

# CONSTITUTION OF BRUNEI DARUSSALAM

(Order under Article 83(3))

## SYARIAH FINANCIAL SUPERVISORY BOARD ORDER, 2006

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## CONSTITUTION OF BRUNEI DARUSSALAM

(Order under Article 83(3))

### SYARIAH FINANCIAL SUPERVISORY BOARD ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 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 Syariah Financial Supervisory Board Order, 2006.

(2) The long title of this Order is “An Order to establish the Syariah Financial Supervisory Board and to provide for the control of the administration and business dealings of financial institutions concerning Islamic products and any matters connected therewith and incidental thereto”.

#### **Interpretation.**

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

“Authority” means the Minister of Finance;

“Board” means the Syariah Financial Supervisory Board established by section 3;

“chairman” means the chairman of the Board;

“financial institution” means any of the institutions set out in the Schedule;

“*Fiqh al-Mu’amalat*” means the commercial law of Islam;

“*Hukum Syara*” means the Laws of Islam according to the Syafeite, Hanafi, Maliki or Hanbali sect of Ahlis Sunnah Waljamaah;

“Islamic banking business” has the same meaning as in section 2 of the Islamic Banking Act (Chapter 168);

“Islamic financial business” means financial business whose aims and operations are in accordance with *Hukum Syara*’;

“Islamic product” means any product of any financial institution submitted by it to be in accordance with *Hukum Syara*’;

“Majlis” means the Majlis Ugama Islam constituted under section 5 of the Religious Council and Kadis Courts Act (Chapter 77);

“Minister” means the Minister of Finance;

“member” means any member of the Board;

“takaful business” means the business of takaful whose aims and operations are in accordance with *Hukum Syara*’.

### **Establishment of Board.**

**3.** There is hereby established a Board known as the Syariah Financial Supervisory Board, which shall be the authority for the ascertainment of the Laws of Islam for the purposes of Islamic banking business, takaful business, Islamic financial business, Islamic development financial business and any other business which is based on syariah principles and which is supervised and regulated by the Authority.

### **Functions of Board.**

4. (1) The Board shall have such functions as may be determined by the Authority.

(2) Every financial institution may consult the Board on syariah matters relating to Islamic banking business, takaful business, Islamic financial business, Islamic development financial business and any other business which is based on syariah principles.

### **Directives.**

5. (1) The Authority may issue written directives in relation to the businesses referred to in subsection (2) of section 4 in accordance with the advice of the Board.

(2) Any financial institution which fails to comply with or contravenes any written directive issued under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$500,000 and to a further fine not exceeding \$5,000 for every day during which the contravention continues.

### **Membership of Board.**

6. (1) The Board shall consist of the following members –

(a) the Permanent Secretary, Ministry of Finance *ex-officio*, who shall be the chairman;

(b) the Mufti Kerajaan of Brunei Darussalam *ex-officio*;

(c) not less than 6 other persons to be appointed by His Majesty the Sultan and Yang Di-Pertuan, on the recommendation of the Authority after his consultation with the Majlis –

(i) at least 4 of whom shall be Muslims –

(aa) being citizens of Brunei Darussalam, who are followers of the Shafeite sect of Ahlis Sunnah Waljamaah and who are religious scholars, experts in Islamic knowledge or experienced in *Fiqh al-Mu'amalat*; or

- (ab) not being citizens of Brunei Darussalam, who are followers of the Shafeite, Hanafi, Maliki or Hanbali sect of Ahlis Sunnah Waljamaah and who are experienced in *Fiqh al-Mu'amalat*; and
- (ii) at least 2 of whom shall be Muslims who are experienced in banking, economics, finance, law or any other related discipline.

(2) The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint one of the members to be the deputy chairman.

**Period of office.**

7. Any member appointed under paragraph (c) of subsection (1) of section 6 shall hold office for a period of 3 years from the date of his appointment.

**Secretary.**

8. The chairman may appoint any person, not being a member, to be the secretary of the Board.

**Notification of appointments.**

9. Notice of the appointments under paragraph (c) of subsection (1) and subsection (2) of section 6 and under section 8 shall be published in the *Gazette*.

**Meetings of Board.**

10. (1) In the absence of the chairman from any meeting of the Board, his functions under this section shall be exercised by the deputy chairman of the Board, and in case he is, at that time absent, the Authority shall elect any other member to be the chairman for that meeting.

(2) The chairman of a meeting shall have an original vote and also a casting vote.

(3) The Board shall meet at such place and time as the chairman may appoint.

(4) The chairman shall summon meetings as often as may be required but not less than 6 in one year.

(5) The Board may invite any person, not being a member, to attend a meeting of the Board for the purpose of giving advice to the Board on any matter.

(6) The Board shall cause proper records of its proceedings to be kept.

(7) Subject to the provisions of this Order, the Board may determine its own procedure.

(8) All acts done by the Board shall, notwithstanding any vacancy in the Board or that it is afterwards discovered that there was a defect in the appointment of any person purporting to be a member thereof, be valid as if no such vacancy or defect has existed.

**Quorum and decisions.**

11. (1) No business shall be transacted at a meeting unless a quorum is present.

(2) At a meeting two-thirds of the members shall form a quorum.

(3) Where any one of the members referred to in paragraph (b) or paragraph (c)(i) of subsection (1) of section 6 is absent from a meeting, the decision of at least 4 other members referred to in those paragraphs shall be sufficient to reach any decision on matters referred to in subsection (2) of section 4 and for the purposes of subsection (1) of section 5 and of section 14.

**Conformity and observance with *qaul muktamad*.**

12. (1) When making any decision pursuant to the performance of its duties under this Order, the Board shall conform to and observe the accepted views (*qaul muktamad*) of the Syafeite, Hanafi, Maliki or Hanbali sect of Ahlis Sunnah Waljamaah.

(2) If the Board considers that such accepted views (*qaul muktamad*) are or are likely to be incompatible with the public interest or that there is no apparent guidance in such views on any matters, the Board may decide according to *maslahah*.

(3) In this section, “*maslahah*” means any interest, benefit, ease or welfare of the public which is not contrary to *Hukum Syara’*.

#### **Annual report.**

**13.** The Board shall, as soon as practicable after the end of each calendar year, cause to be made and transmitted to the Authority and the Majlis a report dealing with the activities of the Board during the preceding year and with any proposed activity.

#### **Board to approve Islamic product.**

**14.** (1) Every financial institution shall apply to the Board for approval with respect to its submission that its Islamic product is in accordance with *Hukum Syara’* before it enters into any business transaction with respect thereto.

(2) In an application for approval under subsection (1), the financial institution shall comply with such requirements as the Board may determine.

#### **Board to approve appointments etc.**

**15.** (1) Unless the Board otherwise approves in writing, no financial institution shall appoint, engage or employ, as the case may be, any person –

(a) to become a member of any syariah advisory body of;

(b) to act as a syariah consultant or syariah advisor of,

that financial institution.

(2) In an application for approval pursuant to subsection (1), the financial institution shall submit to the Board such information as the Board may determine.

(3) The decision of the Board to grant or refuse to grant an application for approval shall be final and shall not be subject to any appeal.



(4) No purported employment or purported engagement of any such person shall be valid for any purpose if the prior approval in writing of the Board has not been obtained in respect of that person.

**Offence committed by director etc.**

16. (1) Where an offence against this Order is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, “director”, in subsection (1), means any member of that body corporate.

**Proceedings relating to Islamic banking business etc.**

17. Where in any proceedings relating to Islamic banking business, takaful business, Islamic financial business, Islamic development financial business or any other business which is based on syariah principles before any court or arbitrator, any question arises concerning a syariah matter, the court or arbitrator, as the case may be, may take into consideration any written directive issued by the Authority pursuant to subsection (1) of section 5 or may refer such question to the Authority for a ruling from the Board.

**Composition of offences.**

18. (1) The Authority or any person authorised by the Authority in writing in that behalf may, subject to such conditions as the Authority considers fit to impose, compound any offence against this Order by collecting from the person reasonably suspected of having committed that offence a sum of money not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of the offence.

(2) On compliance with any such conditions and on payment of such sum of money, no further proceedings shall be taken against that person in respect of that offence.

**Consent to prosecute.**

19. A prosecution under this Order shall not be instituted except by or with the consent of the Public Prosecutor.

**Limitation of liability.**

20. No action shall be brought against the members in respect of anything done or omitted to be done by any of them in good faith in the exercise, performance or purported exercise or performance, of any powers or duties under this Order.

**Penalty.**

21. Any financial institution which fails to comply with or contravenes the provisions of sections 14 and 15 is guilty of an offence and liable on conviction to a fine not exceeding \$500,000 and to a further fine not exceeding \$5,000 for every day during which the contravention continues.

**Publication.**

22. The Board may, with the approval of the Authority, cause any decision of the Board to be published by notification in the *Gazette*.

**Amendment of Schedule.**

23. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette* amend the Schedule.

**Regulations.**

24. (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, including the prescription of fees and of any other thing required to be or which may be prescribed under 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 2)

### **FINANCIAL INSTITUTIONS**

- (a) Any finance company licensed under the Finance Companies Act (Chapter 89);
- (aa) The Perbadanan Tabung Amanah Islam Brunei established by section 3(1) of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163); *[S 65/2007]*
- (b) Any bank licensed under the Banking Act (Chapter 95);
- (c) Any Islamic bank licensed under the Islamic Banking Act (Chapter 168);
- (d) Any licensee within the meaning of the International Banking Order, 2000 (S 53/2000); the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000); the Mutual Funds Order, 2001 (S 18/01); the Securities Order, 2001 (S 31/01) or the International Insurance and Takaful Order, 2002 (S 43/02);
- (e) Any person carrying on the business of insurance under any written law.

Made this 16th. day of Zulhijjah, 1426 Hijriah corresponding to the 17th. day of January, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN,  
BRUNEI DARUSSALAM.**