

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

29 DECEMBER 2000.

No. 7 of 2000

An Enactment to establish the Sabah Biodiversity Council and the Sabah Biodiversity Centre for the purposes of conservation and sustainable use of, and management of access to biological resources or traditional knowledge associated with biological resources and the sharing of benefits arising from their utilization and for matters connected therewith.

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 Biodiversity Enactment 2000, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

[01-05-2002 GN. 333/2002]

Interpretation.

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

"access" means access to a biological resources or traditional knowledge associated with biological resources set out in section 14A;

"access licence" means a licence granted by the Director to any User for access to biological resources or traditional knowledge associated with biological resources;

"advertise" means to describe, make reference to or allude in any way, by any means or in any form,-

(a) whether directly or indirectly; or

(b) whether orally, in writing, diagrammatically, pictorially, by the use of symbols or photographs, or in any combination thereof;

“animal” includes –

- (a) any mammal (other than man), bird, reptile, amphibian, arthropod, or other vertebrate or invertebrate, whether alive or dead, and the egg, young or immature from derived from them;
- (b) any readily recognisable part or derivative of an animal;
- (c) wildlife as defined under the Wildlife Conservation Enactment 1997 [No.6 of 1997];
- (d) fish as defined in the Fisheries Act 1985 [Act 317]; and
- (e) marine and other aquatic ecosystem life forms;

"biodiversity" means biological diversity, being the variability among living organisms from all sources, including plant and animal, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part of, and the diversity within species, between species and ecosystems, and includes biological resources or traditional knowledge associated with biological resources;

"Biodiversity Centre" means the Sabah Biodiversity Centre established under section 9;

"biological diversity" means the variability among living organism from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; includes diversity within species, between species and of ecosystems;

"biological resources" includes-

- (a) the genetic resources, organisms, microorganisms, derivatives and parts of the genetic resources, organisms, microorganisms or derivatives;
- (b) the populations and any other biotic component of an ecosystem with actual or potential use or value for humanity; and
- (c) any information relating to paragraphs (a) and (b);

"biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or to modify products or processes for specific use;

"Council" means the Sabah Biodiversity Council established under section 3;

“derivatives” includes a naturally occurring biochemical compound derived, developed or synthesised, from a biological resource or resulting from the genetic expression or metabolism of the biological or genetic resource, or part, tissue or extract, whether it contains functional units of heredity or otherwise, and information in relation to derivatives;

“Director” means the Director of the Sabah Biodiversity centre;

“*ex situ* collection" includes biological resources or traditional knowledge associated with biological resources that are housed, planted, stored, kept or found outside their natural

habitats such as in herbariums, research institutions, universities, botanical gardens, private collections and any other similar conservation centres;

“export” means to take or cause to be taken out of Sabah any biological resources or traditional knowledge associated with biological resources by land, sea, air or any other means, as the case may be, or to place any biological resources in a vessel, barge, conveyance or aircraft for the purpose of the biological resources being taken out of Sabah by land, sea, or air;

“genetic resource” means any material of plant, animal, microorganism, fungi or other origin that contains functional units of heredity and that has actual or potential value for humanity;

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

"local community" means a group of individuals who have settled together and continuously inherit production processes and culture or a group of individuals settled together in a village or area and under an eco-cultural system;

"Minister" means the Minister for the time being responsible for matters relating to natural resources;

“native” means a group of individuals comprising native as defined in the Interpretation (Definition of Native) Ordinance (*Cap.64*);

“plant” includes-

(a) any species of plant or any part of such species whether alive or dead and includes the stem, branch, tuber, bulb, corm, stock, budwood, cutting, layer, slip, sucker, root, leaf, flower, fruit, seed or any other part or product whatsoever of a plant whether severed or attached; and

(b) any readily recognisable part or derivative of a plant;

"premises" includes any hut, shed, structure, platform, house, building, conveyance and land whether or not enclosed or built upon;

“propagating material” means any biological resource material including material of plant or animal origin or any part of the biological resource material, used for multiplication or reproduction;

“research and development” includes the study or systematic investigation or technology application by analysing, sampling, bioassaying and inventorising or other methods for any purpose including taxonomic research, and potential commercial product development;

“resource provider” includes –

(a) the Council;

(b) a government department or agency holding a biological resources or traditional knowledge associated with biological resources away from its natural environment, whether in a collection or otherwise;

- (c) a private landowner, where the resource is on private land;
- (d) the native and local community, where the resource is on land to which they have a right;
- (e) the native and local community, where they are the holders of the traditional knowledge associated with biological resources;
- (f) an individual, where the genetic resource is found within that individual;

“take” includes –

- (a) in relation to an animal, to harvest, catch, capture, trap and kill or obtain in any other way;
- (b) in relation to a plant specimen, to collect, harvest, pick, gather and cut or obtain in any other way;
- (c) in relation to other biological resources or traditional knowledge associated with biological resources including microorganisms, to collect, pick or obtain in any other way; or
- (d) to obtain a biological resources or traditional knowledge associated with biological resources in any other way;

“User” means any individual, a group of individuals, educational and research institution or corporate entity seeking access to biological resources or traditional knowledge associated with biological resources and where the context so requires, the aforementioned to whom the access licence is granted.

2A. [Deleted by En. 9 of 2023]

Small farmers’ rights

2B. (1) Nothing in this Enactment shall be interpreted to limit the right of a small farmer-

- (a) to save, use, exchange and, sell farm-saved seed or propagating material;
and
- (b) to undertake conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping.

(2) For the purpose of this section, “small farmer” means a farmer whose farming operations do not exceed the size of holding as prescribed by the Minister.

PART II

ESTABLISHMENT OF SABAH BIODIVERSITY COUNCIL

Sabah Biodiversity Council

3. (1) There shall be established for the purpose of this Enactment a body by the name of the Sabah Biodiversity Council.

(2) The Council shall consists of the following members:

- (a) a Chairman who shall be the State Secretary;
- (b) the State Attorney-General or his alternate representative;
- (c) the Secretary of Natural Resources or his alternate representative;
- (d) the Chief Conservator of Forests or his alternate representative;
- (e) the Director of Sabah Parks or his alternate representative;
- (f) the Director of Wildlife Department or his alternate representative;
- (g) the Director of Environment Protection Department or his alternate representative.
- (h) the Director of Water Resources or his alternate representative;
- (i) the Director of Sabah Agriculture Department or his alternate representative;
- (j) the Director of Sabah Fisheries Department or his alternate representative;
- (k) not more than five other members who shall be persons having extensive experience and expertise in biodiversity, conservation and management and all of whom shall be appointed by the Minister.

(3) The Director shall be the Secretary to the Council.

Functions and powers of the Council

3A. (1) The Council shall have the following functions and powers:

- (a) to advise the Government on matters relating to the conservation and sustainable use of biological resources or traditional knowledge associated with biological resources;
- (aa) to advise the Government on matters relating to the management of biological resources and traditional knowledge associated with biological resources in accordance with international requirements;

- (b) to advise the Government on strengthening of the management of biological resources or traditional knowledge associated with biological resources of the State;
- (c) to monitor the State policy with regards to biotechnology and application of biotechnology;
- (d)–(e) [Deleted by En. 9 of 2023]
- (f) to support fair and equitable sharing of benefits to access and benefit sharing in relation to a biological resources or traditional knowledge associated with biological resources;
- (g) to support customary laws and practices of native and local communities, and the development of community protocols and procedures by the native and local communities, as the case may be;
- (j)–(n) [Deleted by En. 9 of 2023]

(2) [Deleted by En. 9 of 2023]

Duration of office and eligibility for reappointment.

4. Every appointed member of the Council shall unless he sooner resigns or his appointment is revoked, hold office for a term not exceeding three years and shall be eligible for reappointment.

Disqualification from membership.

5. (1) The following persons shall be disqualified from being appointed as, or if appointed, remaining a member -

- (a) a person who is of unsound mind or otherwise incapable of performing his duties;
- (b) a person who is prohibited from being a director of a company under the provisions of any written law relating to companies;
- (c) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude; or
- (d) a person who is a bankrupt or who has made an arrangement with his creditors.

(2) An appointment member of the Council shall be deemed to have vacated the office:

- (a) upon his death;
- (b) upon his resignation;
- (c) upon his failure to attend three consecutive meetings of the Council without the permission from the Minister; or

(d) if he becomes disqualified under subsection (1),

and a new member shall be appointed in his place for the unexpired period of his terms in accordance with the provision of this Enactment.

Calling of meeting, quorum, voting, procedure and minutes.

6. (1) The Council shall meet once during every four months of the year and shall, in addition, meet as and when convened by the Chairman.

(2) Seven members shall be a quorum at any meeting of the Council of which two of such members are members appointed in paragraph 3(2)(k).

(3) Decisions of the Council shall be taken by the votes of the majority of the members present and voting thereon.

(4) If on any question to be determined by the Council there is an equality of votes, the Chairman or if the Chairman is absent the presiding member shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Enactment, the Council shall determine its own procedure.

(6) Minutes shall be kept of all proceedings of the Council.

(7) The Minister may invite or request a person, who is not a member of the Council, to attend any meeting of the Council for the purpose of advising it on a matter under discussion but the person so attending has no right to vote at the meeting.

Presiding at meetings of Council.

7. (1) The Chairman of the Council shall preside at all meetings of the Council.

(2) If, owing to absence or inability to act due to illness or any other cause, the Chairman of the Council is unable to preside at any meeting the members present shall elect one of their number to preside at that meeting.

(3) No business shall be transacted at any meeting of the Council in the absence of the Chairman until a member has been elected to preside over that meeting.

Council may establish committee

7A. (1) The Council may establish any committee as it considers necessary or expedient to assist the Council in the performance of its functions or in the exercise of its powers.

(2) Members of a committee may be appointed from amongst the members of the Council or such other person as the Council thinks fit.

- (3) The Council shall appoint the chairman of the committee established under this section.
- (4) A member of a committee shall hold office for such term as the Council may specify in his letter of appointment and shall be eligible for reappointment.
- (5) The Council may, at any time, revoke the appointment of any member of a committee who is not a member of the Council.
- (6) A member of a committee who is not a member of the Council may, at any time, resign by giving a notice in writing to the chairman of the committee.
- (7) The committee shall be subject to and act in accordance with any direction given by the Council.
- (8) The committee shall meet as often as may be necessary at such times and places as the chairman of the committee may determine.
- (9) The committee may determine its own procedure.
- (10) The committee may invite any other person to attend any meeting of the committee for the purpose of advising the committee on the matter under discussion, but the person is not entitled to vote at the meeting.
- (11) The members of the committee or any person invited under subsection (10) to attend any meeting of the committee may be paid such allowances as the Council may determine.
- (12) The committee shall cause minutes of all its meetings to be maintained and kept in proper form, and copies of the minutes shall be submitted by the committee to the Council as soon as practicable.

Disclosure of interest

- 7B.** (1) Any member of the Council or a committee having directly or indirectly any interest in relation to any matter under discussion by the Council or the committee shall disclose to the Council or the committee, as the case may be, the fact of his interest and the nature of that interest.
- (2) A disclosure of interest under subsection (1) shall be recorded in the minutes of the meeting of the Council or the committee, as the case may be.
 - (3) Upon disclosure under subsection (1), the member -
 - (a) shall not take part in or be present during any discussion or decision of the Council or the committee; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the meeting of the Council or the committee,

relating to the matter.

- (4) A member of the Council or the committee who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(5) No act or proceeding of the Council or the committee shall be invalidated on the ground that any member of the Council or the committee has contravened this section.

Council may appoint advisers

7C. The Council may appoint any person with the requisite experience, expertise and knowledge in biological resources or traditional knowledge associated with biological resources as adviser or consultant for the Council, and may form a Panel of Advisers or Consultants to advise the Council on the performance of its functions or exercise of its powers.

Power of Council to delegate

7D. (1) The Council may, in writing, delegate any of its functions or powers subject to such conditions, limitations or restriction as it thinks fit, to the Chairman of the Council, Director or any committee, and such person or committee to whom the functions or powers is delegated shall perform the functions or powers in the same manner and with the same effect as if the functions or powers had been conferred on him under this Enactment.

(2) A person purporting to act pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) A delegation made under this section may at any time be revoked by the Council.

(4) A delegation made under this section shall not preclude the Council itself from carrying out at any time the delegated functions or powers.

8. [Deleted by En.9 of 2017]

PART IIA

FUNCTIONS AND POWERS OF DIRECTOR AND ESTABLISHMENT OF SABAH BIODIVERSITY CENTRE

Director

8A. (1) There shall be a Director of Sabah Biodiversity Centre from amongst the members of the State public service.

(2) There shall be such number of officers, from amongst the members of the State public service, as may be necessary or expedient to assist the Director in the performance of his functions or in the exercise of his powers under this Enactment.

(3) A person appointed under subsection (2) shall be subject to the direction, control and supervision of the Director.

Functions and powers of the Director

8B. The Director shall have the following functions and powers:

- (a) to manage the Biodiversity Centre;

- (b) to deal with all the applications for access to biological resources or traditional knowledge associated with biological resources and the sharing of benefits arising from the utilization of the biological resources or traditional knowledge associated with biological resources;
- (c) to approve, after consultation with the Council, and issue access licence and export licence;
- (d) to maintain a record of all access applications and decisions relating to such application, including the licence issued;
- (e) to regulate the access to the biological resources or traditional knowledge associated with biological resources of the state including the removal of any biodiversity from the State;
- (f) to identify the priorities for research on biodiversity to enhance undertaking, conservation and sustainable utilization of biodiversity and biological resources or traditional knowledge associated with biological resources, including ethnobotany, taxonomy and traditional uses;
- (g) to co-ordinate local, state and national activities relating to conservation, research and sustainable use of biological resources or traditional knowledge associated with biological resources and biodiversity;
- (h) to co-ordinate preparations for regional and international activities relating to the conservation, research and sustainable use of biological resources or traditional knowledge associated with biological resources and biodiversity;
- (i) to formulate programmes for systematic surveys of biodiversity and the collection and analysis of the data thereto;
- (j) to plan and initiate programmes for the utilization, conservation, protection and sustainable development of biological resources or traditional knowledge associated with biological resources;
- (k) to establish or caused to be established a system for the protection of biological resources or traditional knowledge associated with biological resources so that the native and local communities shall, at all time and in perpetuity, be the legitimate creators, users and custodian of such knowledge, and shall collectively benefit from the use of such knowledge.
- (l) to establish linkages with other institution or bodies, within or outside the State, with a view to enhancing the management, protection, preservation, research and utilization of the biodiversity or traditional knowledge associated with biological resources of the native and local community of the State;
- (m) to create awareness and to provide training, education and information relating to access and benefit sharing in relation to a biological resources or traditional knowledge associated with biological resources;
- (n) to support customary laws and practices of native and local communities,

and the development of community protocols and procedures by the native and local communities, as the case may be;

- (o) generally to promote education and knowledge of the biodiversity of the State;
- (p) to carry on of all activities of which appears to the Director to be necessary, advantages or convenient for or in connection with the performance and exercise of his functions and powers; and
- (q) to do such other things as the Director deems fit to enable him to perform and exercise his functions and powers effectively or which are incidental to the performance and exercise of his functions and powers.

Delegation of powers

8C. (1) The Director may, in writing, delegate any of his functions or powers subject to such conditions, limitations or restriction as he thinks fit, to any officer, and such person to whom the functions or powers is delegated shall perform the functions or powers in the same manner and with the same effect as if the functions or powers had been conferred on him under this Enactment.

(2) A person purporting to act pursuant to a delegation made under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(3) A delegation made under this section may at any time be revoked by the Director.

(4) A delegation made under this section shall not preclude the Director himself from carrying out at any time the delegated functions or powers.

Sabah Biodiversity Centre.

9. (1) There shall be established for the purpose of this Enactment a centre by the name of the Sabah Biodiversity Centre to be managed by the Director for the purpose of:

- (a) providing the Government and other institutions approved by the Government with accurate information or data on the status, magnitude, distribution, usage and value of the biodiversity in the State;
- (b) managing and sustaining utilisation of the biodiversity of the State, including determining policies and guidelines for scientific research or experiment related to the access to and use of biological resources or traditional knowledge associated with biological resources in the State for pharmaceutical, medicinal and other specific purposes;
- (c) carrying such activities in association or collaboration or in joint venture with other bodies or persons including the departments or agencies of the Government or the Federal Government for the improvement and enhancement of conservation and management of biological resources or traditional knowledge associated with biological resources in the State;
- (d) [Deleted by En. 9 of 2023]

- (e) [Deleted by En. 9 of 2023]
- (f) promoting the identification of new natural and biotechnological products derived from the biodiversity and biological resources or traditional knowledge associated with biological resources in the State;
- (g) [Deleted by En. 9 of 2023]
- (h) Establishing a database system of all exhibits, published and written records regarding the use, cultivation and management of biological resources or traditional knowledge associated with biological resources in the State.
- (i) Establishing a network of researchers in institutions of higher learning, research institutes, libraries and documentation centres to assist in building or be part of the system of recording such knowledge;
- (j) [Deleted by En. 9 of 2023]
- (k) [Deleted by En. 9 of 2023]
- (ka – kd) [Deleted by En. 9 of 2023]
- (l) carrying on of all activities of which appears to the Director to be necessary, advantages or convenient for or in connection with the discharge of his duties; and
- (m) [Deleted by En. 9 of 2023]

Directions of the Minister.

10. (1) The Minister may give the Director such directions, not inconsistent with the provisions of this Enactment, as he thinks fit, as to the exercise and performance by the Director of his powers, duties and functions under this Enactment, and the Director shall give effect to any direction so given.

(2) [Deleted by En. 9 of 2023]

11. [Deleted by En. 9 of 2023]

12. [Deleted by En. 9 of 2023]

13. [Deleted by En. 9 of 2023]

PART III

ESTABLISHMENT OF THE FUND

Biodiversity Centre Fund

14. (1) For the purpose of this Enactment, there shall be established a fund known as "the Biodiversity Centre Fund".

- (1A) The Fund shall be administered, controlled and maintained by the Director.
- (2) The Fund shall consist of –
- (a) such sums as may be provided by the State Legislative Assembly from time to time;
 - (b) grants from the Federal Government;
 - (c) donations and contributions paid into the Fund by any statutory body, body corporate, associated or individual person; and
 - (d) collections from the public.
- (3) The Fund shall be operated in accordance with the Financial Procedure Act 1957 [Act. 61.] and any subsidiary legislation made thereunder.
- (4) The Fund shall be expended for the purpose of –
- (a) the payment of the expenses of, or connected with, the administration of the Council;
 - (b) the administration, management and operation of the Biodiversity Centre; and
 - (c) the payment of all expenses necessary for carrying out the purpose of this Enactment.

PART IV

ACCESS TO BIOLOGICAL RESOURCES OR TRADITIONAL KNOWLEDGE ASSOCIATED WITH BIOLOGICAL RESOURCES

Access to biological resources or traditional knowledge associated with biological resources

- 14A.** (1) A person is said to have access to biological resources or traditional knowledge associated with biological resources if –
- (a) the taking of a biological resources or traditional knowledge associated with biological resources from its natural habitat or place where it is kept, grown or found including in the market is for the purpose of research and development;
 - (b) there is a reasonable prospect as determined by the Council that a biological resources or traditional knowledge associated with biological resources taken by the person will be subject to research and development; or
 - (c) the collecting of a biological resource's reproductive material for propagation is for the purpose of research and development.

(2) Access to a biological resources or traditional knowledge associated with biological resources shall not include the following activities:

- (a) fishing for commerce, recreation or game;
- (b) taking animals or plants for food;
- (c) taking biological resources that has been cultivated or tended for any purpose other than the purpose of research and development;
- (d) taking natural produce including oils and honey for any purpose other than the purpose of research and development;
- (e) collecting plant reproductive material for propagation for any purpose other than the purpose of research and development;
- (f) carrying out commercial forestry;
- (g) in relation to native and local communities, for the use and exchange of the biological resources or traditional knowledge associated with biological resources among themselves in the exercise of their traditional and customary practices;
- (h) taking of a biological resources or traditional knowledge associated with biological resources by any person that is –
 - (i) a living modified organism as defined in the Biosafety Act 2007 [Act 678] for which intellectual property rights have been granted and subsist; or
 - (ii) a plant variety for which a breeder's right has been granted and subsists under the Protection of New Plant Varieties Act 2004 [Act 634]; and
- (i) access to a biological resources or traditional knowledge associated with biological resources exempted under section 36A.

Protected biological resources

14B. (1) Subject to any other written laws, no person shall keep, sell, purchase, export or import any protected biological resources specified in the Schedule.

(2) Any person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) For the purpose of this section, "protected biological resources" means any biological resources which has satisfied at least three of the following criteria:

- (a) endemic to Sabah;
- (b) rare or geological obligate;
- (c) endangered;
- (d) has significant culture value;
- (e) has ecological importance;
- (f) has genetic value
- (g) high in demand; and
- (h) has potential commercial value.

Access licence.

15. (1) Any User who intends to obtain access to biological resources or traditional knowledge associated with biological resources for biodiversity related to research purposes shall apply in writing to the Director for an access licence.

(2) Provided that this section shall not apply to public officers obtaining access to biological resources or traditional knowledge with biological resources as part of their prescribed duties and responsibilities in their respective organisation and as provided for in their respective Ordinance or Enactment which do not involve any collaboration with the second and third party.

(3) [Deleted by En. 9 of 2023]

Conditions of approval for an access licence

15A. (1) The Director shall, as a condition for approval of an access licence, require the User to –

- (a) identify a Sabah institution as the local collaborator that will collaborate and participate in the collection, research and development and other activities in relation to the biological resources or traditional knowledge associated with biological resources concerned; and
- (b) identify the foreign institution that shall act as the sponsor organisation responsible for the actions of the User with regard to the access activity, where appropriate.

(2) The Government may impose or attach any other conditions to the approval of the application as it deems fit.

Application for an access licence.

16. (1) An application for an access licence shall be in respect of access to biological resources or traditional knowledge associated with biological resources found on:

- (a) State lands;
- (aa) alienated land;
- (b) any reserves, natives customary lands or any other sites over which native and local communities exercise community-based or customary rights; or
- (c) any other areas, including rivers, tributaries, waterways or areas covered by water, marine parks or territorial waters of the State, and shall also include any *ex situ* collections in the State.

(2) Notwithstanding subsection (1), an application for an access licence for commercial or potential commercial purposes shall enter into a benefit sharing agreement under section 24A.

Information for the application for an access licence.

17. (1) The application for an access licence shall include the following information:

- (a) the identity of the User and the documents which testify to his legal capacity to contract;
- (b) the details of the User's proposed access activity, which shall include:
 - (i) the biological resources or traditional knowledge associated with biological resources to which access is sought, including the intended uses;
 - (ii) the purpose for which access is requested, including the intention to commercialise any information resulting from the access activity, and the type and extent of such commercial use;
 - (iii) the name of Sabah institution that will collaborate in the collection, research and development and other activities in relation to the resource concerned, as the local collaborator.
 - (iv) where appropriate, the name of the institution that will act as the sponsor organisation to be responsible for the action of User with regard to the access activity;
 - (v) the precise sites where the access activity is to be undertaken or where the resource is located, including where relevant the status of the land according to the categorisation as specified in section 16, as well as, the places where the proposed research and development activities will be carried out;
 - (vi) the time when the access activity is proposed to be carried out;
 - (vii) the primary destination of resource and its probable subsequent destinations;
 - (viii) the benefits, whether economic, technical, scientific, environmental,

social or otherwise, that may derive to the state and the concerned communities and proposed mechanisms or arrangements for benefit sharing;

- (ix) description of any biological resources or traditional knowledge associated with biological resources; and
- (x) environmental and socio-economic impact assessment covering the likely long term impacts, where appropriate;

(2) The Director may request additional information or document as he deems necessary.

Application fee.

18. The application shall be submitted to the Director together with an application fee, the amount of which shall be prescribed by the Director.

Costs.

19. The User shall bear the following costs and expenses incurred:

- (a) in making an application for the access licence;
- (b) in complying with the conditions imposed by the Director, after consultation with the Council; and
- (c) in meeting or fulfilling any other requirements or conditions as may be imposed by the provision of this Enactment.

Evaluation of the application of an access licence.

20. The Director shall evaluate the application for the access licence, taking into account, *inter alia*, the following matters:

- (a) the contribution of the access activity to the conservation and sustainable use of biological resources or traditional knowledge associated with biological resources;
- (b) the impact of the access activity on biological diversity and the environment, including any adverse impacts, risks and dangers to any component of biological diversity and its sustainable use; and
- (c) the impact of the access activity on native and local communities, their lifestyles and livelihoods.

Grant or refusal of licence

21. (1) The Director shall, after consulting the Council, and considering the application for an access licence under section 15 and any additional information or document provided under subsection 17(2), grant a licence or refuse to grant a licence.

(2) The licence issued under subsection (1) shall be in the prescribed form and shall be subject to such terms and conditions as may be specified in the licence or as prescribed by the Director.

(3) The decision of the Director to grant or not to grant a licence shall be communicated to the applicant by written notice as soon as practicable.

Prohibition against export of biological resources or traditional knowledge associated with biological resources

21A. No export for research purposes of any biological resources or traditional knowledge associated with biological resources collected from alienated land, conservation area, forest reserve, parks area, protected areas, State land, water protection areas or water conservation areas, wildlife area, rivers, tributaries, waterways, marine parks, territorial waters under the State or other area without a licence issued by the Director.

Presumption as to export

21B. In relation to export, any biological resources or traditional knowledge associated with biological resources shall be deemed to be taken out or caused to be taken out of Sabah if –

- (a) an export licence has been issued by the Director;
- (b) it has been cleared by a proper officer of customs at the last customs station on its route out of Sabah;
- (c) it has been loaded onto a vessel or aircraft which is about to depart from a port, jetty or airport in Sabah, as the case may be; or
- (d) it has been cleared by a proper officer of customs at an inland clearance depot or at an inland customs station on its route out of Sabah through a port or an airport, as the case may be.

Appeals.

22. Any person aggrieved by any decision of the Director may, at any time within the period of three (3) months beginning from the date of receipt of the decision, appeal to the Minister.

23 – 24 [Deleted by En. 9 of 2023]

Benefit sharing agreement

24A. (1) An applicant for a licence for access to a biological resources or traditional knowledge associated with biological resources, for commercial or potential commercial purposes shall enter into a benefit-sharing agreement with the resource provider.

(2) A benefit-sharing agreement shall be based upon mutually agreed terms and provide for fair and equitable benefit sharing.

(3) Any such monetary benefits shall be deposited into a fund established by the Government.

(4) The Director shall use any payment or any part thereof received under this section towards the conservation of biological diversity and the sustainable use of its components and for such other incidental expenses.

Requirement for prior informed consent and mutually agreed terms, etc.

24B. (1) The prior informed consent of the relevant native or local community shall be obtained for any access to:

- (a) a biological resource on land to which such native and local community have a right as established by law; and
- (b) traditional knowledge associated with biological resources that is held by such native and local community.

(2) The prior informed consent of native and local community shall be obtained in accordance with customary laws and practices, protocols and procedures, of native and local community, as the case may be.

(3) Any person who intends to access the biological resources or traditional knowledge associated with biological resources in subsection (1) for commercial or potential commercial purposes shall enter into a benefit sharing agreement under section 24A with the relevant native and local community.

(4) Any prior informed consent shall be obtained from and benefit sharing agreement entered into with;

- (a) the representative, organisation or body identified in accordance with the customary laws and practices, protocols and procedure of the native and local community; or
- (b) where no such representative or organisation of the traditional knowledge associated with biological resources can be identified-
 - (i) with the holders of the traditional knowledge associated with biological resources within the native and local community; or
 - (ii) with the Government, if the holders of the traditional knowledge associated with biological resources cannot be identified.

(5) Any monetary benefit obtained from the benefit sharing agreement entered under paragraph 4(b)(ii) shall be deposited into a fund as may be established by the Government and any benefit, including where applicable non-monetary benefit, shall be applied for the interest of native and local community.

(6) Where the same traditional knowledge associated with biological resources is shared by more than one native or local community –

- (a) the applicant shall obtain the prior informed consent of and enter into benefit sharing agreement with the duly identified representative or organization of all the holders of the traditional knowledge associated with biological resources;

or

- (b) where it is not practicable in all the circumstances of the case to ascertain all such holders, and this is proven to the satisfaction of the Director, the applicant shall obtain the prior informed consent of, and enter into the benefit sharing agreement with the duly identified representatives or organisation of such of the holders as the applicant may ascertain.

(7) In the event that there is a claim by any native and local community that it is the rightful holder of the traditional knowledge associated with biological resources after the application is approved, the Director shall –

- (a) determine the claim in consultation with the native and local community whose prior informed consent has been obtained and benefit sharing agreement entered into;
- (b) if the claim is proven to the satisfaction of the Director, declare that the said native and local community is entitled to share the benefits due to the native and local community under the benefit sharing agreement; and
- (c) determine the quantum or nature of benefits to which the native and local community is entitled under paragraph (b), in consultation with all the native and local community concerned.

Review of decision made by the Director.

25. (1) Any approval given may be subjected to further conditions in addition to those originally imposed, or restrictions on, access activities, including in case of:

- (a) adverse effects on the conservation of biological diversity, including where the access activity affects endangered taxa, endemism or rarity;
- (b) adverse effects upon the quality of life or the cultural values of the native and local communities;
- (c) environmental impacts which are undesirable or difficult to control;
- (d) danger of erosion of genetic diversity and ecosystem, their resources or their components because of undue or uncontrolled collection of biological resources or traditional knowledge associated with biological resources;
- (e) adverse effects upon human, animal and plant health; and
- (f) use or potential use of resource for purposes contrary to the interest of the State.

(2) The Director may withdraw his approval and terminate the access licence and further use of the biological resources or traditional knowledge associated with biological resources where it is apparent that the User has violated any of the provision of this Enactment or the regulations thereto, or any other agreed terms under the access licence if public interest so demands.

(3) In the event of any revocation of the access licence, the Director shall not be subject to any claim for any loss, damage or compensation arising from the revocation of the access licence.

PART V
LEGAL PROCEEDINGS, OFFENCES AND PENALTIES

Offences.

26. Any person who:

- (a) in contravention of the provisions of this Enactment engages in, carries out, or undertakes any access activity without having an access licence;
- (b) fails to provide or wilfully withholds any information required under the provisions of this Enactment;
- (c) removes any biological resources or traditional knowledge associated with biological resources out of the State without the prior written authorisation of the Director; and
- (d) publish or advertise any biological resources or traditional knowledge associated with biological resources without prior written authorisation of the Director.

shall be guilty of an offence and shall, upon conviction, be liable to a fine not less than thirty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not less than six months and not more than five years or to both.

Unauthorised taking of exhibits, data, resources from the Biodiversity Centre.

27. Any person who by any act or by neglect, takes away, removes from or makes use of any biological resources or traditional knowledge associated with biological resources, exhibit, data, material or information kept, stored or maintained in the Biodiversity Centre shall be guilty of an offence and shall, on conviction, be liable to a fine not less than thirty thousand ringgit and not more than one hundred thousand ringgit or to imprisonment for a term not less than six months and not more than five years or to both .

28. [Deleted by En. 9 of 2023]

Powers of entry and investigation.

29. The Director, any police officer or customs officer or any other officer authorised in writing in that behalf by the Director may without warrant enter any land or premises upon which any access activity is being carried out on biological resources or traditional knowledge associated with biological resources in the State with a view to ascertaining whether the provisions of this Enactment are being complied with, and may make such investigation and inspection of the land or premises or the activities describes above, and call any person to produce such materials, books, records, reports or other documents or things and to furnish any information as the Director or such officer authorised by him or a police officer or customs officer may consider necessary for the purpose of conducting such investigation:

Provided that any person not in uniform purporting to exercise any powers under this section shall on demand produce his written authority to the owner or occupier of premises demanding the same.

Powers of search.

30. The Director, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may, without warrant and with or without assistance, enter any land or premises if he considers it to be necessary if he has reason to believe that an offence under this Enactment has been committed and may search any place and any person whom he reasonably believes to be concerned in the control or management or use of such land or premises, or to be an employee, servant or agent of the owner or occupier thereof.

Powers of seizure.

31. (1) The Director, any police officer or customs officer or any other officer authorised to exercise the powers of entry or investigation under section 29 may seize, remove and detain any goods, tool, equipment, document, material or any other thing which is used or employed in relation to any collection, study, research or experiment being carried out on biological resources or traditional knowledge associated with biological resources in the State, which he reasonably believes to be or has been used, in the commission of an offence or to contain evidence relating to such an offence under this Enactment.

(2) No claim or action shall lie against the Director, police officer, customs officer or any other officer authorised in writing by the Director in that behalf in respect of the entry, investigation, seizure, removal or detention of any such goods, tool, equipment, document, material or other thing under subsection (1).

(3) Any goods, tool, equipment, document, material or other thing seized, removed or detained under subsection (1) may be sold by the Director by public auction or otherwise, disposed of as the court may order, and the proceed thereof shall, after being applied to cover the costs of such seizure, removal or detention and sale, be returned to the rightful owner.

Powers of arrest.

32. (1) The Director, any police officer or customs officer or other officer authorised to exercise the powers of entry or investigation under section 29 may arrest without warrant any person whom he reasonably suspects of committing or attempting to commit or aiding any person to commit any offence under this Enactment and –

- (a) who refuses to furnish his name and address;
- (b) who furnishes a name or address reasonably suspected of being false or who furnishes an address outside Malaysia; or
- (c) who is reasonably suspected of being likely to abscond.

(2) Every person so arrested shall as soon as practicable be delivered into the custody of a police officer to be dealt with according to law.

Obstruction.

33. Any person who obstructs the Director, any police officer or customs officer or any other authorised officers lawfully exercising any powers conferred on him by or under this Enactment shall be guilty of an offence and shall, on conviction, be liable to a fine of ten thousand ringgit or to imprisonment for a term not exceeding one year, or to both.

Liability of director, etc.

34. Where an offence under this Enactment has been committed by a body of persons, corporate or unincorporate, any person who at the time of the commission of such offence was a director, manager, secretary or other similar officer of the body of persons or who was purporting to act in any such capacity, shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance, and that he exercised such diligence to prevent his 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.

Conduct of prosecution.

35. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code may conduct prosecuting for offences under this Enactment or the rules made thereunder.

Compounding of offences.

36. (1) The Director may in his discretion compound any offence committed by any person under this Enactment by making a written offer to the person suspected of committing the offence to compound the offence on payment to the Director of an amount of money not exceeding fifty percent of the amount of the maximum fine for that offence within the time specified in the offer.

(2) 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 if the amount specified in the offer is not paid within the time specified in the offer or within any extended period as the Director may grant, prosecution for the offence may be instituted at any time after against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

PART VI

Power to exempt

36A. The Minister may, upon recommendation of the Council, by order publish in the *Gazette*, exempt, subject to such terms and conditions as may be deemed fit to impose, any person or class of persons or any biological resources or traditional knowledge associated with biological resources, including any use of a biological resource from all or any of the provisions of this Enactment.

Protection against suit and legal proceedings

36B. No action or prosecution shall be brought, instituted or maintained in any court against-

- (a) the member of the Council or committee, the Director or any officers duly authorized under this Enactment for or on account of or in respect to any act ordered or done for the purpose of carrying into effect this Enactment and any regulations made under this Enactment; and
- (b) any other person for any act done or purported to be done by him under the order, direction or instruction of the Council or Director under this Enactment,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Enactment.

Regulations.

37. (1) The Minister may, make regulations generally for the purpose of carrying out the provision of this Enactment and, in particular, such regulations may provide for –

- (a) the payment of fees, honorarium, allowances and benefits to members of the Council, or adviser or consultants appointed under section 11;
- (b) the management and control of the Biodiversity Centre;
- (c) the terms and conditions for access to and use of the biological resources or traditional knowledge associated with biological resources in the State or such resources, data, exhibit, information or materials kept, stored or maintained in the Biodiversity Centre;
- (d) prescribing the terms and conditions including fees for the access licence to be issued under this Enactment;
- (e) prescribing the amount of security deposit for any licence issued under this Enactment or any of its subsidiary legislation;
- (f) the exercise of the Council's powers and functions under the provisions of this Enactment;
- (g) prescribing rewards to persons or body of persons for giving relevant information for the illegal activities that is being carried out;
- (h) prescribing incentives to persons or body of persons for carrying out measures which are necessary to protect and conserve natural resources for the protection and enhancement of the biodiversity;
- (i) prescribing the offence which may be compounded, the person who may compound, the limit of the sum of money to be collected for compounding such offences and the procedure and forms to be complied with in compounding;
- (j) prescribing rate of compensation that the Director may require any person to pay for damages caused to the biodiversity by the act, omission, neglect or default of that person;

- (k) prescribing the mode and manner of benefit sharing for access to biological resources or traditional knowledge associated with biological resources;
 - (l) prescribing the terms and conditions for the licence to export the biological resources or traditional knowledge associated with biological resources;
 - (la) prescribing the terms and conditions for the licences to transfer the biological resources or traditional knowledge associated with biological resources;
 - (lb) prescribing the fees payable in respect of licences and of any other thing done under the provisions of this Enactment or any of its subsidiary legislation;
 - (lc) prescribing any forms to be used for the purposes of this Enactment or any of its subsidiary legislation; and
 - (m) such other purposes which may be considered to be necessary for carrying out the provisions of this Enactment.
- (2) The regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties –
- (a) where such person is an individual, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding one year or to both; or
 - (b) where such person is a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Amendment of Schedule

38. The Minister may, after consultation with the Council, by order published in the *Gazette*, amend the Schedule.

SCHEDULE

[Section 14B]

PROTECTED BIOLOGICAL RESOURCES

ANIMALS

No.	Family	Scientific Name
1.	Carcharhinidae	<i>Carcharhinus leucas</i>
2.		<i>Glyphis glyphis</i>
3.	Dasyatidae	<i>Urogymnus polylepis</i>
4.	Limulidae	<i>Tachypleus tridentatus</i>
5.	Pristidae	<i>Pristis pristis</i>
6.	Papilionidae	<i>Troides andromache</i>

PLANTS

No.	Family	Scientific Name
1.	Annonaceae	<i>Goniothalamus kinabaluensis</i>
2.	Aquifoliaceae	<i>Ilex revoluta</i>
3.	Araceae	<i>Alocasia melo</i>
4.		<i>Alocasia reginula</i>
5.	Araliaceae	<i>Heptapleurum beamanii</i>
6.		<i>Heptapleurum chanii</i>
7.		<i>Heptapleurum kinabaluense</i>
8.		<i>Heptapleurum opacum</i>
9.		<i>Heptapleurum peridotiticola</i>
10.		<i>Heptapleurum serpentinicola</i>
11.		<i>Heptapleurum tambuyukonense</i>
12.	Athyriaceae	<i>Athyrium amoenum</i>
13.		<i>Deparia biserialis</i>
14.		<i>Diplazium atosquamosum</i>
15.		<i>Begonia basintaliana</i>
16.		<i>Begonia beryllae</i>
17.		<i>Begonia bintang</i>

18.		<i>Begonia bosuangiana</i>
19.		<i>Begonia burbidgei</i>
20.		<i>Begonia chongii</i>
21.		<i>Begonia crockerensis</i>
22.		<i>Begonia doloisii</i>
23.		<i>Begonia erythrogyna</i>
24.		<i>Begonia flammea</i>
25.		<i>Begonia gelasensis</i>
26.		<i>Begonia gibbsiae</i>
27.		<i>Begonia gusilii</i>
28.		<i>Begonia imbricata</i>
29.		<i>Begonia inobongensis</i>
30.		<i>Begonia inostegia</i>
31.		<i>Begonia jambiliana</i>
32.		<i>Begonia kibambanganensis</i>
33.		<i>Begonia kinabaluensis</i>
34.	Begoniaceae	<i>Begonia kinahimiae</i>
35.		<i>Begonia kipandiensis</i>
36.		<i>Begonia lamriana</i>
37.		<i>Begonia mamutensis</i>
38.		<i>Begonia mariaensis</i>
39.		<i>Begonia minutiflora</i>
40.		<i>Begonia moneta</i>
41.		<i>Begonia oblongifolia</i>
42.		<i>Begonia paracauliflora</i>
43.		<i>Begonia peridoticola</i>
44.		<i>Begonia rambutan</i>
45.		<i>Begonia ramlanii</i>
46.		<i>Begonia renek</i>
47.		<i>Begonia simunii</i>
48.		<i>Begonia tawaensis</i>
49.		<i>Begonia tindan</i>

50.		<i>Begonia tomaniensis</i>
51.		<i>Begonia vaccinioides</i>
52.		<i>Begonia vanderentii</i>
53.	Cyperaceae	<i>Machaerina aspericaulis</i>
54.		<i>Oreobolus ambiguus</i>
55.	Dryopteridaceae	<i>Ctenitis minutiloba</i>
56.	Ericaceae	<i>Gaultheria aurea</i>
57.		<i>Gaultheria carrii</i>
58.		<i>Gaultheria caudatifolia</i>
59.		<i>Gaultheria chrysothrix</i>
60.		<i>Gaultheria cinnamomifolia</i>
61.		<i>Gaultheria clementium</i>
62.		<i>Gaultheria ensifolia</i>
63.		<i>Gaultheria kinabaluensis</i>
64.		<i>Gaultheria memecyloides</i>
65.		<i>Gaultheria myrtilus</i>
66.		<i>Gaultheria penduliflora</i>
67.		<i>Gaultheria pseudorufescens</i>
68.		<i>Gaultheria sanguinolenta</i>
69.		<i>Gaultheria sphenophylla</i>
70.		<i>Gaultheria urceolata</i>
71.	<i>Gaultheria sulcinervia</i>	
72.	Phyllanthaceae	<i>Actephila alanbakeri</i>
73.	Gleicheniaceae	<i>Dicranopteris clemensiae</i>
74.	Goodeniaceae	<i>Scaevola chanii</i>
75.	Lamiaceae	<i>Callicarpa kinabaluensis</i>
76.		<i>Clerodendrum kinabaluense</i>
77.		<i>Petraeovitex kinabaluensis</i>
78.	Lindsaeaceae	<i>Lindsaea jamesonioides</i>
79.		<i>Odontosoria veitchii</i>
80.	Magnoliaceae	<i>Magnolia persuaveolens</i> var. <i>pubescens</i>
81.		<i>Magnolia persuaveolens</i> subsp. <i>rigida</i>

82.		<i>Magnolia persuaveolens</i>
83.		<i>Catanthera kinabaluensis</i>
84.	Melastomataceae	<i>Medinilla kinabaluensis</i>
85.		<i>Sonerila kinabaluensis</i>
86.	Moraceae	<i>Ficus densechini</i>
87.	Myrtaceae	<i>Syzygium penibukanense</i>
88.	Phyllanthaceae	<i>Phyllanthus rufuschaneyi</i>
89.	Pittosporaceae	<i>Pittosporum peridoticola</i>
90.	Poaceae	<i>Anthoxanthum horsfieldii</i>
91.		<i>Poa borneensis</i>
92.		<i>Racemobambos gibbsiae</i>
93.		<i>Koeleria spicata</i>
94.	Podocarpaceae	<i>Dacrycarpus kinabaluensis</i>
95.	Polypodiaceae	<i>Oreogrammitis havilandii</i>
96.		<i>Oreogrammitis kinabaluensis</i>
97.	Pteridaceae	<i>Pteris clemensiae</i>
98.	Tectariaceae	<i>Tectaria nitens</i>
99.	Thelypteridaceae	<i>Pneumatopteris microauriculata</i>
100.		<i>Reholtiumia micropaleata</i>
101.		<i>Pronephrium peltatum</i> var. <i>tenompokense</i>
102.		<i>Pseudophegopteris kinabaluensis</i>
103.		<i>Sphaerostephanos gymnorachis</i>
104.		<i>Sphaerostephanos lithophyllus</i>
105.		<i>Sphaerostephanos lobangensis</i>
106.		<i>Sphaerostephanos squamatellus</i>
107.	Ranunculaceae	<i>Ranunculus lowii</i>
108.	Rosaceae	<i>Rubus lowii</i>
109.		<i>Rhaphiolepis balgooyi</i>
110.	Rubiaceae	<i>Timonius beamanii</i>
111.		<i>Timonius pannosus</i>
112.		<i>Timonius stenolobus</i>
113.		<i>Timonius tambuyakonensis</i>

114.		<i>Elatostema lithoneurum</i>
115.		<i>Elatostema maraiparaiense</i>
116.		<i>Elatostema penibukanense</i>
117.	Urticaceae	<i>Elatostema rubrostipulatum</i>
118.		<i>Elatostema serpentinicola</i>
119.		<i>Elatostema tenompokense</i>
120.	Violaceae	<i>Rinorea bengalensis</i>

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 2nd day of November 2000.

DATUK FRANCIS T.N. YAP,
Deputy Speaker,
State Legislative Assembly.