delays or refuses to furnish the same;

- (c) when required by an authorized officer to furnish any information, refuses or neglects to furnish such information; or
- (d) obstructs any seizure under this Enactment,

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

Prosecution

48. The Chief *Syar'ie* Prosecutor may direct any prosecution of any offence under this Enactment.

Power of Chief *Syar'ie* Prosecutor not affected

49. Nothing in this Part shall be deemed to affect the powers of the Chief *Syar'ie* Prosecutor under the Syariah Criminal Procedure Enactment 2004 [No. 9 of 2004].

Other order by the Court

50. In addition to any order which may be made by the Court under this Enactment, the Court may make any other order, whether or not applied for by the *Syar'ie* Prosecutor, as the Court thinks fit.

Application of Chapter 6 Part VII of the Syariah Criminal Procedure Enactment 2004 [No. 9 of 2004]

51. (1) Chapter 6 Part VII of the Syariah Criminal Procedure Enactment 2004 [No. 9 of 2004] shall apply relating to the disposal of exhibits and of things which is the subject matter of the offence under this Enactment.

(2) Notwithstanding subsection (1), this section shall not apply to a *mawquf* which has been made an exhibit or is connected to the offence committed and at the conclusion of any proceedings in Court affecting such *mawquf* the Court shall order such *mawquf* to be delivered to the Majlis.

**PART XI
GENERAL**

Reference to State Fatwa Council

52. (1) Where there is any question on *Hukum Syarak* which needs to be determined, the Majlis shall refer to the State Fatwa Council.

(2) All decisions made by State Fatwa Council shall be final.

Power to make regulations

53. (1) The Majlis, with the approval of Yang di-Pertua Negeri, may make regulations as may be necessary or expedient for the better carrying into effect the provisions of this Enactment.

(2) Without prejudice to the generality of subsection (1), Majlis may make regulations in respect of all or any of the following matters:

- (a) prescribing procedure for the registration of *mawquf*;
- (b) prescribing financial and management procedure of *Wakaf* Fund;
- (c) prescribing fees and payment;
- (d) prescribing the execution of an administration and management of *wakaf*;
- (e) prescribing procedure for the development, purchase and disposal of *mawquf*;
- (f) prescribing the execution and management of *wakaf* share and *wakaf* of shares;
- (g) prescribing procedure on the creation of *wakaf am* or *wakaf* khas; and
- (h) prescribing all other matters as are necessary or expedient to be prescribed for giving effect to this Enactment.

Declaration

54. (1) Prior to the making of an application to the Court for an order to register *mawquf*, the Majlis shall make a declaration with respect to it by –

- (a) a notification published in a *Gazette* and a local newspaper;

- (b) in the case of an immovable property, a notification posted at a conspicuous place at the *mawquf* and at the *mukim masjid* in which the *mawquf* is situated; and
 - (c) a notification sent to the *waqif* or any person who has the interest in the *mawquf*, or to both.
- (2) The notification under paragraph 1(c) shall –
- (a) be served personally on the *waqif* or any person who has an interest in the *mawquf*, or
 - (b) be sent through A.R. registered post to the *waqif* or any person who has interest in the *mawquf*.
- (3) If the notification in paragraph (1)(c) is served by A.R. registered post, the notification shall be deemed to have been served on the day succeeding the day on which the notification would have been received in the ordinary course of post if the notification is addressed –
- (a) in the case of an individual, to the usual or last known address of the *waqif* or any person who has an interest in the *mawquf*; and
 - (b) in the case of body corporate, partnership or society, to its registered address.
- (4) If any person or body corporate, partnership or society to whom there has been addressed an A.R. registered post containing notification under paragraph (1)(c) is informed of the fact that there is a registered letter awaiting him at the post office, and any person or body corporate, partnership or society who refuses or neglects to take delivery of such notification, such notification shall be deemed to have been served upon that person or body corporate, partnership or society on the date on which he or it was informed.
- (5) Any person having any objections against the application referred to in the declaration made under subsection (1) may submit their objections to the Majlis within the time specified in the declaration.
- (6) The Majlis shall take into consideration any objection submitted under subsection (5) before the Majlis makes any application to the Court.
- (7) The Syariah Court Civil Procedure Enactment 2004 [No. 10 of 2004] shall apply to any application made to the Court for the purpose of this section.

Saving and transitional

55. (1) All *wakaf* vested in the Majlis under the Majlis Ugama Islam Negeri Sabah Enactment 2004 [No. 5 of 2004] shall, upon the coming into operation of this Enactment, be deemed to be vested in the Majlis under this Enactment.

(2) All declarations, orders, notifications, notices, forms, approval letters and appointments issued or made under the Majlis Ugama Islam Negeri Sabah Enactment 2004 [No. 5 of 2004] in relation to matters provided for in this Enactment shall remain in force, in so far as they are not inconsistent with this Enactment, until revoked or replaced by declarations, orders, notifications, notices, forms, approval letters or appointments issued or made under this Enactment.

Schedule
[Subsection 2(3)]

CERTAIN WORDS/EXPRESSION	ARABIC SCRIPT
<i>Hibah</i>	هبة
<i>Istibdal</i>	استبدال
<i>Marad al maut</i>	مرض الموت
<i>Mawquf</i>	موقوف
<i>Mawquf 'alaih</i>	موقوف عليه
<i>Muabbad</i>	مؤبد
<i>Syariah</i>	شريعة
<i>Sighah</i>	صيغة
<i>Ta'liq Wakaf</i>	تعليق وقف
<i>Wakaf</i>	وقف
<i>Wakaf Am</i>	وقف عام
<i>Wakaf Irsod</i>	وقف إرصاد
<i>Wakaf Khas</i>	وقف خاص
<i>Wakaf Muaqqat</i>	وقف مؤقت
<i>Wakaf Musya'</i>	وقف مشاع
<i>Wakaf Musytarak</i>	وقف مشترك
<i>Waqif</i>	واقف
<i>Wasi</i>	واصي

FOR REFERENCE ONLY AS AT JANUARY 2019

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 15th day of November, 2018.

DATUK SERI PANGLIMA HAJI SYED ABAS SYED ALI,
Speaker,
State Legislative Assembly

Sabah Lawnet