

No. S 59

**CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))**

**ASIAN DEVELOPMENT BANK ORDER, 2006**

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**CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))**

**ASIAN DEVELOPMENT BANK ORDER, 2006**

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

**Citation and long title.**

1. (1) This Order may be cited as the Asian Development Bank Order, 2006.

(2) The long title of this Order is "An Order to implement the Agreement establishing the Asian Development Bank to enable Brunei Darussalam to become a member thereof, and for matters connected therewith".

**Interpretation.**

2. In this Order, unless the context otherwise requires —

"Agreement" means the Agreement establishing the Asian Development Bank done at Manila on the 4th. December, 1965, which entered into force on the 22nd. August, 1966;

"Article" means an Article of the Agreement;

"Bank" means the Asian Development Bank;

"Minister" means the Minister of Finance.

**Power to subscribe to shares of Bank.**

3. The Minister is hereby authorised to subscribe on behalf of the Government in accordance with Article 5 and Resolution No. 316 of the Board of Governors of the Bank and with the approval of His Majesty the Sultan and Yang Di-Pertuan, to 12,462 shares of the capital stock of the Bank at the par value of \$10,000 per share in terms of United States dollars of the weight and fineness in effect on the 31st. January, 1966, of which 876 shares shall be paid-in shares and 11,586 shall be callable shares.

**Sums payable to Bank.**

4. (1) The following shall be charged on the Consolidated Fund —

*(a)* all sums payable to the Bank by way of subscription to its paid-in capital stock pursuant to section 3, as provided in Articles 5 and 6 and Resolution No. 316 of the Board of Governors of the Bank;

*(b)* all sums payable to the Bank by way of subscription to its callable capital stock as and when required by the Bank, as provided in paragraph 5 of Article 6 and Resolution No. 316 of the Board of Governors of the Bank;

*(c)* all sums payable to the Bank under any other provision of the Agreement;

*(d)* all sums required for the redemption of any notes or obligations created and issued to the Bank under section 6; and

*(e)* all sums payable to the Asian Development Fund of the Bank.

(2) All sums charged on the Consolidated Fund under this section may be paid in gold, United States dollars or in local currency.

**Power to raise loans.**

5. For the purposes of providing any sums required for making any payment to the Bank, the Minister may, on behalf of the Government and with the approval of His Majesty the Sultan and Yang Di-Pertuan, raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit, and the principal and interest of such securities and any expenses incurred in connection with their issue shall be charged on and paid out of the Consolidated Fund.

**Issue of non-negotiable notes etc.**

6. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, create and issue to the Bank, in such form as he thinks fit, any such non-negotiable and non-interest-bearing notes or other obligations as are provided for by paragraph 3 of Article 6.

**Moneys received by Government.**

7. All sums received by or on behalf of the Government from the Bank shall be paid into the Consolidated Fund.

**Certain provisions of Agreement to have force of law.**

8. (1) The provisions of Chapter VIII of the Agreement set out in the Schedule shall have the force of law:

Provided that —

(a) the Bank, its property and its operations and transactions shall be exempt in accordance with Article 56 from all taxation and any obligation for the payment, withholding or collection of any tax or duty, including any indirect tax, such as a sales or value-added tax;

(b) nothing in Article 56 shall be construed as conferring on the Bank any exemption from taxes or duties which are in fact no more than charges for services rendered;

(c) the Bank shall be allowed to import free of all customs duties, taxes and other levies goods and articles, and any goods and articles imported under such exemption may be disposed of locally, subject to such terms as may be agreed upon with the Government which shall not be less favourable than those applicable to any other international organisation and government including its diplomatic mission in Brunei Darussalam.

(2) The Minister may, by notification in the *Gazette*, amend the Schedule in conformity with any amendments to the Agreement set out therein which may hereafter be made and adopted.

**Chapter 39 shall not apply.**

9. The Bank shall be deemed not to be a company within the meaning of the Companies Act (Chapter 39); and the provisions of that Act shall not accordingly apply to the Bank or to the issue by the Bank of any shares, debentures, bonds, notes or other securities.

**Rules.**

10. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules which are necessary or expedient for giving effect to and carrying out the provisions of this Order and for the due administration thereof.

(2) Such rules may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

**SCHEDULE**

(section 8)

**PROVISIONS OF THE AGREEMENT HAVING THE FORCE OF LAW**

**CHAPTER VIII**

**STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES**

**Article 48**

**PURPOSE OF CHAPTER**

To enable the Bank effectively to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

**Article 49**

**LEGAL STATUS**

The Bank shall possess full juridical personality and, in particular, full capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property; and
- (iii) to institute legal proceedings.

**Article 50**

**IMMUNITY FROM JUDICIAL PROCEEDINGS**

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be

prescribed in this Agreement, in the by-laws and regulations of the Bank, or in contracts entered into with the Bank.

3. Property and assets of the Bank, shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

**Article 51**

**IMMUNITY OF ASSETS**

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

**Article 52**

**IMMUNITY OF ARCHIVES**

The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

**Article 53**

**FREEDOM OF ASSETS FROM RESTRICTIONS**

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

**Article 54**

**PRIVILEGE FOR COMMUNICATIONS**

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

**Article 55**

**IMMUNITIES AND PRIVILEGES OF BANK PERSONNEL**

All Governors, Directors, alternates, officers and employees of the Bank, including experts performing missions for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

#### Article 56

#### EXEMPTION FROM TAXATION

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is issued by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:

- (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or
- (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

**Article 58**

**WAIVER OF IMMUNITIES, EXEMPTIONS AND PRIVILEGES**

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

Made this 26th. day of Rabiulawal, 1427 Hijriah corresponding to the 25th. day of April, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM**