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

BRUNEI NATIONAL PETROLEUM COMPANY SENDIRIAN BERHAD ORDER, 2002

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

BRUNEI NATIONAL PETROLEUM COMPANY SENDIRIAN BERHAD ORDER, 2002

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

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Brunei National Petroleum Company Sendirian Berhad Order, 2002 and shall commence on the 5th. January, 2002.

(2) The long title of this Order is "An Order to make provision for the incorporation of the Brunei National Petroleum Company Sendirian Berhad and for other purposes connected therewith".

Interpretation.

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

"Board" means the Board of the Company set up under subsection (2) of section 9;

"Chief Executive Officer" means the Chief Executive Officer of the Company appointed under section 10;

"commercial income" means the income of the Company referred to in subsection (2) of section 12;

"Company" means the company incorporated under section 5;

"designated area" has the meaning provided by subsection (1) of section 3;

"mineral rights" has the same meaning as in the Petroleum Mining Act (Chapter 44);

"person" has the same meaning as in the Petroleum Mining Act (Chapter 44);

"petroleum" has the same meaning as in the Petroleum Mining Act (Chapter 44);

"petroleum mining Agreement" has the same meaning as in the Petroleum Mining Act (Chapter 44);

"regulatory income" means the income of the Company referred to in subsection (3) of section 12;

"State Land" has the same meaning as in the Petroleum Mining Act (Chapter 44);

"State Party" has the same meaning as in the Petroleum Mining Act (Chapter 44).

PART II

MINERAL RIGHTS

Mineral rights within designated areas granted to Company.

3. (1) His Majesty the Sultan and Yang Di-Pertuan in Council hereby grants to the Company all mineral rights within such area of State Land (in this Order referred to as a designated area) as His Majesty the Sultan and Yang Di-Pertuan in Council may from time to time allocate.

(2) The granting of mineral rights under subsection (1) shall take effect upon the date of the decision of His Majesty the Sultan and Yang Di-Pertuan in Council issued in the form set out in the First Schedule.

(3) Once granted to the Company in accordance with subsections (1) and (2), mineral rights shall remain so granted to the Company until His Majesty the Sultan and Yang Di-Pertuan in Council has revoked in writing the decision referred to in subsection (2) but, in any case, for the full duration of and subject to any petroleum mining Agreement that the Company has entered into as State Party with any third party.

Guarantees of validity of licences, leases and petroleum mining Agreements.

4. (1) Nothing in this Order shall invalidate any exploration licence, prospecting licence, mining lease or petroleum mining Agreement issued or entered into by His Majesty the Sultan and Yang Di-Pertuan in Council and any lawful authority of the Government, or by either of them, before the date of commencement of this Order or abrogate any of the rights or privileges conferred thereby:

Provided that every such right or privilege shall be limited to the extent prescribed by such licence, lease or petroleum mining Agreement.

(2) All rights, interests, benefits, privileges, duties, undertakings and obligations (other than those of the State Party under any petroleum mining Agreement) owned, held and assumed before the date of commencement of this Order by His Majesty the Sultan and Yang Di-Pertuan in Council and any lawful authority of the Government, or by either of them, (including, without limitation, the Prime Minister Corporation) in and in relation to each of the bodies corporate listed in the Second Schedule are without further assurance hereby transferred to and vested in the Company.

(3) Any assignment or transfer of rights or duties of His Majesty the Sultan and Yang Di-Pertuan in Council and any lawful authority of the Government, or of either of them, under the conditions of licences, leases or petroleum mining Agreements to the Company shall in no way prejudice the validity of any such licences, leases and petroleum mining Agreements.

PART III

INCORPORATION AND ORGANISATION OF COMPANY

Incorporation of Company.

5. (1) The Prime Minister Corporation is hereby authorised to incorporate a private company limited by shares under the provisions of the Companies Act (Chapter 39), to be called the "Brunei National Petroleum Company Sendirian Berhad", in Malay "Syarikat Petroleum Kebangsaan Brunei Sendirian Berhad" or by the short form "Petroleum BRUNEI", which company, when incorporated, shall be subject to the provisions of this Order and of the Companies Act to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail.

(2) No person other than the Prime Minister Corporation shall become or remain a member of the Company.

Objects, powers and duties of Company.

6. (1) The objects of the Company shall be such as the Company may choose to exercise under the Companies Act (Chapter 39) to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail.

(2) In order to achieve its objects, the Company shall exercise such powers and perform such duties as are mentioned in this Order and such other powers and duties as it may exercise and perform under the Companies Act to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall

prevail. The powers and duties of the Company mentioned in this Order shall not be granted or otherwise transferred or assigned to any other person, unless the Order provides otherwise.

Structure and functions of Company.

7. (1) The Company shall be structured in accordance with the Companies Act (Chapter 39) to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail.

(2) The Company is hereby required to perform the following regulatory and advisory functions —

(a) acting as a State Party in the negotiation, conclusion and implementation of a petroleum mining Agreement in respect of any designated area;

(b) enforcing the provisions of this Order and of any rules made under section 16;

(c) informing and advising His Majesty the Sultan and Yang Di-Pertuan of the matters referred to in subsection (3) of section 13;

(d) carrying out such other regulatory functions as His Majesty the Sultan and Yang Di-Pertuan in Council or any lawful authority of the Government may delegate to it under subsection (1) of section 15.

(3) The Company may in its discretion engage in any activities, other than those referred to in subsection (2), in accordance with the Companies Act to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail.

General meeting of shareholders.

8. The Prime Minister Corporation shall assume the responsibility of and shall act at general meetings of shareholders of the Company in accordance with the Companies Act (Chapter 39) to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail.

Board.

9. (1) In accordance with the Companies Act (Chapter 39), to the extent that the provisions of that Act are not inconsistent with the provisions of this Order

(and where any such inconsistency exists the provisions of this Order shall prevail), the Company shall be directed and managed by a Board presided over by a chairman.

(2) The Board shall consist of members appointed in accordance with the Companies Act to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail. The Chief Executive Officer shall be a member of the Board. None of the members of the Board shall be subject to sections 139, 140 and 141 or any associated requirements of the Companies Act.

(3) The Board shall be responsible for —

(a) any issue referred to the Board in accordance with the Companies Act to the extent that the provisions of that Act are not inconsistent with the provisions of this Order, and where any such inconsistency exists the provisions of this Order shall prevail;

(b) informing and advising His Majesty the Sultan and Yang Di-Pertuan of the matters referred to in subsection (3) of section 13.

Chief Executive Officer of Company.

10. (1) In accordance with the Companies Act (Chapter 39) to the extent that the provisions of that Act are not inconsistent with the provisions of this Order (and where any such inconsistency exists the provisions of this Order shall prevail), execution of the policy and day-to-day management of the Company shall be the responsibility of the Chief Executive Officer who shall be accountable to the Board.

(2) His Majesty the Sultan and Yang Di-Pertuan shall appoint the Chief Executive Officer after consultation with the Board, but he shall not be obliged to act in accordance with any advice given by the Board at such consultation.

(3) The Chief Executive Officer shall report to the Board and shall not be subject to any control or direction other than by the Board, but subject always to subsection (7) of section 12 and subsection (1) of section 13.

Capital of Company.

11. (1) The paid up share capital of the Company shall be funded from the Consolidated Fund.

(2) The Prime Minister Corporation shall hold every share representing the capital of the Company.

(3) The shares of the Company shall not be transferable.

Financial provisions.

12. (1) Subject to subsections (4) and (5), the income of the Company shall consist of commercial income and regulatory income.

(2) The commercial income shall consist of all receipts, returns and revenues that the Company receives as a result of activities conducted as provided in subsection (3) of section 7.

(3) The regulatory income shall consist of all fees, returns and payments that the Company receives in the exercise of functions as provided in subsection (2) of section 7.

(4) The Company shall be entitled to retain —

(a) all of the commercial income, subject only to paragraph (b) of subsection (5);

(b) a share of up to 5 per cent (as may be decided by the Board) of the part of regulatory income representing the profit share of produced petroleum (or its value) to which the Company becomes entitled as State Party under a petroleum mining Agreement, notwithstanding any provision of this Order or of any other written law;

(c) the part of the regulatory income representing the totality of research and development or other similar contributions to which the Company becomes entitled as State Party under a petroleum mining Agreement.

(5) The following income of the Company shall be the property of Brunei Darussalam and shall be transferred to the Consolidated Fund —

(a) all of the regulatory income subject to paragraphs (b) and (c) of subsection (4) and notwithstanding any other provision of this Order or of any other written law;

(b) a share equal to 95 per cent of the part of commercial income representing the dividends and other revenues directly resulting from the Company's participation in the bodies corporate referred to in the Second Schedule, notwithstanding any provision of this Order or of any other written law.

(6) Notwithstanding any provision of this Order, all amounts of taxes, royalties and other fiscal levies payable under the terms of a petroleum mining Agreement or otherwise shall be paid into the Consolidated Fund.

