

LAWS OF BRUNEI

CHAPTER 163

PERBADANAN TABUNG AMANAH ISLAM BRUNEI

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CHAPTER 163

**PERBADANAN TABUNG AMANAH ISLAM
BRUNEI**

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PERBADANAN TABUNG AMANAH ISLAM BRUNEI ACT

**An Act to establish and incorporate the Perbadanan Tabung Amanah
Islam Brunei**

Commencement: 29th September 1991

PART 1

PRELIMINARY

Citation

1. This Act may be cited as the Perbadanan Tabung Amanah Islam Brunei Act.

Interpretation

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

“bonus” and “dividend” means net profit or net income earned in a financial year;

“financial year” means a period of 12 months ending on 31st day of December;

“Managing Director” means the Managing Director appointed under section 13;

“Perbadanan” means Perbadanan Tabung Amanah Islam Brunei established under section 3;

“Reserve Fund” means the monies as defined in section 25;

“Tabung” means the fund of the Perbadanan Tabung Amanah Islam Brunei established by section 22.

PART 2

ESTABLISHMENT AND ADMINISTRATION OF PERBADANAN

Establishment of Perbadanan

3. (1) (a) There is hereby established a body corporate called the “Perbadanan Tabung Amanah Islam Brunei” (Tabung Amanah Islam Brunei Corporation) which shall have perpetual succession and may sue and be sued in that name.

(b) Subject to and for the purposes of this Act, the Perbadanan may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Perbadanan upon such terms as it deems fit.

(2) The Perbadanan shall have a common seal and such seal may, from time to time, be broken, changed, altered and made anew as it deems fit, and, until a seal is provided under this section, a stamp bearing the inscription “Perbadanan Tabung Amanah Islam Brunei” may be used as the common seal.

(3) All deeds, documents and other instruments requiring the seal of the Perbadanan shall be —

(a) sealed with the common seal of the Perbadanan by the authority of the Perbadanan in the presence of the Managing Director and of some other person duly authorised in writing by the Perbadanan to act in that behalf; and

(b) signed by the Managing Director and by such duly authorised person,

and such signing shall, until the contrary is proved, be sufficient evidence that the common seal of the Perbadanan has been duly and properly affixed and that the seal is the lawful common seal of the Perbadanan.

(4) The Perbadanan may, by resolution or otherwise, appoint an officer of the Perbadanan or any other agent, either generally or in a particular case, to execute or sign on behalf of the Perbadanan any agreement

or other instrument not under seal in relation to any matter coming within the powers of the Perbadanan.

(5) The common seal or the stamp under subsection (2) shall be kept in the custody of the Managing Director.

(6) The common seal of the Perbadanan shall be officially and judicially noticed.

Principal objects

4. The principal objects of the Perbadanan shall be —

(a) to hold and manage the Tabung and to formulate policies in connection therewith;

(b) perform all banking, financing, commercial and investment operations and to establish and participate in industrial and economic development projects either inside or outside Brunei Darussalam in accordance with this Act;

(c) to carry out such other objects as the Minister responsible for religious affairs with the approval of His Majesty the Sultan and Yang Di-Pertuan may, by order published in the *Gazette*, specify.

Board of Directors

5. (1) There shall be a Board of Directors of the Perbadanan which shall be responsible for the policy and general administration of the affairs and business of the Perbadanan.

(2) The Board shall consist of —

(a) a Chairman;

(b) a Deputy Chairman; and

(c) such number of other directors,

who shall be appointed by His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Minister responsible for religious affairs.

(3) The Board shall be appointed from among subjects of His Majesty the Sultan and Yang Di-Pertuan who are Muslims.

(4) If the Chairman is unable to exercise his functions under this Act owing to illness, absence from Brunei Darussalam or for any other cause whatsoever, his functions shall be exercised by the Deputy Chairman.

(5) The directors so appointed shall hold office for a term not exceeding 3 years and shall be eligible for reappointment.

(6) The provisions of subsection (5) do not apply to a director who is appointed as the Managing Director under section 13.

(7) The Board may invite any person as it thinks fit to attend a meeting of the Board for the purpose of giving advice to the Board on any matter.

Powers of Minister in relation to Perbadanan

6. (1) The Minister responsible for finance may give to the Perbadanan such directions of a general character not inconsistent with the provisions of this Act as relates the exercise and performance of its functions and the Perbadanan shall give effect to all such directions.

(2) The Perbadanan shall furnish the Minister responsible for finance with such returns, accounts and other information with respect to the property and activities of the Perbadanan as he may, from time to time, require.

Liability of members

7. No member of the Board of Directors of the Perbadanan or the Religious Advisory Committee shall incur any personal liability for any loss or damage caused by any act or omission in the administration of the affairs of the Perbadanan unless such loss or damage is occasioned by an intentionally wrongful act or omission on his part.

Allowances

8. There may be paid to each member of the Board of Directors of the Perbadanan and the Religious Advisory Committee out of the Tabung such allowances, including travelling and subsistence allowances, as the Perbadanan may, from time to time, determine subject to such limits and conditions as the Minister responsible for religious affairs may direct.

Disqualification of directors

9. His Majesty the Sultan and Yang Di-Pertuan may terminate the appointment of any director appointed under section 5(2) if he —

- (a) resigns his office;
- (b) becomes of unsound mind or incapable of carrying out his duties;
- (c) becomes bankrupt or suspends payment to or compounds with his creditors;
- (d) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (e) is guilty of serious misconduct in relation to his duties;
- (f) is absent, without leave, from three consecutive meetings of the Board; or
- (g) fails to comply with his obligation under section 12.

Vacancies in office of director

10. If any director dies or resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Minister responsible for religious affairs for the unexpired period of the term of office of the director in whose place he is appointed.

Meeting and decision of Board

11. (1) The Chairman of the Board shall summon meetings as often as may be required but not less frequently than once in 3 months.

(2) At every meeting of the Board, a *quorum* shall consist of three directors, and decisions shall be adopted by a simple majority of the votes of the directors present and voting, except that in the case of an equality of votes, the Chairman shall have a casting vote.

Disclosure by director of interest of transaction with Perbadanan and disqualification of director from voting

12. (1) Any director who has or acquires, directly or indirectly by himself, his partner or agent —

(a) any share or interest —

- (i) in any contract made with the Perbadanan;
- (ii) in any work done for the Perbadanan; or
- (iii) in any company or firm or in respect of any undertaking with which the Perbadanan proposes to enter into a contract; or

(b) any beneficial interest in land proposed to be acquired, purchased, leased or otherwise dealt with by the Perbadanan, which he knows to be affected or likely to be affected by any project, scheme or enterprise approved or proposed to be approved by the Perbadanan,

shall declare the nature and extent of his share or interest to the Perbadanan.

(2) The declaration required to be made by a director under subsection (1) shall be made at a meeting of the Board at which any question relating to such contract, acquisition, purchase, lease, dealing, project or scheme is first taken into consideration, or if the director has not at the date of that meeting any such share or interest, at the next such meeting held after he acquired such share or interest, and in a case where a director acquires any such share or interest in any contract with the Perbadanan after it has been made, the declaration shall be made at the first meeting held after that director acquires such share or interest.

(3) For the purposes of this section, a general notice given to the other directors by a director to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with or by that company or firm, is deemed to be a sufficient declaration of interest in relation to any contract or application so made:

Provided that such notice shall be of no effect unless either it is given at a meeting of the Board or the director concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the Board after it is given.

(4) Every declaration made in pursuance of this section shall be recorded in the minutes of the meeting at which it was made or read.

(5) A director shall not vote upon any resolution or question relating to any contract, acquisition, purchase, lease, dealing, project or scheme in which he has any share or interest, whether or not he has declared the same, nor shall he take part in any deliberation (except by the invitation of the Board) or decision relating thereto or to any matter incidental thereto, and if he shall do so his vote shall not be counted, nor shall he be counted in the *quorum* present at the meeting for the purpose of such resolution or question.

Appointment of Managing Director

13. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Minister responsible for religious affairs, appoint one of the directors appointed under section 5 to be the Managing Director.

(2) The Managing Director shall be the Chief Executive of the Perbadanan.

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

(4) The Managing Director shall be entrusted with the day-to-day administration of the Perbadanan, preparation of programmes, schemes or projects for the consideration of the Board and the implementation of decision of the Board.

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

(6) In the event of the absence or inability to act of the Managing Director, the Chairman of the Board of Directors of the Perbadanan may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint any director appointed under section 5(2) to discharge the duties of the Managing Director during the period of his absence or inability:

Provided that, if the absence or inability is for a period of less than 30 days, the power to make any such appointment shall be vested in the Chairman who shall notify His Majesty the Sultan and Yang Di-Pertuan of the appointment.

[S 29/2004]

Religious Advisory Committee

14. (1) The Minister responsible for religious affairs, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may appoint a Religious Advisory Committee.

(2) The Religious Advisory Committee shall consist of the following members —

- (a) a Chairman;
- (b) the Managing Director; and
- (c) not less than two and not more than three other members.

(3) Members of the Religious Advisory Committee other than the Managing Director shall be selected from amongst Islamic scholars and jurists who are Muslims.

(4) The Religious Advisory Committee shall advise the Perbadanan as concerns the conformity of its investments, dealings and actions with the principles and rulings of Islamic Syariah.

(5) The Religious Advisory Committee shall have such other powers as may be delegated to it by the Board.

(6) The Religious Advisory Committee may invite any person as it thinks fit to attend a meeting of the Committee for the purpose of giving advice to the Committee on any matter.

Preservation of secrecy

15. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do by any court or under the provisions of any written law, no director, officer or employee of the Perbadanan shall disclose to any person any information relating to the affairs of the Perbadanan or any person which he has acquired in the performance of his duties or the exercise of his functions.

(2) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for 3 years.

Remuneration not to be related to profits

16. No salary, fee, wage or other remuneration shall be computed by reference to the results of any money management services undertaken by or on behalf of the Perbadanan pursuant to this Act.

PART 3

PROVISIONS RELATING TO STAFF, TRANSFER OF FUNCTIONS,
EMPLOYEES AND ASSETS ETC.**List of posts and appointment of employees**

17. (1) The Perbadanan may approve a list of posts (excluding the directors) which it thinks necessary for the purposes of this Act and may add to or amend this list.

(2) Subject to the provisions of this section —

(a) appointments and promotions to all posts shall be made by the Perbadanan; and

(b) the termination of appointment, dismissal and disciplinary control of the employees of the Perbadanan shall be vested in the Perbadanan.

(3) Notwithstanding the provisions of this section, the Perbadanan may appoint persons temporarily for a period not exceeding one year to posts in the list of posts for the time being in force.

(4) The Perbadanan may, with the approval of the Minister responsible for religious affairs, make rules not inconsistent with the provisions of this Act or of any other written law for the appointment, promotion, disciplinary control and terms and conditions of service of all persons employed by the Perbadanan.

(5) Without prejudice to the generality of subsection (4), the Perbadanan shall prescribe the rates of remuneration payable to persons employed by the Perbadanan and no person so employed shall be paid otherwise than in accordance with such rates.

Transfer of assets and liabilities to Perbadanan

18. (1) Upon the coming into operation of this Act, such movable property, assets, rights, interests and privileges as constitute any part of the assets of the Perbadanan together with any debt, liability or obligation connected therewith or appertaining thereto is deemed to have been transferred to and vested in the Perbadanan without the requirement of any further action.

(2) The Minister responsible for finance shall have power to do all acts or things that he considers necessary or expedient to give effect to the provisions of subsection (1).

(3) If the question arises as to whether —

(a) any of the functions, duties and powers; or

(b) any movable property, asset, rights, interest, privilege, debt, liability and obligation,

have been transferred to or vested in the Perbadanan under subsection (1), a certificate executed by the Minister responsible for finance shall be conclusive evidence of such transfer or vesting.

PART 4

POWERS, DUTIES AND FUNCTIONS OF PERBADANAN

Powers, duties and functions of Perbadanan

19. (1) The Perbadanan may, for the purpose of carrying out the provisions of this Act, exercise and discharge the following powers, duties and functions —

(a) open and operate securities and cash clearing accounts and place deposits on such terms as it may decide;

(b) purchase, acquire by exchange or other means, hold, sell or otherwise dispose of various types of investment assets as shall be specifically authorised by this Act or by the Minister responsible for religious affairs on the recommendations of the Board;

(c) accept money on deposits, lend or borrow money, establish credits and give guarantees in any currency inside and outside Brunei Darussalam on such terms and conditions as it may deem fit;

(d) open and operate accounts with central banks outside Brunei Darussalam;

(e) purchase, acquire or develop inside or outside Brunei Darussalam facilities for accounting for and reporting on the assets and liabilities of the Perbadanan and any other assets or liabilities vested in the Perbadanan;

(f) enter into contracts with third parties inside or outside Brunei Darussalam for the purposes set forth in section 21;

(g) underwrite loans and securities in which it may invest;

(h) undertake the issue and management of loans publicly issued by the Government or by any public authority;

(i) pay the expenses of the Perbadanan, including specifically any payment contemplated by sections 5(7), 8, 13(3), 14(6) and 21(b) out of the assets of the Perbadanan; and

(j) do generally all such things as may be commonly done by investment managers and are not inconsistent with the exercise of its powers or the discharge of its duties under this Act.

(2) After the coming into operation of this Act, there shall be vested in the Perbadanan such other functions, duties and powers as His Majesty the Sultan and Yang Di-Pertuan may, from time to time by notification in the *Gazette*, specify.

(3) The Perbadanan shall be exempted from the requirements for licensing under the Banking Order, 2006 (S 45/2006), Moneylenders Act (Chapter 62) and the Finance Companies Act (Chapter 89).

Investment of funds

20. Investments which the Perbadanan may hold, as provided in section 19(1)(b) shall include —

(a) gold coin or bullion and other precious metals;

(b) real property and interests therein;

(c) notes, coin, bank balances and money at call in such country or countries as may be approved by the Board;

(d) treasury bills of such government or governments as may be approved by the Board;

(e) securities of or guaranteed by such government or governments or international financial institutions as may be approved by the Board;

(f) such other classes of investment assets as may be authorised by the Board from time to time and set forth in a written investment guideline to the Perbadanan; and

(g) such other specific investments not otherwise authorised hereunder as may be authorised by the Minister for religious affairs on the recommendation of the Board.

Representatives

21. In the exercise of its powers and the performance of its functions under this Act, the Perbadanan may —

(a) establish offices and representatives at such places outside Brunei Darussalam as it thinks fit;

(b) arrange or contract with and authorise a person or persons, which may be individuals or corporate entities, to act as agent or representative of the Perbadanan inside or outside Brunei Darussalam, including the performance of investment management, legal, auditing and measurement of investment performance activities on behalf of the Perbadanan, and in conjunction with the performance of such activities, such agents or representatives may be paid fees for services rendered and may be reimbursed by the Perbadanan for out-of-pocket expenses.

PART 5

FINANCE

Tabung

22. (1) There shall be established a fund called “Tabung Amanah Islam Brunei” vested in the Perbadanan for the general purposes of this Act and for the purposes of enabling persons to save, invest and to perform the pilgrimage to Mecca into which Tabung shall be paid —

(a) deposits and such other sums as are directed by this Act to be paid into the Tabung;

(b) such sums as may, from time to time, be contributed or loaned to the Perbadanan by the Government;

(c) such other fees as may be prescribed;

(d) monies earned from the investment or by the operation of any project, agency scheme or enterprise financed from the Tabung.

(2) Deposits shall be repayable from the Tabung with such bonus thereon as is provided by this Act, and such other outgoings, subject to section 23, as are directed by this Act to be paid out of the Tabung.

Expenditure of Perbadanan

23. The Tabung may be applied for the purpose of carrying out the functions of the Perbadanan:

Provided that expenditure of the Perbadanan shall not be made against the accounts of the depositors.

Investment of Tabung

24. (1) The assets of the Tabung shall, in so far as they are not required to be expended by the Perbadanan under this Act, be invested in such manner as the Perbadanan may think fit.

(2) Before exercising its powers of investment under subsection (1), the Perbadanan shall consider any report or recommendation made to the Perbadanan by the Religious Advisory Committee referred to in section 14.

Reserve Fund

25. (1) The Perbadanan shall establish a Reserve Fund.
- (2) There shall be paid into the Reserve Fund by the Perbadanan —
- (a) the annual net profit of the Tabung;
 - (b) any Government grant, gift, contribution or bequest made to the Perbadanan.

Declaration of bonus and dividend

26. (1) Subject to the provisions of this section, the Perbadanan may declare a rate of bonus or dividend or both for any financial year of the Tabung; and if a declaration is made, the amount standing to the credit of each depositor at the end of that year shall be increased accordingly.

(2) No bonus or dividend shall be declared unless the Perbadanan have established a Reserve Fund, and no bonus or dividend shall be declared in any year unless at the end of that year —

(a) the assets of the Tabung were not less than the aggregate liabilities of the Tabung, amounts due to depositors being calculated as if immediately payable; and

(b) the assets of the Reserve Fund were not less than such percentage of the amounts actually standing to the credit of the depositors as at the end of that year including the bonus or dividend as the Perbadanan may approve.

(3) Any payment required to be made out of the Tabung shall, in so far as the monies in the Tabung are insufficient for that purpose, be made out of the Reserve Fund.

(4) Subsections (1) to (3) apply to the assets of the Reserve Fund as they apply to the assets of the Tabung and all income from investment of the assets of the Reserve Fund shall be paid into the Tabung.

(5) The Perbadanan may transfer assets from the Reserve Fund to the Tabung or from the Tabung to the Reserve Fund.

Withdrawals

27. (1) Subject to the provisions of this section, any amount standing to the credit of a depositor's account under this Act may be withdrawn —

(a) for defraying all or part of the costs of the depositor's pilgrimage;

(b) on the death of the depositor;

(c) on the depositor satisfying the Perbadanan that by reason of age, sickness or in the other circumstances he is unlikely to be able to make his pilgrimage during his lifetime;

(d) on the depositor satisfying the Perbadanan that he is about to leave Brunei Darussalam and has no intention of returning thereto; and

(e) in any other case where the Perbadanan having regard to all the circumstances of the case allow the withdrawals,

but not otherwise.

(2) On a withdrawal under subsection (1)(a), the Perbadanan may, *in lieu* of making payment in cash, provide the depositor with tickets, travel voucher or other documents necessary for the pilgrimage.

Guarantee by Government

28. (1) The Government shall be responsible for the payment of all monies due by the Perbadanan but nothing in this section authorises a creditor or other person claiming against the Perbadanan to sue the Government in respect of his claim.

(2) Any payment out of the Consolidated Fund shall, as soon as practicable, be repaid by the Perbadanan to the Consolidated Fund and until repaid shall be a debt to the Government and a first charge on the assets of the Tabung and the Reserve Fund.

Annual estimates

29. (1) The Managing Director shall not later than one month before the commencement of each financial year, lay before the Board an estimate of expenditure of the Perbadanan (including capital expenditure) for the ensuing year in such detail and form as the Board may determine.

(2) A copy of such estimates shall be sent to each member of the Board not less than 14 days prior to the meeting before which the estimates is to be laid.

Accounts and audit

30. (1) The Perbadanan shall keep proper accounts and other records in respect of its operation and shall prepare a statement of accounts in respect of each financial year.

(2) The accounts of the Perbadanan 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 Perbadanan with the approval of the Minister responsible for finance:

Provided that where the accounts of the Perbadanan have been audited by a person appointed under paragraph (b), they may be verified by the Auditor General before a copy of the statement of those accounts is transmitted pursuant to subsection (3) to the Minister responsible for finance.

[S 15/2003]

(3) After the end of each financial year, as soon as the accounts of the Perbadanan have been audited, the Perbadanan shall cause a copy of the statement of accounts to be transmitted to the Minister responsible for finance together with a copy of any observation made by the Auditor General or other auditor appointed under subsection (2) on any statement or on any account of the Perbadanan.

(4) The Minister responsible for finance shall cause a copy of every such statements and observations to be transmitted to His Majesty the Sultan and Yang Di-Pertuan.

Annual report

31. (1) The Perbadanan shall not later than the 30th day of April in each year, cause to be made and transmitted to the Minister responsible for finance a report dealing with the activities of the Perbadanan during the preceding financial year and containing such information relating to the

proceedings and policy of the Perbadanan as the Minister responsible for finance may from time to time direct.

(2) The Minister responsible for finance shall cause a copy of every such report to be transmitted to His Majesty the Sultan and Yang Di-Pertuan.

PART 6

GENERAL

Power to appoint attorney

32. The Perbadanan may, by instrument under its common seal, appoint a person (whether in Brunei Darussalam or in a place outside Brunei Darussalam) to be its attorney, and the person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

Fiat of Attorney General

33. No prosecution in respect of any offence under this Act shall be instituted without the consent in writing of the Attorney General.

Jurisdiction

34. Notwithstanding the provisions of any other written law, a Court of a Magistrate has jurisdiction to try all offences under this Act and to impose the full penalty prescribed therefor.

Power to make regulations

35. The Minister responsible for religious affairs may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the better carrying out of the objects and purposes of this Act.

Preliminary acts and expenses

36. Notwithstanding the provisions of section 1, the Minister responsible for religious affairs may, at any time before the date of the coming into operation of this Act, do all such acts and incur all such expenses as he may consider necessary in connection with the establishment of the Perbadanan; and upon that date all such acts and expenses are deemed to have been done and incurred by the Board.

