

No. S 11

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

**DARUSSALAM ENTERPRISE ORDER, 2016**

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

**DARUSSALAM ENTERPRISE ORDER, 2016**

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

**PART I**

**PRELIMINARY**

**Citation and long title**

1. (1) This Order may be cited as the Darussalam Enterprise Order, 2016.

(2) The long title of this Order is “An Order to establish and incorporate the Darussalam Enterprise to promote and facilitate the development of business enterprises and for matters connected therewith or incidental thereto”.

**Interpretation**

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

“Board” means the Board of Directors referred to in section 5;

“business enterprise” means any entity incorporated, formed or established in Brunei Darussalam or elsewhere, whether or not for profit, and howsoever owned or controlled, and includes —

(a) a corporation, a sole proprietorship, a partnership, a joint venture, a co-operative society, a trust and an association; and

(b) a branch of an enterprise,

but does not include a government entity.

“Chairman” means the Chairman of the Board appointed under section 5(2) and includes any temporary Chairman;

“committee” means any committee appointed under section 6(1);

“Darussalam Enterprise” means the Darussalam Enterprise established under section 3;

“Fund” means the Darussalam Enterprise Fund established under section 15;

“government entity” includes —

(a) the Government;

(b) every entity that is wholly owned (whether directly or indirectly) and wholly controlled by the Government and their wholly owned subsidiaries;

“Managing Director” means the Managing Director of the Darussalam Enterprise appointed under section 11(1) and includes any temporary Managing Director;

“member” means any member of the Board;

“Minister” means the Minister responsible for the administration of this Order.

## PART II

### DARUSSALAM ENTERPRISE

#### Establishment of Darussalam Enterprise

3. There is hereby established an body to be known as the Darussalam Enterprise which shall be a body corporate with perpetual succession and a common seal and shall, by that name, be capable of —

(a) suing and being sued;

(b) acquiring, owning, holding, developing or disposing of property, both movable and immovable; and

(c) doing all such other acts or things as a body corporate may lawfully do.

#### Common seal

4. (1) The Darussalam Enterprise shall have a common seal and such seal may be changed, altered or made anew as the Darussalam Enterprise thinks fit.

(2) All deeds and other documents requiring the seal of the Darussalam Enterprise shall be sealed with the common seal of the Darussalam Enterprise.

(3) All instruments to which the common seal is affixed shall be signed by any two members generally or specially authorised by the Darussalam Enterprise for that purpose.

(4) The Darussalam Enterprise may, by resolution or otherwise in writing, appoint an officer of the Darussalam Enterprise or any other person either generally or in any particular case to execute or sign on behalf of the Darussalam Enterprise any agreement or other instrument not under seal in relation to any matter within the powers of the Darussalam Enterprise.

(5) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Darussalam Enterprise affixed to any document and shall presume that it was duly affixed.

#### **Board of Directors**

5. (1) There shall be a Board of Directors of the Darussalam Enterprise which shall be the executive body of the Darussalam Enterprise which may exercise all the powers conferred on the Darussalam Enterprise under this Order and shall be responsible for the formulation of the policies of the Darussalam Enterprise, the supervision of the implementation and the general administration of the affairs and business of the Darussalam Enterprise and all matters to which this Order relates.

(2) The Board shall consist of a Chairman, a Deputy Chairman and not less than five other members as His Majesty the Sultan and Yang Di-Pertuan may appoint.

(3) The members shall be appointed from amongst persons with extensive professional experience in the field of, but not limited to, economics, law, finance, agriculture, fisheries or banking, from both public service and private sector.

(4) The First Schedule shall have effect with respect to the Board, its members and proceedings.

#### **Committees**

6. (1) The Board may, in its discretion, appoint committees consisting of persons who are members or otherwise, for purposes which, in the opinion of the Board, would be better regulated and managed by such committees.

(2) The Board may define or vary the terms of reference of the committees.

(3) Subject to this Order and to the control of the Board, each committee may regulate its procedure in such manner as the committee thinks fit.

#### **Delegation of powers**

7. (1) The Board may, in respect of a specified matter or class of matter, by writing, delegate any of its powers to a member or a committee.

(2) Every member or committee purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of that delegation.

(3) No delegation under this section shall prevent the exercise of any power of the Board.

### PART III

#### FUNCTIONS AND POWERS

##### Functions of Darussalam Enterprise

8. (1) The functions of the Darussalam Enterprise shall include —

*(a)* to support the development of business enterprises and assist them to expand and upgrade their businesses at start-up, growth and expansion stage through well-coordinated and well-aligned development programmes, including incubation and mentoring programmes;

*(b)* to facilitate and assist market access of products and services produced by business enterprises through well-coordinated marketing strategies and plans;

*(c)* to facilitate and assist business enterprises to acquire internationally recognised standards, certification and accreditation of their products and services;

*(d)* to promote, facilitate and assist business enterprises to have business and industrial linkages with large business enterprises or conglomerates so that the business enterprises may spur and sustain their businesses;

*(e)* to monitor and evaluate indicators of business enterprises to better understand their impact on the economy as well as to make regional and international comparison;

*(f)* to promote modernisation and technology innovation of business enterprises by encouraging and facilitating them to invest in new technology, automation, training and research and development;

*(g)* to provide and promote financial assistance and facilities through grants, loans and equity financing to allow reasonable access to capital and encourage growth of business enterprises;

*(h)* to build the capacity and capability of business enterprises through training, expert panel discussions, focus group discussions, business clinics, advisory services etc.;

(i) to develop competency and entrepreneurship of business enterprises by promoting code of corporate governance, productivity, sound financial management, use of information technology, intellectual property rights etc. in their businesses;

(j) to do all such other matters as may be incidental to or consequential upon the discharge of its functions under this Order.

(2) In addition to the functions and duties imposed by this section, the Darussalam Enterprise may undertake such other functions as the Minister may assign to the Darussalam Enterprise, and in so doing –

(a) the Darussalam Enterprise shall be deemed to be fulfilling the purposes of this Order;

(b) the provisions of this Order shall apply to the Darussalam Enterprise in respect of such functions.

(3) Nothing in this section shall be construed as imposing on the Darussalam Enterprise, directly or indirectly, any form of duty or liability enforceable by proceedings before any court.

#### **Powers of Darussalam Enterprise**

9. (1) Subject to this Order, the Darussalam Enterprise may carry on such activities as appear to the Darussalam Enterprise to be advantageous, necessary or incidental for it to carry on for or in connection with the discharge of its functions and duties under this Order or any other written law, and in particular, the Darussalam Enterprise may exercise any of the powers as set out in the Second Schedule.

(2) This section shall not be construed as limiting any power of the Darussalam Enterprise as may be conferred by or under any other written law.

#### **Directions by Minister**

10. (1) The Minister may give to the Darussalam Enterprise such directions, not inconsistent with the provision of this Order, as he thinks fit, as to the discharge of its functions and exercise of its powers and the Darussalam Enterprise shall give effect to any such directions.

(2) The Darussalam Enterprise shall furnish the Minister with such information in respect of the carrying out of its functions and its property and activities, in such manner and at such times as the Minister may reasonably require.

**PART IV**

**PROVISIONS RELATING TO STAFF**

**Appointment of Managing Director**

11. (1) His Majesty the Sultan and Yang Di-Pertuan shall appoint one of the directors of the Darussalam Enterprise to be the Managing Director.

(2) The Managing Director shall be responsible for —

(a) the proper administration and management of the functions and affairs of the Darussalam Enterprise in accordance with the policy of the Darussalam Enterprise;

(b) the overall discipline of the officers and employees of the Darussalam Enterprise,

and for those purposes the Managing Director shall, subject to the provisions of this Order, have all such powers as are necessary or advantageous and proper.

(3) The Managing Director shall be an employee of the Darussalam Enterprise on such terms and conditions of service as His Majesty the Sultan and Yang Di-Pertuan may decide.

(4) The Managing Director shall be answerable to the Board for his acts and decisions.

(5) The Board may appoint any person to be a temporary Managing Director during the temporary absence from Brunei Darussalam of the Managing Director or during the temporary inability to perform his duties.

**Appointment of staff**

12. The Darussalam Enterprise may appoint and employ for such terms of office and on such conditions of service as the Darussalam Enterprise may determine such other officers, employees, consultants and agents as may be necessary for the effective performance of its functions.

**Protection from personal liability**

13. No suit or other legal proceedings shall lie personally against any member, officer or employee of the Darussalam Enterprise or other person acting under the direction of the Darussalam Enterprise for anything which is in good faith done or intended to be done in the execution or purported execution of this Order.

**Public servants**

14. All members, officers and employees of the Darussalam Enterprise shall be deemed to be public servants for the purposes of the Penal Code (Chapter 22).

**PART V**

**FINANCIAL PROVISIONS**

**Darussalam Enterprise Fund**

15. For the purposes of this Order, there is established a fund to be known as the Darussalam Enterprise Fund into which shall be paid —

(a) such sums as may be paid to the Darussalam Enterprise out of the general revenues of Brunei Darussalam;

(b) such sums as may be raised by the Darussalam Enterprise by loan;

(c) all rents and proceeds of sale profits and income and other funds derived by the Darussalam Enterprise directly or indirectly from the property belonging to the Darussalam Enterprise;

(d) all such other sums as may be paid to the Darussalam Enterprise.

**Application of Fund**

16. The Fund shall be applied only in payment or discharge of the expenses, obligations and liabilities of the Darussalam Enterprise and in making any payment that the Darussalam Enterprise is authorised or required to make.

**Grants-in-aid**

17. (1) The Minister of Finance shall cause to be paid to the Darussalam Enterprise such moneys as may be approved by the Government as grants-in-aid to the Darussalam Enterprise.

(2) All moneys provided for under subsection (1) may be applied or expended by the Darussalam Enterprise for all or any of the purposes of the Darussalam Enterprise.

**Power to accept gifts**

18. (1) The Darussalam Enterprise may accept by way of grant, gift, testamentary disposition or otherwise, property and moneys in aid of the finances of the Darussalam Enterprise on such conditions as it may determine.

(2) The Darussalam Enterprise shall keep a register of all donations to the Darussalam Enterprise, including the names of donors and any special conditions on which any donation may have been given.

(3) Any property, moneys or funds donated for any specific purposes shall be applied and administered in accordance with the purposes for which they have been donated and shall be separately accounted for.

**Power to borrow and invest**

19. (1) For the discharge of its functions under this Order, the Darussalam Enterprise may —

(a) raise loans from the Government; or

(b) with the approval of the Minister of Finance, raise loans from banks or other financial institutions (whether in Brunei Darussalam or elsewhere) by —

(i) mortgage, overdraft or otherwise;

(ii) charge, whether legal or equitable, on any property vested in the Darussalam Enterprise or on any other revenue receivable by the Darussalam Enterprise under this Order; and

(iii) the creation and issuance of debentures, bonds or other instruments.

(2) Subject to the approval of the Minister who shall consult the Minister of Finance, the Darussalam Enterprise may invest its funds in such manner as the Minister thinks fit.

**Annual report**

20. The Darussalam Enterprise shall, within 6 months after the end of each financial year, submit to the Minister an annual report on the activities of the Darussalam Enterprise during the preceding financial year, and the Minister shall cause a copy of every such annual report to be presented to His Majesty the Sultan and Yang Di-Pertuan.

**Other financial provisions**

21. The financial provisions set out in the Third Schedule shall have effect with respect to the Darussalam Enterprise.

**PART VI**

**GENERAL**

**Validity of act and transactions of Darussalam Enterprise**

22. The validity of an act or transaction of the Darussalam Enterprise shall not be called in question in any court on the ground that any provision of this Order has not been complied with.

**Preservation of secrecy**

23. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any other written law, no person who is or has been a member, an officer, an employee, a consultant or an agent of the Darussalam Enterprise or a member of a committee, shall disclose any information relating to the affairs of the Darussalam Enterprise or of any other person which has been obtained by him in the performance of his duties or the exercise of his functions.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 12 months or both.

**Amendment of Schedules**

24. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, amend the Schedules.

**Regulations**

25. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as may be necessary or expedient for giving effect to and carrying out the provisions of this Order and for the due administration thereof, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order.

**FIRST SCHEDULE**

(sections 5(4) and 24)

**CONSTITUTION AND PROCEEDINGS OF BOARD**

**Term and condition of office**

1. (1) Members shall hold office for such terms and on such conditions of service as His Majesty the Sultan and Yang Di-Pertuan may determine.

(2) If at any time it appears to His Majesty the Sultan and Yang Di-Pertuan that removal from office of all or any of the members is necessary in the interests of the effective and economical performance of the functions of the Darussalam Enterprise under this Order, or in the public interest, His Majesty may remove from office all or so many of those members as His Majesty considers necessary in such interests.

### ***Quorum***

2. (1) The Board shall meet for the dispatch of business at such times and places as the Chairman may appoint.

(2) At every meeting of the Board, five members shall form a *quorum*.

(3) A decision at a meeting of the Board shall be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairman of the meeting shall have a casting vote.

(4) The Board may invite any person, not being a member, to attend a meeting of the Board for the purpose of giving advice to the Board on any matter.

### **Conduct of business**

3. (1) The Board may conduct its business and regulate its own procedure, including its meetings, in the way it considers appropriate.

(2) The Board shall cause proper records of its proceedings to be kept.

(3) All acts done by the Board shall, notwithstanding any vacancy in the Board or that is afterwards discovered that there was a defect in the appointment of any person purporting to be a member thereof, be valid as if no such vacancy or defect had existed.

### **Disclosure of interest of members**

4. (1) A member who is in any way, directly or indirectly, interested in a transaction or project of the Board shall disclose the nature of his interest at a meeting of the Board.

(2) The disclosure by a member of his interest shall be recorded in the minutes of the Board and that member shall not take part in any deliberation of the Board with respect to the transaction or project, and if the Chairman or the person presiding at that meeting so directs, he shall withdraw from the meeting during the consideration or discussion.

(3) For the purpose of determining whether there is a *quorum*, a member shall be treated as being present at a meeting notwithstanding that under subparagraph (2) he cannot vote or has withdrawn from the meeting.

(4) For the purposes of this paragraph, an interest of any spouse, parent, son or adopted son, or daughter or adopted daughter, of a member shall be treated as an interest of the member.

#### **Temporary Chairman**

5. The Chairman may appoint any member to be a temporary Chairman during the temporary absence from Brunei Darussalam of the Chairman or during the temporary inability to perform his duties.

#### **Resignation**

6. A member may resign his office at any time by giving notice in writing to that effect addressed to the Chairman, and shall cease to be a member on the date to be determined by the Chairman.

#### **Disqualification from membership**

7. No person shall be eligible to be appointed or to remain a member if he —
- (a) is an undischarged bankrupt or has made any arrangement with his creditors;
  - (b) is incapacitated by physical or mental illness; or
  - (c) is otherwise unable or unfit to discharge the functions of a member.

#### **Vacation of office**

8. The seat of a member shall become vacant —
- (a) on his death;
  - (b) if he becomes in any manner disqualified for membership of the Board;
  - (c) if he resigns his seat; or
  - (d) if he is removed from office by virtue of paragraph 1(2).

#### **Filling of vacancies**

9. If a vacancy occurs in the membership of the Board, His Majesty the Sultan and Yang Di-Pertuan may appoint any person to fill the vacancy and the person so appointed shall hold office for so long as the member in whose place he is appointed would have held office.

**Salaries, fees and allowances payable to members**

10. Subject to the prior approval in writing of Minister of Finance, there shall be paid to the members, out of the Fund, such salaries, fees and allowances as the Minister may determine.

**SECOND SCHEDULE**  
(sections 9(1) and 24)

**POWERS OF DARUSSALAM ENTERPRISE**

1. Ensures that all the services and support programmes provided to business enterprises by various government agencies, private sector and non-government organisations are well-coordinated and in well-aligned environment.
2. Has an advisory or consultative role on any matters that are directly or indirectly related to business enterprises that is necessary or expedient for growth, expansion and development of the business enterprises.
3. Provides for the collection of data and interpretation of statistical information from the business enterprises.
4. Provides grant incentives to local investors as it thinks necessary to support business enterprises to spur and sustain their businesses, and to facilitate business linkages.
5. Enters a joint-venture arrangement and draw up memoranda of understanding and agreement with relevant institutions and organisations for the promotion, facilitation and development of business enterprises. .
6. Organises and facilitates participation in activities for small and medium industries such as participation in trade exhibitions, seminars and conferences in Brunei Darussalam and abroad.
7. Charges a fee for the use of any facilities or services provided by the Darussalam Enterprise.
8. Publishes or sponsors the publication of periodicals, booklets and other information materials in any media for the use of the Darussalam Enterprise and the business enterprises.
9. Acquires, purchases, exchanges, leases and holds land for the purpose of development and resale to the public and building lots, or industrial land and for the purposes of providing open spaces and recreation grounds.
10. Does any work on land necessary for the purposes of its development, as building or industrial land.

11. Leases to other persons in accordance with the provisions of any law in force in Brunei Darussalam relating to land or dealings in land or building or other immovable property.
12. Enters into contracts with other persons to build or do any work on behalf of the Darussalam Enterprise;
13. Subject to the written approval of the Minister and the Minister of Finance, grants loans or advances to business enterprises for the purpose of industrial development.
14. Provides technical service and assistance to business enterprises and to build up a corps of engineering and managerial staff to provide such assistance.
15. Acts as agents for any business enterprises.
16. Lays out, develops and manages sites, parks, estates, identified zones and other premises for industries and businesses in Brunei Darussalam or elsewhere through sale or lease of specific site.
17. Facilitates new and existing business enterprises in the implementation and operation of their projects, and offer assistance through direct consultation and co-operation with the relevant authorities.

**THIRD SCHEDULE**  
(sections 21 and 24)

**FINANCIAL PROVISIONS**

**Financial year**

1. The financial year of the Darussalam Enterprise shall begin on 1st April of each year and end on 31st March of the succeeding year.

**Budget**

2. (1) The Darussalam Enterprise shall prepare its annual budget, which shall be approved by the Board.

(2) There shall be reported in the annual budget all revenue and income projected to be generated by the Darussalam Enterprise or granted to the Darussalam Enterprise from any source together with projected expenditures, including depreciation and provisions for losses.

(3) The Darussalam Enterprise shall then cause a copy of the approved budget to be transmitted to the Minister of Finance not later than 60 days before the commencement of the new financial year.

(4) The Minister of Finance shall submit a copy of the approved budget, together with his recommendation to His Majesty the Sultan and Yang Di-Pertuan, for approval.

#### **Accounts and financial statements**

3. (1) The Darussalam Enterprise shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Darussalam Enterprise and over the expenditure incurred by it.

(2) The Darussalam Enterprise shall, as soon as practicable after the close of each financial year, cause financial statements in respect of that year to be prepared and submitted to the auditor of the Darussalam Enterprise.

#### **Audit**

4. (1) The accounts and financial statements of the Darussalam Enterprise shall be audited annually by —

*(a)* the Auditor General; or

*(b)* any person who has been authorised to perform the duties required by the Companies Act (Chapter 39) to be performed by an auditor, who shall be appointed annually by the Darussalam Enterprise:

Provided that where the accounts of the Darussalam Enterprise have been audited by a person appointed under sub-paragraph *(b)*, they may be verified by the Auditor General before they are presented to the Minister of Finance pursuant to paragraph 6(1).

(2) The auditor shall in his report state —

*(a)* whether the financial statements show fairly the financial transactions and the state of affairs of the Darussalam Enterprise;

*(b)* whether proper accounting and other records have been kept, including records of all assets of the Darussalam Enterprise whether purchased, donated or otherwise;

*(c)* whether receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the Darussalam Enterprise during the financial year were in accordance with the provisions of this Order; and

*(d)* such other matter arising from the audit as he considers necessary.

**Powers of auditor**

5. (1) The auditor or any person authorised by him shall be entitled at all reasonable time to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the Darussalam Enterprise.

(2) The auditor or a person authorised by him may make copies of, or make extracts from, any such accounting and other records.

(3) The auditor or any person authorised by him may require any person to furnish him with such information which that person possesses or has access to as the auditor or any duly authorised person considers necessary for the purposes of the functions of the auditor under this Order.

(4) Any person who refuses or fails without any reasonable cause to allow the auditor access to any accounting and other records of the Darussalam Enterprise in his custody or power or to give any information possessed by him as and when required or who otherwise hinders, obstructs or delays the auditor in the performance of his duties or the exercise of his powers under this Order is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part thereof during which the offence continues after conviction.

**Presentation of financial statements and audited reports**

6. (1) As soon as the accounts of the Darussalam Enterprise and the financial statements have been audited in accordance with this Order and in any case not later than 6 months after the end of the financial year, a copy of the audited accounts and financial statements, together with a copy of the report made by the auditor, shall be presented to the Minister of Finance.

(2) Where the Auditor General is not appointed to be the auditor, a copy of the audited accounts and financial statements and any report made by the auditor shall be forwarded to the Auditor General at the same time as they are submitted to the Darussalam Enterprise.

(3) The Minister shall cause a copy of the audited accounts and financial statements and of the auditor's report to be presented to His Majesty the Sultan and Yang Di-Pertuan.

Made this 9th. day of Jamadilawal, 1437 Hijriah corresponding to the 18th. day of February, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM