

No. S 104

CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

CURRENCY AND MONETARY (AMENDMENT) ORDER, 2010

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

CURRENCY AND MONETARY (AMENDMENT) ORDER, 2010

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 commencement.

1. This Order may be cited as the Currency and Monetary (Amendment) Order, 2010 and shall commence on the 1st. day of January, 2011.

Amendment of section 1 of S 16/04.

2. Section 1 of the Currency and Monetary Order, 2004, in this Order referred to as the principal Order, is amended —

(a) in subsection (1), by deleting "and Monetary" from the first line; and

(b) in subsection (2), by deleting "a Brunei Currency and Monetary Board," from the first 2 lines.

Amendment of section 2.

3. Section 2 of the principal Order is amended —

(a) by inserting the following new definition immediately before the definition of "bank" —

"Authority" means the Autoriti Monetari Brunei Darussalam established by section 3 of the Autoriti Monetari Brunei Darussalam Order, 2010;"

(b) by deleting the definition of "bank" and by substituting the following new definition therefor —

"bank" means a bank licensed under sections 4 or 23 of the Banking Order, 2006 [S 45/06] and an Islamic bank licensed under sections 4 or 23 of the Islamic Banking Order, 2008 [S 96/08];

(c) by deleting the definitions of "Board" and "Chief Executive Officer";

(d) by inserting the following new definition immediately before the definition of "demand liabilities" —

"currency" means currency notes and coins which are legal tender in Brunei Darussalam;"

(e) by deleting the definition of "member".

Amendment of Part II.

4. Part II of the principal Order is amended in the heading, by deleting "BRUNEI CURRENCY AND MONETARY BOARD" and by substituting "TRANSFER OF FUNCTIONS, PROPERTY, LIABILITIES AND EMPLOYEES TO AUTHORITY" therefor.

Substitution of section 3.

5. Section 3 of the principal Order is repealed and the following new section substituted therefor —

"Authority to administer Order.

3. (1) The Authority shall be charged with the general administration of this Order and the exercise of the functions and duties imposed on the Authority by this Order.

(2) The Authority may authorise any person to assist it in the exercise of its functions and duties under this Order, either generally or in a particular case."

Substitution of section 4.

6. Section 4 of the principal Order is repealed and the following new section substituted therefor —

"Transfer to Authority of property, assets and liabilities.

4. (1) As from the appointed day, such movable and immovable property vested in the Board as may be determined by the Minister and all assets, interests, rights, privileges, liabilities and obligations of the Board shall be transferred to and shall vest in the Authority without further assurance, act or deed.

(2) If any question arises as to whether any particular property, asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Authority under subsection (1), a certificate under the hand of

the Minister shall be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

(3) Any immovable property to be transferred to and vested in the Authority under subsection (1) shall be held by the Authority upon such tenure and subject to such conditions as the Minister may determine.

(4) Every proceedings by or against the Board which are pending on the appointed day may be continued, completed and enforced by or against the Authority.

(5) Every agreement relating to any of the transferred properties to which the Board was a party immediately before the appointed day, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if —

(a) the Authority had been a party to such an agreement; and

(b) for any reference to the Board there were substituted in respect of anything to be done on or after the appointed day a reference to the Authority.

(6) It is hereby declared for the avoidance of doubt that —

(a) any reference in this Part to property vested in the Board is a reference to such property of the Board whether situated in Brunei Darussalam or elsewhere; and

(b) any such reference to rights and liabilities of the Board is a reference to such rights to which the Board is entitled or, as the case may be, such liabilities to which the Board is subject, whether under the laws of Brunei Darussalam or any country or territory outside Brunei Darussalam and includes rights and liabilities arising under loans raised by the Board."

Substitution of section 5.

7. Section 5 of the principal Order is repealed and the following new section substituted therefor —

"Transfer of employees.

5. (1) As from the appointed day, all persons employed immediately before that day by the Board shall be transferred to the service of the Authority on terms no less favourable than those enjoyed by them immediately prior to their transfer.

(2) Until such time as conditions of service are drawn up by the Authority, the scheme and conditions of employment in the Board shall continue to apply to every person transferred to the service of the Authority under subsection (1) as if he were still in the employment of the Board."

Substitution of section 6.

8. Section 6 of the principal Order is repealed and the following new section substituted therefor —

"Service rights etc. of transferred employees to be preserved.

6. (1) The conditions to be drawn up by the Authority shall take into account the salaries and conditions of service, including any accrued rights to leave, enjoyed by the persons transferred to the service of the Authority under section 5 while in the employment of the Board.

(2) Any condition relating to the length of service with the Authority shall provide for the recognition of employment under the Board by the persons transferred under section 5 to be service by them under the Authority."

Substitution of section 7.

9. Section 7 of the principal Order is repealed and the following new section substituted therefor —

"Existing contracts.

7. All deeds, bonds, agreements, instruments and arrangements subsisting immediately before the appointed day to which the Board is a party shall continue in force on and after that day and shall be enforceable by or against the Authority as if the Authority had been named therein or had been a party thereto instead of the Board."

Substitution of section 8.

10. Section 8 of the principal Order is repealed and the following new section substituted therefor —

"Continuation and completion of disciplinary proceedings.

8. (1) Where on the appointed day any disciplinary proceedings were pending against any employee of the Board transferred to the service of the Authority under section 5, the proceedings shall be carried on and completed by the Authority.

(2) Where on the appointed day any matter was in the course of being heard or investigated or had been heard or investigated by a committee acting under due authority but no order, ruling or direction had been made thereon, the committee shall —

(a) complete the hearing or investigation; and

(b) make such order, ruling or direction as it could have made under the authority vested in it before that day.

(3) Any order, ruling or direction made by a committee under this section shall be treated as an order, a ruling or a direction of the Authority and have the same force or effect as if it had been made by the Authority pursuant to the authority vested in the Authority under this Order."

Substitution of section 9.

11. Section 9 of the principal Order is repealed and the following new section substituted therefor —

"Misconduct or neglect of duty by employee before transfer.

9. The Authority may reprimand, reduce in rank, retire, dismiss or punish in some other manner a person who had, whilst he was in the employment of the Board, been guilty of any misconduct or neglect of duty which would have rendered him liable to be reprimanded, reduced in rank, retired, dismissed or punished in some other manner if he had continued to be in the employment of the Board and if this Order had not been made."

Substitution of section 10.

12. Section 10 of the principal Order is repealed and the following new section substituted therefor —

"Interpretation of this Part.

10. In this Part —

"appointed day" means the date of commencement of the Currency and Monetary (Amendment) Order, 2010;

"Board" means the Brunei Currency and Monetary Board."

Repeal of section 11.

13. Section 11 of the principal Order is repealed.

Insertion of new section 13A.

14. The principal Order is amended by inserting the following new section immediately after section 13 —

"Power to buy and sell currency notes and coins.

13A. (1) The Authority may, in its discretion, buy and sell currency notes and coins against gold, silver or foreign currencies eligible for inclusion in the reserve of the external assets specified under section 24.

(2) The Authority shall be entitled to charge a commission at such rate or rates as maybe determined for any currency notes or coins bought or sold by the Authority under this section".

Substitution of section 23.

15. Section 23 of the principal Order is repealed and the following new section substituted therefor —

"Currency Fund.

23. (1) The Authority shall establish a Currency Fund which shall be maintained and managed by the Authority in the manner prescribed in this Order.

(2) There shall be paid into the Currency Fund —

(a) all gold, silver and foreign currencies bought by the Authority under section 13A of this Order; and

(b) the proceeds of any transactions under subsection (6)(b), less all expenses incurred in connection therewith.

(3) The Authority may charge on the Currency Fund any expense properly incurred by or on behalf of the Authority in connection with the execution of its functions under this Order, including expenses relating to —

(a) the investment of the Currency Fund;

(b) the issue and demonetisation of currency notes and coins and the transaction of any business relating to such currency; and

(c) the protection of currency notes and coins against forgery or counterfeiting.

(4) Subject to this Order, the Currency Fund shall not be applied for any other purpose.

(5) The Authority shall maintain adequate liquidity in the Currency Fund to meet all demands under normal market conditions.

(6) Notwithstanding anything in subsections (1) to (4), the Authority may —

(a) use any coin held for the account of the Currency Fund for the purpose of having it reminted into current coin; and

(b) sell any coin held for the account of the Currency Fund.

