

No. S 69

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

ASIAN INFRASTRUCTURE INVESTMENT BANK ORDER, 2016

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

ASIAN INFRASTRUCTURE INVESTMENT BANK 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 —

Citation and long title

1. (1) This Order may be cited as the Asian Infrastructure Investment Bank Order, 2016.

(2) The long title of this Order is “An Order to implement the International Agreement for the establishment of operation of the Asian Infrastructure Investment Bank to enable Brunei Darussalam to become a member of the Bank and for connected purposes”.

Interpretation

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

“Agreement” means the Agreement for the establishment and operation of the international body known as the Asian Infrastructure Investment Bank done at Beijing on the 29th June 2015 and entered into force on the 25th December 2015;

“Article” means an Article of the Agreement;

“Bank” means the Asian Infrastructure Investment Bank established under the Agreement;

“Minister” means the Minister of Finance.

Deposit of instrument of ratification

3. The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may empower a person named in an instrument under the Minister’s hand to deposit, on behalf of the Government of Brunei Darussalam, an instrument of ratification of the Agreement with the Government of the People’s Republic of China stating that the Government of Brunei Darussalam —

(a) has accepted the Agreement in accordance with the written laws of Brunei Darussalam; and

(b) has taken all steps necessary to enable the Government of Brunei Darussalam to carry out all its obligations under the Agreement.

Power to subscribe to shares of Bank

4. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, on behalf of the Government —

(a) subscribe to shares of the original authorised capital stock of the Bank in accordance with paragraph 1 of Article 5 to an amount not exceeding US\$52.4 million;

(b) where the shares of Brunei Darussalam have been increased at the request of the Government in accordance with paragraph 3 of Article 5, subscribe to the amount of such increase;

(c) where the original authorised capital stock of the Bank is increased under paragraph 4 of Article 5, subscribe to a proportion of the increase of stock as provided in that paragraph.

Sums payable to Bank to be charged on Consolidated Fund

5. (1) The following sums are to be charged on the Consolidated Fund —

(a) all sums payable to the Bank by way of subscription to its paid-in capital stock under paragraph 1 of Article 6;

(b) all sums payable to the Bank by way of subscription to its callable capital stock as and when required by the Bank under paragraph 3 of Article 6;

(c) all sums payable to the Bank by way of increase of the shares of the Bank's capital stock subscribed by the Government under paragraphs 3 and 4 of Article 5;

(d) all sums payable to the Bank under any other provisions of the Agreement;

(2) All sums charged on the Consolidated Fund under this section may be paid in United States dollars or in such other currency permitted by the Agreement.

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 6 of Article 6.

Moneys received by Government to be paid into Consolidated Fund

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

Certain provisions of Agreement to have force of law

8. (1) Despite anything to the contrary in any other law, the provisions of the Agreement set out in the Schedule have the force of law.

(2) Nothing in Article 51 is to be construed as —

(a) entitling the Bank to import into Brunei Darussalam goods free of any customs duty without any restriction on their subsequent sale in Brunei Darussalam;

(b) conferring on the Bank any exemption from taxes or duties which form part of the price of goods sold or services supplied; or

(c) conferring on the Bank any exemption from taxes or duties which are in fact no more than charges for services rendered.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, amend the Schedule in conformity with any amendments to the provisions of the Agreement set out in the Schedule which may be subsequently made and adopted.

Companies Act (Chapter 39) does not apply to Bank and to issue by Bank of shares, debentures etc.

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

Power to make regulations

10. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations 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 regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

SCHEDULE
(section 8)

PROVISIONS OF AGREEMENT HAVING FORCE OF LAW

CHAPTER IX

STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44

Purpose of Chapter

1. To enable the Bank to fulfill its purpose and carry out the functions entrusted to it, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member.
2. Each member shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken.

Article 45

Status of the Bank

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

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
- (iii) to institute and respond to legal proceedings; and
- (iv) to take such other action as may be necessary or useful for its purpose and activities.

Article 46

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 raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in

which the Bank has an 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 the 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 47

Immunity of Assets and Archives

1. 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.

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

Article 48

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 49

Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of any other member.

Article 50

Immunities and Privileges of Officers and Employees

All Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank, including experts and consultants performing missions or services 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 and shall enjoy inviolability of all their official papers, documents and records;
- (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 51

Exemption from taxation

1. The Bank, its assets, property, income and its operations and transactions pursuant to this Agreement, 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 of any kind shall be levied on or in respect of salaries, emoluments and expenses, as the case may be, paid by the Bank to Directors, Alternate Directors, the President, Vice-Presidents and other officers or employees of the Bank, including experts and consultants performing missions or services for the Bank, except where a member deposits with its instrument of ratification, acceptance, or approval a declaration that such member retains for itself and its political subdivisions the right to tax salaries, and emoluments, as the case may be, 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 52

Waivers

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 Muharram, 1438 Hijriah corresponding to the 27th. day of October, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM