

STATE OF SABAH

MUSLIM WILLS (STATE OF SABAH) ENACTMENT 2018

(Sabah No. 8 of 2018)

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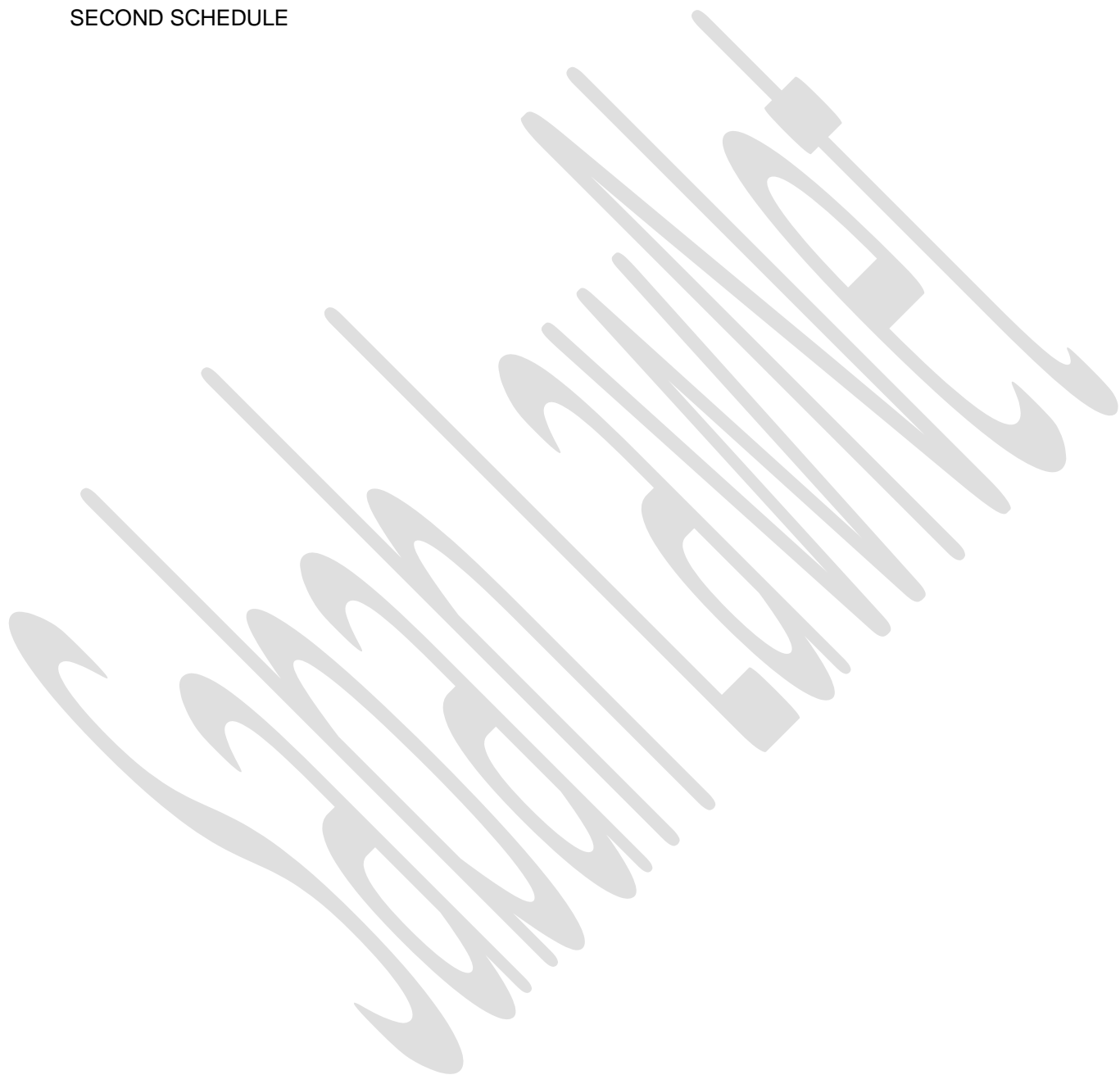
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I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR HAJI MAHIRUDDIN

Yang di-Pertua Negeri.

13TH DECEMBER, 2018

No. 8 of 2018

An Enactment to provide for provisions relating to wills and matters related thereto.

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

PART I
PRELIMINARY

Short title and commencement

- (1) This Enactment may be cited as the Muslim Wills (State of Sabah) Enactment 2018.
- (2) This Enactment comes into operations on a date to be appointed by the Minister by notification in the *Gazette*. [1 January 2019 G.N.381/2018]

Interpretation

- (1) In this Enactment, unless the context otherwise requires -
“beneficiary” means a person or body of persons, corporate or unincorporated that benefits as a result of a will and, in relation to the proceeds of a will, includes a religious or charitable purpose not opposed to *Hukum Syarak*;
“bequest” means gift by will, property or benefit of property.
“born alive” means a person who is born alive according to *Hukum syarak*;
“Court” means Syariah Courts established under section 4 of the Syariah Courts Enactment 2004 [No. 6 of 2004];

“estate” means all properties of a deceased person;

“guardian of property” means a person responsible for the execution of a will and includes a person appointed as a guardian of property by the Court;

“heir” means a person who is entitled to inherit an estate pursuant to *Hukum Syarak*;

“*Hukum Syarak*” means *Hukum Syarak* according to *Mazhab Syafie* or according to any one of the *Mazhab Hanafi, Maliki or Hanbali*;

“*iqra*” means an admission made by a person, in writing, or orally or by gesture, stating that he is under an obligation or liability to another person in respect of some right;

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

“*marad al maut*” means a fatal disease which fulfils the following conditions:

- (a) the disease normally resulting in death;
- (b) the disease causes the fear of death in the patient’s mind to the extent of affecting the soundness of mind;
- (c) shall possess some external signs showing that the disease is a serious disease; and
- (d) the disease is suffered continuously for a period of not more than one year;

“person” includes a body of person, corporate or unincorporated;

“person of unsound mind” means a person with mental disorder defined under section 2 of the Mental Health Act 2001 [Act 615]; and includes any other person of unsound mind incapable of managing himself or his affairs;

“property” includes –

- (a) movable property, immovable property or intellectual property;
- (b) any benefit profit or interest in any movable property, immovable property or intellectual property;

- (c) any right, interest, title or otherwise in connection with movable property, immovable property or intellectual property;
- (d) expertise and services having value in accordance with *Hukum Syarak*;

“*qarinah*” means fact connected with the other fact in any ways referred to in the Syariah Court Evidence Enactment 2004 [No. 11 of 2004];

“*urf*” means a custom or practice recognized by society or a certain class of people whether in the form of word or deed as long as it is not inconsistent with *Hukum Syarak*;

“*wasi*” means a person to whom the execution of a will is entrusted including a person appointed as a *wasi* by the Court; and

“will” means an *iqrar* of a person made during his life time with respect to his property or benefit thereof, to be carried out for the purposes of charity or for any other purpose permissible by *Hukum Syarak*, after his death.

(2) All words and expressions used in this Enactment and not defined in this Enactment but defined in Part 1 of the Interpretation and General Clauses Enactment 1963 [*Sabah No. 34 of 1963*] shall have the meanings assigned to them in that Part to the extent that such meanings do not conflict with *Hukum Syarak*.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expressions used in this Enactment that are listed in the First Schedule, reference may be made to the Arabic Script for those words and expressions as shown against them in the schedule.

PART II EXECUTION OF WILLS

Will may be made orally, in writing or by gesture

3. (1) A will may be made orally or in writing and, if the testator is incapable of either, a will may be made by an intelligible gesture on his part that can be understood.

(2) A will made orally or by gesture shall be made before two witnesses who are competent to be accepted as witnesses according to *Hukum Syarak*.

(3) A written will shall be made in the form set out in the Second Schedule.

Proof of will

4. (1) Subject to subsection (2), no claim regarding the validity of a will after the death of the testator shall be accepted by the Court unless it is supported by documents written or signed by the testator.

(2) Where there exists a substantial obstacle to obstruct the production of the documentary evidence mentioned in subsection (1), a will may be established by the oral testimony of two witnesses.

Conditional will

5. (1) A will may be made absolute or subject to a condition.

(2) A will which is subject to a condition which seeks to regulate either the manner in which the property or benefit thereof shall be enjoyed or the general conduct or activities of the beneficiary, shall be valid if the condition is in itself valid according to *Hukum Syarak*.

(3) A condition attached to a will shall be valid and enforceable if it is one in which there is some legal benefit to the testator or to the beneficiary or to some other person, and which is neither forbidden nor contrary to the purpose of *Syariah*.

Competency of testator

6. (1) A testator shall be a person who –

(a) has attained the age of 18 years old;

(b) is not of unsound mind;

(c) is acting of his own free will and without coercion; and

(d) is not prohibited to administer his property.

(2) A will of a person who is not competent to be a testator according to *Hukum Syarak*, is not valid except with the consent and authorization of the Court.

(3) Where a testator is ill at the time of making of the will, he shall be of sound mind, of good memory and understands the act of making will.

(4) Where a testator is in *marad al maut*, his bequest shall not exceed one-third of his property and if the bequest exceeds one-third of his property, the excess shall be given effect to only with the consent of all the heirs.

Conditions of beneficiary

7. A beneficiary of a will shall be a person –

- (a) who is known;
- (b) who is competent to own the bequeathed property; and
- (c) if specified, he shall be in existence at the time of the execution of the will, and if unspecified, it is not necessary for such beneficiary to be in existence at the time of the execution of the will or at the time of the testator's death.

Bequest to places of worship or other institutions

8. A will may be made to places of worship, benevolent institutions, academic institutions or any other institution which is beneficial to the public welfare in general and, where such will is made without specifying the purpose, it shall be applied for general charitable purpose which is not inconsistent with *Hukum Syarak*.

Conditions of subject matter of will

9. (1) The subject matter of a will shall be –

- (a) capable of being inherited or the subject of a valid contract during the testator's life;
- (b) capable of being valued;
- (c) capable of being transferred after the testator's death; and
- (d) existing in the testator's possession, if specified and, if not specified shall be in existence at the time of the testator's death.

(2) The subject matter of a will shall be permissible and not a subject which is prohibited and inconsistent with *Hukum Syarak*.

Bequest on benefit

10. A will may be made on the benefit of the property or the benefit of a thing and such will may be made for a specified period or in perpetuity.

Mode of will

11. (1) A will may be made by –
- (a) giving the property or any part of it which the beneficiary will be entitled to inherit, to the beneficiary; or
 - (b) lending a specific amount of property to the beneficiary not exceeding one third of the deceased's estate unless with the consent of all the heirs.

(2) Subject to subsection 26(2), a person may specify the share of his heirs in the estate and if the share of one of the heirs so specified is in excess of his share in the estate, such excess shall be deemed as will.

PART III INVALIDATION OF WILL

Invalidation of will

12. A will shall be invalidated if –
- (a) the testator becomes a person of unsound mind and dies in that state;
 - (b) the beneficiary dies before the testator's death;
 - (c) the specific subject or benefit of the will is destroyed before the testator's death; or
 - (d) the testator revokes the will.

A will of a person prohibited to administer his property

13. No will shall be held invalid only by reason of the testator being prohibited from administering his property.

Beneficiary who has caused the death of testator is not entitled to the will

14. A will shall be invalidated if the beneficiary has intentionally caused the death of the testator, directly or indirectly, whether he acted as principal, accomplice or accessory, or was a false witness whose testimony led to the execution of the death sentence of the testator, provided that the killing was without lawful excuse or justification and the beneficiary was sane and has attained the maturity age according to *Hukum syarak*.

PART IV
REVOCATION OF WILL

Revocation of will

15. (1) A will may be revoked either wholly or in part by –
- (a) express revocation;
 - (b) implied revocation; or
 - (c) subsequent will which overrides the former will.
- (2) A will shall be deemed to be revoked –
- (a) where the testator does any act or creates circumstances which can be proved by *qarinah* or *urf* that he has revoked his will; or
 - (b) where the testator has exhausted his entire bequeathed property.

Acts not deemed to be revocation of will

16. A testator shall not be deemed to revoke his will only by reason of –
- (a) the denial of the will by another person;
 - (b) the alteration made to the form of bequeathed property; or
 - (c) the testator did any act or adding something to the bequeathed property, where such act or addition is not independent by itself, unless there is proof either by *qarinah* or

urf, to establish that by doing such an act or addition, he had intended to revoke his will.

PART V
ACCEPTANCE AND REJECTION OF WILL

Acceptance and rejection of will

17. (1) A will shall be enforceable when it is accepted by express or implied acceptance by the beneficiary after the testator's death.

(2) Where the beneficiary is a minor in accordance with *Hukum Syarak* or a person who is prohibited from administering his property, his acceptance or rejection shall be exercised by his guardian of property.

(3) Where the beneficiary is an unborn child, its acceptance or rejection shall be exercised by his guardian of property provided that the unborn child is born alive.

(4) Where the beneficiary is a body corporate, its acceptance or rejection shall be exercised by the legal representative of such body corporate.

(5) Where a will has been made to an unincorporated group of persons, its acceptance or rejection is not required, and such will shall be distributed to not less than three persons of the group.

(6) Where a beneficiary dies without having accepted or rejected the will, the option to accept or reject the will shall be passed to the beneficiary's heirs.

Time to accept or reject will

18. (1) Acceptance or rejection of a will may be made within thirty days after a beneficiary comes to know about a testator's death and the existence of such will provided that there is no reasonable excuse on the part of the beneficiary which causes him to delay the acceptance or rejection of the will.

(2) An heir of a testator may make an application to the Court to obtain an order directing a beneficiary to express his acceptance or rejection of a will.

Acceptance of part of will

19. (1) Where a beneficiary accepts part of the will and rejects the other part, such acceptance shall be valid to the extent of the part accepted and invalid to the extent of the part rejected.

(2) Where some of the beneficiaries accept the will and some others reject it, such will shall be valid in respect of those who have accepted it and invalid in respect of those who have rejected it.

Rejection of will before or after the death of the testator

20. (1) No will shall be invalid if the rejection is made by the beneficiary before the testator's death.

(2) Where a beneficiary rejects the will wholly or in part after the testator's death and at such time the beneficiary has not accepted it, the rejection is valid to the extent and in respect of the part rejected.

(3) Where a beneficiary has accepted the will after the testator's death and thereafter rejects such will wholly or in part, the rejection is not valid.

Acceptance of the bequeathed property

21. (1) Subject to sections 17 and 18, where a beneficiary is in existence at the time of a testator's death, he shall be entitled to the bequest from the time of the death provided that no particular time, after such death, is fixed in the bequest.

(2) All profits of and additions to the bequeathed property from the time it has been taken in possession by the beneficiary shall not be considered as part of the bequest and any expenses due to the bequest during such period shall be borne by the beneficiary.

PART VI

PROVISIONS RELATING TO THE BENEFICIARY

Will to a yet-to-exist beneficiary

22. (1) A will may be made to a yet-to-exist beneficiary or to a group of a specific number of both existing and non-existing beneficiaries.

(2) Where any of the beneficiary mentioned in subsection (1) does not exist at the time of the testator's death, his heirs shall be entitled to the property or benefit thereof.

(3) Where there is only one person from a few beneficiaries existing at the time of the testator's death or thereafter, the property shall be given to such existing person until the remaining beneficiaries come forward, and thereon, the property shall be divided among them and, if one of them dies, the deceased's share shall become part of his estate.

(4) Where there is only one beneficiary, he shall be entitled to the entire property unless there is evidence to establish that the testator had intended to bequeath the property to a few beneficiaries, and in such circumstances, the existing beneficiary shall be given only his share and the remaining share shall be given to the other beneficiaries.

(5) Where a will is made in stages, upon the testator's death, the bequest shall be given to the first group of recipients and so on until all properties have been exhausted and such bequest shall become part of the testator's estate if the groups of recipients are no more in existence, unless there is evidence to establish that it has been bequeathed to other beneficiaries.

Will to certain persons

23. (1) Subject to section 22, where a bequest is made to a limited number of persons, but did not specify them by names and some of them are not competent to be beneficiaries at the time of the testator's death, the property shall be distributed to the remaining rightful beneficiaries.

(2) Where a will is a joint one between a specified person and a group or organization, or between a group and an organization, or between all of them, every specified person and every individual of the limited group, and every unlimited organization shall have a share in the will.

(3) Where a will is made to a person, group of persons or a specified party is invalid, the share of the person, group of persons or specified party in the bequeathed property shall become the testator's estate.

Will to an unborn child

24. (1) A will to an unborn child shall be valid in the following circumstances –

(a) if the testator makes an *iqrar* regarding the existence of the foetus at the time of making his will, then the child must be born alive within the recognizable period according to *Hukum Syarak*; or

(b) if the testator does not make any *iqrar* regarding the existence of foetus and the child is born alive within the recognizable period according to *Hukum syarak* from the time

of making his will, and if the pregnant woman is observing *iddah talaq raj'i* or she is observing *iddah* upon the death of her husband or *iddah bain*, then the child must be born alive within the recognizable period according to *Hukum Syarak*.

(2) Subject to subsection (1), a will may be made to an unborn child of another person if such unborn child is of the legitimate descendant child of that other person in accordance with *Hukum Syarak*.

(3) The property of the unborn child shall be administered by his guardian of property or *wasi*, as the case may be, until he is born and thereafter such property shall be given to him when he is competent to receive it.

Will to two or more unborn children, etc.

25. Where a pregnant woman gives birth, at a time or at two different times at an interval of less than six months, to two or more surviving babies –

- (a) the bequest shall be equally divided among them unless otherwise provided in the will;
- (b) where one of them is a stillborn, the surviving one shall be entitled to the entire bequest, unless otherwise provided in the will; or
- (c) where any one of the babies dies after birth and if the will is related to the corpus of the property, his share shall pass on to his heirs, and in the case of the will being of the benefit, his share, shall pass to the testator's heirs.

PART VII

PROVISIONS RELATING TO TESTAMENTARY DISPOSITION

Will to heirs and non-heirs

26. (1) Where a will is made to a person who is not an heir within the limit of one-third of the testator's net estate after the payment of all his debts, the will shall be given effect to without the consent of the heirs.

(2) A will made to an heir in excess of one-third shall not given effect to unless the heirs consent to it after a testator's death.

(3) A will made by an indebted person shall take effect only to the extent of his remaining estate after the payment of all his debts.

PART VIII
OBLIGATORY WILL

Will to grandchildren

27. (1) Where a person dies without making any will to his grandchildren through his son who has predeceased him or dies with him at the same time, then his grandchildren shall be entitled to the will of one-third of his estate and, if such grandchildren is given less than one-third, his share shall be executed in accordance with the provisions of the obligatory will provided for under this section.

(2) The obligatory will for the grandchildren in subsection (1) shall be to the extent of share in the estate of his deceased grandfather, presuming that the father died after the death of the grandfather provided that, the will shall not exceed one-third of the deceased's estate.

(3) The grandchildren shall not be entitled to the will if they had inherited from their grandfather or grandmother, as the case may be, or if the grandfather or grandmother had, during his or her lifetime and without having received any consideration, made a will to them or given them a property equivalent to what they would have been entitled to according to the obligatory will provided that, if the will is less than what they would have been entitled, it shall be increased accordingly and, if it is more, the excess shall be treated as voluntary will which is subject to the consent of the heirs.

PART IX
GENERAL

Hukum Syarak

28. (1) Any provision or interpretation of the provisions under this Enactment which is inconsistent with *Hukum Syarak* shall, to the extent of the inconsistency, be void.

(2) In the event of a lacuna or if any matter is not expressly provided for in this Enactment, the Court shall apply *Hukum Syarak*.

Power to make regulations

29. (1) The Majlis, with the approval of Yang di-Pertua Negeri, may by notification in the *Gazette*, make regulations as may be necessary or expedient for the better carrying into effect the provisions of this Enactment.

(2) Without prejudice to the generality of subsection (1), Majlis may make regulations for –

- (a) the forms, registers and other documents to be used in respect of any act or thing done under or in pursuance of this Enactment;
- (b) the forms of any certificate, notice or other documents required for the purpose of implementing this Enactment;
- (c) the making of searches and the giving of certified copies; and
- (d) such other matters as may be necessary for the proper administration of this Enactment.

Amendment of Schedule

30. The Majlis may, with the approval of the the Yang di-Pertua Negeri, amend the Schedules in this Enactment by order published in the *Gazette*.

FIRST SCHEDULE

[Subsection 2(3)]

ARABIC SCRIPT FOR CERTAIN WORDS AND EXPRESSIONS

<i>Hakim</i>	-	حاكم
<i>Hakim Syarie</i>	-	حاكم شرعي
<i>Hukum Syarak</i>	-	حكوم شرع
<i>Iddah</i>	-	عدة
<i>Iddah bain</i>	-	عدة بائن
<i>Iqrar</i>	-	اقرار
<i>Marad al maut</i>	-	مرض الموت
<i>Qarinah</i>	-	قرينه
<i>Talaq raj'i</i>	-	طلاق رجعي
<i>Urf</i>	-	عرف
<i>Waris</i>	-	وارث
<i>Wasi</i>	-	واصي
<i>Wasiat</i>	-	واصية

SECOND SCHEDULE

[Subsection 3(3)]

FORM OF WRITTEN WILL

(In the name of Allah, The most Gracious, Most Merciful)

Praise be to Allah, peace and blessings of Allah be upon His Messenger, the prophet Muhammed (P.B.U.H), the last of the prophets,

This is the last will of mine,
(state name)

NRIC No.: of
.....
(state address)

Duly affirmed and witnessed by the undersigned witnesses that I am of healthy and sound mind which enable to appreciate the nature of the will and the responsibilities it entails; and who bear witness that there is no God except Allah; alone with no associates and prophet Muhammad (P.B.U.H) is his slave and Messenger and Paradise is true and so is Hell; Hereafter *akhirat* is no doubt coming and Allah resurrects those in the grave;

I enjoin my children, family and relatives to fear Allah *Azzawajalla* and to obey Him and remain firm on His *syariat* and religion and shall not die unless they are Muslim; I also enjoin that when the span or life of His creatures is arrived, as determine by Allah, they shall be careful with my estate; namely, by paying the expenses for the purpose of my funeral ceremony and burial, then to discharge of my debts which have been liable on me and I now hereby acknowledge in the presence of those witnesses that such debts shall be paid.

*
.....
(state name or names)

In the amount

(state amount)

and then, the payment of my legacies out of one-third from my estate to

*

(state name of heirs)

and the distribution of the residue among my successors; they are

*

(state name or names)

As prescribed by the *syariat* of Allah *Taa'la* and I also enjoin that they look after my infant; they are

*

(state name or names)

And to administer their share until they have reached the age of *baligh* and maturity; and I appoint

.....

(state name of wasi)

To be my *wasi* and I trust his or their religion, trustworthiness, good character (*'adil*) and sound judgment and it is in his or their absolute discretion to do such act or thing as his or they deem fit for the benefit of them and this appointment has been accepted by the abovementioned *wasi* in accordance with *Hukum Syarak* in the presence of the undersigned witnesses and I so declare accordingly.

Signed by the said testator in our presence,
who at his request and in his presence we
have subscribed our name as witnesses.

}

.....

(signature or thumbprint)

.....
Name of first witness

.....
(signature or thumbprint)

.....
Name of second witness

.....
(signature or thumbprint)

*delete whichever is not applicable

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on
Thursday, the 15th day of November, 2018.

DATUK SERI PANGLIMA HAJI SYED ABAS SYED ALI,
Speaker
State Legislative Assembly.