

No. S 36

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

SUSTAINABILITY FUND ORDER, 2008

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

SUSTAINABILITY FUND ORDER, 2008

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 Sustainability Fund Order, 2008.

(2) The long title of this Order is "An Order to establish the Sustainability Fund and 3 Trust Sub-Funds and for matters connected therewith or incidental thereto".

Interpretation.

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

"Fiscal Stabilisation Reserve Fund" means the Trust Sub-Fund referred to in section 4;

"Minister" means the Minister of Finance;

"Non-Oil Deficit" means the difference between Non-Oil Revenue and the total budgeted expenditure for the following financial year. Interest earnings and capital gains on assets originating from oil revenue, gas revenue or both shall be excluded from the calculation of a Non-Oil Deficit;

"Non-Oil Revenue" means all revenue to the Government other than Oil Based Revenues;

"Oil Based Revenue Projection" means the total Oil Based Revenues used as an underlying assumption for the annual budget estimates, as recommended for approval by the Minister;

"Oil Based Revenues" means the revenues to the Government derived from the oil and gas sector through all tax and non-tax channels, including all production based, equity based and profit-based instruments, as well as through bonuses and rental payments;

"Oil Revenue Shortfall" means the difference between the Oil Based Revenue Projection and (if lower) the actual Oil Based Revenues received by the Government as determined by the Minister;

"Retirement Fund" means the Trust Sub-Fund referred to in section 4;

"Strategic Development Capital Fund" means the Trust Sub-Fund referred to in section 4;

"Sustainability Fund" means the Sustainability Fund referred to in section 4;

"Trust Sub-Fund" means a Trust Sub-Fund referred to in section 4.

Non-derogation from Const. III.

3. Except so far as may be expressly enacted herein to the contrary, nothing in this Order shall apply, be deemed to apply or derogate from any of the provisions of the Constitution (Financial Procedure) Order (Const. III).

Establishment of Sustainability Fund and Trust Sub-Funds.

4. (1) There is hereby established a Government trust fund to be known as the Sustainability Fund.

(2) There is hereby established the following Trust Sub-Funds —

(a) the Fiscal Stabilisation Reserve Fund;

(b) the Retirement Fund;

(c) the Strategic Development Capital Fund.

Objectives and purposes of Sustainability Fund and Trust Sub-Funds.

5. (1) The objectives of the establishment of the Sustainability Fund and of the Trust Sub-Funds is to ensure the long-term sustainability of the finances of the Government. The Minister shall review the annual budget estimates to —

(i) maximise the Non-Oil Revenue in any given financial year and to facilitate an increasing trend in that Revenue from year to year; and

(ii) minimise the Non-Oil Deficit in any given financial year and to facilitate a decreasing trend in that Deficit from year to year.

(2) The purpose of the Sustainability Fund is to facilitate the collection, accounting for and channelling of an appropriate portion of Government revenue to the Trust Sub-Funds. Monies in the Sustainability Fund may be withdrawn and applied solely for the purpose of funding one or more of the Trust Sub-Funds.

(3) The purpose of the Fiscal Stabilisation Reserve Fund is to provide monies to the annual budget to eliminate or reduce the Oil Revenue Shortfall. Monies in that Fund may be withdrawn and applied solely for that purpose, provided that all reasonable costs arising from or incidental to the administration of and the investment and management of monies in the Fund shall also be charged on and payable from that Fund.

(4) The purpose of the Retirement Fund is to fund the following liabilities and pay the following benefits and all the reasonable costs referred to in the last sentence of this subsection —

(a) all pensions and allowances granted by the Old Age and Disability Pensions Act (Chapter 18);

(b) all pensions, gratuities and other allowances granted by the Pensions Act (Chapter 38);

(c) all pensions, gratuities and allowances granted by the Royal Brunei Armed Forces Act (Chapter 149), the Police Regulations (S 59/58) and the Prisons Rules;

(d) contributions by the Government under the Tabung Amanah Pekerja Act (Chapter 167);

(e) contributions by the Government to any pension scheme introduced by the Government after the commencement of this Order.

Monies in the Retirement Fund shall be withdrawn and applied solely for the above-mentioned purposes, provided that all reasonable costs arising from or incidental to the administration of and the investment and management of monies in the Fund shall also be charged on and payable from that Fund.

(5) The purpose of the Strategic Development Capital Fund is to provide risk capital for strategic local development that contributes to economic growth and diversification across various sectors and that broadens the revenue base of the Government. Subject to section 7(6), monies in that Fund shall be withdrawn and applied solely for those purposes, provided that all reasonable costs arising from or incidental to the administration of and the investment and management of monies in the Fund shall also be charged on and payable from that Fund.

Governing Boards of Sustainability Fund and Trust Sub-Funds.

6. (1) The Sustainability Fund shall be governed by a Board of Governance and Allocation called the Sustainability Fund Board and advised by a Fund Allocation Committee. The members of the Board and the Fund Allocation Committee shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

The Fund Allocation Committee shall consist of an equal number of members from the Executive Boards of each of the Trust Sub-Funds as well as persons who are not members of each Trust Sub-Funds Board. Every member of a Sub-Fund Board and of the Fund Allocation Committee shall hold office for a term not exceeding 2 years and shall be eligible for re-appointment. Any member of the Sustainability Fund Board, the Fund Allocation Committee or the Executive Board of each Trust Sub-Fund whose appointment has been terminated shall, unless His Majesty the Sultan and Yang Di-Pertuan otherwise decides, not be entitled to any damages or other compensation and there shall be no claim or appeal in any court against such termination.

(2) The Sustainability Fund Board shall be supported and assisted in its research, administration, governance and overall operations by a secretariat. The management and staff of the secretariat shall consist of persons who support and work on behalf of the Trust Sub-Funds, and who are appointed by the Sustainability Fund Board after consultation with the Executive Boards of the Trust Sub-Funds. The Sustainability Fund Board shall specify the roles, responsibilities and lines of reporting of such management and staff.

(3) Each of the Trust Sub-Funds shall be governed by an Executive Board, which shall be supported and assisted by management and staff and an Investment Advisory Committee appointed by the Executive Board. Members of each Executive Board and of such Committee shall hold office for a term not exceeding 2 years and shall be eligible for re-appointment. Members of each Executive Board and of each Committee shall be appointed by His Majesty the Sultan and Yang Di-Pertuan. A majority of the members of each Executive Board shall consist of persons who do not serve on the Sustainability Fund Board. A majority of the members of the Executive Board of each Trust Sub-Fund shall consist of persons who do not serve as a member of the Executive Board of another Trust Sub-Fund. Each member of each Investment Advisory Committee shall be selected by the respective Executive Board.

(4) The persons who support and work on behalf of each Trust Sub-Fund shall consist of public officers assigned by the Minister to that Trust Sub-Fund (each such person being defined in this Order as a seconded officer). Once so assigned, each seconded officer shall remain a public officer but shall be subject to personnel practices and terms of employment (including evaluation of performance, compensation and related matters) as determined by the respective Executive Board. The Executive Board of each Trust Sub-Fund may also directly employ staff under such terms and conditions as the Executive Board may decide. Such directly employed staff shall be deemed to be public servant for the purposes of the Penal Code (Chapter 22). The Executive Board of each Trust Sub-Fund shall establish clear employment regulations with respect to such employees.

(5) An Executive Board shall have all powers and functions reasonably necessary to achieving its purposes under this Order, including –

(a) the development and payment for its own operating budget and other reasonable costs out of the assets of its Trust Sub-Fund, but only insofar as such budget is reasonable and intended solely for the purpose of achieving the purposes of the Trust Sub-Fund;

(b) the procuring and entering into contracts for goods and services on reasonable terms, reasonably necessary to achieving the purposes of the Trust Sub-Fund and to adhering to the provisions of this Order;

(c) all powers and functions reasonably necessary to prudently invest and manage its assets.

Allocations to and from Sustainability Fund and Trust Sub-Funds.