(7) Subject to subsection (8), His Majesty the Sultan and Yang Di-Pertuan in Council shall have the right to decline a dividend as proposed by the Board and to

direct the Company in writing to pay such amount of dividend as he considers appropriate in the public interest. Subject only to subsection (1) of section 13 and notwithstanding any other provision of this Order or of any other written law, any direction so issued shall be binding on the Company, its directors, officers and other employees.

(8) When issuing any direction to the Company, as provided in subsection (7) of this section or subsection (1) of section 13, His Majesty the Sultan and Yang Di-Pertuan in Council shall abide by the requirements of the Company's annual budgets, as approved by the Board, and by the Company's binding commitments to third parties.

Administrative control and supervision.

13. (1) Subject to subsection (8) of section 12, the Company shall be subject to the control and direction of His Majesty the Sultan and Yang Di-Pertuan in Council who may from time to time issue such directions in writing as he considers appropriate. Notwithstanding any provision of this Order or of any other written law, any direction so issued shall be binding on the Company, its directors, officers and other employees.

(2) His Majesty the Sultan and Yang Di-Pertuan in Council shall not be deemed to be a director for the purposes of section 260 or of any other provision of the Companies Act (Chapter 39) by virtue only of subsection (7) of section 12 and subsection (1) of this section.

(3) His Majesty the Sultan and Yang Di-Pertuan shall be entitled to receive from the Company information and advice on the state of the petroleum sector in Brunei Darussalam and internationally, on policies and their implementation in all matters pertaining to petroleum and petroleum products and on measures of control and protection of investments in the national petroleum sector. This advisory function shall be the responsibility of the Board.

(4) His Majesty the Sultan and Yang Di-Pertuan in Council shall have the right at any time to initiate an inquiry into the activities of the Company. Such inquiry shall be conducted by the Auditor General. While conducting such inquiry, the Auditor General shall be entitled to have immediate and unrestricted access to all records, documents and other sources of information available within or with the sanction of the Company.

Indemnity of members of Board and employees of Company.

14. The Company shall indemnify every member of the Board, the Chief Executive Officer, officers and other employees against any liability and expenses incurred by them or by any of them in defending any proceedings, whether civil or criminal, if such proceedings are brought against them in connection with the

proper discharge of their respective duties and functions in the capacity as a member of the Board, Chief Executive Officer, or such officer or employee.

Delegation.

15. (1) Subject to subsection (2), His Majesty the Sultan and Yang Di-Pertuan in Council or any lawful authority of the Government may by notification in the *Gazette* delegate to the Company, subject to such conditions as may be imposed in such notification, the exercise of any of their respective powers or the performance of any of their respective duties, in addition to the powers and duties already vested in the Company by this Order.

(2) His Majesty the Sultan and Yang Di-Pertuan in Council may by notification in the *Gazette* delegate, subject to such conditions as may be imposed in such notification, the exercise of any powers or the performance of any duties under this Order, other than the powers and duties under section 3.

Rules.

16. His Majesty the Sultan and Yang Di-Pertuan in Council may make rules for carrying out the provisions of this Order, and, without prejudice to the generality of the foregoing, and providing for —

(a) the appointment, duties, privileges and powers of persons to enforce any provision of this Order;

(b) the prescribing of fees to be paid in respect of anything to be done in accordance with any provision of this Order.

FIRST SCHEDULE

(section 3(2))

**DECISION OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN IN
COUNCIL CONCERNING ALLOCATION OF DESIGNATED AREA TO
THE BRUNEI NATIONAL PETROLEUM COMPANY SENDIRIAN BERHAD**

His Majesty the Sultan and Yang Di-Pertuan in Council, in exercise of the power conferred by section 3 of the Brunei National Petroleum Company Sendirian Berhad Order, 2002, and having reviewed the Petroleum Mining Act (Chapter 44), has resolved on the date hereof to allocate to the Brunei Darussalam National Petroleum Company Sendirian Berhad the area having the following co-ordinates —

as a designated area for the purpose of subsection (1) of section 3 of the Brunei Darussalam National Petroleum Company Sendirian Berhad Order, 2002, and to publish this decision in the *Gazette*.

Made this day of 14 Hijriah corresponding to the day of 20 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

CLERK TO THE COUNCIL OF MINISTERS.

SECOND SCHEDULE

(section 12(5))

BODIES CORPORATE SUBJECT TO SECTION 12(5)

Brunei Gas Carriers Sendirian Berhad
Brunei LNG Sendirian Berhad
Brunei Shell Marketing Company Sendirian Berhad
Brunei Shell Petroleum Company Sendirian Berhad
Brunei Shell Tankers Sendirian Berhad

Made this 30th. day of Syawal, 1422 Hijriah corresponding to the 14th. day of January, 2002 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM