

CONSULTATION SESSION OF RANG UNDANG-UNDANG (RUU) LEMBAGA MINYAK SAWIT MALAYSIA (MPOB) (PINDAAN) 2016

11 November 2016



MINISTRY OF PLANTATION
INDUSTRIES AND COMMODITIES

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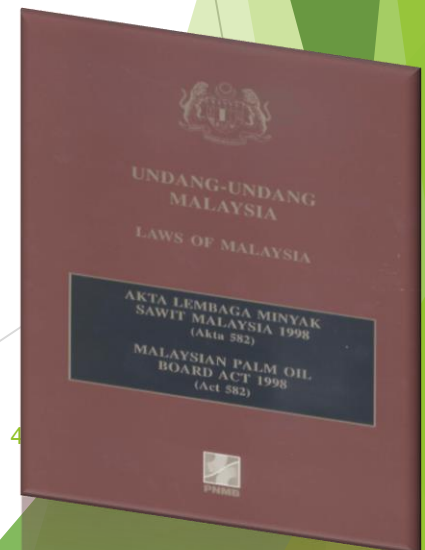
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BACKGROUND

- ▶ **Malaysian Palm Oil Board (MPOB) was established on 1st May 2000 under Section 3 of the Malaysian Palm Oil Board Act 1998 (Act 582). MPOB is operating under the provisions of Act 582.**
- ▶ **The objectives are—**
 - (a) to promote and develop the oil palm industry in Malaysia;
and**
 - (b) to develop national objectives, policies and priorities for the orderly development and administration of the oil palm industry.**
- ▶ **Oil palm industry is a dynamic industry and has been through a phase of gradual development that contributes to the economic development of the country.**

PURPOSE OF AMENDMENT

- ▶ **The proposed amendment of the Malaysian Palm Oil Board Act 1998 (Act 582) due to the following factors:**
 - (i) to conform with changes and development of the oil palm industry and the potential of this industry to continue to grow in the future; and**
 - (ii) the existing Act 582 established in 1998 and its scope is limited to the needs for that particular period, as such there is a need to provide legal clarity for the execution of the functions and scope of activities of Malaysian Palm Oil Board (MPOB);**



PROPOSED AMENDMENTS/INSERTION

4 MAIN AREAS

- | | |
|----|----------------------|
| 1. | COMMERCIALIZATION |
| 2. | ENFORCEMENT |
| 3. | CENTRE OF EXCELLENCE |
| 4. | INVESTMENT |

PROPOSED AMENDMENTS/INSERTION

- (1) Expand the functions and powers of MPOB under Sections 4, 5, 5A and 5B of the Bill
- collect and receive payment for commercialization activities (commercialization);
 - contribute to organizations related to the oil palm industry (commercialization);
 - established company to carry out commercial activities related to the oil palm industry under the Companies Act 2016 (commercialization);
 - provide courses and training programs for educational purposes (center of excellence);
 - establish partnership & collaboration with institutions/ organizations in and outside Malaysia (center of excellence);
 - award scholarships, medals, prizes & awards related to courses and training programs offered (center of excellence); and
 - Palm oil related investments in or outside Malaysia aimed to strengthen country's oil palm industry (investment);

PROPOSED AMENDMENTS/INSERTION

- (2) Expand powers of MPOB enforcement officer under Sections 45, 45A, 45B, 45C, 46, 48A and 64A of the Bill**
- **power to require attendance of persons acquainted with case (enforcement);**
 - **examination of persons acquainted with case (enforcement); and**
 - **the power of arrest (enforcement).**
- (3) Empowers the Minister of Plantation Industries and Commodities to amend the Schedule under Section 78A.**

JUSTIFICATION

- ▶ **The implementation of the amendments and new provisions will contribute towards strengthening MPOB's role in regulating and facilitating the development of the oil palm industry.**
- ▶ **In addition, these amendments will also allow MPOB to increase revenue through the commercialization of research findings, among others, investment in the oil palm industry in and outside Malaysia and the development of human capital.**
- ▶ **These measures will increase MPOB role as a leading organization in international level in the development of the oil palm industry, as well, making Malaysia as a reference center for international research of oil palm industry.**

CONCLUSION

- ▶ **Amendments and new provisions proposed are geared toward a more efficient governance in the conduct of the affairs of the Malaysian oil palm industry development whereby any proposed activities including commercialization and investment will be tabled and endorsed by MPOB's Board prior to the approval by the Minister of MPIC.**

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
1.	Section 2 (New)		<p>“smallholding” means an oil palm holding with an area of not more than 40.46 hectares or oil palm holdings with areas in aggregate amounting to not more than 40.46 hectares;</p> <p>“premises” means any place whether open or enclosed or whether on land or sea and includes any house, factory, shop, conveyance, store, room, estate, smallholding, cubicle or shed;</p>
2.	Subsection 4(e) (Amended)	4. The functions of the Board shall be— (e)to develop and commercialize research findings for the benefit of the oil palm industry and to promote the use of the research findings commercially;	4. The functions of the Board shall be— (e)to develop, <u>involve</u> and commercialize research findings for the benefit of the oil palm industry and to promote the use of the research findings commercially;

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
3.	Subsection 4(ga) (New)		4. The functions of the Board shall be— (ga) to promote investments in the oil palm industry wholly or partly within Malaysia or outside Malaysia towards strengthening the oil palm industry of Malaysia;”
4.	Subsection 4(ia) (New)		4. The functions of the Board shall be— (ia) to consider, promote and take measures to develop economic activities for persons involved in the oil palm industry
5.	Subsection 4(j) (Amended)	4. The functions of the Board shall be— (j) to plan and implement training programmes and human resource development in line with the needs of the oil palm industry;	4. The functions of the Board shall be— (j) to plan and provide courses of study and training programmes in the field of oil palm or any other related fields, and to take such other actions as may appear necessary or desirable for education;

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
6.	Subsection 5(b) (Amended)	5. The Board shall have power— (b) to impose fees or any other charges it deems fit for the use of any facility relating to research, investigation, testing, advisory services or any other service provided by the Board;	5. The Board shall have power— (b) to impose fees or any other charges it deems fit for the use of any facility relating to research, investigation, testing, <u>training</u> , advisory services or any other service provided by the Board;
7.	Subsection 5(ba), (bb) & (bc) (New)		5. The Board shall have power— (ba)to collect and receive any moneys related to its commercial activities and the use of its facilities and in consideration of other services rendered by the Board; (bb)to make contribution to bodies or organisations of which the Board is a member or to any organisations related to the oil palm industry as the Minister may determine; (bc)to provide financial or other assistance, with the approval of the Minister, to persons involved in the oil palm industry;

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
8.	Subsection 5(da) (New)		5. The Board shall have power— (da) to commercialise, trade or sell results of any research conducted by or for the Board or in connection with, the results of any research undertaken by any person, organisation or, any publication by print or electronic relating to the oil palm or oil palm product;
9.	Subsection 5(fa) (New)		5. The Board shall have power— (fa) to provide and implement training programmes, including training facilities for the purpose of training, research and development of human resource in relation to oil palm industry;
10.	Subsection 5(i) (Amended)	5. The Board shall have power— (i) to prescribe the standards or grades of oil palm and oil palm products; and	5. The Board shall have power— (i) to prescribe the standards or grades of oil palm and oil palm products;

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
11.	Subsection 5(ia) (New)		<p>5. The Board shall have power—</p> <p>(ia) to promote economically viable alternatives for persons involved in the oil palm industry; and</p>
12.	Subsection 5(ja), (jb) & (jc) (New)		<p>5. The Board shall have power—</p> <p>(ja) to conduct courses or technical and non-technical training in the field of oil palm or any other related fields and to confer certificates upon persons who have followed such courses or training;</p> <p>(jb) to collaborate with any institution or organization within or outside Malaysia;</p> <p>(jc) to award scholarships, bursaries, medals, prizes and other forms of distinctions, awards or assistance to any person in respect of the courses or technical and non-technical training referred to in paragraph (ja) or the collaboration referred to in paragraph (jb) or any course of study or training programme conducted by any institution of higher learning, whether public or private, within or outside Malaysia.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
13.	Section 5A (New)		<p>Power to enter into equity participation or joint venture</p> <p>5A. The Board may with the approval of the Minister and Finance Minister, enter into equity participation or joint venture with any enterprise where such equity participation or joint venture appears to be requisite, advantageous or convenient for or in connection with the discharge of the functions of the Board.</p>
14.	Section 5B (New)		<p>Power to establish companies</p> <p>5B. (1) The Board may, with the approval of the Minister —</p> <p>(a) carry on any activity which is commercial in nature and where it appears to be requisite, advantageous or convenient for or in connection with the discharge of the functions of the Board; or</p> <p>(b) promote the incorporation of companies under Companies Act 2016 [Act 777] or any other written law, whether in Malaysia or otherwise, for the purposes of carrying out or engaging in any activity which has been planned or undertaken by the Board in connection with the discharge of its functions.</p> <p>(2) A company incorporated under paragraph (1)(b) shall adopt the constitution as approved by the Board prior to the incorporation of such company</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
14.	Section 5B (New)		<p>(3) If on the application of a company established under paragraph (1)(b), the Board is satisfied that in the interest or for the promotion of research and development of oil palm industry, it is expedient to second or transfer any officer or servant of the Board to the requesting company, the Board may, with the consent of the officer or servant of the Board, issue a direction for the secondment or transfer of the officer or servant of the Board to the requesting company.</p> <p>(4) Any claim arising out of the secondment or transfer of an officer or servant of the Board pursuant to subsection (3) shall be paid by the requesting company in accordance with the arrangement as may be agreed upon by the Board and the requesting company.</p> <p>(5) Notwithstanding subsection (1), the Board shall not without the approval of the Minister and the concurrence of the Minister of Finance —</p> <p>(a) invest in the shares of any company; or</p> <p>(b) dispose of all or any part of its equity or assets invested in any of its subsidiary companies.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
15.	Subsection 17(1) (Amended)	<p>(1) The Board may, subject to such conditions, limitations or restrictions as it deems fit to impose, delegate any of its functions, powers or duties, except the power to borrow money, grant loans, establish corporations or make regulations, to—</p> <p>(a) any member of the Board;</p> <p>(b) any committee established by the Board; or</p> <p>(c) any officer or servant of the Board, and any function, power or duty so delegated may be performed, exercised or discharged by the member, officer or servant, as the case may be, in the name and on behalf of the Board.</p>	<p>(1) The Board may, subject to such conditions, limitations or restrictions as it deems fit to impose, delegate any of its functions, powers or duties, except the power to borrow money, <u>investment</u>, grant loans, establish corporations, <u>establish companies</u> or make regulations, to—</p> <p>(a) any member of the Board;</p> <p>(b) any committee established by the Board; or</p> <p>(c) any officer or servant of the Board, and any function, power or duty so delegated may be performed, exercised or discharged by the member, officer or servant, as the case may be, in the name and on behalf of the Board.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
16.	Subsection 32(2)(ba) (New)		(2) The Fund shall consist of— (ba) moneys collected and received by the Board in relation to its commercial activities and the use of its facilities;
17.	Subsection 33(d) (Amended)	33. The Fund shall be expended for the purpose of— (d) contributing to such organizations related to the oil palm industry as the Minister may determine;	33. The Fund shall be expended for the purpose of— (d) contributing to <u>any person, body</u> or organisation related to the oil palm industry for any purpose determined by the Minister;
18.	Subsection 33(g) (Amended)	33. The Fund shall be expended for the purpose of— (g) granting loans or providing capital for corporations established under this Act;	33. The Fund shall be expended for the purpose of— (g) granting loans or providing capital for corporations <u>or companies</u> established under this Act;

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
19.	Subsection 39(1) (Amended)	39. (1) The moneys of the Board shall, in so far as they are not required to be expended by the Board under this Act, be invested in such manner as the Minister and the Minister of Finance may approve.	39. (1) The moneys of the Board shall, in so far as they are not required to be expended by the Board under this Act, be invested <u>wholly or partly within Malaysia or outside Malaysia</u> in such manner as the Minister and the Minister of Finance may approve.
20.	Subsection 45 (Amended)	45. An authorized officer may investigate the commission of any offence under this Act.	45. (1)An authorized officer shall have all the powers necessary to carry out an investigation under this Act.
21.	Subsection 45(2) (New)		(2) For the purpose of subsection (1), the Criminal Procedure Code [Act 593] shall apply and an authorized officer shall have all the powers as provided for under the Code.

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
22.	Section 45A (New)		<p>Power to require attendance of persons acquainted with case</p> <p>45A. (1) An authorized officer making an investigation under this Act may by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as required.</p> <p>(2) If any such person refuse to attend as required by an order made under subsection (1), the authorized officer may report his refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
23.	Section 45B (New)		<p>Examination of persons acquainted with case</p> <p>45B. (1) An authorized officer making in investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.</p> <p>(2) Such person shall be bound to answer all questions relating to such case put to him by the authorized officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.</p> <p>(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.</p> <p>(4) The authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).</p> <p>(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after –</p> <p>(a) it has been read to him in the language in which he made it; and</p> <p>(b) he has been given an opportunity to make any correction he may wish.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
24.	Section 45C (New)		<p>Admissibility of statements in evidence</p> <p>45C. (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not, in oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by an accused person to or in the hearing of an authorized officer and whether or not interpreted to him by any other authorized officer or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at this trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross examination and for the purpose of impeaching his credit.</p> <p>(2) No statement under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
24.	Section 45C (New)		<p>(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing, which shall be explained to him, to the following effect:</p> <p>“You have been arrested/informed that you may be prosecuted for (the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defense in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”</p> <p>(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible thereafter.</p> <p>(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
24.	Section 45C (New)		<p>(6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a prima facie case against the accused and in determining whether the accused is guilty of the failure as appear proper; and the failure may, on the basis of those inference, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.</p> <p>(7) Nothing in subsection (6) shall in any criminal proceedings—</p> <p>(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence of it would be admissible apart from that subsection; or</p> <p>(b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
25.	Section 46 (Amended)	<p>46. An authorized officer may arrest without warrant any person—</p> <p>(a) found committing or attempting to commit or abetting the commission of an offence under this Act; or</p> <p>(b) whom the authorized officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Act, if the person refuses or fails to furnish the person's name and address or if there are reasonable grounds for believing that the person has furnished a false name or address or that the person is likely to abscond.</p>	<p>Power of arrest</p> <p>46. (1)An authorized officer may arrest without warrant any person—</p> <p>(a) found committing or attempting to commit or abetting the commission of an offence under this Act; or</p> <p>(b) whom the authorized officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Act.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
26.	Subsection 46(2) (New)		(2) An authorized officer making an arrest under subsection (1) shall, without unnecessary delay, bring the person arrested to the nearest police station, and thereafter the person shall be dealt with in accordance with the law relating to criminal procedure for the time being in force.
27.	Section 48A (New)		<p>Access to computerized data</p> <p>48A. (1) Any authorized officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.</p> <p>(2) Any information obtained under subsection (1) shall be admissible in evidence notwithstanding any other provisions in any written law to the contrary.</p> <p>(3) For the purpose of this section, access includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable the comprehension of computerized data.</p>

DETAILS

-NEW PROVISION AND PROPOSED AMENDMENT

No.	New/ Amended Section	Current Provision	Proposed Provision
28.	Section 64A (New)		<p>Presumption 64A. For the purpose of any proceedings for offences under this Act, it shall be presumed, until the contrary is proved, that—</p> <p>(a) a person shall be presumed to be in control of a premise if he has or appears to have control or management of the premise;</p> <p>(b) any person found to be in his control or have kept any matter which contains oil palm product, shall be presumed to be in possession of such oil palm product; or</p> <p>(c) if any oil palm product is found to be concealed in any compartment, specially constructed for the purpose, in any part of a conveyance, such oil palm product shall be presumed to be concealed with the knowledge of the owner of such conveyance or any person who has control of such conveyance.</p>
29.	Section 78A (New)		<p>Power to amend Schedules 78A. The Minister may, upon the recommendation of the Board, amend any Schedule by order published in the Gazette.</p>

THANK YOU