

STATE OF SABAH

I assent,

TUN DATUK HAJI MOHD. SAID BIN KERUAK,
Yang di-Pertua Negeri.

14TH AUGUST, 1993.

No. 6 of 1993

An Enactment to provide for the chargeability and administration of *zakat* and *fitrah* and matters incidental thereto.

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

PART I PRELIMINARY

Short title, application and commencement.

1. (1) This Enactment may be cited as the Zakat and Fitrah Enactment 1993 and applies only to Muslims in the State of Sabah.

(2) This Enactment shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint. [c.i.f. 01.01.1996]

Interpretation.

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

"*al-riqab*" means a person held in slavery or bondage who needs assistance to free himself from such obligation as has been imposed upon him;

"*Amil*" means a person appointed by the Majlis to collect zakat in the State of Sabah according to *Hukum Syarak*;

"Court" means the Syariah Courts established under the Syariah Courts Enactment 2024;

"*fakir*" means a person who has neither property nor vocation or who receives income from other sources not amounting to fifty per cent of his daily needs of an average person and those of his dependants;

"*fi-sabilillah*" means a person who is engaged in activity or activities to uphold, defend and propagate the religion of Islam and its welfare;

"*fitrah*" means an obligation of a person to purify or sanctify himself to be paid annually during the month of *Ramadan* according to *Hukum Syarak* either in the form of necessity or its equivalent in value ;

"*gharim*" means a person who borrows money or property for the purpose of the public as approved by *Hukum Syarak*;

"*haul*" means a complete Hijrah year in nisab;

"*ibn al-sabil*" means any person who undertakes a journey for purposes approved by *Hukum Syarak* from any State and who is in need of assistance although he may have property in his own State or residence;

"*Jawatankuasa*" means the *Jawatankuasa Zakat and Fitrah* appointed under section 3;

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

"*miskin*" means any person who has property or income from his vocation insufficient to meet his daily needs and those of his dependants;

"*muallaf*" means a person who has newly embraced Islam and is in need of financial assistance;

"*nisab*" means a complete number or measure specified by *Hukum Syarak* computing the amount or quantity of the assets on which *zakat* is chargeable;

"Principal Assistant Secretary" means the Principal Assistant Secretary in charge of the Zakat and Fitrah Division appointed under section 10;

"Secretary" means the Secretary of Majlis Ugama Islam Sabah appointed under the Majlis Ugama Islam Negeri Sabah Enactment 2004;

"*syura*" means a discussion in order to arrive at a final decision;

"*was*" means a person appointed as an executor of a will;

"*zakat*" means *zakat* on property chargeable according to *Hukum Syarak* in every year;

PART II ESTABLISHMENT AND ADMINISTRATION

Appointment of *Jawatankuasa Zakat and Fitrah*.

3. (1) The Majlis may, for the purpose of this Enactment, appoint a *Jawatankuasa Zakat and Fitrah*.

(2) The *Jawatankuasa* shall consist of the following members –

- (a) a Chairman who is a State Mufti;
- (b) a Deputy Chairman who is the Secretary of the Majlis;
- (c) a *Jawatankuasa* Secretary who is the Principal Assistant Secretary of the Zakat and Fitrah Division established under section 8; and
- (d) eight other members, at least four of whom are from the members of the Majlis appointed by the Minister.

(3) All members of the *Jawatankuasa*, except those who are appointed by virtue of their posts shall hold office for a period of three years from the date of their appointments and shall be eligible for re-appointment.

Responsibility of the *Jawatankuasa*.

4. The *Jawatankuasa* shall be responsible for the issuance of general policy guidelines for the superintendence and control over matters relating to *zakat* and *fitrah*.

Meeting.

5. (1) A meeting of the *Jawatankuasa* shall be held at least once in three months.
- (2) The *Jawatankuasa* shall not hold any meeting unless there is a quorum of at least five members present in that meeting.
- (3) Decision in the meeting shall be made in accordance with the system of *syura*.

Duties of Chairman.

6. The Chairman shall have power to –
- (a) direct the *Jawatankuasa* Secretary to summon meeting;
- (b) preside over all meetings and in his absence, the Deputy Chairman shall preside over the meeting; and
- (c) circulate among members for their decision on any urgent matter and the decision shall be confirmed by the *Jawatankuasa* in the next meeting.

Duties of *Jawatankuasa* Secretary.

7. *Jawatankuasa* Secretary shall have power –
- (a) to maintain all correspondence and to keep and manage all accounts;
- (b) to summon any meeting on the direction of the Chairman, or on the request from at least three of the members who shall give reasons for having the meeting or when it is deemed necessary to have the meeting;
- (c) to prepare agenda for the meeting by stating clearly all items in the agenda to all members at least seven days prior to the meeting and at the same time stating the time and venue of the meeting: Provided that in case of emergency, the Chairman may direct that written notice may be dispensed with;
- (d) to carry out any other duty assigned to him by the *Jawatankuasa*.

Establishment of Zakat and Fitrah Division.

8. (1) A *Zakat* and *Fitrah* Division (hereinafter referred to as 'the Division'), shall be established to carry out the functions of administering *zakat* and *fitrah*.
- (2) The Division shall comprise officers and staff from the State Public Service.

Responsibility of the Zakat and Fitrah Division.

9. (1) The Division shall be responsible for –
- (a) the collection of *zakat* and *fitrah*;
 - (b) the issuance of *zakat* returns as prescribed and the making of assessment in accordance with *Hukum Syarak*;
 - (c) distribution of the assets received from the *zakat* and *fitrah* in accordance with *Hukum Syarak*;
 - (d) making recommendation to the *Jawatankuasa* with regard to the appointment and termination of service of *Amil*;
 - (e) preparation of accounts for *zakat* and *fitrah* collection and an annual budget; and
 - (f) the carrying out of annual census of the Muslim population in the State of Sabah.

The Secretary and his Staff.

10. (1) The Secretary shall be the Controller who shall have the care and management of *zakat* and *fitrah* in the State of Sabah.
- (2) There shall be –
- (a) one Principal Assistant Secretary; and
 - (b) such Assistant Secretary and such other officers as may be necessary and expedient for the due administration under this Enactment,

and such posts shall be in the State Public Service.

Jawatankuasa may give directions to the Secretary.

11. The *Jawatankuasa* may give the Secretary directions of a general nature not inconsistent with this Enactment as to the exercise of the functions of the Secretary under this Enactment, and the Secretary shall give effect to such directions so given.

Delegation of the Secretary's function.

12. (1) The Principal Assistant Secretary may exercise any function of the Secretary under this Enactment, other than a function exercisable by statutory order or a function exercisable under section 80 except those functions under section 13(1).

(2) The Secretary may by writing under his hand authorize any public officer, subject to any exceptions or limitations contained in the authorization, to exercise or assist in exercising any function of the Secretary under this Enactment.

(3) Where an officer exercises any of the functions of the Secretary by virtue of any provision of subsections (1) to (2), he shall do so subject to the general supervision and control of the Secretary.

(4) The delegation under any provision of subsections (1) to (2) of the exercise of any function of the Secretary shall not prevent the exercise of the function by the Secretary.

(5) References in this Enactment to the Secretary shall be construed, in relation to any case where an officer is authorized by any provision of subsections (1) to (2) to exercise the function of the Secretary, as including references to that officer.

Identifications of officials.

13. (1) Any person exercising the right of access or the right to take possession conferred by section 29 shall carry a warrant in the prescribed form issued by the Secretary, or, (in the case of warrant issued to the Secretary) by the Principal Assistant Secretary, which shall identify the holder and his office and shall be produced by the holder on demand to any person having reasonable grounds to make the demand.

(2) Where a person purporting to be a public officer exercising functions under this Enactment produces a warrant in the form prescribed under subsection (1) or any written identification or authority, then, until the contrary is proved, the warrant, identification or authority shall be presumed to be genuine and he shall be presumed to be the person referred to therein.

Certain material to be treated as confidential.

14. (1) Subject to this section, every classified person shall regard and deal with classified material as confidential, and, if he is an official, he shall make and subscribe before the prescribed authority a declaration stating that he will do so.

(2) No classified material shall be produced or used in Court or otherwise, except –

- (a) for the purpose of this Enactment; or
- (b) in order to institute or assist in the course of a prosecution for any offence committed in relation to *zakat* or *fitrah* ; or
- (c) with the written authority of the Majlis or of the person or partnership to whose affairs it relates.

(3) No official shall be required by any Court –

- (a) to produce or disclose any classified material which has been supplied to him or another official otherwise than by or on behalf of the person or partnership to whose affairs it relates; or
- (b) to identify the person who supplies that material.

(4) Nothing in this section shall prevent –

- (a) the production or disclosure of classified material to the Auditor-General or to public officers under his direction and control or the use of classified material by the Auditor-General or such officers to such an extent as is necessary or expedient for the proper exercise of their functions;
- (b) the Secretary from publicising, from time to time, in such manner as he may deem fit, the following particulars in respect of a person who has been found guilty or convicted of any offence under this Enactment or dealt with under subsection (2) of section 59 –

- (i) the name, address and occupation or other description of the person;
- (ii) such particulars of the offence or evasion as the Secretary may think fit;
- (iii) the year or years of assessment to which the offence or evasion relates;
- (iv) the amount of the income or assets not disclosed;
- (v) the aggregate of the amount of the *zakat* or *fitrah* evaded and the penalty, if any, imposed; and
- (vi) the sentences imposed or other order made:

Provided that the Secretary may refrain from publicising any particulars of any person to whom this paragraph applies if the Secretary is satisfied that, before any investigation or inquiry has been commenced in respect of any offence or evasion falling under section 59 or 60, that person has voluntarily disclosed to the Secretary or to any authorized officer complete information and full particulars relating to such offence or evasion.

(5) In this section –

"classified material" means any return or other document made for the purposes of this Enactment relating to the income or assets of any person or partnership and any information or other matter or thing which comes to the notice of a classified person in his capacity as such;

"classified person" means –

- (a) an official;
- (b) the Auditor-General and public officers under his direction and control;
or
- (c) any person advising or acting for a person who is or may be chargeable to *zakat* and *fitrah* and any employee of a person so acting or advising if he is an employee who in his capacity as such has access to classified material;

"official" means a person having an official duty under or employed in carrying out the provisions of this Enactment.

Appointment of *wakil Amil*.

15. (1) The *Jawatankuasa* may, on behalf of the *Majlis*, appoint *wakil Amil*.
- (2) The appointment of an *wakil Amil* shall be for a period of one year from the date of appointment.
- (3) An *wakil Amil* shall be eligible for reappointment.

Responsibilities of *wakil Amil*.

16. (1) The *wakil Amil* shall be responsible for –
- (a) the collection of *zakat* and *fitrah*;
 - (b) the issue of an official receipt bearing his signature to every person who has paid *zakat* and *fitrah*; and
 - (c) the surrender of all *zakat* and *fitrah* collection to the Division.

PART III

IMPOSITION AND GENERAL
CHARACTERISTICS OF *ZAKAT*

Charge of *zakat*.

17. Subject to and in accordance with this Enactment, *Zakat* shall be charged for each *haul* upon the income or asset of every Muslim person accrued in Malaysia.

Classes of income or assets on which *zakat* is chargeable.

18. (1) The income or asset upon which *zakat* is chargeable under this Enactment is as prescribed by the Minister on the advice of the *Majlis* from time to time.
- (2) The Minister may, on the advice of the *Majlis*, from time to time by order published in the *Gazette* amend any of the matters so prescribed in subsection (1).

Manner in which chargeable assets is to be ascertained and the rates of *zakat*.

19. The *zakat* which is chargeable upon the income and asset of a chargeable person shall be ascertained in the manner and at the rates as prescribed by the Minister on the advice of the Majlis from time to time.

Distribution of *zakat*.

20. *Zakat* shall be distributed to –

- (a) *faqir*;
- (b) *miskin*;
- (c) *Amil*;
- (d) *muallaf*;
- (e) *al-riqab*;
- (f) *gharim*;
- (g) *fi-sabilillah*; and
- (h) *ibn-al-sabil*.

PART IV
PERSONS CHARGEABLE TO ZAKAT

General principal on charge of *zakat* on a person.

21. If, under this Enactment the income or asset of any person may be assessed and *zakat* is charged, that person shall, subject to this Part, become a person assessable and chargeable to *zakat* in respect of his income or asset.

Vicarious responsibility and chargeability.

22. (1) Subject to this Part, the following subsections shall apply where by or under any of the following sections of this Part, a person (in this section referred to as "the representative") –

- (a) is appointed to be the agent of any other person; or
- (b) is assessable and chargeable to *zakat* on behalf of any other person;
or
- (c) is a person in whose name other chargeable person is assessable
and chargeable to *zakat*,

any such chargeable person being in this section referred to as "the principal".

(2) The representative may require any person (including the principal, in so far as he is capable of complying with the requisition) who is in receipt or control of any asset of the principal, and any person by whom any income or asset is paid or payable to the principal, to supply to the representative full particulars of the income and any expenses connected therewith.

(3) Where the representative is assessable and chargeable to *zakat* on behalf of the principal, the representative shall be assessable and chargeable to *zakat* in like manner and to the like amount as the principal would be assessed and charged to *zakat*.

(4) The representative shall be responsible for doing all such acts and things as are required by or by virtue of this Enactment to be done by him as representative or by the principal for the purposes of this Enactment, and in particular for the payment of any *zakat* due from him as representative or from the principal and, in default of payment, any such *zakat* or amount due together with any penalty which is payable by him due to the default as representative or principal shall be recoverable from the representative either as such or as if he were the principal, as the case may be:

Provided that the representative shall not be required to pay any penalty other than that which the principal is liable by other means other than money recovered.

Power to appoint agent.

23. (1) The Secretary may, if he thinks fit, by notice in writing appoint any person to be the agent of any chargeable person for all or any of the purposes of this Enactment, and, where any person is so appointed for all those purposes, he shall be assessable and chargeable to *zakat* on behalf of that chargeable person.

(2) An appointment made under subsection (1) may be revoked by the Secretary at any time.

(3) Where a person appointed under subsection (1) to be the agent of any chargeable person is aggrieved by the appointment, he may, within thirty days after the service on him of the notice of appointment, appeal under section 45 as if the notice of appointment served upon him were a notice of assessment and the provisions of this Enactment relating to appeals shall apply accordingly with any necessary modifications.

Incapacitated persons.

24. (1) Where a person lawfully having the direction, control or management of any asset on behalf of an incapacitated person receives the gross income or asset of that incapacitated person from all sources for the appropriate basis periods for a year of assessment, that first-mentioned person shall be assessable and chargeable to *zakat* in respect of that income or asset on behalf of that incapacitated person.

(2) Where there is no person assessable and chargeable to *zakat* by virtue of subsection (1) in respect of the income or asset of an incapacitated person, the Secretary may, if he deems it necessary, appoint any other person in writing to be the agent of that incapacitated person for all or any of the purposes of this Enactment, and if any person is so appointed as such for all purposes, he shall be assessable and chargeable to *zakat* on behalf of the incapacitated person.

(3) Without prejudice to subsection (1) or (2), if an incapacitated person assessed and chargeable to *zakat* is a *wasi*, he shall be assessed and chargeable to *zakat* on behalf of the *wasi*.

Companies and bodies of persons.

25. The responsibility for doing all acts and things required to be done by or on behalf of a company or body of persons for the purposes of this Enactment shall be jointly and severally -

- (a) in the case of a company, with –
 - (i) the manager or other principal officer in Malaysia;
 - (ii) the directors;
 - (iii) the secretary; and

- (iv) any person (however styled) exercising the functions of any of the persons mentioned in the foregoing subparagraphs; and
- (b) in the case of a body of persons, with –
 - (i) the manager;
 - (ii) the treasurer;
 - (iii) the secretary; and
 - (iv) the members of its controlling authority.

PART V
RETURNS

Return of assets and notices of chargeability to *zakat*.

26. (1) The Secretary may for any year of assessment require any person by notice in writing to furnish him within a time specified in the notice (not being less than thirty days from the date of service of the notice) a return in the prescribed form containing such particulars as may be required for the purpose of ascertaining the total *nisab* (if any) of that person for that year.

(2) Every person chargeable to *zakat* for any year who has not been required within three months after the beginning of that year to make a return for that year under subsection (1) shall within fourteen days after the expiration of that period give notice to the Secretary that he is so chargeable to *zakat*.

- (3) An individual who –
 - (a) resides in the State of Sabah during a particular year of assessment;
 - (b) has not been chargeable to *zakat* for that particular year,

shall within two months give notice to the Secretary that he will be so chargeable to *zakat*.

Power to call for specific returns and production of books.

27. For the purpose of obtaining full information for ascertaining whether or not a person is chargeable to *zakat* the Secretary may by notice under his hand require that person or any other person –

- (a) to complete and deliver to the Secretary within a time specified in the notice (not being less than thirty days from the date of service of the notice) any return specified in the notice; or
- (b) to attend personally before the Secretary and produce for examination all books, accounts, returns and other documents which the Secretary deems necessary; or
- (c) to make a return in accordance with paragraph (a) and also to attend in accordance with paragraph (b).

Power to call for statement of bank account, etc.

28. The Secretary may by notice under his hand require any person to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a statement containing particulars of –

- (a) all banking accounts –
 - (i) in his own name; or
 - (ii) in which he is or has been interested jointly or solely; and
- (b) all assets liable to *zakat* which he possesses or has possessed during that particular period.

Power of access to buildings and documents, etc.

29. (1) For the purpose of this Enactment, the Secretary shall at all times have full and free access to all lands, buildings and places and to all books and other documents and may search such lands, buildings and places and may inspect, copy or make extracts from any such books or documents without making any payment by way of fee or reward.

(2) The Secretary may take possession of any books or documents to which he has access under subsection (1) where in his opinion –

- (a) the inspection, the copying of or the making of extracts from the books and documents cannot reasonably be undertaken without taking possession of them;
- (b) the books or documents may be interfered with or destroyed unless he takes possession of them; or
- (c) the books or documents may be needed as evidence in any legal proceedings instituted under or in connection with this Enactment:

(3) Where in the opinion of the Secretary it is necessary for the purpose of ascertaining the business for any period to examine any books, accounts or records kept otherwise than in the national language, he may by notice under his hand require any person carrying on the business during that period to furnish within a time specified in the notice (not being less than thirty days from the date of service of the notice) a translation in the national language of the books, accounts or records in question.

Power to call for information.

30. The Secretary may require any person to give orally or may by notice under his hand require any person to give in writing within a time specified in the notice all such information or particulars as may be demanded of him by the Secretary which may be in the possession of that person.

Obligation to keep and issue receipt.

31. (1) Subject to this section, every person who carries on a business –

- (a) shall keep and retain in safe custody sufficient records relating to his income from the business so that it can be readily computed at any time the Secretary deems it necessary; and
- (b) shall keep printed receipts with a serial number for any amount of money received during the year of assessment relating to goods sold or services rendered that may be chargeable to *zakat* for the purpose validly determined.

(2) If in the course of the business a cash register is used to record sales, the production of receipts under subsection (1)(b) may be dispensed with unless the Secretary is not satisfied –

- (a) that the cash register is able to record automatically all sales made; or
- (b) that the total of all sales made in one day is transferred at the end of the business day into a sales record.

(3) The Secretary may specify by statutory order in respect of any class or description of business (or by notice under his hand in respect of the business of a particular person) –

- (a) the form of records to be retained under subsection (1)(a) and the manner in which they shall be kept and retained; and
- (b) the form of receipt to be issued and duplicate to be retained under subsection (1)(b) and the manner of issuance and retention of the receipt.

(4) The Secretary may waive all or any of the provisions of subsection (1) in relation to any business or record or any class or description of business or record.

Return by employer.

32. The Secretary may by statutory order require every employer to prepare and deliver for any year specified in the order and within a time so specified a return in the prescribed form containing –

- (a) the names and places of residence of all employees as may be indicated in the order; and
- (b) the full amount of the gross income paid, payable or provided by or on behalf of the employer to those persons in respect of their employment.

Return concerning Muslim persons other than the maker of the return.

33. (1) Every person who in whatever capacity is in receipt or has control of any money or asset belonging to or owned by any chargeable person shall, if required to do

so by a notice under the hand of the Secretary, deliver to the Secretary within a period to be specified in the notice (not being less than thirty days from the date of service of the notice) a return in the prescribed form containing particulars of the money or asset and a statement of the name and address of the owner.

(2) Every person who sells any asset in Malaysia on behalf of a person not resident in Malaysia for the basis year shall, if those assets are sold in the course of carrying on a business of that person, deliver to the Secretary within thirty days after the end of that year a return showing the gross proceeds from any such sales made during that year.

Return by partnership.

34. (1) Where a business is carried on by a partnership –
- (a) the precedent partner, that is to say, the partner who, being an acting partner present in Malaysia –
 - (i) is first named in the partnership agreement; or
 - (ii) if there is no partnership agreement, is specified by name or initial singly or with precedence to the other partners in the usual name of the firm; or
 - (b) if no acting partner is present in Malaysia, any advocate, agent, manager or factor of the partnership in Malaysia,

shall, when required by the Secretary by notice in writing to do so within a time specified in the notice (not being less than thirty days from the date of service of the notice), make a partnership return or returns in the prescribed form; and where the person to be so required has not been so required within three months after the beginning of that year to make such a return or returns for that year, he shall within fourteen days after the expiration of that period make that return or returns without being required to do so.

(2) If a partnership has been dissolved as to all its partners, this section shall continue to apply in relation to the dissolved partnership, and those persons who were partners of the partnership immediately before the dissolution shall be deemed to continue to be partners for the purposes of this section.

Power to call for further return.

35. The Secretary may give notice in writing to any person whenever he thinks fit requiring that person to furnish within a reasonable time (to be specified in the notice) fuller or further returns respecting any matter as to which a return is required by or under this Enactment.

Returns deemed to be made with due authority.

36. A return purporting to be made pursuant to this Enactment by or on behalf of any person shall be presumed to have been made by that person or on his authority, as the case may be, until the contrary is proved, and any person signing such a return shall be deemed to know the contents thereof.

Change of address.

37. Every person chargeable to *zakat* who changes his address in Malaysia (being an address furnished by him to the Secretary) for another address in Malaysia shall within three months inform the Secretary of the change by notice in writing.

PART VI

ASSESSMENT AND APPEAL

Chapter 1 – Assessment

Assessment generally.

38. (1) Where a person had delivered a return under section 26 to the Secretary for a year of assessment, the Secretary may –

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and require the person to furnish further particulars to enable a proper assessment to be made.

(2) The Secretary, if he is of the opinion that a person has failed to submit his return under section 26 for the particular assessment year which is chargeable to *zakat* for that year, may make an assessment in respect of that person for that year accordingly:

Provided that the assessment made in respect of that person under this subsection does not affect any liabilities which if not for this subsection is the responsibility of the person due to the failure to submit the return.

Assessment and additional assessment in certain cases.

39. (1) The Secretary, where for any year of assessment it appears to him that no or not sufficient assessment has been made on a person chargeable to *zakat*, may, in that year or years following that year, make an assessment or additional assessment, as the case may be, in respect of that person in the amount or additional amount of income or *zakat* chargeable or in the amount of additional *zakat* which according to the discretion of the Secretary assessment with respect to that person ought to have been made for that year.

(2) The Secretary, where it appears to him that –

- (a) any form of fraud, or wilful default, has been committed wilfully by or on behalf of any person; or
- (b) any person has been negligent,

in connection with or in relation to *zakat*, may at any time make an assessment in respect of that person for any year of assessment for the purpose of making good any loss of *zakat* attributed to the fraud, wilful default or negligence in question.

Form for making assessment.

40. An assessment in respect of a person shall –

- (a) be made in the appropriate prescribed form;
- (b) indicate, in addition to any other material included therein, the appropriate year of assessment and the amount or additional amount of *nisab* and the *zakat* charged thereon or the amount of *zakat* or additional *zakat*, as the case may be; and
- (c) specify in the appropriate space in that form the date on which that form was duly completed,

and, where that form appears to have been duly completed, the assessment shall, until the contrary is proved, be presumed to have been made on the date so specified.

Record of assessment.

41. The Secretary shall cause to be maintained in such manner as he thinks fit a record of all assessments made for each year of assessment.

Notice of assessment.

42. (1) As soon as may be after an assessment has been made, the Secretary shall cause a notice of assessment to be served on the person in respect of whom the assessment was made.

(2) Where the *zakat* charged under an assessment is increased on appeal to the Special Commissioners or court, then, as soon as may be after the appeal has been decided, there shall be served on the person in respect of whom the assessment was made a notice of increased assessment.

(3) Where an assessment has been made in respect of a person appointed under section 23 to be the agent of any chargeable person, any notice to be served under subsection (1) or (2) shall be served both on the agent and on the chargeable person.

(4) A notice served under subsection (1) or (2) shall be in the prescribed form and shall indicate, in addition to any other material included therein –

- (a) in the case of a notice served under subsection (1), the year of assessment, the amount or additional amount of *nisab* and the *zakat* charged thereon or the amount of the *zakat* or additional *zakat*, as the case may be;
- (b) in the case of a notice served under subsection (2), the year of assessment and the amount of the increase in the *zakat* charged; and
- (c) in either case –
 - (i) the place at which payment is to be made; and
 - (ii) any right of appeal which may exist under this Enactment.

Finality of assessment.

43. (1) Where –

- (a) no valid notice of appeal against an assessment has been given under section 45 within the time specified by that section (or any extension thereof); or
- (b) an agreement has been come to with respect to an assessment pursuant to section 47(2); or
- (c) an assessment has been determined on appeal and there is no right of further appeal; or
- (d) a valid notice of appeal against an assessment has been given but the appellant dies before the hearing of the appeal by the Special Commissioners is commenced or completed and no personal representative of the estate of the deceased appellant applies to the Special Commissioners within two years after his death to proceed with or complete the hearing,

the assessment as made, agreed to or determined shall be final and conclusive for the purposes of this Enactment.

(2) Nothing in subsection (1) shall prejudice the exercise of any power conferred on the Secretary by section 39 or 75(3).

Chapter 2 – Appeal

Special Commissioners and Secretary to Special Commissioners.

44. (1) For the purposes of this Enactment, there shall be three or more Special Commissioners of *Zakat* and *Fitrah* and one Secretary to the Special Commissioners.

(2) The Special Commissioners shall be appointed by the Yang di-Pertua Negeri.

(3) The Special Commissioners shall include such number of *ulamaks*, who possess *syariah* judicial and legal experience, as may be prescribed by the Yang di-Pertua Negeri from time to time; and if the Yang di-Pertua Negeri considers it expedient

to do so, he may appoint one of those persons to be the Chairman of the Special Commissioners.

Right of appeal.

45. (1) A person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Secretary within thirty days after the service of the notice of assessment (or within such extended period as may be allowed under section 46) a written notice of appeal in the prescribed form stating the grounds of appeal and containing such other particulars as may be required by that form.

(2) Where an assessment has been made in respect of a person appointed under section 23 to be the agent of any chargeable person, the agent and the chargeable person shall for the purposes of this section and the other provisions of this Enactment relating to appeals each be treated as the person in respect of whom the assessment was made and, if they both appeal against the assessment, their appeal shall if possible dealt with together:

Provided that in the case of a recipient deemed under section 23(3) as duly appointed under section 23(1) becomes an agent of a Court, this subsection shall not be applicable.

(3) Where in a case to which section 22 applies, the principal has appealed against an assessment, the representative, whether or not he himself has appealed or is entitled to appeal against the assessment and without prejudice to any power conferred on him, may represent and act generally on behalf of the principal for the purposes of the provisions of this Enactment relating to appeals ("the principal" and "the representative" here having the same meaning as in section 22).

Extension of time for appeal.

46. (1) A person seeking to appeal against an assessment may at any time make to the Secretary a written application in the prescribed form for an extension of the period within which notice of appeal against the assessment may be given under section 45(1).

(2) On receipt of an application under subsection (1), the Secretary –

(a) if he is satisfied that for any reasonable cause the applicant was prevented from giving notice of appeal within the appropriate period

provided by section 45(1), shall extend that period as he thinks proper in the circumstances and give written notice of the extension to the applicant; and

- (b) if he is not so satisfied, shall forward the application to the Secretary to the Special Commissioners, together with a statement of the reasons for his dissatisfaction and his address for the purpose of this application.

(3) Where the Secretary forwards an application and statement pursuant to subsection (2)(b), he shall inform the applicant in writing that he has done so and shall furnish the applicant with a copy of the statement; and the applicant may, within twenty-one days of receiving the information and the copy, forward to the Secretary to the Special Commissioner written representations as to the application and the statement.

(4) Any application and statement forwarded pursuant to subsection (2)(b) and any representations forwarded pursuant to subsection (3) shall be brought by the Secretary to the Special Commissioners to the attention of one of the Special Commissioners, who shall decide whether or not to extend, as he thinks proper in the circumstances, the period within which the notice of appeal may be given.

(5) The decision of the Special Commissioner refusing an application or granting an extension under subsection (4) shall be notified in writing by the Secretary to the Special Commissioners to the applicant and the Secretary and the decision shall be final.

Review by the Secretary.

47. (1) On receipt of a notice of appeal under section 45(1), the Secretary may review the assessment against which the appeal is made and for that purpose may –

- (a) require the appellant to furnish such particulars as the Secretary may think necessary with respect to the income to which the assessment relates and any other matter relevant to the assessment in the Secretary's opinion;
- (b) require the appellant to produce all books or other documents in the appellant's control relating to any asset to which the assessment

relates or any other matter relevant to the assessment in the Secretary's opinion;

- (c) summon any person who in the Secretary's opinion is able to give evidence respecting the assessment to attend before the Secretary; and
- (d) examine any person so attending on affirmation or otherwise.

(2) Where as the result of a review under subsection (1), the Secretary and the appellant come to an agreement in writing either –

- (a) as to the amount of the chargeable *nisab* and the *zakat* chargeable thereon or the amount of *zakat* or additional *zakat*; or
- (b) that there is no chargeable *nisab* or *zakat*,

the assessment against which the appeal is made shall be treated as having been confirmed, reduced, increased or discharged in accordance with the agreement.

(3) Subject to subsection (5), where as the result of a review under subsection (1) the Secretary and the appellant come to an oral agreement as to the matters mentioned in subsection (2)(a) or (b) and the Secretary serves written confirmation of the agreement on the appellant, then, unless the appellant within a period of twenty-one days of being so served gives notice in writing to the Secretary repudiating the agreement, the oral agreement as confirmed by the Secretary shall be deemed to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period between the Secretary and the appellant.

(4) Subject to subsection (5), where as the result of a review under subsection (1) the Secretary makes to the appellant proposals in writing that the assessment should be confirmed, reduced, increased or discharged and the appellant neither accepts nor rejects the proposals, unless the appellant within a period of thirty days of being served with such proposals (or within such further period as the Secretary on the appellant's application may allow) gives notice in writing to the Secretary rejecting the proposals, the proposals shall be deemed to have been accepted and to be an agreement in writing within the meaning of subsection (2) come to upon the expiration of that period or further period, as the case may be, between the Secretary and the appellant.

(5) Where by the operation of subsection (3) or (4) there is deemed to be an agreement within the meaning of subsection (2) between the Secretary and the appellant, one of the Special Commissioners, on the application of the appellant made to the Special Commissioners within a period of the thirty days after the agreement is deemed to be come to, may, after giving the Secretary an opportunity to make oral or written representations, set the agreement aside if he thinks it just, and equitable in the circumstances to do so.

(6) The decision of one of the Special Commissioners on an application under subsection (5) shall be notified by the Secretary to the Special Commissioners in writing to the applicant and the Secretary and the decision shall be final.

(7) References in this section to agreements come to between the Secretary and the appellant and to confirmations and requests being served on the appellant include references to agreements come to between the Secretary and a duly authorized person conducting correspondence or otherwise acting on behalf of the appellant in relation to the appeal and to confirmations and requests served on such a person.

(8) Where on an appeal against an assessment of *zakat* chargeable under the assessment is increased by an agreement come to under subsection (2) or by an agreement deemed to be come to under subsection (3) or (4) and not set aside under subsection (5), the Secretary shall serve on the appellant a notice in the prescribed form which shall –

- (a) indicate, in addition to any other material included therein, the amount of the increase in the *zakat* charged and the place of payment; and
- (b) have the same effect for the purpose of this Part as a notice increased assessment.

(9) The notice mentioned in subsection (8) shall be served –

- (a) where an agreement is come to under subsection (2), as soon as may be; and
- (b) where an agreement is come to under subsection (3) or (4) and is not set aside under subsection (5), as soon as may be after the expiry of the period mentioned in subsection (5) or, if there is an unsuccessful application to the Special Commissioners under subsection (5), as soon as may be after the application has been refused.

Disposal of appeal.

48. (1) Subject to subsection (3), the Secretary may send an appeal to the Special Commissioners at any time if he is of the opinion that there is no reasonable prospect of coming to an agreement with the appellant in accordance with section 47(2) in respect of the appeal and if sections 47(3) and (4) are not applicable; and, where he sends an appeal under this subsection, he shall give the appellant written notice that he has done so.

(2) Subject to subsection (3), if an appellant has complied to the best of his ability with all requirements (if any) of the Secretary under section 47(1), he may after the expiration of a period of six months beginning with the giving of the notice of appeal request the Secretary in writing to send the appeal to the Special Commissioners and the Secretary shall send the appeal accordingly within three months after receiving any such request.

(3) No appeal shall be sent to the Special Commissioners if the Secretary and the appellant have or are deemed to have come to an agreement in respect of it in accordance with subsections (2), (3) or (4) of section 47.

(4) Where an appeal is sent to the Special Commissioners pursuant to this section, the appeal shall be sent forward in the manner as prescribed by the Minister from time to time and this provision shall have effect for regulating the hearing and determination of the appeal or otherwise as provided therein.

(5) Where an appeal has been sent to the Special Commissioners pursuant to this section –

(a) the Secretary and the appellant, at any time before the hearing of the appeal by the Special Commissioners is completed, may come to an agreement of the kind mentioned in section 47(2) with regard to the assessment to which the appeal relates; or

(b) the appellant may at any time withdraw the appeal.

(6) Where the Secretary and the appellant come to an agreement under subsection (5)(a), the Secretary shall and the appellant may send a true copy of the agreement to the Special Commissioners.

(7) Where the Special Commissioners are satisfied that the Secretary and the appellant have come to an agreement under subsection (5)(a) with regard to the assessment to which an appeal relates –

- (a) the proceedings before the Special Commissioners relating to the appeal shall abate;
- (b) the agreement shall have effect as if it had been come to under section 47(2); and
- (c) subsections (8) and (9) of section 47 shall apply accordingly.

(8) Where the Special Commissioners are satisfied that the appellant has withdrawn his appeal under subsection (5)(b) –

- (a) the proceedings before the Special Commissioners relating to the appeal shall abate; and
 - (b) the assessment to which the appeal relates shall be final and conclusive for the purposes of this Enactment.
- (9) In this section, "appeal" means an appeal against an assessment.

PART VII

COLLECTION AND RECOVERY OF ZAKAT

Payment of *zakat*.

49. (1) Subject to this section, *zakat* payable under an assessment or composite assessment shall on the service of the notice of assessment or composite assessment on the person assessed be due and payable at the place and within the period as specified in that notice whether or not that person appeals against the assessment or composite assessment, as the case may be.

(2) Subject to this section, where *zakat* payable under an assessment is increased on appeal, the additional *zakat* payable by virtue of the increased assessment shall on the service of the notice of increased assessment on the person assessed be due and payable at the place and within the period as specified in that notice, whether or not that person makes any appeal against the increased assessment.

(3) Where any *zakat* is payable in accordance with subsection (1) or (2), the Secretary may allow the *zakat* to be paid by installments in such amounts and on such dates as he may determine.

Recovery of *zakat* from persons leaving Malaysia.

50. (1) The Secretary, where he is of the opinion that any person is about or likely to leave Malaysia without paying -

- (a) all *zakat* payable by him (whether or not it is due and chargeable);
and
- (b) all amounts payable by him under this Enactment,

may issue to any Commissioner of Police or Director of Immigration a certificate containing particulars of the *zakat*, the amount of money and debt so payable with a request for that person to be prevented from leaving Malaysia unless and until he pays all the *zakat*, the amount of money and debt so payable or furnishes security to the satisfaction of the Secretary for their payment.

(2) Subject to any order issued or made under any written law relating to banishment or immigration, any Commissioner of Police or Director of Immigration who receives a request under subsection (1) in respect of any person shall take or cause to be taken all such measures (including the use of reasonable force and the seizure, removal or retention of any certificate of identity and any passport, exit permit or other travel documents relating to that person) as may be necessary to give effect to it.

(3) The Secretary shall cause notice of the issue of a certificate under subsection (1) to be served personally or by registered post on the person to whom the certificate relates:

Provided that the non-receipt of the notice by that person shall not invalidate anything done under this section.

(4) Where a person in respect of whom a certificate has been issued under subsection (1) –

- (a) produces a written statement signed on or after the date of the certificate by the Secretary or an authorized officer to the effect that all the *zakat*, the amount of money and debt specified in the certificate

have been paid or that security has been furnished for their payment;
or

- (b) pays all the *zakat*, the amount of money and debt specified in the certificate to the officer in charge of a police station or to an Immigration Officer,

the statement or the payment, as the case may be, shall be sufficient authority for allowing that person to leave Malaysia.

(5) No legal proceedings shall be instituted or maintained against the Government, a police officer or any other public officer in respect of anything lawfully done under this section or section 62(2).

- (6) In this section –

"Commissioner of Police" includes a Chief Police Officer;

"Director of Immigration" means the Director of Immigration in West Malaysia, Sabah or Sarawak;

"Immigration Officer" means a public officer having official duties in connection with the control of immigration into Malaysia or any part of Malaysia.

Recovery of *zakat* by suit.

51. (1) *Zakat* due and payable may be recoverable by the Majlis in a civil proceedings in the Syariah Court as a debt to the Majlis.

(2) The Secretary and every authorised officer shall be deemed to be public servants duly authorised by the Majlis respecting all proceedings under this section.

Deduction of *zakat* from emoluments and pensions.

52. (1) Where income in respect of gains or profits from an employment or in respect of any pension, annuity or periodical payment falling under section 18 is payable to a Muslim individual, then, if the Secretary so directs, the person by whom the income is payable shall make deduction out of the income on account of *zakat* which is or may be payable by that individual for any year of assessment.

(2) Subject to subsection (1) and any rules made under section 83, deductions under this section on account of *zakat* shall be made at such time and in such amounts as the Secretary may determine, whether or not the *zakat* has been assessed.

(3) In relation to any case, nothing in this section shall prevent the collection of any *zakat* (not being *zakat* deducted in accordance with this section) in accordance with section 49 or the payment of that *zakat* being enforced in accordance with section 51:

Provided that in any such case for the purposes of section 49 the Secretary shall determine the period within which that *zakat* shall be payable.

(4) An employer who fails to comply with section 32 or this section in respect of his employee is liable, in respect of the failure to comply with section 32, to pay the amount of *zakat* in full which due to his failure cannot be recovered from the employer and, for failure to comply with this section, pay the amount of *zakat* which he fails to deduct:

Provided that –

- (a) the Secretary shall utilise any amount paid to him or recovered by him pursuant to this section to the payment of *zakat* payable by the employee; and
- (b) the employer may recover from the employee as debt payable to the employer any amount paid to the Secretary or recovered by the Secretary pursuant to this section from the employer.

(5) Where a person by whom any such income mentioned in section 18 is payable fails to comply with this section with respect to a recipient of that income, that person shall be liable to pay the amount of *zakat* which he has failed to deduct:

Provided that –

- (a) the Secretary shall apply any amount paid to or recovered by him in pursuance of this subsection towards payment of the *zakat* payable by the recipient; and
- (b) that person may recover from the recipient as a debt due to that person any amount which has been paid to the Secretary by that

person or recovered by the Secretary from that person in pursuance of this subsection.

Refund of overpayment.

53. (1) Subject to this section, where it is proved to the satisfaction of the Secretary that any person has paid *zakat* for any year of assessment (by deduction or otherwise) in excess of the amount payable under this Enactment, that person shall be entitled to have the excess refunded by the Majlis and, where that person is dissatisfied with the amount to be refunded to him, he may within thirty days of being notified of that amount appeal to the Special Commissioners as if the notification were a notice of assessment, and the provisions of this Enactment relating to appeals shall apply accordingly with any necessary modifications.

(2) No claim whatsoever for repayment under this section shall be valid except made within six years after the end of the assessment year to which the claim relates or, what the claim is in relation to repayment of *zakat* charged by an assessment, within six years after the end of the assessment year within which the assessment was made.

(3) Nothing in this section shall operate –

(a) to extend any time limit for appeal, validate any appeal which is otherwise invalid or authorize the revision of any assessment or other matter which has become final and conclusive; or

(b) to compel the Majlis to refund the excess amount of *zakat* paid (by deduction or otherwise) in respect of an assessment unless the assessment has been finally determined.

(4) The representative of a disabled or deceased person shall be entitled to a refund under subsection (1) for the benefit of that person or his estate of any excess within the meaning of that subsection, and, for the purposes of this subsection, a payment of *zakat* by the representative of such a person shall be deemed to have been made by that person.

(5) In this section –

"disabled person" means a person who through incapacity, bankruptcy or liquidation or for any other reason is unable to manage his own affairs;

"representative" means, in the case of a deceased person, his executor or administrator, and, in the case of a disabled person, the guardian, committee, assignee in bankruptcy, liquidator or other person who manages or controls his estate, property, assets or affairs.

PART VIII

FITRAH

Payment of *fitrah*.

54. *Fitrah* shall be payable in accordance with *Hukum Syarak* by every Muslim who has the means to do so in respect of himself and such members of his family as are dependent upon him.

Payment of *fitrah* to the *Amil*.

55. *Fitrah* shall be paid annually to the *Amil* not later than the first day of *Syawal* before the start of the *Eid Prayer*.

Persons liable to pay *fitrah*.

56. Payment of *fitrah* shall be made by the person who is liable to pay to the *Amil* 2 kilogrammes and 700 grammes of rice or the equivalent value in money in respect of himself and of each person for whose payment he is responsible.

General application.

57. The provisions of Part II, section 20 of Part III, Parts IX and X shall be applicable to this Part.

PART IX

OFFENCES AND PUNISHMENTS

Failure to furnish return or give notice of chargeability to *zakat*.

58. (1) Any person who makes default in furnishing a return in accordance with section 26(1) or in giving a notice in accordance with subsection (2) or (3) of section 26 shall, if he does so without reasonable excuse, be guilty of an offence and shall, on

conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

(2) In any prosecution under subsection (1), the burden of proving that a return has been made or a notice given shall be upon the accused person.

(3) Where, in relation to assessment year, a person makes default in making returns in accordance with section 26(1) or in giving notice under section 26(2) or (3), on commencement of prosecution under subsection (1) in relation to the default –

- (a) the Principal Assistant Secretary may require the person to pay the penalty in the amount equal to three times the amount of *zakat* which, before any deduction of repayment or discharge under this Enactment, shall be payable for that year; and
- (b) if the person pays the penalty he shall not be charged on the, same facts with an offence under subsection (1).

Incorrect returns.

59. (1) Any person who –

- (a) makes an incorrect return by omitting or understating any asset of which he is required by this Enactment to make a return on behalf of himself or another person; or
- (b) gives any incorrect information in relation to any matter affecting his own chargeability to *zakat* or the chargeability to *zakat* of any other person,

shall, unless he satisfies the Court that the incorrect return or information was made or given in good faith, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both and shall pay a special penalty the amount of which shall be double the amount of *zakat* understated due to incorrect return or incorrect information.

(2) Where a person –

- (a) makes an incorrect return by omitting or understating any income in which he is required under this Enactment to prepare return on his behalf or on behalf of other person; or
- (b) gives incorrect information relating to any matter pertaining to chargeability to *zakat* of himself or any other person,

then, if no prosecution under subsection (1) has been commenced relating to incorrect return or information, the Secretary may require the person to pay the penalty equivalent to the amount of *zakat* understated in consequence of incorrect return or incorrect information or which would have been understated had the return or information been received as correct; and if the person pays the penalty he shall not be charged on the same facts with an offence under subsection (1).

Wilful evasion.

60. (1) Any person who wilfully and with intent to evade or assist any other person to evade *zakat* -

- (a) omits from a return made under this Enactment any asset which should be included;
- (b) makes a false statement or entry in a return made under this Enactment;
- (c) gives a false answer (orally or in writing) to a question asked or request for information made in pursuance of this Enactment;
- (d) prepares or maintains or authorizes the preparation or maintenance of false books of account or other false records;
- (e) falsifies or authorizes the falsification of books of account or other records; and
- (f) makes, uses or authorizes the use of any fraud, art or contrivance,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and shall pay a special penalty the amount of which shall be triple the amount of *zakat*

understated due to the said offence or which would have been understated had the offence not been detected.

(2) Where in any proceedings under this section, it is proved that a false statement or false entry (whether by omission or otherwise) has been made in a return furnished under this Enactment by or on behalf of any person or in any book of accounts or other record maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade *zakat*.

Non-payment of *zakat* and *fitrah*.

61. (1) Any person who wilfully refuses to pay *zakat* or *fitrah* chargeable to him shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment not exceeding two years or to both.

(2) The Court may order that the *zakat* or *fitrah* be settled in such manner as the Court thinks fit.

Leaving Malaysia without payment of *zakat*.

62. (1) Any person who, knowing that a certificate has been issued in respect of him under section 50, voluntarily leaves or attempts to leave Malaysia without paying all the *zakat*, amount of money and debt specified in the certificate or furnishing security to the satisfaction of the Secretary for the payment thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

(2) A Police Officer or Immigration Officer may arrest without warrant any person whom he reasonably suspects to be committing or about to commit an offence under this section.

(3) In this section, "Immigration Officer" has the same meaning as in section 50.

Obstruction of officers.

63. Any person who –

(a) obstructs or refuses to permit the entry of the Secretary or an authorized officer into any land, building or place in pursuance of section 29;

- (b) obstructs the Secretary or an authorized officer in the exercise of his functions under this Enactment;
- (c) refuses to produce any book or other document in his custody or under his control on being required to do so by the Secretary or an authorized officer for the purposes of this Enactment;
- (d) fails to give reasonable assistance to the Secretary or an authorized officer for any of the purposes in this Enactment; or
- (e) refuses to answer any question relating to any of those purposes lawfully asked of him by the Secretary or an authorized officer,

shall be guilty if an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Breach of confidence.

64. (1) Any classified person who in contravention of section 14 –
- (a) communicates classified material to another person; or
 - (b) allows another person to have access to classified material,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) In this section, "classified material" and "classified person" shall have the same meaning as in section 14.

Offences by officials.

65. Any person having an official function under this Enactment who -
- (a) otherwise than in good faith, demands from any person an amount in excess of the *zakat* or penalty due under this Enactment;
 - (b) withholds for his own use or otherwise any portion of any such *zakat* or penalty collected or received by him;

- (c) otherwise than in good faith, makes a false report or return (orally or in writing) of the amount of any such *zakat* or penalty collected or received by him;
- (d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Secretary or any other person; or
- (e) fails or refuses to surrender all *zakat* and *fitrah* collected or received by him,

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

Offence of abetment.

66. Any person who aids, abets or incites another person to commit an offence under sections 59, 61, 62 or 64 shall be deemed to have committed the same offence and shall be liable to the same punishment.

Unauthorized collection.

67. Any person who, not being authorized under this Enactment to do so, collects or attempts to collect *zakat* or penalty under this Enactment shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Other offences.

68. Any person who without reasonable excuse –

- (a) fails to comply with a notice given under sections 27, 28, 29(3), 30, 31(3), 33(1) or 35;
- (b) fails to comply with an order made under section 31(3) or 32; or
- (c) contravenes sections 31(1), 33(2), 34(1) or 37,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Zakat etc. payable notwithstanding institution of proceedings.

69. The institution of proceedings or the imposition of penalty or special penalty, of a fine or a term of imprisonment under this Enactment shall not relieve any person from liability for the payment of any *zakat* (or any penalty deemed under any other Part herein as *zakat* payable under this Enactment) or any debt or any amount of money for which he is or may be liable or from liability to make any return which he is required by this Enactment to make.

Sanction for prosecution.

70. No prosecution for an offence under this Enactment shall be instituted except –
- (a) in the case of an offence under sections 59 to 66, with the sanction of the Chief Syariah Prosecutor, and
 - (b) in any other case, with the sanction of the Secretary.

Power to compound offences.

71. (1) Where any person has committed any offence under this Enactment, the Secretary may at any time before conviction compound the offence and order that person to pay such sum of money, not exceeding the amount of the maximum fine or any special penalty to which that person would have been liable if he had been convicted of the offence, as he thinks fit:

Provided that the Secretary shall not exercise his power under this section unless that person admits in writing that he has committed the offence and requests the Secretary to deal with the offence under this section.

- (2) Where under this section the Secretary compounds an offence committed by any person and makes an order accordingly –
- (a) the order shall be made in writing under the hand of the Secretary and there shall be attached to it the written admission and request referred to in subsection (1);
 - (b) the order shall specify –
 - (i) the offence committed;

- (ii) the sum of money ordered to be paid; and
 - (iii) the date on which payment is to be made or the dates on which installments of that sum are to be paid, as the case may be, and, if the order provides for the instalment payment and a default is committed in the payment of any instalment all the balance remains due at that time shall become payable immediately;
- (c) a copy of the order shall be given, if so requested, to the person who committed the offence;
- (d) the person shall not be liable to prosecution or, as the case may be, any further prosecution, in respect of the offence and, where any prosecution or any further prosecution is brought, it shall be a good defence for any person to prove that offence was compounded under this section;
- (e) the order is final and shall not be subject to any appeal;
- (f) the order shall be enforced in the same manner as the judgment of Court in respect of payment of amount specified in the order or the amount remains unpaid, as the case may be; and
- (g) the order shall, on production to the Court, be deemed proof of the commission of the offence by the said person and other matters mentioned therein.
- (3) The Secretary may reduce or remit any penalty imposed under this Enactment except the penalty imposed upon conviction.

Recovery of penalty.

72. (1) The special penalty imposed under section 59(1) or 60(1) may be recovered in the same manner as recovery of fines imposed on conviction.

(2) Any penalty imposed on any person under section 58(3) or 59(2) shall be recovered as if it is part of *zakat* payable by the person, but shall not be regarded as

zakat payable as such for the purpose of any provision of this Enactment other than sections 49 to 51.

Jurisdiction of Syariah Court.

73. Notwithstanding any other written law, a Syariah Court shall have power to try any offence under this Enactment and on conviction to impose the full punishment therefor.

PART X
MISCELLANEOUS

Evidential provisions.

74. (1) In a suit under section 51, the production of a certificate signed by the Secretary giving the name and address of the defendant and the amount of *zakat* due from him shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for that amount.

(2) In criminal or civil proceedings under this Enactment, any statement purporting to be signed by the Secretary or an authorized officer which forms part of or is annexed to the information, complaint or statement of claim, shall, until the contrary is proved, be evidence of any fact stated therein:

Provided that this subsection shall not apply to –

- (a) any statement of intention of the accused or any other defendants;
- or
- (b) proceeding of an offence punishable with imprisonment.

(3) A transcript of any particulars contained in a return or other document relating to *zakat*, if it is certified under the hand of the Secretary or an authorized officer to be a true copy of the particulars, shall be admissible in evidence as proof of those particulars.

(4) No statement made or document produced by or on behalf of any person shall be inadmissible in evidence against that person in any proceedings against him for an offence under sections 58, 59 or 60 or for the recovery of any amount of money due and payable as *zakat* or penalty, by reason only of the fact that he was or may have been

induced to make the statement or produce the document by any lawful inducement or proceeding from the Secretary or an authorized officer.

- (5) (a) Unless otherwise provided for in paragraph (b) of this subsection, nothing in this Enactment shall -
- (i) affect the operation of Chapter IX, Part III of Evidence Act 1950 [Act 56.] or Syariah Court Evidence Enactment 1992 [En. No. 16 of 1992.]; or
 - (ii) be construed as requiring or permitting any person to disclose or to give to the Court, the Special Commissioners, Secretary or any other person any document, matter or information in which he is not required or permitted to disclose or to give according to the that Chapter or the provisions.
- (b) Notwithstanding the provisions of any other written law, where any document, thing, matter, information, communication or advice consists wholly or partly of the receipt, payment, income, expenditure, or financial transaction or dealing of any person (whether an advocate, his client, or any other person), it shall not privileged from disclosure to a Court, the Special Commissioners, the Secretary or any authorised person if it is contained in, or comprises wholly or partly thereof, any book, account, statement, or any other record prepared or kept by any advocate or firm of the advocates in respect of any client or clients of any advocate or firm of advocates or any other person.
- (c) Paragraph (b) of this subsection shall also apply in respect of any document, matter, thing, information, communication or advice made or existed prior to the coming into force of the said paragraph.

Errors and defects in assessment, notices and other documents.

75. (1) No assessment, notice or other document purporting to and be made or issued for the purposes of this Enactment shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Enactment or in accordance with the intent and meaning of this Enactment and –

- (a) in the case of an assessment, the person assessed or intended to be assessed or affected thereby is designated according to common intent and understanding; and
- (b) in any other case, the person to whom it is addressed and any other person referred to therein are so designated.

(2) An assessment purporting to be made or issued for the purposes of this Enactment shall not be impeached or affected by reason of a mistake therein as to –

- (a) the name of a person charged to *zakat*;
- (b) the description of any assets; or
- (c) the amount of chargeable income assessed or *zakat* charged,

and a notice of assessment purporting to be so made or issued shall not be impeached or affected by any such mistake if it is served on the person in respect of whom the assessment was made or intended to be made and contains in substance and effect the particulars contained in the assessment.

(3) Notwithstanding subsection (2), if the amount of *zakat* charged by an assessment has been incorrectly calculated by reference to the amount of the *nisab* and the appropriate rate of *zakat* applicable thereto, the amount of *zakat* charged as shown in the assessment and the notice of assessment may, if the Secretary so directs, be taken to be the amount of *zakat* which ought to have been charged if it had been correctly calculated.

(4) A notice of *zakat* payable purporting to be issued for the purposes of this Enactment shall not be impeached by reason of mistake therein as to the name of the person liable to pay the *zakat* if the notice is served on that person.

Power to direct where returns etc., are to be sent.

76. The Secretary may by statutory order direct that any information, return or document required to be supplied, sent or delivered to the Secretary for the purposes of this Enactment shall, subject to any conditions contained in the order, be supplied, sent or delivered to such public officer or to such address as may be specified in the order.

Service of notice.

77. (1) Subject to any express provision of this Enactment, for the purposes of this Enactment notices may be served personally or by ordinary or registered post.

(2) A notice relating to *zakat* which is sent by ordinary or registered post shall be deemed to have been served on the person (including a partnership) to whom it is addressed on the day succeeding the day on which the notice would have been received in the ordinary course of post, if it is addressed –

- (a) in case of a company, partnership or body or persons having a registered office in Malaysia –
 - (i) to that registered office;
 - (ii) to its last known address; or
 - (iii) to any person authorized by it to accept service of process;
- (b) in the case of a company, partnership or body of persons not having a registered office in Malaysia –
 - (i) to any registered office of the company, partnership or body (wherever that office may be situated);
 - (ii) to the principal place of business or other activity of the company, partnership or body (wherever that place may be situated); or
 - (iii) to any individual authorized (by or under the law of any place where the company, partnership or body is incorporated, registered or established) to accept service of process; and
- (c) in the case of an individual, to his last known address.

(3) Where a person to whom there has been addressed a registered letter containing a notice under this Enactment –

- (a) is informed that there is a registered letter awaiting him at a post office; and
- (b) refuses or neglects to take delivery of the letter,

the notice shall be deemed to have served upon him on the date on which he was informed that the letter was awaiting him.

(4) For the purposes of subsection (3), an affidavit by the officer in charge of a post stating that to the best of his knowledge and belief there has been delivered to the address appearing on a registered letter a post office notification informing the addressee that there is a registered letter awaiting him shall, until the contrary is proved, be evidence that the addressee has been so informed.

Authentication of notices and documents.

78. (1) Subject to subsection (2), every notice or other document issued, served or given for the purposes of this Enactment by the Secretary or an authorized officer shall be sufficiently authenticated if the name and office of the Secretary are printed, stamped or otherwise written thereon.

(2) Where this Enactment provides for a notice, certificate or other document to be under the hand of any officer, the notice, certificate or document shall be signed in manuscript by that officer.

(3) A notice, certificate or other document issued, made, served or given for the purposes of this Enactment and purporting to be signed in manuscript by the Secretary or an authorized officer shall be presumed, until the contrary is proved, to have been so signed.

Posting of returns etc.

79. All returns made under this Enactment and all remittances of *zakat* (and any correspondence resulting from or connected with any such return or remittance) may, if posted in Malaysia in envelopes marked "*zakat*", be sent by ordinary post to the Secretary or to an officer or address specified in an order made under section 76:

Provided that the Secretary may in certain cases by notice in writing require any person to send any return, document or correspondence by registered post.

Provisions as to approvals and directions given by the *Jawatankuasa Zakat* or the Secretary.

80. Where by or under this Enactment there is conferred on the *Jawatankuasa* or Secretary power to give an approval or direction of any kind (not being a power exercisable by statutory order) –

- (a) an approval or direction given in the exercise of that power shall not be regarded as subsidiary legislation;
- (b) that power shall be deemed to include –
 - (i) power to give any such approval or direction with retrospective effect;
 - (ii) power to vary or revoke any such approval or direction retrospectively or otherwise; and
 - (iii) power to give any such approval or direction subject to such conditions as the *Jawatankuasa* or Secretary, as the case may be, may think fit to impose; and
- (c) any such approval or direction shall take effect when it is given or, where the *Jawatankuasa* or Secretary, as the case may be, specifies a date on which it is to take effect, on that date.

Procedure for making refunds and repayments.

81. Where the Secretary is authorized or required by this Enactment to make any refund or repayment -

- (a) he shall certify the amount of the sum to be refunded or repaid and cause the refund or repayment to be made forthwith; and
- (b) the sum required for making the refund or repayment shall be charged on the *Zakat* Fund.

Forms.

82. (1) The Secretary may, either by statutory order or in such other way as seems to him to be appropriate, prescribe such forms as are required by this Enactment to be prescribed and such other forms as he considers ought to be prescribed in connection

with the operation of this Enactment, and may authorize the use of a suitable substitute for any form so prescribed:

Provided that this subsection shall not apply to the form of declaration to be prescribed for the purposes of section 14(1).

(2) Where in order to comply with any provision of this Enactment, a person is required to use a prescribed form, he shall not be regarded as complying with that provision unless he uses all reasonable diligence to procure and use –

- (a) a printed copy of the form as prescribed under subsection (1); or
- (b) a copy of any substitute for the form authorized under subsection (1), being a printed copy unless the authorization provides otherwise.

Power to make rules.

83. The Minister may make rules -

- (a) providing for the deduction and payment of *zakat* at source in respect of income from any employment and income of the kind mentioned in section 18 and for the recovery of *zakat* which has or should have been so deducted;
- (b) prescribing, except where section 82(1) applies, anything required by this Enactment to be prescribed;
- (c) regulating the practice and procedure in appeals to the Special Commissioners and the Special Commissioners' own procedure;
- (d) requiring any person chargeable to *zakat* who intends to leave Malaysia to produce a certificate that he has paid all *zakat* and other amount of money due from him under this Enactment or that the Secretary does not object to his departure, and preventing any such person from leaving Malaysia if he fails to produce such certificate;
- (e) for facilitating generally the operation of this Enactment.

Repeal.

84. Upon the commencement of this Enactment, sections 26 and 27 of the Administration of Muslim Law Enactment 1977 [*En. No. 15 of 1977.*] are hereby repealed and cease to have effect in the State of Sabah.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 27th July, 1993.

JOHN DATUK ANGIAN ANDULAG,
Deputy Speaker.