



LAWS OF MALAYSIA

REPRINT

Act 258

TRUSTEES (INCORPORATION) ACT 1952

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

TRUSTEES (INCORPORATION) ACT 1952

First enacted 1952 (F.M. Ordinance
No. 73 of 1952)

Revised 1981 (Act 258 w.e.f.
24 December 1981)

PREVIOUS REPRINT

First Reprint 2001

LAWS OF MALAYSIA**Act 258****TRUSTEES (INCORPORATION) ACT 1952**

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SCHEDULE

LAWS OF MALAYSIA**Act 258****TRUSTEES (INCORPORATION) ACT 1952**

An Act to provide for the incorporation of the trustees of certain bodies or association of persons.

[30 December 1952]

Short title and application

1. (1) This Act may be cited as the Trustees (Incorporation) Act 1952.

(2) This Act shall apply to Peninsular Malaysia only.

Interpretation

1A. In this Act, unless the context otherwise requires—

“certificate of incorporation” means the certificate of registration of a trustee as a body corporate that may be granted under section 2.

Upon application of trustees, Minister may grant certificate as a body corporate

2. (1) Trustees may be appointed by any body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees may apply, in the manner hereinafter provided, to the Minister for a certificate of registration of the trustees of such body or association of persons as a body corporate.

(2) If the Minister, having regard to the extent, nature and objects and other circumstances of such body or association of persons, shall consider such incorporation expedient, he may grant such certificate accordingly, subject to such conditions or directions generally as he shall think fit to insert in such certificate, and particularly relating to the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of the land which such trustees may hold, and the purposes for which such land may be applied.

(3) The trustees shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal and power to sue and be sued in such corporate name, and subject to the conditions and directions contained in the said certificate to acquire, purchase, take, hold and enjoy movable and immovable property and by instruments under such common seal to sell, convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of movable and immovable property now or hereafter belonging to, or held for the benefit of, such body or association of persons, in such and the like manner, and subject to such restrictions and provisions, as such trustees might do, without such incorporation, for the purposes of such body or association of persons.

Estate to vest in body corporate

3. The certificate of incorporation shall vest in such body corporate all property, movable or immovable of whatever description, belonging to or held by any person in trust for such body or association of persons, and thereupon any person in whose name any stocks, funds or securities shall be standing in trust for the body or association of persons, shall transfer the same into the name of such body corporate, and all covenants and conditions relating to any such immovable property enforceable by or against the trustees thereof before their incorporation shall be enforceable to the same extent and by the same means by or against them after their incorporation.

Particulars respecting application

4. (1) Every application to the Minister for a certificate under this Act shall be in writing, signed by the person making the same, and shall contain the several particulars specified in the Schedule, or such of them as shall be applicable to the case.

(2) The Minister may require a statutory declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information and evidence, if any, as he may think necessary or proper.

(3) The Minister may refuse to grant a certificate of incorporation under this Act if he is not satisfied that the application has complied with the provisions of this Act or the regulations made under this Act.

Nomination of trustees and filling up vacancies

5. (1) Before a certificate of incorporation shall be granted, the said trustees shall have been effectually appointed to the satisfaction of the Minister, and where a certificate of incorporation shall have been granted vacancies in the number of the said trustees shall, from time to time, be filled up so far as shall be required by the constitution or settlement of the said body or association of persons, or by any such conditions or directions as aforesaid, by such legal means as would have been available for the appointment of new trustees of the said body or association if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid, and the appointment of every new trustee shall be certified by, or by the direction of, the trustees to the Minister upon the completion of such appointment.

(2) Within one month after the expiration of each period of one year after the grant of a certificate of incorporation, or, whenever required by the Minister, a return shall be made to the Minister by the then trustees of the names of the trustees at the expiration of each such period, with their residences and descriptions.

Liability of trustees and others, notwithstanding incorporation

6. After a certificate of incorporation has been granted under this Act all trustees of the body or association of persons, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of the body or association of persons and its property, in the same manner and to the same extent as if no such incorporation had been effected, and nothing herein contained shall diminish or impair any control or authority exercisable by the Attorney General under section 9 of the Government Proceedings Act 1956

[Act 359] over the trustees who shall be so incorporated but they shall remain subject jointly and separately to such control and authority as if they were not incorporated.

Disqualification of trustees

6A. Where a certificate of incorporation has been granted under this Act in respect of a trustee, a person shall be disqualified from being, and shall not become or remain, such trustee or one of such trustees if—

- (a) he has been convicted of any offence under any law and sentenced to a fine of not less than one thousand ringgit or to imprisonment for a term of not less than one year or to both;
- (b) there has been made and is in force against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision, by bond or otherwise, under any law relating to the security of Malaysia or any part thereof, the prevention of crime, preventive detention, restricted residence, banishment or immigration;
- (c) he is an undischarged bankrupt; or
- (d) he is, or has been found or declared to be, of unsound mind.

Certificate to be evidence of compliance with requisitions

7. A certificate of incorporation so granted shall until and unless it is revoked be conclusive evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

Record of applications and documents to be kept, and copies supplied

8. The Minister shall, in such manner as he shall think fit, direct a record to be kept of all such applications for and certificates of incorporation, and shall in like manner direct all documents sent to him under this Act to be preserved, and any person may require a copy or extract of any such document to be certified under the

hand of such person as shall be appointed for that purpose by the Minister, and there shall be paid for such certified copy or extract such fee as may be prescribed by the Minister.

Enforcement of orders and directions of Attorney General

9. All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as trusts of the body or association of persons, and shall also be enforceable by the Attorney General or other persons interested under section 9 of the Government Proceedings Act 1956.

Applications and certificates to be stamped

10. Every application for a certificate of incorporation under this Act, and every such certificate, shall be charged with a stamp duty of thirty ringgit, and a stamp denoting the payment of that duty shall be impressed or affixed upon such application or certificate.

Gift to vest in body corporate

11. After the incorporation of the trustees of any association or body of persons pursuant to this Act, every donation, gift and disposition of land, or any interest therein, theretofore lawfully made (but not having actually taken effect) or hereafter lawfully made by deed, will or otherwise to or in favour of such body or association of persons, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to, or in favour of, the body corporate or otherwise for the like purposes.

Common seal

12. (1) The common seal of the body corporate shall have such device as may be approved by the Minister, and until such common seal is provided the seal of some person may be authorized by the Minister for use as the common seal of the body corporate.

(2) Any instrument to which the common seal of the body corporate has been affixed, in apparent compliance with the conditions or directions for the use of such common seal referred to in section 2, shall be binding on such body corporate, notwithstanding any defect or circumstance affecting the execution of such instrument.

Contracts not under seal to be binding in certain cases

13. Every contract made or entered into by the trustees of a body or association of persons which would be valid and binding according to the constitution, settlement or rules and regulations of the said body or association of persons if no such incorporation had taken place as aforesaid, shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

Payments on transfers in reliance on corporate seal protected

14. Any person who shall make or permit to be made any transfer or payment *bona fide*, in reliance on any instruments to which the common seal of any body corporate created under this Act is affixed, shall be indemnified and protected in respect of such transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument.

Trustees to keep accounts and to render annual returns of accounts

15. (1) The trustees of any body or association of persons incorporated pursuant to this Act shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such body or association.

(2) The said trustees shall, on or before the 30th day of June in every year, or upon such other day as may be appointed for this purpose by the Minister, prepare and make out the following accounts in relation to the said body or association—

- (a) an account of the gross income arising from any endowment or which ought to have arisen therefrom during the year ending on the 31st day of December immediately preceding, or upon such other day as may have been appointed for this purpose by the Minister;
- (b) an account of all balances in hand at the commencement of the year and of all moneys received during the same year on account of the said body or association;
- (c) an account for the same period of all payments; and
- (d) an account of all moneys owing to or from the said body or association, so far as conveniently may be.

(3) The accounts prescribed under subsection (2) shall be certified under the hand of one or more of the said trustees or of the said trustee and shall be audited by the auditor of the said body or association, if any, and the said trustees shall within fourteen days after the day appointed for making out the said accounts deliver or transmit a copy thereof to the Minister and every such copy shall be open to inspection of all persons at all reasonable hours, subject to such regulations as the Minister may see fit to make, and any person may require a copy of every such account, or of any part thereof, on paying therefor such fee as the Minister may prescribe.

(4) The said trustees shall, at the same time as the accounts prescribed under subsection (2) are delivered or transmitted to the Minister in accordance with subsection (3) for the first time after the grant of a certificate of incorporation pursuant to this Act, transmit to the Minister an account of any endowments then belonging to the said body or association, showing in the case of immovable property not in hand the manner in which the same is let or occupied and in the case of movable property the existing investment or employment thereof and in what names such investments are made, and thereafter the said trustees shall, on every occasion upon which the said accounts are delivered or transmitted as aforesaid to the Minister after the acquisition of any endowment not included in the foregoing account, or after the alienation, charge or transfer of any movable or immovable property of the said body or association, transmit to the Minister a similar account of such last-mentioned endowment and an account of such alienation, charge or transfer, as the case may be.

Petition to decide question whether person is a member of a body corporate

16. (1) When any question arises as to whether any person is a member of such body corporate as aforesaid, any person interested in such question may apply by petition to the High Court for its opinion on such question.

(2) Notice of the hearing shall be given to such persons and in such manner as the Court shall think fit, and any opinion given by the Court on an application under this section shall be binding on the person in respect of whom such question arose and upon all members of the said body corporate and upon the person aforesaid interested in such question and upon any persons to whom notice of the hearing has been given in accordance with any direction of the Court.

Revocation or suspension of certificate of incorporation

17. (1) The Minister may by order revoke the certificate of incorporation if—

- (a) the incorporation was effected as a result of fraud or mistake or misrepresentation in any material particular;
- (b) the body or association of persons by whom the trustee constituting the body corporate are appointed is likely to be used for unlawful purpose prejudicial to or incompatible with the security of Malaysia or public order or morality in Malaysia or any part thereof;
- (c) the body or association of persons by whom the trustee constituting the body corporate are appointed is found to have pursued objectives other than those for which it originally established;
- (d) the body corporate has willfully contravened any provision of this Act or any regulations made under this Act; or
- (e) if the body corporate does any or omits to do any act the doing or omission of which is an offence under any law and punishable with a fine of not less than one thousand ringgit or with imprisonment for a term of not less than one year or to both.

(2) The Minister shall notify the body corporate of his intention to revoke the certificate of incorporation of the body corporate.

(3) No certificate of incorporation shall be revoked under this section without the body corporate being given the opportunity to show cause in writing within a period of thirty days from the date of receipt of a notice to show cause as to why the certificate should not be revoked.

(4) During the period specified in subsection (3), the Minister may by order in writing suspend all or any of the activities of the body corporate—

- (a) in order to restrain the body corporate from further infringing or violating any provision of this Act or any regulations made under this Act; or

- (b) if he thinks it is necessary to do so in the interest of the public or of the body corporate or the body or association of persons by whom the trustee constituting the body corporate are appointed.

(5) An order made under subsection (4) may contain such conditions as the Minister thinks necessary or expedient and shall continue to be in force until the order or the certificate of incorporation is revoked.

(6) The revocation of the certificate of registration of any body corporate by the Minister under this section shall come into force on the date the notification of such revocation is communicated to the trustee, or if there is more than one trustee, at least one of the trustees, and it shall be final and conclusive.

Voluntary dissolution of body corporate

18. (1) A body corporate may be dissolved voluntarily in either of the following ways:

- (a) upon the happening of any event as specified in the trust deed which amounts to the dissolution of the body corporate;
or
- (b) by the decision of the trustee, or if there is more than one trustee, the unanimous agreement of the trustees, testified by the trustee constituting the body corporate signing an instrument of dissolution and with the consent of the body or association of persons by whom the trustee are appointed.

(2) The trustee shall immediately inform the Minister of the happening of the event referred to in paragraph (1)(a) or the decision or agreement referred to in paragraph (1)(b).

(3) The Minister shall make an order revoking the certificate of incorporation as from such date as is specified in the order.

Consequences of revocation of certificate of incorporation

19. (1) Upon an order being made under subsection 17(1) or 18(3)—

- (a) the body corporate is dissolved;

- (b) any assets or liabilities of the body or association of persons vested in the body corporate shall vest in such trustee as may be appointed by the body or association of persons, or if the trustee are the same trustee or trustees who had been incorporated as the body corporate before its dissolution, in such trustee, in trust for such body or association; and
- (c) any legal proceeding that might have been continued or instituted by or against the body corporate with respect to any asset or liability vested in the body corporate may be continued or instituted by or against the trustee in whom the asset or liability is vested subsequent to the dissolution.

(2) Notwithstanding subsection (1), in the absence of such trustee as are referred to in subsection (1) any property vested in such body corporate shall vest in the Amanah Raya Berhad, a body corporate established under the Public Trust Corporation Act 1995 [Act 532], in trust for the body or association of persons by whom the trustee who had been incorporated as the body corporate before its dissolution was appointed, until the appointment by the body or association of persons of a new trustee; and upon such Pappointment the property shall be transferred to and vest in such trustee.

Appointment of Registrar, Deputy Registrars and Assistant Registrars

20. (1) The Minister may appoint a Registrar and such number of Deputy Registrars and Assistant Registrars as he may consider necessary for the purpose of this Act.

(2) The Registrar, Deputy Registrars and Assistant Registrars shall perform such functions as may be specified by the Minister in writing for the purpose of giving effect to and carrying out the provisions of this Act.

(3) The Registrar, Deputy Registrars and Assistant Registrars shall be deemed to be public servants for the purpose of the Penal Code [Act 574].

(4) Nothing done or omitted to be done by the Registrar, Deputy Registrars and Assistant Registrars shall, if done or omitted to be done in good faith for the purpose of executing the provisions of this Act, subject any of them to any action, liability, claim or demand.

Regulations

21. (1) The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of subsection (1), regulations may be made for prescribing—

- (a) the manner of making applications to register a trustee as a body corporate;
 - (b) the procedure to be followed in registering a trustee as a body corporate;
 - (c) the information to be furnished to the Minister; and
 - (d) the fees which can be imposed and collected for the purposes of this Act.
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SCHEDULE
[Section 4]

PARTICULARS TO BE INSERTED IN APPLICATIONS
FOR INCORPORATION

1. The objects of the body or association of persons, and the rules and regulations of the same, together with the date of, and parties to every deed, will or other instrument, if any, creating, constituting or regulating the same.
 2. A statement and short description of the land, or interest in land, which at the date of application is possessed by, or belonging to, or held on behalf of such body or association of persons.
 3. The names, residences and descriptions of the said trustees of such body or association of persons.
 4. The proposed title of the body corporate, of which title the words “trustees” and “registered” shall form part.
 5. The proposed device of the common seal.
 6. The regulations for the custody and use of the common seal.
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LAWS OF MALAYSIA**Act 258****TRUSTEES (INCORPORATION) ACT 1952**

LIST OF AMENDMENTS

| Amending law | Short title | In force from |
|---------------|---|---------------|
| L.N. 332/1958 | Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958 | 13-11-1958 |
| Ord. 58/1956 | Government Proceedings Ordinance 1956 | 01-04-1958 |
| Act 160 | Malaysian Currency (Ringgit) Act 1975 | 29-08-1975 |
| Act A1219 | Trustees (Incorporation) (Amendment) Act 2004 | 14-02-2005 |

LAWS OF MALAYSIA**Act 258****TRUSTEES (INCORPORATION) ACT 1952**

| Section | Amending authority | In force from |
|---------|----------------------|--------------------------|
| 1 | Act A1219 | 14-02-2005 |
| 1A | Act A1219 | 14-02-2005 |
| 4 | Act A1219 | 14-02-2005 |
| 5 | Act A1219 | 14-02-2005 |
| 6A | Act A1219 | 14-02-2005 |
| 7 | Act A1219 | 14-02-2005 |
| 10 | Act A1219 | 14-02-2005 |
| 15 | Act A1219 | 14-02-2005 |
| 17 | Act 160 Act A1219 | 29-08-1975 14-02-2005 |
| 18 | Act A1219 | 14-02-2005 |
| 19 | Act A1219 | 14-02-2005 |
| 20 | Act A1219 | 14-02-2005 |
| 21 | Act A1219 | 14-02-2005 |