(7) The value of the Currency Fund and its assets for any purpose of this Order shall be determined by such method as the Authority may adopt.

(8) If at any time the value of the Currency Fund determined by the Authority under subsection (7) exceeds 100 *per cent* of the face value of the Authority's currency notes and coins then in circulation, the Authority may direct that the whole or part of such excess be transferred from the Currency Fund to the other funds of the Authority.

(9) If at any time the face value of the Authority's currency notes and coins in circulation exceeds the value of the Currency Fund, the deficiency shall be made up from the other funds of the Authority and, if such funds are insufficient, the balance of the deficiency shall be charged on and paid out of the Consolidated Fund.

(10) In preparing the financial statements relating to the Currency Fund, the Authority may comply with accounting standards to the extent that it is, in the opinion of the Authority, appropriate to do so, having regard to the objects and functions of the Authority under this Order or the *Autoriti Monetari Brunei Darussalam Order, 2010*.

Amendment of section 24.

16. Section 24 of the principal Order is amended —

(a) in subsection (1) —

- (i) by deleting "The external assets of the Board shall consist of all or any of the following" from the first 2 lines and by substituting "The external assets of the Currency Fund shall consist of all or any of the following and shall at all times be not less than 100 *per cent* of the face value of the currency issued by the Authority" therefor;
- (ii) in paragraph (a), by deleting "coin and bullion" and by substituting "and silver in any form" therefor;

(b) in subsection (2) —

- (i) by deleting "70" from the second line and by substituting "100" therefor;
- (ii) in the proviso, by deleting "figure of 70 *per cent*" from the fourth line and by substituting "percentage" therefor;

(c) in subsection (5), in paragraph *(b)*, by deleting "subsection (5) of section 34" from the last line and by substituting "the accounting standards adopted by the Authority" therefor.

Repeal of sections 25 to 34.

17. Sections 25 to 34 of the principal Order are repealed.

Amendment of principal Order.

18. The principal Order is amended by deleting "Board" wherever that word appears, except in Part II, and by substituting "Authority" therefor.

Savings and transitional provisions.

19. (1) On the appointed day —

(a) the Brunei Currency and Monetary Board (referred to in this section as the Board) shall be dissolved;

(b) currency notes and coins issued by the Board before the appointed day shall for all purposes be deemed to have been issued by the Autoriti Monetari Brunei Darussalam (referred to in this section as the Authority); and

(c) all assets and moneys of the Reserve Fund shall be transferred to the Currency Fund.

(2) Any decision made by the Board under the Order before the appointed day shall be deemed to be a decision made by the Authority.

(3) Any permission, consent, approval or authorisation granted by the Board under the Order before the appointed day shall, so far as it is not inconsistent with the provisions of the Order (as amended by this Order), be deemed to be a permission, consent, approval or authorisation granted by the Authority.

(4) Any certificate, notice, order, direction or declaration issued or made by the Board or an officer of the Board under the Order before the appointed day shall be deemed to be a certificate, notice, order, direction or declaration issued or made by the Authority or an officer of the Authority.

(5) Where there are any accounts of the Brunei Currency and Monetary Board which on the appointed day had not been audited by the Auditor General under section 33 of the Currency and Monetary Order, 2004 (S 16/04) (repealed by this Order) —

(a) the Auditor General shall audit such accounts or cause such accounts to be audited;

(b) such audited accounts shall be signed by the managing director and one other director of the board of directors of the Authority; and

(c) the Authority shall thereafter transmit copies of such signed audited accounts to the Minister who shall then transmit the copies to His Majesty the Sultan and Yang Di-Pertuan.

(6) Where in any document any reference is made to the Brunei Currency and Monetary Board such reference shall, as from the appointed day, be read as the Autoriti Monetari Brunei Darussalam.

(7) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, make such other savings or transitional provisions which appear to him to be necessary or expedient for the purposes of the Currency and Monetary (Amendment) Order, 2010.

(8) In this section, "appointed day" means the date of commencement of the Currency and Monetary (Amendment) Order, 2010.

Made this 8th. day of Muharram, 1432 Hijriah corresponding to the 14th. day of December, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM