

17 September 2012

A BILL

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An Act to implement the Convention on Biological Diversity and related international agreements on access to biological resources and the sharing of benefits arising from their utilisation and for matters connected therewith.

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WHEREAS the Convention on Biological Diversity was opened for signature at Rio De Janeiro, Brazil on 5 June 1992 and entered into force on 29 December 1993;

AND WHEREAS Malaysia deposited her instrument of accession on 24 June 1994 and therefore in accordance with Article 36 of the Convention, the said Convention entered into force as far as Malaysia is concerned on 22 September 1994;

AND WHEREAS the Convention on Biological Diversity enjoins Parties to take legislative, administrative or policy measures, as appropriate, to implement the provisions relating to access to genetic resources;

NOW THEREFORE IT IS ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Access to Biological Resources and Benefit Sharing Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. This Act shall apply throughout Malaysia.

Act to be read with other laws

3. (1) This Act shall be read together with any other written laws relating to access to biological resources and benefit sharing arising from their utilization.

(2) In the event of any inconsistency between the provisions of this Act and any other written law relating to access to biological resources and benefit sharing arising from their utilization, this Act shall prevail.

(3) The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law for the time being in force, relating to forests, wildlife, animals, fishery and international trade in endangered species, except for matters that fall within the provisions of this Act.

Interpretation

4. In this Act, unless the context otherwise requires –

“access to biological resources” has the meaning set out in section 5 of this Act;

“Advisory Committee” means a committee established by the National Competent Authority under section 12;

“animal” means any member of the animal kingdom, and includes –

(a) any mammal (other than man), bird, reptile, amphibian, fish, mollusc, arthropod, or other vertebrate or invertebrate, whether alive or dead, and the egg, young or immature form thereof; and

(b) any readily recognizable part or derivative of an animal;

“biological resources” includes genetic resources, organisms, parts of organisms, microorganisms and parts thereof, populations and any other biotic component of an ecosystem with actual or potential use or value for humanity and derivatives therefrom, and information in relation thereto;

“Competent Authority” means the Competent Authority specified in the first column of the First Schedule;

“Convention” means the Convention on Biological Diversity;

“Court” means the High Court of Malaya and the High Court in Sabah and Sarawak or either of them, as the case may require;

“derivatives” includes a naturally occurring chemical compound derived, developed or synthesized, 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 the chemical compound;

“enforcement officer” means an enforcement officer appointed under section 31;

“fishery” has the same meaning assigned to it as in the Fisheries Act 1985 [Act 317];

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

“indigenous community” means a group of persons who fall within the definition of the “aborigine” as defined in Aboriginal Peoples Act 1954 or who fall within the definition of the “native” as defined in Clause (6) of Article 161a of the Federal Constitution and who speaks a native language and habitually follows and embodies a traditional way of life, customs and beliefs;

“law” has the meaning assigned by Article 160(2) of the Federal Constitution;

“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;

“Microorganism” means a microscopic organism which includes a virus;

“Minister” means the Minister charged with the responsibility for natural resources and environment;

“National Biological Diversity Clearing House Mechanism” means a web-based information portal on biodiversity established by the National Competent Authority under section 28(1);

“non-commercial” means pure academic and non-profit oriented;

“permit” means a permit issued by a Competent Authority under section 13 or section 15, as the case may be;

“permit holder” means a person holding a valid permit issued by a Competent Authority under section 13 and section 15;

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

“prescribed” means prescribed by this Act;

“propagating material” means any material or plant, or any part of the plant, used for multiplication or reproduction;

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

“resource provider” includes, where the context admits:

- (a) the Competent Authority, where the resource is under the Federal, State or Federal Territory jurisdiction;
- (b) a private landowner, where the resource is on private land;

(c) the indigenous and local communities, where the resource is on land to which they have a right;

(d) the indigenous and local communities, where they are the holders of the traditional knowledge;

“taking” includes:

(a) in relation to an animal, harvest, catch, capture, trap and kill;

(b) in relation to a plant specimen, collect, harvest, pick, gather and cut;

(c) in relation to other biological resources including microorganisms, collect, pick, or obtain in any other way;

“this Act” includes any subsidiary legislation made under this Act;

“threatened taxa” means critically endangered, endangered or vulnerable species.

PART II

ACCESS TO BIOLOGICAL RESOURCES

Meaning of access to biological resources

5. (1) Access to biological resources means the taking of biological resources from their natural habitat or place where they are found, kept or grown for research and development.

(2) A person is said to have access to biological resources if there is a reasonable prospect that biological resources taken by the person will be subject to research and development.

(3) Access to biological resources in subsection (1) shall not include the following activities:

(a) taking of biological resources by indigenous and local communities –

(i) for a purpose other than a purpose under subsection (1); or

(ii) for the use and exchange of the resources among themselves in the exercise of their traditional and customary practices;

(b) taking of biological resources that have been cultivated or tended for a purpose other than a purpose under subsection (1) and where they are not to be used for the purpose under subsection (1);

(c) taking of biological resources for a purpose other than a purpose under subsection (1) including the following activities:

(i) fishing for commerce, recreation or game;

(ii) taking animals or plants for food;

(iii) taking natural produce including oils and honey;

(iv) collecting plant reproductive material for propagation;

(v) carrying out commercial forestry;

(d) taking of biological resources that are –

(i) living modified organisms as defined under the Biosafety Act 2007 [Act 678] for which intellectual property rights have been granted and subsist; or

(ii) plant varieties for which a breeder's right has been granted and subsists under the Protection of New Plant Varieties Act 2004 [Act 634];

(e) access to biological resources specified in a declaration under subsection 7(1);

(f) access to biological resources exempted under subsection 65(1).

Farmers' Rights

6. (1) Nothing in this Act shall be interpreted to limit the right of a small farmer to save, use, exchange and sell farm-saved seed or propagating material.

(2) For the purpose of this section, "small farmer" has the same meaning assigned to it as in the Protection of New Plant Varieties Act 2004 [Act 634].

Declaration

7. (1) The Minister may, declare that this Act does not apply to specified biological resources or a specified collection of biological resources, including future additions to the collection, and for such purposes or circumstances, if:

(a) the resources are held as specimens away from their natural environment (whether in a collection or otherwise) by a Government Department or agency and the access to the biological resources is administered by the said Department or agency in a manner consistent with the purpose of this Act;
or

(b) the access to, and transfer of biological resources is subject to any international treaties, agreements, and conventions to which Malaysia is a party and for the purposes specified therein.

(2) A holder of biological resources to which paragraph (1)(a) applies may request the Minister, in writing, to make a declaration under subsection (1).

(3) The Minister shall consult the relevant Competent Authority before making any declaration under subsection (1) where the resources are within the jurisdiction of that particular Competent Authority.

PART III AUTHORITIES

National Competent Authority

8. The Ministry responsible for natural resources and environment shall be the National Competent Authority for the purposes of this Act.

Functions of the National Competent Authority

9. The functions of the National Competent Authority shall be as follows:

(a) to coordinate the implementation and enforcement of the provisions of this Act by the Competent Authorities;

(b) to determine the fees payable in consultation with the Competent Authority;

- (c)* to communicate with other countries and the secretariat established under any treaty, agreement, convention or protocol relating to access and benefit sharing in relation to biological resources, as appropriate, on matters under this Act;
- (d)* to implement, as appropriate, any treaty, agreement, convention or protocol relating to access and benefit sharing in relation to biological resources to which Malaysia is a party where such treaty, agreement, convention or protocol relates to the purposes of this Act;
- (e)* to create awareness and to provide training, education and information relating to access and benefit sharing in relation to biological resources;
- (f)* to keep and maintain a register of permits issued by the Competent Authorities and information relating thereto;
- (g)* to establish measures under subsection 26(1) with the aim of monitoring and tracking of biological resources accessed;
- (h)* to support customary laws and the development of community protocols and procedures by the indigenous and local communities, as appropriate; and
- (i)* to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

Competent Authority

10. (1) The Competent Authority specified in the second column of the First Schedule shall have jurisdiction over all matters relating to access to biological resources

appearing in the corresponding third column, in the region appearing in the corresponding fourth column.

(2) The Minister may amend the First Schedule.

(3) Notwithstanding subsection (2), the Minister shall obtain the consent of the State Authority of the relevant State in Malaysia or Federal Territory before making any amendment to the First Schedule.

Functions and powers of the Competent Authority

11. (1) The functions of the Competent Authority shall be as follows:

(a) to deal with all applications for access to biological resources within its jurisdiction and benefit sharing relating thereto;

(b) to maintain records of all access applications and decisions relating to such applications, including the permits issued;

(c) to prepare annual reports concerning such access applications and decisions relating to such applications including permits issued and to submit the reports and copies of the permits to the National Competent Authority on or before such date as the National Competent Authority may determine;

(d) to inform the National Competent Authority within a reasonable period the offences committed under this Act; and

(e) to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

(2) A Competent Authority shall have the power to do such things including the power of enforcement as conferred by this Act.

(3) A Competent Authority may consult and seek the advice of the Advisory Committee or such other advisory body, including an advisory body comprising representatives of indigenous and local communities, in the implementation of its powers and functions under this Act.

Advisory Committee and Advisory Body

12. (1) The National Competent Authority shall establish an Advisory Committee.

(2) The Advisory Committee shall provide advice on scientific, technical, ethical and other relevant matters to the National Competent Authority and the Competent Authority upon request.

(3) The Competent Authority may establish an advisory body comprising representatives of indigenous and local communities to provide advice on matters relating to indigenous and local communities and traditional knowledge associated with the biological resource.

PART IV

ACCESS FOR COMMERCIAL OR POTENTIAL COMMERCIAL PURPOSES

Permit for commercial or potential commercial purpose

13. (1) Any person who intends to access biological resource, or traditional knowledge associated with the biological resource, for commercial or potential commercial purposes, shall apply for a permit.

(2) An application for a permit shall be made to the Competent Authority, as appropriate, in the form and manner, together with the fees, as may be prescribed.

(3) The Competent Authority may, after considering the application under subsection (1), issue or refuse to issue a permit.

(4) The Competent Authority shall refuse to issue a permit, on the grounds specified in section 14.

(5) The Competent Authority shall inform the applicant of its decision in writing.

(6) The Competent Authority may impose such conditions as it thinks fit for the issue of the permit.

(7) The Competent Authority may at any time after issuing a permit –

(a) impose any additional conditions on the permit; or

(b) vary or revoke any conditions imposed on the permit.

(8) Where the Competent Authority intends to take action under subsection (7), it shall give the permit holder a written notice of its intention to do so and opportunity to make written representations within the period specified in the notice.

(9) After the expiry of the period specified in the notice, and after considering any representation made by the permit holder, the Competent Authority shall decide whether to impose, vary or revoke any condition under subsection (7).

(10) The Competent Authority shall give the permit holder a written notice of its decision under subsection (9) as soon as practicable and the decision shall take effect on a date to be specified in the written notice.

(11) No permit that has been issued may be transferred.

(12) There shall be no change of use in respect of the biological resources as specified in the permit except with the approval of the Competent Authority, provided that

such approval shall be subject to the issuance of a new permit and conditions as determined by the Competent Authority.

(13) Any person who fails to comply with or contravenes any of the conditions imposed under subsections (6), (7) or (12) commits an offence and shall, on conviction, be liable –

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

(b) where such person is a body corporate, to a fine not less than one hundred thousand and not more than four hundred thousand ringgit.

(14) The Competent Authority shall inform the National Competent Authority of the outcome of any application.

(15) The permit issued by the Competent Authority shall state the following information, among others:

(a) the person to whom the permit has been issued;

(b) the issuing authority;

(c) the date of issuance;

(d) the subject matter covered by the permit;

(e) the use of the biological resource or traditional knowledge associated with the biological resource for which the permit is issued;

(f) the place and location of the biological resource intended to be accessed;

(g) whether single or multiple collection;

(h) the quantity that may be collected;

(i) the duration of the permit;

- (j)* the resource provider;
- (k)* where applicable, the holder of the traditional knowledge associated with the biological resource intended to be accessed;
- (l)* unique identifier of the permit;
- (m)* the confirmation that a benefit sharing agreement was established; and
- (n)* the confirmation that the prior informed consent of indigenous and local communities has been obtained as provided for and in accordance with this Act.

Grounds for refusal of permit

14. (1) The Competent Authority shall refuse to issue the permit to the applicant if it is satisfied that –

- (a)* a benefit sharing agreement has not been established in accordance with section 18;
- (b)* in the case of access to biological resource or traditional knowledge associated with biological resource, as appropriate, the applicant has not obtained the prior informed consent in accordance with section 19;
- (c)* the application is for any threatened taxa ;
- (d)* the application is for any endemic and rare species;
- (e)* the access is likely to result in adverse effects on the livelihood or cultural including religious, ceremonial or other traditional or customary practices of indigenous and local communities;

- (f)* in the case of access to human genetic resource, its use is for purposes contrary to ethical values;
- (g)* the access may result in adverse environmental impact which may be difficult to control and mitigate;
- (h)* the access may cause genetic erosion or affect the ecosystem function;
- (i)* the access may adversely affect the food security of the country or any part thereof;
- (j)* the use of the biological resource is for purposes contrary to the national or State interest;
- (k)* the use of the biological resource is for the development of biological or chemical weapons, or for military or terrorist purposes;
- (l)* the use of the biological resource is for purposes associated with genetic use restriction technology;
- (m)* the applicant has committed an offence under this Act;
- (n)* An applicant had been adjudicated a bankrupt or, in the case of a company, has been wound up;
- (o)* the application does not comply with the requirements of this Act or any other written law;

Provided that the Competent Authority may issue a permit with respect to paragraphs (c) and (d) if it is satisfied that it does not undermine the conservation and sustainable use of biodiversity.

(2) The Competent Authority, in consultation with the National Competent Authority, shall refuse access to biological resources or traditional knowledge associated with the biological resource where the applicant is from, or otherwise based or operating in, jurisdictions which do not provide for adequate and effective measures to address situations of non-compliance with this Act.

PART V

ACCESS FOR NON-COMMERCIAL PURPOSES

Permit for non-commercial purpose

15. (1) Any person who intends to access biological resource or traditional knowledge associated with the biological resource for non-commercial research purposes shall apply for a permit.

(2) The application for a permit shall be made to the Competent Authority, as appropriate, in the form and manner, together with the fees, as may be prescribed.

(3) Any research undertaken under subsection (1) shall be in collaboration with a public higher education institution, public research institution or Government agency, unless otherwise decided by the relevant Competent Authority.

(4) An application for a permit under subsection (1) shall be accompanied with a copy of a statutory declaration duly completed as in the Third Schedule.

(5) If the application is approved, the Competent Authority shall issue a permit.

(6) The Competent Authority shall refuse to issue a permit, on the grounds specified in paragraphs 14(1)(b) to (l), or, if it is satisfied that the application is for commercial or potential commercial purpose.

(7) The Competent Authority may impose such conditions as it thinks fit for the issue of the permit.

(8) The Competent Authority may at any time after issuing a permit –

(a) impose any additional conditions on the permit; or

(b) vary or revoke any conditions imposed on the permit.

(9) Where the Competent Authority intends to take action under subsection (8), it shall give the permit holder a written notice of its intention to do so and opportunity to make written representations within the period specified in the notice.

(10) After the expiry of the period specified in the notice, and after considering any representation made by the permit holder, the Competent Authority shall decide whether to impose, vary or revoke any condition under subsection (8).

(11) The Competent Authority shall notify in writing the permit holder of its decision under subsection (10) as soon as practicable and the decision shall take effect on a date to be specified in the written notice.

(12) No person issued with a permit shall carry out, or allow others to carry out, research or development for commercial purposes on any biological resources, unless he obtains a permit for commercial or potential commercial purpose under subsection 13(1) and a benefit sharing agreement has been entered into in accordance with subsection 18(1) of this Act.

(13) Any person who fails to comply with or contravenes any of the conditions imposed under subsection (7) or (8) or fails to comply with subsection (12) commits an offence and shall, on conviction, be liable –

(a) where such person is an individual, to a fine not less than twenty thousand and not more than one hundred thousand ringgit or to imprisonment for a term not exceeding four years or to both;

(b) where such person is a body corporate, to a fine not less than forty thousand ringgit and not more than two hundred thousand ringgit.

PART VI
OFFENCES

Access without permit

16. Any person who accesses biological resources or traditional knowledge associated with the biological resource without a permit under section 13 or section 15 under this Act, commits an offence and shall, on conviction, be liable –

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

(b) where such person is a body corporate, to a fine not less than one hundred thousand ringgit and not more than four hundred thousand ringgit.

Possession, etc of biological resources and traditional knowledge associated with the biological resource

17. Any person who –

(a) has in his possession or under his control; or

(b) sells, offers or exposes or advertises for sale;

any biological resource or traditional knowledge associated with the biological resource for which a permit is required and for which no permit has been issued, commits an offence and shall, on conviction, be liable –

(a) where such person is an individual, to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding four years or to both;

(b) where such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit.

PART VII

BENEFIT SHARING

Benefit sharing agreement

18. (1) An applicant for permit for access to biological resources or traditional knowledge associated with the biological resource, 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) Where the Competent Authority is not the resource provider under subsection (1), it may require the applicant to pay a percentage of any monetary benefits derived under the benefit sharing agreement to a fund as may be established by the Federal or State Government

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

PART VIII

INDIGENOUS AND LOCAL COMMUNITIES

Requirement for Prior Informed Consent and Mutually Agreed Terms, etc.

19. (1) The applicant shall obtain the prior informed consent of, and enter into a fair and equitable benefit sharing agreement with, the relevant indigenous and local community for access to:

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

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

(3) The prior informed consent of indigenous and local communities shall be obtained through, and the benefit sharing agreement shall be entered into with, the representative or organization identified:

- (a) in accordance with the customary laws, community protocols and procedures of the said indigenous and local communities; or

(b) in the absence of the same, by the holders of the traditional knowledge associated with biological resources within the indigenous and local communities.

(4) Where no such representative or organization of the traditional knowledge associated with biological resources can be identified under subsection (3), the prior informed consent shall be obtained from, and the benefit sharing agreement shall be entered into with, the Competent Authority.

(5) Any monetary benefit obtained under subsection (4) shall be deposited into a fund as may be established by the Federal or the State Government and such benefit, including where applicable non-monetary benefit, shall be applied for the interest of indigenous and local communities.

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

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

(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 Competent Authority, then the applicant shall obtain the prior informed consent of, and enter into the benefit sharing agreement with, the duly identified representatives or organization of such of the holders as the applicant may ascertain.

(7) In the event that, after the application is approved, there is a claim by any indigenous and local community that it is the rightful holder of the traditional knowledge associated with biological resources then the Competent Authority shall:

- (a) determine the said claim in consultation with the indigenous and local community whose prior informed consent has been obtained and benefit sharing agreement entered into under subsection (6);
- (b) if the claim is proven to the satisfaction of the Competent Authority, declare that the said indigenous and local community is entitled to share the benefits due to the indigenous and local communities under the agreement entered into under subsection (6); and
- (c) determine the quantum or nature of benefits to which the indigenous and local community is entitled under paragraph (b), in consultation with all the indigenous and local communities concerned.

PART IX

PERMIT, REGISTER, RECORDS AND SAMPLE DISPOSAL

Permit: Evidence of compliance

20. (1) The Competent Authority shall, upon issuance of the permit under section 13, or the permit under section 15, forward to the National Competent Authority a copy of such permit.

(2) The permit referred to under subsection (1) shall be evidence of the following information:

- (a) the prior informed consent of the Competent Authority for access to the biological resource;
- (b) the prior informed consent of the indigenous and local communities under section 19 for access to the biological resource or traditional knowledge associated with the biological resource, as appropriate;

- (c) the origin of the place or location of the biological resource accessed;
- (d) the establishment of a benefit sharing agreement with the resource provider;
- (e) the person to whom the permit is issued; and
- (f) the use for which the permit is issued.

Register of permits

21. The National Competent Authority shall keep and maintain a register of permits issued by the Competent Authorities.

Records and samples

22. (1) Any person who is issued with a permit for access to biological resources shall keep the following record for each sample taken:

- (a) a unique identifier;
- (b) the date the sample was taken;
- (c) the place from where the sample was taken;
- (d) an appropriate indication of the quantity or size of the sample (such as, weight or physical dimension of the sample);
- (e) the scientific name of, or given to, the sample;
- (f) the location of the sample when first entered in the record; and

(g) the details about any subsequent physical disposition of the sample, including the names and addresses of others having possession of the sample or a part of the sample.

(2) A copy of the records mentioned in subsection (1) shall be furnished to the Competent Authority and the National Competent Authority within 30 days after the sample is taken.

(3) A record mentioned in subsection (1) for a sample shall be retained and maintained by the permit holder while the sample is in the holder's possession.

Disposal of samples

23. (1) If a permit holder does not propose to keep a sample for which the holder has a record in accordance with subsection 22(1), the permit holder shall offer the sample to the Competent Authority.

(2) If the Competent Authority does not agree to take the sample in the circumstances mentioned in subsection (1), the permit holder shall dispose of the sample in a manner as may be prescribed in the regulations, and, at that time, shall send the details of the disposal of the sample to the Competent Authority.

PART X

CANCELLATION AND APPEALS

Cancellation of permit

24. (1) The Competent Authority may at any time cancel any permit issued under this Act on all or any of the following ground -

- (a)* the permit holder has failed to comply with any provisions of this Act;
- (b)* the permit holder has contravened any of the conditions of the permit and which the holder has not remedied if required to do so;
- (c)* the permit was issued as a result of false, misleading or inaccurate information;
- (d)* the permit was obtained improperly or illegally; or
- (e)* the permit holder has been convicted of an offence under this Act.

(2) Where the Competent Authority cancels the permit under subsection (1), it shall immediately notify –

- (a)* the permit holder; and
- (b)* the National Competent Authority,

of the decision and grounds for the cancellation.

(3) Upon such notification, the permit holder shall immediately surrender the permit, any research results and related documents, and the accessed biological resources to the Competent Authority that issued the permit.

(4) No permit shall be cancelled without giving the permit holder an opportunity to be heard.

(5) Any permit holder who fails to comply with subsection (3) commits an offence and shall, on conviction, be liable –

(a) where such person is an individual, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both, and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for each day during which the offence continues after conviction;

(b) where such person is a body corporate, to a fine not exceeding one hundred thousand ringgit, and, in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for each day during which the offence continues after conviction.

Appeal for cancellation of permit

25. (1) A person who is aggrieved by the cancellation of the permit may, within 21 days after being informed in writing of the cancellation, appeal against such decision to the Court.

(2) The Court may, after considering an appeal made under subsection (1), confirm or set aside the decision appealed against and the decision of the Court shall be final.

PART XI

MONITORING AND TRACKING

Measures for monitoring and tracking

26. (1) The National Competent Authority, in consultation with the Competent Authority and other relevant agencies shall establish measures for the purpose of monitoring and tracking the biological resources accessed.

(2) Such measures shall include –

(a) the establishment of checkpoints; and

(b) the requirement for the production of the permit at the checkpoints established.

(3) The checkpoints established under subsection (2)(a) shall include offices or authorities dealing with applications for intellectual property rights, product registration and public research funding grants.

(4) The authorities responsible for the checkpoints shall inform in writing the National Competent Authority and the relevant Competent Authority of the production of the permit under subsection (2)(b).

Consent for application of intellectual property rights

27. No person shall apply for intellectual property rights, whether in or outside Malaysia, in relation to the biological resources or traditional knowledge associated with biological resources accessed without the written consent of the Competent Authority.

(2) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable –

(a) where such person is an individual, to a fine not exceeding one hundred thousand ringgit, or to imprisonment for a term not exceeding four years or to both;

(b) where such person is a body corporate, to a fine not exceeding two hundred thousand ringgit.

CLEARING HOUSE MECHANISM

Establishment of National Biological Diversity Clearing House Mechanism

28. (1) The National Competent Authority shall establish a clearing house mechanism to be known as the National Biological Diversity Clearing House Mechanism.

(2) The National Biological Diversity Clearing House Mechanism shall serve as a means for sharing of information including that related to access and benefit sharing. In particular, it shall provide access to information made available by each Competent Authority relevant to the implementation of this Act.

(3) Each Competent Authority shall make available to the National Biological Diversity Clearing House Mechanism any information required by this Act.

Posting and confidential information

29. (1) A copy of the permit including the information in it sent to the National Competent Authority under this Act shall, at the same time, be posted on the webpage of the National Biological Diversity Clearing House Mechanism.

(2) Such information shall not be posted if it is classified as confidential by the National Competent Authority in consultation with the relevant Competent Authority.

(3) For the purpose of subsection (2), information is deemed to be confidential –

(a) if it is culturally sensitive; or

(b) if disclosed, it may –

(i) damage a person's commercial interests;

(ii) result in a risk to the biodiversity; or

(iii) be detrimental to the national interest.

(4) Any determination as to confidentiality under subparagraph (3)(b)(i) shall be made upon the application of the permit holder.

PART XIII
USER MEASURES

Measures to support access laws of other Contracting Parties

30. (1) Any biological resource obtained by any person from the jurisdiction of a Party to the Convention which requires by its law or other regulatory requirements a permit or its equivalent for access to such biological resource shall be accompanied by such a permit or its equivalent.

(2) The National Competent Authority shall establish measures aimed at preventing the use within Malaysia, of the biological resources, which are not accompanied by a permit or its equivalent.

(3) A notification by a competent authority of the Party to the Convention to the National Competent Authority that it has not issued a permit or its equivalent for access to its biological resources shall be prima facie evidence of this fact.

PART XIV
POWER RELATING TO ENFORCEMENT, SEIZURE, ARREST, *ETC*

Enforcement officers

31. The officers specified in the first column of the Second Schedule shall be the enforcement officers for the purposes of this Act and in respect of the Competent Authority appearing in the corresponding second column.

Power of investigation

32. (1) An enforcement officer shall have all the powers necessary to carry out an investigation under this Act.

(2) In any case relating to the commission of an offence under this Act, any enforcement officer carrying out an investigation may exercise all or any of the special powers in relation to police investigation in seizeable cases given by the Criminal Procedure Code [Act 593].

(3) This section shall not be construed as limiting or affecting any similar powers conferred on any person under any other written law.

Authority card

33. (1) There shall be issued to each enforcement officer under section 31 an authority card to be signed by an officer duly designated by the relevant Competent Authority.

(2) Whenever such enforcement officer exercises any of the powers under this Act, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Power of arrest

34. (1) An enforcement officer may arrest without warrant any person-

(a) found committing or attempting to commit or abetting the commission of an offence under this Act; or

(b) whom the enforcement officer reasonably suspects of being engaged in committing or attempting to commit or abetting an offence under this Act.

(2) An enforcement officer making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt in accordance with the law relating to criminal procedure for the time being in force.

Search and seizure with warrant

35. (1) If it appears to a Magistrate, upon written information on oath and after such enquiry as the Magistrate considers necessary, that there is reasonable cause to believe that-

(a) any premises has been used or are about to be used for; or

(b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any enforcement officer named therein, at any reasonable time by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) A warrant issued under subsection (1) may authorize the enforcement officer to-

(a) search the premises for, and to seize or remove from the premises any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article that is reasonably believed to furnish evidence of the commission of such offence;

(b) take samples of any biological resources or thing found in the premises for the purposes of ascertaining, by testing or otherwise, whether the offence has been committed; and

(c) make copies of or take extracts from any book, record, document or other article found in the premises.

(3) An enforcement officer entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(4) An enforcement officer may, in the exercise of his powers under this section, if it is necessary so to do,-

(a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;

(b) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under this section; and

(c) detain any person found in the premises until the search has been completed.

(5) Where, by reason of its nature, size or amount, it is not practicable to remove any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this section, the enforcement officer shall, by any

means, seal such biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article in the premises or container in which it is found.

(6) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article under seal, or attempts to do so commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or imprisonment for a term not exceeding five years or to both.

Search and seizure without warrant

36. Whenever an enforcement officer has reasonable cause to believe that any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article in respect of which an offence under this Act has been committed is likely to be found in or on any premises, person or conveyance and that by reason of delay in obtaining a warrant under section 35 the object of the search may be frustrated, he may, without warrant, with such assistance and force as is necessary-

(a) enter and search such premises;

(b) stop and search such person or conveyance; and

(c) seize any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article which may be found and may be evidence of the commission of such offence.

Power to enter premises

37. Notwithstanding sections 35 and 36, an enforcement officer may at any time enter any premises for the purpose of-

(a) inspecting any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article as he considers necessary;

(b) verifying the accuracy of records or statements or any information given to an enforcement officer; or

(c) collecting samples of any biological resources.

Access to computerized data

38. Any enforcement officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise, and for such purpose, shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of computerized data.

Seizure of thing, etc.

39. Without prejudice to subsection 35(2) and section 36, any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article that an authorized officer reasonably suspects has been used or will be used in the commission of any offence under this Act may be seized and detained by the enforcement officer.

Power to stop, search and seize conveyances

40. (1) If an enforcement officer has reasonable cause to suspect that any conveyance is carrying any biological resources, machinery, contrivance, equipment, book, record, document or other article in respect of which an offence under this Act is being or has been committed, he may stop and examine the conveyance and may, if on examination

he has reasonable cause to believe that such conveyance is or has been used for the commission of such offence, seize such conveyance and any biological resources, machinery, contrivance, equipment, book, record, document or other article found in the conveyance that is reasonably believed to furnish evidence of the commission of such offence.

(2) The person in control or in charge of the conveyance shall, if required to do so by the enforcement officer-

(a) stop the conveyance and allow the enforcement officer to examine it; and

(b) open all parts of the conveyance for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the enforcement officer considers necessary.

(3) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Notice of seizure

41. (1) Where any seizure is made under this Act, the enforcement officer making the seizure shall give a notice in writing of the seizure and the grounds of the seizure to the owner of the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized by delivering a copy of such notice to the owner, if the owner or his whereabouts are known.

(2) A notice under subsection (1) need not be given if the seizure is made in the presence of-

(a) the owner or his agent;

(b) the occupier of the premises; or

(c) the person in control or in charge of the conveyance where the seizure is made under section 40.

