



LAWS OF SARAWAK

REPRINT

Chapter 15

STATUTORY BODIES (FINANCIAL AND ACCOUNTING PROCEDURE) ORDINANCE, 1995

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**(FINANCIAL AND ACCOUNTING PROCEDURE)
ORDINANCE, 1995**

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LAWS OF SARAWAK
Chapter 15
STATUTORY BODIES
(FINANCIAL AND ACCOUNTING PROCEDURE)
ORDINANCE, 1995

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LAWS OF SARAWAK**Chapter 15****STATUTORY BODIES
(FINANCIAL AND ACCOUNTING PROCEDURE)
ORDINANCE, 1995**

An Ordinance to make provisions relating to accounting procedure and financial management of all statutory bodies incorporated pursuant to the provisions of State laws and to provide for all matters connected therewith.

[1st July, 1995]

Enacted by the Legislature of Sarawak—

PART I**PRELIMINARY****Short title, commencement and application**

1.—(1) This Ordinance may be cited as the Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995, and shall come into force on the 1st day of July, 1995.

(2) Save as otherwise provided in this Ordinance, the provisions of this Ordinance and any regulations made and instructions issued hereunder shall (unless and to such extent as the Majlis Mesyuarat Kerajaan Negeri may, by Order published in the *Gazette* otherwise, direct) apply to all statutory bodies listed in the Schedule and the members thereof and other persons in the service of the statutory bodies, and shall be read together and construed as one with the provisions of the State law pursuant to which a statutory body is incorporated.

Interpretation**2.—(1) In this Ordinance—**

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

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

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

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

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

“Chief Executive Officer”, in relation to a statutory body, shall mean its principal executive officer who is responsible for the day to day administration and management of that statutory body;

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

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

“holding company” shall have the same meaning as that assigned to it in section 5(4) of the Companies Act 1965 [*Act 125*], but does not include the State Financial Secretary incorporated under the State Financial Secretary (Incorporation) Ordinance [*Cap. 36*];

“member” means any person appointed as a member of a statutory body or as a director or Trustee of the Board of that statutory body pursuant to the provisions of the State law establishing or constituting that body;

“Minister”, in relation to a statutory body, means the Minister in the State Government of Sarawak for the time being responsible for the statutory body;

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

“State Financial Authority” shall have the same meaning as assigned to that expression in the Financial Procedure Act, 1957 [*Act 61*];

“State law” means—

- (a) any law enacted by Dewan Undangan Negeri or which the Dewan has the power to make; and

(b) any Order or subsidiary legislation which an authority in the State is empowered to make or enact;

“statutory body” means any body corporate listed in the Schedule incorporated pursuant to the provisions of a State law and is a public authority or an agency of the State Government of Sarawak but does not include a local authority in Sarawak;

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

(2) In this Ordinance, a reference to the Yang di-Pertua Negeri shall be construed as a reference to the Yang di-Pertua Negeri acting in accordance with the advice of the Majlis Mesyuarat Kerajaan Negeri or of a member thereof acting under the general authority of the Majlis.

Inconsistency with any other State laws

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

PART IA

ANNUAL ESTIMATES

Preparation of annual estimates

3A.—(1) A statutory body shall, not later than the fifteenth day of October of each year, prepare detailed estimates of the revenue and expenditure (both capital, operating and development, where applicable) of the statutory body for the next financial year, with the accompanying pro-forma balance sheet, profit and loss account and cash flow statement showing sources and disbursements of fund among others.

(2) Such estimates and accompanying documents shall be prepared in such form and manner as may be prescribed by the State Financial Authority and the draft of such estimates and accompanying documents shall be tabled and adopted by the Board or members of the statutory body.

(3) Once adopted in accordance with subsection (2), the draft estimates and accompanying documents shall be forwarded to the Majlis Mesyuarat Kerajaan Negeri, not later than the thirtieth day of November of each year for consideration and approval.

(4) The Majlis Mesyuarat Kerajaan Negeri may approve, vary or reject any item of expenditure appearing in the draft estimates of a statutory body.

(5) A statutory body shall be bound by the estimates approved by the Majlis Mesyuarat Kerajaan Negeri.

Supplementary estimates

3B.—(1) Where additional financial provision is required in any financial year by a statutory body, it shall, after consultation with the State Financial Authority, prepare a draft supplementary estimates of such expenditure for adoption by the Board or members of the statutory body, and upon such adoption, the draft estimates shall be forwarded to the Majlis Mesyuarat Kerajaan Negeri for its consideration and approval.

(2) The Majlis Mesyuarat Kerajaan Negeri may approve, vary or reject such supplementary provisions and the statutory body shall be bound by the decision of the Majlis Mesyuarat Kerajaan Negeri.

Virement

3C. A statutory body may, subject to the approval of the Minister and to any guidelines as may be issued by the State Financial Authority, transfer all or any part of the moneys assigned from one expenditure item to another expenditure item for capital, operating and development expenditure approved under section 3A or 3B.

Application to companies of statutory bodies

3D.—(1) The Chief Minister may, by Order, direct any company which is wholly owned by a statutory body or is a subsidiary of a statutory body to comply with the provisions of this Part.

(2) For the purpose of this section, any company which is wholly owned by the State Financial Secretary, a corporation incorporated under the State Financial Secretary (Incorporation) Ordinance [*Cap. 36*] or where the majority of its issued share capital are held by the State Financial Secretary shall be deemed to be a company which is wholly owned by or a subsidiary of a statutory body.

[Add. Cap. A112.]

PART II**ACCOUNTS OF STATUTORY BODIES****Time limit for submission of accounts for auditing by statutory body**

4.—(1) Every statutory body shall keep or shall cause to be kept proper accounts and other records in respect of its operations in accordance with generally accepted commercial accounting principles and practices and shall cause to be prepared a statement of its accounts in respect of each financial year and shall, within four months after the end of that financial year or such extension thereof as may be granted in writing by the Majlis Mesyuarat Kerajaan Negeri pursuant to section 5, submit the same to the Auditor General or other auditor appointed by the statutory body for audit.

(2) A copy of the statements of accounts referred to in subsection (1) shall also be sent by the statutory body to the State Financial Authority.

(3) The Auditor General shall cause the statements of accounts to be audited, and may authorize any person appointed by the statutory body, exercising powers vested in it by the State law to which it is incorporated, to undertake, at the expense of that body, the audit of the statements of accounts on the Auditor General's behalf or under his directions.

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

(5) The State Financial Authority shall from time to time issue guidelines, circulars, directions and instructions as to statutory bodies regarding—

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

Application for extension of time limit

5.—(1) Where a statutory body is unable to submit its accounts for audit within four months after the end of the financial year to which the accounts relate, it shall, before the expiry of such time limit, apply in writing to the Majlis Mesyuarat Kerajaan Negeri for an extension thereof setting out the reasons or grounds in support of such application.

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

Financial year

6. The financial year of every statutory body shall, unless otherwise specified by the State Financial Authority by notification published in the *Gazette*, be from the 1st day of January to the 31st day of December in each year.

Submission of report to Minister

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

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

(3) A copy of the reports and explanations referred to in subsections (1) and (2) shall be also sent by the statutory body to the State Financial Authority who shall bring to the notice of the Minister any incompetence or repeated negligence on the part of the officers of the statutory body in the discharge of their financial duties for appropriate action to be taken under section 17.

Minister to cause audited statement of accounts to be laid before Dewan Undangan Negeri

8. The Minister shall, as soon as may be practicable on receipt of the audited statement of accounts, the auditor's report thereon, if any, and the report of activities of a statutory body and the explanation by the Chief Executive Officer referred to in section 7, forward the same to the Yang di-Pertua Negeri who shall cause the audited statements of accounts and the auditor's report to be laid before the Dewan Undangan Negeri.

Restrictions on acts of statutory bodies

9.—(1) A statutory body shall not without the prior written approval of the State Financial Authority—

(a) undertake or authorize the undertaking of any work or service or purchase in excess of such sum as may be determined by the State Financial Authority;

(b) dispose of any of its capital assets with a market value in excess of such sum as may be determined by the State Financial Authority;

(c) write off bad debts or of any arrears of revenue in excess of such sum as may be determined by the State Financial Authority;

(d) permit the take over, dissolution or winding up (except in the case of compulsory winding up by the court or its creditors) of any of its holding or subsidiary companies;

(e) borrow from a financial source other than a bank or financial institution; and

(f) provide loans, credit facilities or financial assistance to any of its members or the Directors of any of its holding or subsidiary or related companies.

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

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

PART III

HOLDING OR SUBSIDIARY OR RELATED COMPANIES
OF STATUTORY BODIES**Capital of holding and subsidiary companies**

10. Where a statutory body is authorized under any State law to form, establish or incorporate any holding or subsidiary company, the authorized and paid up capital of such holding or subsidiary company shall be fixed only after consultation with the State Financial Authority and the Minister has agreed to the limit of the authorized and paid up capital of such holding or subsidiary company.

Restrictions of certain acts of holding or subsidiary or related companies

11. No statutory body shall without the prior written approval of the State Financial Authority—

(a) cause an increase or reduction of the issued or paid up capital of any of its holding or subsidiary company;

(b) permit borrowings by any of its holding or subsidiary company beyond a limit approved in writing by the Minister after consultation with the State Financial Authority or from a source other than a bank or financial institution;

(c) guarantee or provide any form of security for any loan, or liability or obligation, contractual or otherwise, any of its holding or subsidiary or related company;

(d) appoint or cause to be appointed any consultants, contractors, project managers or professional advisers to undertake or execute any work, project or scheme which is funded by moneys provided from the State Consolidated Fund or any loan or credit facilities in respect of which the Government has provided security in any form whatsoever;

(e) cause or permit any of its members and nominees on the Board of Directors of that statutory body's holding or subsidiary or related company, to be paid or to receive, salaries, allowances or other privileges, in excess of the amount approved by the Government;

(f) cause or permit any of its officers or employees to acquire or hold, directly or indirectly, any shares in any holding or subsidiary or related company without the prior written approval of the Minister;

(g) cause or permit any of its holding or subsidiary or related company to merge or amalgamate with another company which is not a holding or subsidiary or related company of that statutory body without the prior written approval of the Minister; and

(h) cause or permit any person to be appointed to audit the accounts of any of its holding or subsidiary company.

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

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

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

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

Power of Minister to wind up holding or subsidiary companies or replace or remove nominees or employees

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

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

the Minister may by Order direct the statutory body—

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

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

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

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

PART IV

FINANCIAL ACCOUNTABILITY AND CONTROL

Members', officers' and servants' responsibilities

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

General fiduciary duties

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

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

Prohibition against members, etc., holding shares

16.—(1) No member, officer, employee or staff of a statutory body shall, without the prior written approval of the Minister—

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

(c) acquire, directly or indirectly, any of the assets, both moveable or immovable, of the holding or subsidiary or related company of that statutory body; or

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

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

(3) Without prejudice to subsection (2), any member who contravenes subsection (1) shall have his appointment as a member of that statutory body revoked by the authority which appointed him, and the services of any officer, staff or employee of the statutory body who acted in contravention of subsection (1) shall, notwithstanding any provision in his terms of his employment with the statutory body, be liable to be terminated.

Surcharge

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

(a) has failed or neglected to collect any moneys owing to the statutory body for the collection of which he is or was responsible;

(b) is or was responsible for any payment from the funds of the statutory body of moneys which ought not to have been made or for any payment of moneys which is not duly approved or which would not have been paid by the statutory body but for his negligence;

(c) is or was responsible, directly or indirectly, for any deficiency in, or for the destruction of, any moneys, stamps, securities, stores or other property of the statutory body;

(d) being or having been an accounting officer, fails or has failed to keep proper accounts or records; or

(e) has failed to make any payment, or is or was responsible for any unreasonable delay in the payment, of moneys from the funds of the statutory body to any person to whom such payment is due under any contract, agreement or arrangement entered into between that person and the statutory body,

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

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

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

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

(a) from the salary of the person surcharged if the statutory body so directs;

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

(c) from the gratuity or other retirement benefits of that person if the statutory body, with the approval of the Minister, so directs.

PART V

MISCELLANEOUS

Transitional provision

18.—(1) Where, upon the date of coming into force of this Ordinance, a statutory body has not, in respect of any of its financial years ending on or before the 31st December, 1994—

(a) caused its statement of accounts to be audited; or

(b) prepared the annual report of its activities,

in accordance with the provisions of the State law pursuant to which it is incorporated, such statutory body shall, on or before the 31st December, 1995, cause its accounts to be audited and shall prepare the annual report of its activities in accordance with the provisions of such State law.

(2) The provisions of sections 5, 7 and 8—

(a) shall then apply in respect of such audited statement of accounts and annual report of activities; and

(b) shall also apply in respect of other statements of accounts and annual reports of activities of a statutory body in respect of financial years ending on or before the 31st December, 1994, which have been audited and prepared, as the case may be, prior to the date of commencement of this Ordinance but which have not, on such date, been submitted to the Minister or laid on the table of the Dewan Undangan Negeri in accordance with the provisions of the State law pursuant to which the statutory body concerned is incorporated.

Power to amend the Schedule

19. The Chief Minister may by Order published in the *Gazette* amend the Schedule.

Regulations

20.—(1) The Majlis Mesyuarat Kerajaan Negeri may make regulations generally for the purpose of carrying out the provisions of this Ordinance, and in particular, such regulations may provide for all or any of the following matters:

(a) the salaries, fees and other privileges for members of a statutory body;

(b) the salaries, fees and privileges of members of Board of Directors of any holding or subsidiary company of the statutory body;

(c) the fees or other remuneration payable to the statutory body for services rendered by the statutory body;

(d) the remuneration of an auditor appointed under this Ordinance and for the costs of an audit carried out under this Ordinance;

(e) powers, duties and responsibilities of members of the board of management or trustees and officers and servants of a statutory body in relation to the accounts and other records of the operation of that statutory body or its holding or subsidiary or related companies;

(f) the appointment of consultants, professional advisers, contractors and project managers by statutory bodies, their holding or subsidiary companies;

(g) the disposal of capital assets by a statutory body;

(h) the transfer of all or any part of the moneys assigned to one expenditure item to another expenditure item;

(i) the writing off of bad debts and other losses of a statutory body; and

(j) prescribing anything which is to be or may be prescribed by regulations.

[Am. Cap. A112.]

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties of a fine not exceeding ten thousand ringgit and imprisonment for a term not exceeding two years.

Saving

21. Save as otherwise provided in this Ordinance, the provisions of the Financial Procedure Act 1957 [*Act 61*] and any regulations made and instructions issued thereunder shall apply to any statutory body and other persons in the service of the statutory body.

SCHEDULE

(Sections 1(2) and 19)

THE STATUTORY BODIES TO WHICH
THIS ORDINANCE SHALL APPLY ARE:

- (1) Board of Trustees of the Forest Concession Area (Rehabilitation and Development) Fund [Ord. No. 7/85]
- (2) Brooke Dockyard and Engineering Works Corporation [Cap. 11]
- (3) Housing and Development Commission [Cap. 52]
- (4) Kuching Port Authority [Ord. No. 1/61]
- (5) Kuching Water Board (Vol. VIII, page 709)
- (6) Land Custody and Development Authority [Ord. No. 4/81]
- (7) Lembaga Kemajuan Bintulu (Bintulu Development Authority) [Ord. No. 1/78]
- (8) Lembaga Kemajuan Tanah Sarawak (Sarawak Land Development Board) [Swk. L.N.17/72]
- (9) Miri Port Authority [Ord. No. 1/61]
- (10) Natural Resources and Environment Board [Cap. 84 (1958 Ed.)]
- (11) Perbadanan Pembangunan Ekonomi Sarawak (Sarawak Economic Development Corporation) [Cap. 35, (1958 Ed.)]
- (12) Rajang Port Authority [Ord. No. 1/61]
- (13) *Sarawak Electricity Supply Corporation [Cap. 51]
- (14) Sarawak Land Consolidation and Rehabilitation Authority [Ord. No. 3/76]
- (15) Sarawak Rivers Board [Cap. 4]
- (16) †Sarawak Stadium Corporation [Ord. No. 1/72]
- (17) Sarawak Timber Industry Development Corporation [Ord. No. 3/73]
- (18) Sarawak Tourism Board [Cap. 14]
- (19) Sibu Water Board (Vol. VIII, (1958 Ed.) - page 711)
- (20) Yayasan Sarawak (Board of Trustees of the Sarawak Foundation) [Ord. No. 4/71]

*Repealed by Cap. 59 w.e.f. 1.7.2005 (Sek. L.N. 44/2005).

†Will be repealed when Cap. A135 is brought into force.

LAWS OF SARAWAK

Chapter 15

**STATUTORY BODIES (FINANCIAL AND ACCOUNTING
PROCEDURE) ORDINANCE, 1995**

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Cap. A112	Statutory Bodies (Financial And Accounting Procedure)(Amendment) Ordinance, 2004	1.7.2004
Cap. A135	Sarawak Stadium Corporation (Repeal) Ordinance, 2007	[]

