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SARAWAK BIODIVERSITY CENTRE ORDINANCE, 1997

SARAWAK BIODIVERSITY REGULATIONS, 2016

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SARAWAK BIODIVERSITY CENTRE ORDINANCE, 1997

SARAWAK BIODIVERSITY REGULATIONS, 2016

(Made under section 35(1))

In exercise of the powers conferred by section 35(1) of the Sarawak Biodiversity Centre Ordinance, 1997 [*Cap. 24*], the Majlis Mesyuarat Kerajaan Negeri has made the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the **Sarawak Biodiversity Regulations, 2016**, and shall be deemed to have come into force on the 28th day of January, 2016.

Interpretation

2. In these Regulations—

“benefit sharing agreement” means an agreement as described in regulation 14;

“biological resources” means biological resources as defined in the Ordinance;

“Centre” means the Sarawak Biodiversity Centre established under the Ordinance;

“Chief Executive Officer” means the Chief Executive Officer as defined in the Ordinance;

“Controller” means the Controller of Wild Life or Controller of National Parks and Nature Reserves, as the case may be;

“Council” means the Sarawak Biodiversity Council established under the Ordinance;

“derivative” means derivatives as defined in the Ordinance;

“Director” means the Director of Forests or any person temporarily discharging the duties of that office;

“export” in relation to biological resources means removing, shipping or taking away by any means the same out of the State for research and development relating to pharmaceutical or biotechnological developments;

“forest reserve” and “protected forest” shall have the same meaning assigned to those expressions by the Forests Ordinance, 2015 [*Cap. 71*];

“national park” or “nature reserve” refers to a national park or nature reserve respectively constituted under the National Parks and Nature Reserves Ordinance, 1998 [*Cap. 27*];

“natives” shall have the same meaning assigned to that expression by the Interpretation Ordinance, 2005 [*Cap. 61*];

“Ordinance” means the Sarawak Biodiversity Centre Ordinance, 1997 [*Cap. 24*];

“permit holder” means any person issued with a permit under these Regulations, and includes any person employed or engaged by him to undertake or assist in undertaking the activities covered by the permit or his duly authorized agent or representative;

“prior informed consent” means the consent obtained in accordance with Part V of these Regulations;

“protected resources” means those biological resources declared as protected resources under section 21(1) of the Ordinance;

“research and development” means research and development as defined in the Ordinance;

“specimen”, in relation to biological resources, includes any sample, extract, part, derivative, components, representation or by-product of any plant, insect or aquatic life;

“traditional knowledge” means the traditional knowledge of natives in utilizing and managing biological resources and its environment for their communities general sustenance;

“wild life sanctuary” means a wild life sanctuary constituted under the Wild Life Protection Ordinance, 1998 [*Cap. 26*].

PART II

ACCESS TO BIOLOGICAL RESOURCES FOR RESEARCH AND DEVELOPMENT

Access to biological resources

3.—(1) Subject to regulation 4, no person shall enter and collect or take away any biological resources from State land, State land forests, permanent forests, national park, nature reserve or wild life sanctuary without a licence or permit issued by the Director or the Controller under the Forests Ordinance, 2015 [Cap. 71], the National Park and Nature Reserve, 1998 [Cap. 27], or the Wild Life Protection Ordinance, 1998 [Cap. 26], as the case may be.

(2) An application for such permit shall be made to the appropriate officer in a form prescribed by him.

(3) A permit may be granted subject to or upon such terms and conditions as the Director or the Controller, as the case may be, may deem fit to impose.

Access to biological resources for research and development

4. No person shall collect biological resources in the State for research and development or for propagation to support such research and development unless he has been granted a permit by the Council.

Application for permit

5.—(1) An application for a permit required under regulation 4 shall be made in a form to be determined by the Council.

(2) The applicant shall, in support of such application, furnish to the Council—

(a) a written undertaking not to remove biological resources or any part or extract or specimen thereof from the State without an export permit granted by the Council;

(b) a written undertaking that the applicant shall obtain prior informed consent in accordance with Part V of these Regulations, where such research and development or propagation to support such research and development involves traditional knowledge associated with a biological resource:

Provided that no permit shall be granted unless such prior informed consent has been obtained by the applicant;

(c) a detailed collection plan and full particulars of any research scheme or objectives;

(d) a brief outline of his previous or current collection or research into biological resources in Malaysia or elsewhere;

- (e) full particulars of the collectors and researchers who are intended to be covered by the intended permit together with their technical expertise;
- (f) copies of all minutes and written communications required under regulations 23 and 24; and
- (g) such other particulars as may be required by the Council.

Grant of permit, terms and conditions

6.—(1) The Council may at its discretion grant the permit applied for or refuse to grant such permit.

(2) Where the permit is granted, it shall contain terms including but not limited to—

- (a) the place or places where collection of biological resources may be undertaken;
- (b) the species of biological resources that may be collected and the quantity thereof;
- (c) unique identifier and duration of the permit;
- (d) if applicable, the time when such collection may take place and the person who provided the biological resources and/or traditional knowledge;
- (e) the places or premises where the biological resources collected may be kept, stored or preserved;
- (f) the submission to the Centre, within such period as the Chief Executive Officer shall determine, of data and/or report or manuscripts and at least one specimen or its derivatives of any biological resource collected pursuant to the permit; and
- (g) where applicable, that the permit holder shall enter into a benefit sharing agreement with the Council as provided in regulation 14.

Implied conditions

7. Without prejudice to regulation 6, there shall be implied in each permit the following conditions—

- (a) the permit holder when undertaking any collection shall, unless exempted by the Chief Executive Officer, at all times be accompanied by an officer, employee or agent of the Centre;
- (b) the permit shall not be transferable;

(c) the permit shall be in the possession of the permit holder who shall, on demand by the Chief Executive Officer or any person authorized by him, produce the same for inspection;

(d) none of the biological resources collected shall be taken out of the State without a permit for the export thereof issued under this Part;

(e) if collection is undertaken within a wild life sanctuary, national park, nature reserve, communal forest, forest reserve or protected forest, the permit holder shall comply with and observe all rules and regulations governing his entry into and activities in such wild life sanctuary, national park or nature reserve, communal forest, forest reserve or protected forest; and

(f) the permit holder shall provide such security, as may be determined by the Council, for the due performance and compliance of the terms and conditions of the permit or where applicable, the provision of the benefit sharing agreement related to the issuance of the permit.

Form of permit

8. A permit granted under these Regulations shall be in a form to be determined by the Council from time to time.

Prohibition against export

9. No person shall export for research and development purposes any biological resources without a permit issued by the Council for the export thereof.

Restriction on issues of permit for export

10.—(1) No permit shall be issued for the export of biological resources under regulation 9 unless the Council is satisfied that—

(a) the biological resources are required for the research and development of the nature or specialization that could not be undertaken or conducted within Sarawak;

(b) the applicant has not been in breach of any condition, express or implied, in a permit issued for collection of biological resources;

(c) the applicant intending to export the biological resources, undertakes in writing to submit promptly to the Centre all reports and data prepared or obtained from research and development undertaken or conducted outside Sarawak;

(d) the institution, laboratory scientist or body undertaking or conducting such research and development has agreed to disclaim rights to intellectual property or patents in the event of any discovery or invention

derived from the biological resources exported from the State, or enters into such undertaking or agreement with regard thereto as may be acceptable to the Council;

(e) the biological resources would be returned expeditiously to the Centre or destroyed as determined by the Council if not used for the purpose in regard to which the same was exported; and

(f) a benefit sharing agreement as provided and described in regulation 14 has been signed between the Council and the applicant for the permit to export the biological resources for intellectual property rights or potential commercial or commercial purposes.

(2) The permit issued under regulation 9 may relate to one or more species of biological resources and shall stipulate the quantity thereof and specify the number of occasions or shipments that such resources may be exported.

Suspension or cancellation of permit

11. Any permit issued under these Regulations may be suspended for such period as the Council may direct or may be cancelled, if—

(a) the permit holder breaches or contravenes any of the provisions of the Ordinance or these Regulations or any of the conditions of the permit;

(b) the benefit sharing agreement which relates to the permit has been terminated or rescinded;

(c) there has been a breach or non-compliance with any undertaking which the permit holder is required to provide under these Regulations;

(d) there is, in the Council's opinion, a need to protect, conserve or preserve the biological resources which the permit holder is entitled to collect or export under the terms of the permit;

(e) the permit holder has been adjudged a bankrupt or has become insolvent; or

(f) he has transferred the permit or assigned the rights or benefits conferred thereunder and for the purpose of these Regulations, if the permit holder is a corporation, the permit shall be deemed to have been transferred if the majority shares or interest therein have been transferred or disposed of.

Effect of cancellation

12. Where the permit is cancelled, the permit holder shall surrender the same to the Centre together with all biological resources in his possession and any report or data obtained by the permit holder in regard thereto including any intellectual

property rights or any other rights or interest whatsoever therein, and any benefit sharing agreement entered into between the permit holder and the Council shall be deemed to have been terminated.

PART III

RESEARCH AND DEVELOPMENT FOR INTELLECTUAL PROPERTY RIGHTS, POTENTIAL COMMERCIAL AND COMMERCIAL PURPOSES

Places for research and development

13. All research and development on biological resources with potential gain of intellectual property rights or potential commercial or commercial purposes shall be—

- (a) carried out in accordance with the terms and conditions of a benefit sharing agreement as provided and described in regulation 14; and
- (b) undertaken in Sarawak at such laboratory, institution, hospital or research centre as may be approved by the Council or, subject to regulation 15, at such place outside Sarawak as may be approved in writing by the Council.

Benefit sharing agreement for research and development

14.—(1) Before any permit may be granted under these Regulations for research and development with potential intellectual property rights or potential gain of commercial or commercial purposes can be carried out on biological resources, a fair and equitable benefit sharing agreement based on mutually agreed terms shall be entered into between the Council, in whom proprietary rights in such resources are vested, and the person or institution intending to carry out such research:

Provided that where such research and development involves traditional knowledge associated with biological resources, the following shall apply:

- (a) prior informed consent be obtained from the natives in accordance with Part V; and
- (b) the natives shall be made a party to such benefit sharing agreement.

(2) A benefit sharing agreement shall contain such terms and conditions as may be determined by the Council upon consultation with the Government and the natives, and these terms and conditions shall include, but not limited to the following—

- (a) the place or institution in Sarawak or outside Sarawak where such research and development is to be carried out;

(b) access by the Council, on behalf of the Government, to any reports, data, studies or results of the research and development undertaken;

(c) rights of the Government to patents and intellectual property to or over any discovery resulting from the research and development undertaken, and where appropriate, the sharing of such rights with other parties based on the benefit sharing agreement;

(d) the rights of the Government to license any patent or intellectual property referred to in paragraph (c) and the entitlement to benefits derived therefrom;

(e) confidentiality over any reports, data, studies or results obtained from or generated from such research and development;

(f) programmes or arrangements for the transfer of technology, skills and knowledge derived from any research and development covered by such agreement, including the training of scientists from the State and their participation in such research and development;

(g) ownership of data and results accruing from research and development on or study of the biological resources;

(h) the Council shall require that the applicant pay a percentage of any monetary benefits derived under the benefit sharing agreement to a fund as may be established and administered by the Council;

(i) the Council shall apply any payment or any part thereof received under paragraph (h) towards the conservation of biological resources and the sustainable use of its component and for such other expenses as determined by the Council;

(j) benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Schedule; and

(k) such other terms and conditions as may be agreed between the Council, the applicant and where applicable, the natives.

(3) The parties shall negotiate and enter into a fair and equitable benefit sharing agreement based on mutually agreed terms for commercial or potential commercial purposes.

(4) The negotiation for a benefit sharing agreement shall be conducted by members of the community elected at the general meeting which decides upon the approval of the prior informed consent application under regulation 24.

(5) Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Schedule.

(6) Any monetary benefit obtained shall be disbursed in accordance with the benefit sharing agreement.

Research and development outside Sarawak

15.—(1) No research and development on biological resources shall be undertaken outside Sarawak unless the Council is satisfied that the nature or specialization thereof requires such research and development to be carried out or conducted in a place outside Sarawak.

(2) Where the Council is so satisfied under sub-regulation (1), an export permit under regulation 9 may be issued if the conditions in regulation 10 for the issue thereof are fulfilled.

Research reports, etc.

16. Subject to any direction issued by the Chief Executive Officer, any laboratory, institution, hospital, research centre or body undertaking any research and development on biological resources shall—

(a) furnish to the Centre, at such intervals as may be determined by the Chief Executive Officer, reports of all data, findings, results or other information obtained or derived from such research and development:

Provided that the Chief Executive Officer may permit such reports to be submitted in a summary or abridged form;

(b) allow any scientist, as may be nominated by the Chief Executive Officer, to participate in the research and development;

(c) make available, free of charge to the Centre, all papers, presentations, essays or findings pertaining to the research and development on the biological resources;

(d) ensure all scientists or persons involved in the research and development shall undertake to comply with the provisions of any benefit sharing agreement governing rights to patents and intellectual properties arising from the research and development;

(e) allow the Chief Executive Officer or any person authorized by him to have access at all reasonable times to the laboratory, institution, hospital, research centre or body and any records or data kept thereat pertaining to the research and development on biological resources undertaken therein; and

(f) not publish or disseminate information or data derived from any research and development without the approval of the Chief Executive Officer, which approval shall not be unreasonably withheld.

Rights over discoveries

17.—(1) Where research and development leads to the discovery of any compound, chemical or curative agent, molecule or product which has pharmaceutical, medicinal, therapeutic, nutritional, industrial or agricultural, commercial or economic value, properties or potential, the person or body undertaking the research and development shall notify the Chief Executive Officer, and an application for intellectual property rights in regard to the discovery shall be made in accordance with the terms of the benefit sharing agreement.

(2) No application for intellectual property rights in respect of any discovery referred to in sub-regulation (1) shall be made without the consent in writing of the Chief Executive Officer.

(3) In the event of any breach of sub-regulation (1) or (2), the Council may apply to any court of competent jurisdiction for, inter alia, injunctive reliefs to restrain any application for patent or copyright or intellectual property rights or the registration thereof or the use of any discovery referred to in sub-regulation (1).

Use of discovery

18. Where any discovery has been patented or copyrighted in respect thereof has been registered, the use thereof shall be regulated by the Council, and shall be subject to payment of such royalty, fees, or other consideration as may be determined by the Council:

Provided that where the use of such discovery is already subject to the terms and conditions contained in the benefit sharing agreement, the Council shall not impose conditions regarding the use of the discovery which are contrary to the terms and conditions thereof.

PART IV**PROPAGATION OF PROTECTED RESOURCES****Offences for propagation, etc., of protected resources**

19.—(1) No person shall—

- (a) undertakes any form of research and development into; or
- (b) germinates, propagates, breeds or cultivates,

any protected resources without a permit in the form to be determined by the Council.

(2) Any person who contravenes sub-regulation (1) shall be guilty of an offence and shall, upon conviction, be punished with—

(i) where such person is an individual, a fine of not less than fifty thousand ringgit and not exceeding two hundred thousand ringgit, or to imprisonment not exceeding five years or to both; or

(ii) where such person is a body corporate, a fine of not less than one hundred thousand ringgit and not exceeding five hundred thousand ringgit.

Site for propagation of protected resources

20.—(1) The propagation, breeding or cultivation of any protected resources shall be on such site or premises as may be approved by the Council:

Provided that the Council shall not approve any site or premise outside Sarawak unless it is satisfied that, for technical or scientific reasons, there is no suitable site or premise or available facility or technical know-how in Sarawak for such purpose.

(2) The Chief Executive Officer or any person authorized by him may at all reasonable times enter any site or premise used for the propagation, breeding or cultivation of any protected resources for the purpose of ensuring that the activities conducted therein comply with the terms and conditions of the approval granted under regulation 19(1).

(3) The owner or proprietor of the site or premise referred to in sub-regulation (1) shall submit to the Chief Executive Officer a true and accurate record of the protected resources propagated, bred or cultivated therein on or before the 30th June and 31st December of each calendar year.

Sale of protected resources

21.—(1) No sale of any protected resources shall be permitted except in accordance with a permit issued by the Council and such a permit shall be subject to such terms and conditions as the Council may impose.

(2) Where there is a sale of protected resources associated with traditional knowledge, prior informed consent shall be obtained by the applicant in accordance with Part V of these Regulations before the permit under sub-regulation (1) may be granted.

PART V

PRIOR INFORMED CONSENT

Prior informed consent

22.—(1) The prior informed consent shall be obtained in accordance with and based on the following but not limited to—

(a) the applicant shall obtain the prior informed consent from the natives before the commencement of any activity;

(b) there shall be sufficient time for the relevant community to assess, understand, analyze and discuss information pertaining to the proposed access application:

Provided that the time used by the community concerned to deliberate on an access application shall not be less than two weeks and shall not be more than two months from the date the application is received by the community or to such extension of time that the parties may agree from time to time;

(c) the prior informed consent of the natives shall be obtained from the community as represented by the head of each family or his duly appointed representative in accordance with regulation 24; and

(d) the prior informed consent of the concerned community shall be obtained in accordance with the local cultural norms, customary laws, protocols and procedures, as the case may be:

Provided that every consent obtained shall be freely given, including free from any inducement, threat, coercion, duress, undue influence, enticement or any other unlawful means.

(2) The burden of proving that all requirements under these Regulations for the obtaining of prior informed consent shall be on the applicant.

(3) The prior informed consent and all information supplied by the applicant in regulation 23(2) shall be kept confidential, including the details of biological resources and traditional knowledge and the terms and conditions governing the grant of the prior informed consent.

(4) No third party shall be allowed to access any information in sub-regulation (3) without the approval of the applicant, the Headman and the Chairman of Jawatankuasa Kemajuan dan Keselamatan Kampung (hereinafter referred to as the "Jawatankuasa").

Procedure for application

23.—(1) The applicant shall apply in writing in the Malay language to the Headman of the community for the purposes of obtaining the prior informed consent of the community.

(2) The applicant shall provide to the community information, in the Malay language, pertaining to the proposed application that is accurate, objective, clear and sufficient to allow the relevant community to arrive at an informed decision and shall include—

(a) the details of the proposed project which includes the methodology, the type of biological resources sought by providing the local and scientific name of the biological resources whenever possible, the quantity required, frequency, purpose of the project, starting date and duration of the activity, geographic prospecting area, identification of where the research and development will take place, and how the research and development is to be carried out;

(b) the possible destination of the knowledge or resource acquired;

(c) a preliminary assessment of the likely social, cultural and environmental impact at each stage of the proposed access activity;

(d) information regarding the legal entity and affiliation of the applicant and its sponsors, including identification of participating individuals, financing and collaborating organizations (unless there is a non-disclosure provision which is reasonable in the circumstances), local bodies involved, and possible third party involvement;

(e) personnel likely to be involved in the execution of the proposed project, including natives, private sector staff, research institutions and government employees;

(f) all intended uses and new uses, with any commercial interests, as that may require new or additional prior informed consent;

(g) procedures that the activity or project may entail;

(h) proposal of the benefits;

(i) all legal options available to the community, including its right to forbid access to or the use of the biological resources and traditional knowledge; and

(j) a protocol of acknowledgements, citation, authorship, and inventorship, anonymity and confidentiality in any subsequent publications.

(3) If the community requests *additional* information, the applicant shall provide such information without undue delay.

Decision by community

24.—(1) The Headman shall upon receipt of the application in regulation 23, convene a meeting of the Jawatankuasa to deliberate and recommend whether the application should be approved or refused and the terms and conditions to be imposed, if the application is approved.

(2) The Headman shall then call a general meeting of all the community members to deliberate and decide on the matter based on the recommendations made by the Jawatankuasa.

(3) Notice of the meeting shall be made in writing and be sent to each household as well as non-resident members of the community and be placed on the community notice board.

(4) The community may require the applicant or his agent or representative to provide further information or input on the proposed project.

(5) The meeting may authorize the Jawatankuasa to enter into negotiation with the applicant on behalf of the community.

(6) The Jawatankuasa shall report back to the general meeting the outcome of the negotiations and the meeting shall then make a final decision.

(7) The meeting shall also elect representatives to negotiate benefit sharing agreement under regulation 14.

(8) Decisions at any meeting relating to the application shall be by a simple majority of the community attending the meeting as represented by the head of the family or his duly appointed representative.

(9) The decision of the meeting shall be placed on the community notice board and shall be deemed to have been communicated to the community.

(10) Subject to regulation 26, the decision of the meeting shall be communicated to the applicant in writing by the Jawatankuasa, signed by the Chairman and Headman and bearing the official stamp of the Jawatankuasa and the Headman.

(11) Minutes of all meetings shall be recorded and documented.

Terms and conditions for consent

25. The terms and conditions that may be imposed for the grant of the consent to the applicant may include but not be limited to the following—

(a) binding commitment to enter into a benefit sharing agreement when additional quantity of the biological resources is required or if the research yields a prototype which has a commercial value;

(b) binding commitment to notify the relevant community if there is an application for patent and to supply relevant information relating thereto, and upon the granting of the patent to forthwith supply to the community a copy of the grant and information in relation thereto;

(c) restriction to access certain areas;

(d) submission of progress report on the status of research periodically as may be determined by the community;

(e) declaration of the resource and the quantity collected;

(f) community involvement in the resource collection;

- (g) engagement of members of the community where appropriate for contract farming and to carry out activities based on mutually agreed terms;
- (h) duration for the consent, including the right of the community to extend the term;
- (i) compliance with the concerned community's customary norms and practices;
- (j) appointment of local research collaborator by the community;
- (k) submission of a description of the research and development results and all discoveries made in the course of the activity that might affect the interests of the community;
- (l) whether the relevant community requires further prior informed consent to be given where the applicant becomes subject to a merger, re-organization, transfer of rights, acquisition by another entity or joint venture, or whether to include in lieu of the requirement of a further prior informed consent that the terms and conditions will be binding on the new entity, assignee or transferee; and
- (m) compliance with all relevant legal requirements.

Form of prior informed consent

26.—(1) The prior informed consent shall be in writing and in the Malay language.

(2) The prior informed consent document shall be stipulated in the form prescribed by the Council and shall contained, among others, the following—

- (a) the parties involved;
- (b) the resources involved;
- (c) the quantity allowed to be taken;
- (d) the duration of the consent;
- (e) the responsibilities of each party; and
- (f) other terms and conditions agreed to by the community at its meeting.

PART VI

INVENTORY AND DEPOSITORY

Inventory and depository

27. The Centre shall maintain—

(a) an inventory, in such form or manner as may be determined by the Council, of—

(i) all samples of biological resources collected pursuant to permits issued under these Regulations;

(ii) all samples of biological resources collected by officers of the Council for research and development purposes;

(iii) all species of animals, plants, insects, and aquatic life, protected under section 21 of the Ordinance;

(iv) all extracts, specimens or derivatives, whether by synthesis process or otherwise, of biological resources which have been or are subject of any research and development, whether on-going or otherwise;

(v) reports, data and results of all biological resources which have been or are subject of any research and development, whether on-going or otherwise;

(vi) books, periodicals, journals, articles or essays concerning any biological resources referred to in sub-paragraphs (i), (ii), (iii), (iv) and (v);

(vii) a list of all permits and benefit sharing agreements issued or executed pursuant to these Regulations and all places or premises where protected species of animals, plants, insects and aquatic life can be propagated, cultivated, breed or reared under Part IV; and

(viii) such other records, data or information which the Centre is directed by the Council to maintain in the performance of its duties and functions under the Ordinance.

(b) a depository, for the display, exhibition, storage, protection, safe keeping or preservation of—

(i) all or any of the biological resources referred to in sub-paragraphs (a) (i) to (iv), including pictorial or other forms of representations or replicas thereof; and

(ii) all or any of the reports, data, books, periodicals, journals, articles and essays referred to in sub-paragraphs (a) (v) to (viii).

Access to inventory materials

28.—(1) No person shall have access to any materials in the inventory maintained under regulation 27(a) or obtain any extracts or make any copies thereof without the approval of the Chief Executive Officer:

Provided that such approval shall not be unreasonably withheld.

(2) Such approval may be given upon such terms and conditions as the Chief Executive Officer may impose and upon payment of such fees as may be prescribed by the Council.

(3) For the purpose of these Regulations, access includes any form of linkage with the Centre by way of any computerized or information technology system which allows a person to obtain any information, data or materials kept by the Council in the inventory.

Admission to depository

29. No person other than a member of the Council or a staff of the Centre shall be admitted to the depository without the permission of the Chief Executive Officer who may impose such fees for admission as may be approved by the Council.

Supply of materials from depository

30.—(1) The Chief Executive Officer may, with the approval of the Council and subject to sub-regulations (2) and (3), supply any biological resources to any person, who satisfies the conditions set forth in regulations 3(1) and 5, for the purposes of research and development or pharmaceutical development or any other purposes as may be approved by the Council.

(2) Where any biological resources referred to in sub-regulation (1) is required for research and development purpose, the supply thereof shall not be permitted until a benefit sharing agreement is entered into between the Council and the person desirous of having the same:

Provided that the Council may, if it deems fit, exempt any person from compliance with the provisions thereof.

(3) The supply of any materials referred to in sub-regulation (1) shall be subject to payment of such fees as may be prescribed by the Council.

Extract not to be exported

31. No materials supplied pursuant to regulation 30(1) may be exported without a permit issued by the Council for the export thereof.

Data to be reported to Centre

32. The results and data obtained from any research and development undertaken on any of the materials supplied under regulation 30(1) shall be reported to the Centre at such periodical intervals as may be stipulated by the Chief Executive Officer.

Restrictions on copyrights, patents or intellectual property rights

33.—(1) No person shall claim or be entitled to any copyrights, patents or intellectual property rights over any discovery derived from the use of any materials supplied by the Centre under this Part, except in accordance with the terms and conditions of a benefit sharing agreement applicable to the research and development leading to such discovery.

(2) Any application for patents, copyrights or intellectual property rights pertaining to such discovery shall be made only with the consent of the Chief Executive Officer.

(3) Where there has been a breach of the provisions of sub-regulation (2), the Council may apply to a court of competent jurisdiction for, inter alia, injunction relief to restrain the application for patents, copyrights or intellectual property rights or the registration thereof or the use of the discovery.

PART VII
MISCELLANEOUS

General provisions on permit

34.—(1) All permits required under these Regulations shall be issued at the discretion of the Council and shall be for such period as may be determined by the Council.

(2) The period of such permits may be extended at the sole discretion of the Council.

(3) Upon expiration, suspension or cancellation of a permit, the original thereof shall be surrendered to the Chief Executive Officer.

Exemption

35. Nothing in these Regulations shall affect, vary, nullify or render invalid—

(a) any subsisting or existing agreement entered into by the Government or any of its agencies with regard to collection or research and development on biological resources or the development of any pharmaceutical, medicinal, therapeutic, nutritional, industrial, agricultural products derived from compounds or agents extracted from any biological resources of the State; or

(b) any prior consent, approval or permission given by the Government for the collection of biological resources of the State:

Provided that the Council may require a person who has been previously granted consent, approval or permission to collect biological resources for research

and development to apply for a permit to undertake the same under these Regulations.

Fees

36. The Council may by notification in the *Gazette* prescribe fees to be payable under these Regulations.

Delegation

37. The Chief Executive Officer may, with the approval of the Council, delegate to any other officer of the Centre such powers, duties or functions assigned to him by these Regulations.

Offences

38. Any person who contravenes any of the provisions of these Regulations shall be guilty of an offence and shall, if no penalty is expressly provided for the offence in the Ordinance or under these Regulations, be punished with—

(a) where such person is an individual, a fine of not less than fifty thousand ringgit and not exceeding two hundred thousand ringgit or to imprisonment not exceeding five years or to both; or

(b) where such person is a body corporate, a fine of not less than one hundred thousand ringgit and not exceeding five hundred thousand ringgit.

Revocation and saving

39.—(1) The Sarawak Biodiversity Regulations, 2004 [*Swk. L.N. 73/2004*] is revoked.

(2) Nothing in these Regulations shall affect the past operation of, or anything done under, the Regulations repealed under sub-regulation (1) and any permit issued or agreement made under such repealed Regulations shall continue to be in force and have full effect until the expiry or termination thereof.

SCHEDULE
MONETARY AND NON-MONETARY BENEFITS
(Regulations 14(2)(j) and (5))

1. Monetary benefits may include, but not be limited to:
 - (a) access fees/fee per sample collected or otherwise acquired;
 - (b) up-front payments;
 - (c) milestone payments;
 - (d) payment of royalties;
 - (e) licence fees in cases of commercialization;
 - (f) special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;
 - (g) salaries and preferential terms where mutually agreed;
 - (h) research funding;
 - (i) joint ventures; and
 - (j) joint ownership of relevant intellectual property rights.
2. Non-monetary benefits may include, but not be limited to:
 - (a) sharing of research and development results;
 - (b) collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the party providing genetic resources;
 - (c) participation in product development;
 - (d) collaboration, cooperation and contribution in education and training;
 - (e) admittance to *ex situ* facilities of genetic resources and to databases;
 - (f) transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;
 - (g) strengthening capacities for technology transfer;
 - (h) institutional capacity-building;
 - (i) human and material resources to strengthen the capacities for the administration and enforcement of access regulations;

- (j) training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;
- (k) access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;
- (l) contributions to the local economy;
- (m) research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the party providing genetic resources;
- (n) institutional and professional relationships that can arise from an access and benefit sharing agreement and subsequent collaborative activities;
- (o) food and livelihood security benefits;
- (p) social recognition; and
- (q) joint ownership of relevant intellectual property rights.

Made this 27th day of April, 2016.

DATUK AMAR HAJI AWANG TENGAH ALI HASAN,
Minister for Resource Planning and Environment II

48/KPSAS/S/T/2-212(8)



DICETAK OLEH PERCETAKAN NASIONAL MALAYSIA BERHAD, KUCHING, SARAWAK
BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN SARAWAK