Temporary return of conveyance, etc.

42. (1) Where any conveyance, machinery, contrivance or equipment is seized under this Act, the Court may temporarily return the conveyance, machinery, contrivance or equipment to the owner of the conveyance, machinery, contrivance or equipment or the person from whose possession, custody or control it was seized, subject to such terms and conditions as the Court may impose, and subject in any case to sufficient security being furnished to the satisfaction of the Court that the conveyance, machinery, contrivance or equipment shall be surrendered to the Court on demand and that such terms and conditions, if any, shall be complied with.

(2) Where any seized conveyance, machinery, contrivance or equipment is temporarily returned under subsection (1), a person who—

(a) fails, on demand, to surrender the conveyance, machinery, contrivance or equipment to the Court; or

(b) contravenes any of the terms or conditions imposed under subsection (1),

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

Power to require attendance of persons acquainted with case

43. (1) The enforcement officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as required.

(2) If any such person refuses to attend as required by an order made under subsection (1), the enforcement officer may report his refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

Examination of persons acquainted with case

44. (1) An enforcement officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by the enforcement officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after-

(a) it has been read to him in the language in which he made it; and

(b) he has been given an opportunity to make any correction he may wish.

Admissibility of statements in evidence

45. (1) Except as provided in this section, no statement made by any person to an enforcement officer in the course of an investigation made under this Act shall be used in evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the Court shall, on the request of the accused or the prosecutor, refer to any statement made by that witness to an enforcement officer in the course of an investigation under this Act and may then, if the Court thinks fit in the interest of justice, direct the accused to be furnished with a copy of it and the statement may be used to impeach the credit of the witness in the manner provided by the Evidence Act 1950 [Act 56].

(3) Where the accused had made a statement during the course of investigation, such statement may be admitted in evidence in support of his defence during the course of the trial.

(4) Nothing in this section shall be deemed to apply to any statement made in the course of an identification parade or falling within section 27 or paragraphs 32(1)(a), (i) and (j) of the Evidence Act 1950.

(5) When any person is charged with any offence in relation to –

(a) the making; or

(b) the contents,

of any statement made by him to an enforcement officer in the course of an investigation made under this Act, that statement may be used as evidence in the prosecution's case.

Forfeiture of seized biological resources, etc.

46. (1) Any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized in exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture of the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article shall be made if it is proved to the satisfaction of the Court that an offence under this Act has been committed and that the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article was the subject-matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) If there is no prosecution with regard to any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act, such biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article shall be taken and deemed to be forfeited at the expiration of a period of one calendar month from the date of service of a notice to the last known address of the person from whom the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article was seized indicating that there is no prosecution in respect of such biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article unless before the expiration of that period a claim thereto is made in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article

referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the enforcement officer in whose possession such biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article is held that he claims the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article.

(5) On receipt of the notice referred to in subsection (4), the enforcement officer shall refer the claim to a Magistrate of the First Class for his decision.

(6) The Magistrate to whom a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article and the person from whom it was seized to appear before him, and when they appear or they fail to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter.

(7) If it is proved that an offence under this Act has been committed and that the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article referred to in subsection (6) was the subject-matter of or was used in the commission of such offence, the Magistrate shall order the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article to be forfeited, and shall, in the absence of such proof, order its release.

(8) Any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article forfeited or deemed to be forfeited shall be delivered to the Competent Authority and shall be disposed of in such manner as the Competent Authority thinks fit, including repatriation under subsection (9) if the Competent Authority so decides.

(9) When a decision of repatriation is made under this Act in respect of any biological resources which has been imported into Malaysia in contravention of this Act,

and the biological resources was brought into Malaysia in a conveyance, the owner or importer of the biological resources or his agent shall, if required in writing by the Competent Authority, provide or be responsible for –

(a) free passage for the return of the biological resources to the place at which the biological resources was shipped to Malaysia, or to any other port or place designated by the Competent Authority; and

(b) where required, proper maintenance and housing of the biological resources during the voyage, flight or journey.

(10) No person shall be liable under subsection (9) unless the decision of repatriation has been made by the Competent Authority within-

(a) where there are no proceedings instituted, twelve months from the date on which the biological resources were imported into Malaysia; or

(b) six months from the date proceedings for the offence in connection with such importation into Malaysia are concluded.

(11) Any person who contravenes subsection (9) commits an offence and shall, on conviction, be liable-

(a) where such person is an individual, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both;

(b) where such person is a body corporate, to a fine not exceeding one hundred and fifty thousand ringgit.

Property in forfeited biological resources, etc.

47. Any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article forfeited or deemed to be forfeited under this Act shall be the property of the Competent Authority.

Release of seized biological resources, etc.

48. Notwithstanding section 46 the Competent Authority may, where it thinks fit, at any time direct that any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act be released to the person from whose possession, custody or control it was seized.

Cost of holding seized biological resources, etc.

49. Where any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized or surrendered under this Act is held in the custody of the Competent Authority pending completion of any proceedings in respect of an offence under this Act, the cost of holding it in custody shall, in the event of any person being convicted of such offence, be a debt due to the Competent Authority or Government, as the case may be, by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

50. No person shall, in any proceedings before any Court in respect of the seizure of any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized or surrendered in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Additional powers

51. (1) An enforcement officer shall, for the purposes of the execution of this Act, have power to do all or any of the following acts:

(a) to require the production of records, accounts and documents and to inspect, examine and copy any of them;

(b) to require the production of any identification document from any person in relation to any case or offence under this Act;

(c) to make such enquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

(2) A person who fails to comply with a request made under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or to both.

Offence to assault or obstruct enforcement officer

52. A person who—

(a) assaults, obstructs, impedes or interferes with any enforcement officer in the performance of his functions under this Act;

(b) rescues or endeavours to rescue any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized under this Act; or

(c) before or after any seizure causes the disappearance of, or damages or destroys any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article in order to prevent the

seizure thereof or the securing of the biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article,

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

PART XV
GENERAL

Payment into fund

53. Except for the money received by a Competent Authority as a resource provider under subsection 18(1), and money received under subsections 18(3) and 19(5), all money received under this Act by a Competent Authority shall be paid into and form part of-

(a) where the Competent Authority is under the jurisdiction of the Federal Government, the Consolidated Fund; or

(b) where the Competent Authority is under the jurisdiction of the State Government, the State Consolidated Fund.

Compounding of offences

54. (1) The Competent Authority may, with the consent of the Public Prosecutor, offer in writing to compound any offence committed by any person under this Act and prescribed to be a compoundable offence by regulations made under this Act by making a written offer to such person to compound the offence upon payment to the Competent

Authority of such amount not exceeding fifty per centum of the amount of the maximum fine for that offence within such time as may be 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.

(3) If the amount specified under subsection (1) is not paid within the time specified in the offer or within such extended period as the Competent Authority may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1) , no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made and any biological resources, conveyance, machinery, contrivance, equipment, book, record, document or other article seized in connection with the offence may be released or forfeited by the Competent Authority, subject to such terms and conditions as the Competent Authority thinks fit to impose in accordance with the conditions of the compound.

Institution of prosecution

55. No prosecution for or in relation to any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

False declaration

56. (1) Any person who makes, orally or in writing, signs or furnishes any declaration, return, certificate or other document or information required under this Act which is untrue, inaccurate or misleading in any particular commits an offence and shall, on conviction, be liable:-

(a) where such person is an individual, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both;

(b) where such person is a body corporate, to a fine not exceeding two hundred thousand ringgit.

(2) Any person who-

(a) without lawful authority alters, forges, mutilates or defaces any permit, certificate or registration; or

(b) knowingly makes use of any permit, certificate or registration which has been so altered, forged, mutilated or defaced, commits an offence and shall, on conviction, be liable-

(i) where such person is an individual, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both;

(ii) where such person is a body corporate, to a fine not exceeding two hundred thousand ringgit.

Offence committed by body corporate

57. Where a body corporate commits an offence under this Act, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management -

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) where the body corporate is found to have committed the offence, shall be deemed to commit that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves-

- (i) that the offence was committed without his knowledge, consent or connivance; and
- (ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence; and

(c) shall, on conviction, be liable to the penalty applicable to an individual.

Offence by partner, agent or servant

58. Any person who would have been liable to any penalty under this Act for any act, omission, neglect or default if the act, omission, neglect or default is committed by him personally shall be liable to the same penalty if the act, omission, neglect or default is committed by his partner, agent or servant unless he proves-

(a) that the act, omission, neglect or default was committed without his knowledge, consent or connivance; and

(b) that he took all reasonable precautions and had exercised due diligence to prevent the act, omission, neglect or default.

Abetments and attempt

59. (1) Any person who abets or attempts to commit any offence punishable under this Act shall be liable to be punished with the punishment provided for that offence.

(2) A person who does any act preparatory to or in furtherance of the commission of any offence under this Act shall be liable to be punished with the punishment provided for that offence.

Public servant

60. Every member, officer, servant or agent of the National Competent Authority or Competent Authority while discharging his duties as such member, officer, servant or agent shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

Protection against suit and legal proceedings

61. No action shall lie or prosecution shall be brought, instituted or maintained in any Court against-

(a) any member, officer or enforcement officer of the National Competent Authority and Competent Authority; and

(b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the National Competent Authority or Competent Authority, enforcement officer or any other officer duly appointed by the National Competent Authority or Competent Authority,

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 Act.

Protection of informers

62. (1) Except as provided in subsections (2) and (3), no witness in any civil or criminal proceeding shall be obliged or permitted to disclose the name or address of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

(2) If any book, record, account, document or computerized data which is in evidence or liable to inspection in any civil or criminal proceeding contains any entry in which any informer is named or described or which might lead to his discovery, the Court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on the trial for any offence under this Act, the Court after full enquiry into the case believes that the informer willfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the Court is of the opinion that justice cannot be fully done between the parties in that proceeding without the discovery of the informer, the Court may require the production of the original complaint, if in writing, and permit enquiry and require full disclosure, concerning the informer.

Rewards

63. The National Competent Authority or Competent Authority may order such rewards as it thinks fit to be paid to any person for services rendered in connection with the detection of any offence under this Act, or in connection with any seizures made under this Act.

Additional action

64. Nothing in this Act shall be interpreted as restricting the right of a Competent Authority to take action in addition to that set out in this Act, provided that such action is consistent with the objective of this Act.

Power to exempt

65. (1) The Minister may, upon recommendation of the relevant Competent Authority in consultation with the National Competent Authority, exempt, subject to such terms and conditions as may be deemed fit to impose, any person or class of persons or any biological resources, including any use of the biological resources from all or any of the provisions of this Act.

(2) The Minister may, in consultation with or upon recommendation of the relevant Competent Authority at any time, revoke any order made under subsection (1) if satisfied that such exemption should no longer be granted.

Power to amend Schedules

66. (1) The Minister may, after consultation with the relevant Competent Authority, amend the Second Schedule.

(2) The Minister may at any time amend the Third Schedule.

Power to make regulations

67. (1) The Minister may, after consultation with the relevant Competent Authority, make such regulations as may be expedient or necessary for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for the following:

- (a) to prescribe the duration, terms, conditions and restrictions of any permit,
- (b) to provide for the cancellation and suspension of the permit;
- (c) to prescribe the offences which may be compounded;
- (d) to prescribe the records and documents to be provided and kept, including the time for doing so;
- (e) to prescribe the manner of disposal of the samples and records;
- (f) to prescribe the forms for the purposes of this Act;
- (g) to prescribe fees and charges;
- (h) to provide the procedure for appeals;
- (i) to provide for the composition, remuneration, rules and incidental matters relating to the establishment and conduct of the Advisory Committee;
- (j) to provide for minimum terms for a benefit sharing agreement;
- (k) to provide the measures aimed at preventing the use within Malaysia, of the biological resources, which are not accompanied by a permit or its equivalent;

(l) to establish measures for the purpose of monitoring and tracking the biological resources accessed;

(m) to provide for such other matters as are contemplated by, or necessary for giving full effect to, the provisions of this Act and for their due administration.

(3) Regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding three years or both for such offence.

Prevention of anomalies

68. (1) The Minister may, after consultation with the National Competent Authority and Competent Authority whenever it appears to him necessary or expedient to do so, whether for the purpose of removing difficulties or preventing anomalies in consequence of the enactment of this Act, make such modifications to any provision in this Act.

(2) The Minister shall not exercise the powers conferred by this section after the expiration of two years from the date of coming into operation of this Act.

(3) In this section, "modifications" includes amendments, additions, deletions, substitutions, adaptations, variations, alterations and non-application of any provision of this Act.

Transitional provisions

69. (1) Any person who, on the date of the coming into operation of this Act, is accessing the biological resources to which this Act applies shall, within six months from

the date of the coming into operation of this Act, make an application for a permit under section 13 or section 15, as the case may be.

(2) Pending the determination of such application, such person may continue accessing the biological resources.

(3) The Competent Authority may require a person in possession of biological resource and traditional knowledge associated with the biological resource, acquired before the entry into force of this Act, to enter into an agreement with the Competent Authority to share the benefits derived from the commercial utilization of the biological resource or traditional knowledge associated with the biological resource where:

- (a) there is a new use of the biological resource and traditional knowledge associated with the biological resource; or
- (b) there is a continuing use of the biological resource and traditional knowledge associated with the biological resource;

in respect of benefits arising from such use after the coming into force of this Act.

FIRST SCHEDULE

[subsection 10(1)]

COMPETENT AUTHORITIES

Item	Competent Authority	Biological resource	Region
1.	Department of Wildlife and National Parks Peninsular Malaysia, Ministry of Natural Resources and Environment Malaysia	Wildlife listed under Wildlife Conservation Act 2010 [Act 716]	Peninsular Malaysia, the Federal Territory of Labuan
2.	Department of Veterinary Services, Ministry of Agriculture and Agro-based Industries Malaysia	Animal under Animals Act 1953 [Act 647]	Peninsular Malaysia, the Federal Territory of Labuan
3.	Department of Fisheries, Ministry of Agriculture and Agro-based Industries Malaysia	Fish that is not in marine parks, both as defined in Fisheries Act 1985 [Act 317]	Peninsular Malaysia, the Federal Territory of Labuan
4.	Department of Marine Parks Malaysia, Ministry of Natural Resources and Environment Malaysia	Fish in marine parks both as defined in Fisheries Act 1985 [Act 317]	Peninsular Malaysia and the Federal Territory of Labuan
5.	Department of Wildlife and National Parks	All covered by this Act	Penang National Park and Taman Negara

	Peninsular Malaysia, Ministry of Natural Resources and Environment Malaysia		
6.	Forestry Department Peninsular Malaysia, Ministry of Natural Resources and Environment Malaysia	Forest produce as defined in National Forestry Act 1984 [Act 313]	Federal Territory of Kuala Lumpur, Labuan and Putrajaya
7.	National Competent Authority/Kementerian Wilayah Persekutuan dan Kesejanteraaan Bandar	All except those covered in first 6 rows above	Federal Territory of Kuala Lumpur, Labuan and Putrajaya
8.	To be determine by State	All covered by this Act	Johor
9.	To be determine by State	All covered by this Act	Kedah
10.	To be determine by State	All covered by this Act	Kelantan
11.	To be determine by State	All covered by this Act	Malacca
12.	To be determine by State	All covered by this Act	Negeri Sembilan
13.	To be determine by State	All covered by this Act	Pahang

14.	To be determine by State	All covered by this Act	Penang
15.	To be determine by State	All covered by this Act	Perak
16.	To be determine by State	All covered by this Act	Perlis
17.	To be determine by State (Sabah Biodiversity Centre)	All covered by this Act	Sabah
18.	To be determine by State (Sarawak Biodiversity Centre)	All covered by this Act	Sarawak
19.	To be determine by State	All covered by this Act	Selangor
20.	To be determine by State	All covered by this Act	Terengganu

SECOND SCHEDULE

[section 31]

ENFORCEMENT OFFICERS

Officers	Competent Authority
Any officer as defined in section 3 of the Wildlife Conservation Act 2010 [Act 716]]	Department of Wildlife and National Parks, Ministry of Natural Resources and Environment Malaysia
Any fisheries officer as defined in section 2 or appointed under section 5 of the Fisheries Act 1985 [Act 317]	Department of Fisheries, Ministry of Agriculture and Agro-based Industries Malaysia
Any authorized officer as defined and appointed under the Fisheries Act 1985 [Act 317]	Department of Marine Parks Malaysia, Ministry of Natural Resources and Environment Malaysia
Any authorized officer as defined and appointed under the National Forestry Act 1984 [Act 313]	Forestry Department Peninsular Malaysia
	National Competent Authority
	Sabah Biodiversity Centre
	Sarawak Biodiversity Centre

THIRD SCHEDULE

[subsection 15(4)]

Form 1

STATUTORY DECLARATION

BY A PERSON PURSUANT TO AN APPLICATION FOR A

PERMIT FOR NON-COMMERCIAL PURPOSE

I _____ [*name of applicant*] (NRIC No./Passport No. _____) of
_____ [*address*] solemnly and sincerely declare the following:

1. That in relation to [*insert biological resources, traditional knowledge associated to biological resources, purpose for access and use*],
I
(a) do not intend to use the biological resources or traditional knowledge associated to biological resources, to which the proposed action relates, for commercial or potential commercial purposes; and
(b) undertake to give a written report on the results of any research on the biological resources or traditional knowledge associated to biological resources to the Competent Authority; and
(c) undertake to offer a taxonomic duplicate of each sample collected to the Competent Authority; and
(d) undertake not to give the sample to any person other than the Competent Authority without its prior written permission; and

(e) undertake not to carry out, or allow others to carry out, research or development for commercial or potential commercial purposes on any genetic resource, or derivative, comprising or contained in the biological resources, or in relation to traditional knowledge associated to biological resources, unless a benefit sharing agreement has been entered into, in accordance with subsection 18(1) of this Act.

2. I am aware that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 56 of this Act.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1960.

Subscribed and solemnly)
declared by the abovenamed)
_____)
_____)

.....
Signature of Applicant

at _____
in the State of _____
this _____ day of _____ 20__

Before me,

.....
(Sessions Court Judge, Magistrate
or Commissioner for Oaths)