7. (1) In advance of each forthcoming financial year, the Sustainability Fund Board shall apply to withdraw from the Consolidated Fund a sum of money determined by the Board, after considering advice from the Fund Allocation Committee.

(2) In advance of each forthcoming financial year and based on its analysis of the sum of money the respective Trust Sub-Fund requires that year to accomplish its purpose under this Order, the respective Executive Boards of the Fiscal Stabilisation Reserve Fund, the Retirement Fund and the Strategic Development Capital Fund shall determine the sum of money necessary and suitable to accomplish that purpose and shall communicate that sum and the underlying rationale for the same to the Fund Allocation Committee. That Committee shall then confer internally and with the Sustainability Fund Board regarding the sum, if any, that the Sustainability Fund shall allocate to each Trust Sub-Fund with respect to that financial year.

(3) After considering the annual requests of each Trust Sub-Fund Board, the analysis and advice of the Fund Allocation Committee and the sum that the Sustainability Fund expects to obtain from the Consolidated Fund with respect to that financial year, the Sustainability Fund Board shall annually determine the amount of money, if any, it shall allocate to each of the Trust Sub-Funds and shall then allocate it. Whatever amount, if any, the Sustainability Fund Board allocates to a Trust Sub-Fund shall be accounted for in the Consolidated Trust Account and shall be transferred to that Trust Sub-Fund.

(4) After determining the amount of the Oil Revenue Shortfall for each applicable quarter, the Minister shall, with the approval of His Majesty the Sultan and Yang Di-Pertuan, certify a sum which may be less than or equal to (but not more than) that amount and cause that sum to be transferred from the Fiscal Stabilisation Reserve Fund to the Consolidated Fund for the purpose of meeting some or all of the Oil Revenue Shortfall.

(5) The assets of the Retirement Fund shall be used and applied solely for the purposes set out in section 5(4).

(6) The Minister may authorise the transfer to the Consolidated Fund of assets of the Strategic Development Capital Fund resulting from dividends, distributions, sale of equity, other return on capital or return of capital to the Strategic Development Capital Fund from investments that it had previously made.

Investments, standards of care and internal governance of Trust Sub-Funds.

8. (1) The Executive Board of each Trust Sub-Fund shall establish and adhere to investment policies and adopt standards and procedures that a reasonably prudent person would apply to a portfolio of investments to achieve the Fund's purpose to reasonably diversify its risks, avoid undue risk of loss and to obtain a reasonable return, under all the relevant circumstances. The Executive Board shall invest, manage and administer the respective Trust Sub-Fund's assets in accordance with such policies, standards and procedures and solely for the purpose of achieving the Fund's purpose. Subject to the foregoing sentence, the Executive Board of each Trust Sub-Fund may invest its assets in any investment specified in subsection (2).

(2) The investments referred to in subsection (1) are —

(a) any stocks, funds, shares or securities in companies incorporated or operating in Brunei Darussalam which have been approved by His Majesty the Sultan and Yang Di-Pertuan;

(b) any investment in any entity or instrument of issuers based in any other country or territory, or originating in any other currency, approved by His Majesty the Sultan and Yang Di-Pertuan, including —

- (i) any fixed interest securities issued by or guaranteed by a Government, state or municipality or by an international institution guaranteed by a Government, whether or not traded on an exchange;
- (ii) any floating rate and inflation protected security;
- (iii) any obligation of a corporation, commercial bank or a bank-holding company; asset-backed security and mortgage-backed security issued or unconditionally guaranteed by a corporate entity or trust; any repurchase and reverse repurchase agreement with a major commercial bank and a primary dealer;

- (iv) futures, forwards, options contracts, or swaps on any investments authorised by this subsection which are traded on an exchange regulated by a national authority; or over-the-counter derivative contracts which are based on market criteria or broadly recognised transactions among reputable and creditworthy counterparties;
- (v) any security listed and traded on an exchange regulated by a national authority;
- (vi) any exchange-traded funds and investment company, instrument that provides exposure to market indices for any investments authorised by this subsection; structured instrument including but not limited to a collateralised debt obligation; a private equity fund and an individual security; and a hedge fund;
- (vii) any Islamic financial instrument;
- (viii) any bullion, commodity, and currency;
- (ix) any real estate and infrastructure;
- (x) any other specific investment not included in this subsection as may be authorised by His Majesty the Sultan and Yang Di-Pertuan.

Each Executive Board may, in its reasonable discretion, establish and adhere to policies, standards and procedures which are as broad as or more restrictive than is permitted by this subsection.

(3) The Executive Board of each Trust Sub-Fund may prudently delegate appropriate authority to a seconded officer, any agency of the Government and any other company (including but not limited to an investment management firm, insurance company and a bank) (each of which are in subsection (4) referred to as a service provider), provided that —

(a) such delegation is appropriately documented;

(b) the delegate provides a written acknowledgment of the appropriate responsibility, liability and duties associated with the delegation; and

(c) the Board monitors the performance of each delegate.

(4) The Executive Board of each Trust Sub-Fund and each respective Investment Advisory Committee (and each member of such Board and Committee) shall perform its and his duties solely to achieve the purposes of that

Trust Sub-Fund. An Executive Board shall establish and adhere to policies and procedures to detect and prevent conflicts of interest and to impose reasonable ethical standards on its members, all members of the respective Investment Advisory Committee, all seconded officers and all service providers which the Board hires (all of which are in this subsection referred to as a covered person). Such policies and procedures shall include a provision that —

(a) every covered person who has a direct or indirect personal financial or other interest in a contract or investment made or proposed to be made by a Trust Sub-Fund, shall disclose the nature of his interest at the first meeting of the Board after the relevant facts have come to his knowledge;

(b) a disclosure under paragraph (a) shall be recorded in the minutes of the Executive Board meeting and, after the disclosure, the covered person shall —

- (i) not take part in any deliberation or decision of the Board or its staff regarding, or otherwise influence or seek to influence the substance, terms or any other aspect of, the contract or investment;
- (ii) if he is a member of the Executive Board, be disregarded for the purpose of constituting a quorum of the Executive Board for any such deliberation or decision;
- (iii) if he is a member of the Investment Advisory Committee, a seconded officer or a service provider abstain from taking any action regarding that contract or investment;

(c) no act or proceeding of the Executive Board shall be questioned by any person who is not a member of the Executive Board on the ground that a covered person has contravened the provisions of this subsection;

(d) no member of the Executive Board of each Trust Sub-Fund shall act as a delegate on the Executive Board from any commercial, financial, agricultural, industrial or other interests with which he may be connected.

(5) The Executive Board of each Trust Sub-Fund shall establish and adhere to a written system of internal controls regarding its investment programme, receipt and distribution of monies and other activities. At a minimum, that system shall require separation of functions and internal audit processes, appropriate under the circumstances.

(6) The accounts of each Trust Sub-Fund 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 His Majesty the Sultan and Yang Di-Pertuan:

Provided that where the accounts have been audited under subsection (6)(b), they may be verified by the Auditor General before a copy is submitted to His Majesty the Sultan and Yang Di-Pertuan.

(7) The Executive Board of each Trust Sub-Fund shall convene meetings as often as may be required but not less frequently than once every 3 months. At every meeting of an Executive Board, a quorum shall consist of a majority of the members and decisions shall be adopted by a simple majority of the votes of the members present and voting except that in the case of an equality of votes, the Chairman shall have a decisive vote. The Executive Board shall cause written minutes of its proceedings and decisions to be kept. The Chairman of the Executive Board shall cause all decisions of the Board and minutes of each meeting to be sent to the chairman of the Sustainability Fund Board as soon as practicable after that decision or meeting, who shall then transmit them to His Majesty the Sultan and Yang Di-Pertuan.

Amendment of Const. III.

9. The Constitution (Financial Procedure) Order is amended, in the Second Schedule, by adding —

"Trust Fund —

the Sustainability Fund

Trust Sub-Funds —

the Fiscal Stabilisation Reserve Fund

the Retirement Fund

the Strategic Development Capital Fund".

Made this 3rd. day of Rabiulawal, 1429 Hijriah corresponding to the 11th. day of March, 2008 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM