

No. S 37

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

TELECOMMUNICATION SUCCESSOR COMPANY ORDER, 2001

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

TELECOMMUNICATION SUCCESSOR COMPANY ORDER, 2001

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 —

Citation, commencement and long title.

1. (1) This Order may be cited as the Telecommunication Successor Company Order, 2001 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the transfer of the property, rights and liabilities of the Telecommunications Department to the telecommunication successor company; for the transfer to the telecommunication successor company of the staff of the Telecommunications Department and for matters connected therewith".

Interpretation.

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

"Authority" means the Authority for Info-communications Technology Industry of Brunei Darussalam (also known by the acronym AiTi) established under section 3 of the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001;

"designated telecommunication property" means property of any description, whether movable or immovable, which the Minister may designate as necessary to be retained by the Authority (or the Authority's nominee) for the exercise of its duties and functions relating to telecommunications under the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001 and under the Telecommunications Order, 2001;

"excepted telecommunication employee" means any officer or employee which the Authority may specify as necessary or expedient to be retained by the Authority (or the Authority's nominee) for the exercise of any of the duties and functions relating to telecommunications under the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001 and under the Telecommunications Order, 2001;

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective, and wherever arising;

"Minister" means the Minister for Finance;

"property" means any legal or equitable estate or interest (whether present or future or whether vested or contingent) in any property whether movable or immovable;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective, whether statutory or otherwise, and wherever arising;

"succession date" means the date appointed by the Minister by order published in the *Gazette* for the purposes of section 3;

"telecommunication successor company" means the company nominated by the Minister pursuant to paragraph (a) of subsection (1) of section 3;

"telecommunication undertaking" means all property, whether moveable or immovable, vested in the Government which is necessary for the provision, maintenance, management and operation of telecommunication services in Brunei Darussalam, and all assets, powers, rights, interests, privileges, debts, liabilities and obligations connected therewith;

"transferred employee" means a person who, under section 5, is taken to have been engaged as an employee by the telecommunication successor company.

Vesting of telecommunication undertaking in telecommunication successor company.

3. (1) On the succession date —

- (a) all the property, rights and liabilities comprised in the telecommunication undertaking (other than the designated telecommunication property) to which the Government was entitled or subject to immediately before that date, shall become, by virtue of this section and without further assurance, the property, rights and liabilities of a nominated for the purposes of this section by the Minister (referred to in this Order as the telecommunication successor company);
- (b) the telecommunication successor company becomes the successor at law of the Government in respect of the telecommunication undertaking of the Government; and
- (c) the telecommunication successor company shall be designated, in accordance with section 6 of the Telecommunications Order, 2001, as a public telecommunication licensee.

(2) Where any land is, on the succession day, reserved for use by the telecommunication undertaking, His Majesty the Sultan and Yang Di-Pertuan in Council may, in his discretion, alienate such land pursuant to section 3 of the Land Code (Chapter 40) in favour of the telecommunication successor company by granting in respect of that land a lease in perpetuity or for such lesser term as His Majesty the Sultan and Yang Di-Pertuan in Council may consider appropriate.

(3) A premium will be charged on land alienated under subsection (2) in the manner mentioned in section 14 of the Land Code (Chapter 40).

(4) If any question arises as to whether any particular property, right or liability has been transferred to or vested in the telecommunication successor company under this Order, a certificate under the hand of the Minister shall be conclusive evidence that the property, right or liability was or was not so transferred or vested.

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

(a) any reference in this Order to property comprised in the Government's telecommunication undertaking is a reference to such property (other than the designated telecommunication property) of the Government whether situated in Brunei Darussalam or elsewhere; and

(b) any such reference to rights and liabilities comprised in the Government's telecommunication undertaking is a reference to such rights to which the Government is entitled or, as the case may be, such liabilities to which the Government is subject, whether under the laws of Brunei Darussalam or any country outside Brunei Darussalam.

(6) It shall be the duty of the Government and of the telecommunication successor company to take all such steps as may be requisite to secure that the vesting in the telecommunication successor company by virtue of this section of any foreign property, right or liability is effective under the relevant foreign law and until such time it shall be the duty of the Government to hold the property or right for the benefit of, or to discharge that liability on behalf of, the company.

(7) Nothing in subsection (6) shall be taken as prejudicing the effect under the laws of Brunei Darussalam of the vesting in the telecommunication successor company by virtue of this section of any foreign property, right or liability.

(8) In subsections (6) and (7), references to any foreign property, right or liability are references, respectively, to any property, right or liability comprised in the telecommunication undertaking as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of conflict of laws) by reference to the law of a country or territory outside Brunei Darussalam.

Initial Government holding in the telecommunication successor company.

4. (1) As a consequence of the vesting in the telecommunication successor company by virtue of section 3 of the property, rights and liabilities comprised in the Government's telecommunication undertaking (other than the designated telecommunication property), the telecommunication successor company shall issue such securities of the company as the Minister may from time to time direct to any company wholly owned by the Government.

(2) The Minister shall not give a direction under subsection (1) at a time when the telecommunication successor company has ceased to be wholly owned by the Government.

(3) Securities required to be issued under this section will be issued or allotted at such time and on such terms as to allotment as the Minister may direct.

(4) Shares issued in pursuance of this section —

(a) shall be of such nominal value as the Minister may direct; and

(b) shall be issued as fully paid and treated for the purposes of the Companies Act (Chapter 39) as if they had been paid up by virtue of the payment to the telecommunication successor company of their nominal value in cash.

Transfer to telecommunication successor company of employees of the telecommunication undertaking.

5. (1) Every person who was an employee of Government in connection with the telecommunication undertaking immediately before the succession date (other than an excepted telecommunication employee) is deemed —

(a) to have been engaged by the telecommunication successor company, with effect from the succession date, on terms and conditions of service no less favourable than those enjoyed by him immediately prior to his transfer; and

(b) to have accrued an entitlement to benefits, in connection with his employment by the telecommunication successor company, that is equivalent to the entitlement that he had accrued, as an employee of the Government in connection with the telecommunication undertaking, immediately before the succession date.

(2) The service of an employee transferred under subsection (1), as an employee of the telecommunication successor company, is deemed, for all purposes, to have been continuous with the service of the employee immediately

before the succession date, as an employee of the Government in connection with the telecommunication undertaking.

Conditions of service.

6. Until such time as contracts of service are drawn up by the telecommunication successor company, the terms and conditions of service in the Government shall continue to apply to every transferred employee as if he were still in the service of the Government.

Pensions.

7. Notwithstanding the provisions of the Pensions Act (Chapter 38), no transferred employee shall be entitled to claim any benefits under the Act on the ground that he has been retired from the service of the Government on account of abolition of office or termination in the public interest in consequence of the incorporation of the telecommunication successor company or the transfer of that employee to the telecommunication successor company.

Performance of obligations.

8. Subject to any regulations made under section 11, any agreement made, transaction effected or other thing done by, to or in relation to the telecommunication undertaking which is in force or effective immediately before the succession date shall have effect from that date as if made, effected or done by, to or in relation to the telecommunication successor company, in all respects as if the telecommunication successor company were the same person in law as the Government (whether acting in its own right or through the telecommunication undertaking as its nominated representative), and accordingly references to the Government in respect of the telecommunication undertaking of the Government —

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
- (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court; and
- (c) in any document whatsoever relating to or offering any property, right or liability of the telecommunication undertaking which vests by virtue of section 3 in the telecommunication successor company,

shall be taken as from the succession date as referring to the telecommunication successor company.

Application of laws.

9. (1) The laws of Brunei Darussalam apply to the telecommunication successor company according to their tenor, and so far as they are capable of applying, except to the extent that the telecommunication successor company is exempted from the application of a particular law by express provision of this Order or of any other law of Brunei Darussalam.

(2) Any law of Brunei Darussalam which relates to —

- (a) the standards applicable to the design or manner of construction of a building structure or facility; or
- (b) the approval of the construction of a building, structure or facility; or
- (c) the use of or occupancy of a building, structure or facility; or
- (d) the alteration, repair or refurbishment of a building, structure or facility,

does not apply to a building, structure or facility that is the property of the telecommunication successor company if —

- (i) the building, structure or facility was occupied or in use; or
- (ii) the construction, alteration, repair or refurbishment of the building, structure or facility had commenced,

before the succession date.

Financial structure of telecommunication successor company.

10. (1) If the Minister so directs at any time before the telecommunication successor company ceases to be wholly owned by the Government, such sum (not exceeding the accumulated realised profits of the Government in connection with its telecommunication undertaking) as may be specified in the direction shall be carried by the telecommunication successor company to a reserve (referred to in this section as the statutory reserve).

(2) The statutory reserve may only be applied by the telecommunication successor company in paying up unissued shares of the company to be allotted to members of the company as fully-paid bonus shares.

(3) For the purposes of any statutory accounts of the telecommunication successor company —

- (a) the vesting effected by virtue of section 3 shall be taken to have been a vesting of all the property, rights and liabilities comprised in the Government's telecommunication undertaking (other than the designated telecommunication property) to which the Government was entitled or subject on the succession date; and
- (b) the value of any asset and the amount of any liability of the Government taken to have been vested in the telecommunication successor company by virtue of paragraph (a) shall be taken to be the value or, as the case may be, the amount assigned to that asset or liability in the statement of accounts of the Government as at the succession date.

(4) For the purposes of any statutory accounts of the telecommunication successor company, the amount to be included in respect of any item shall be determined as if anything done by the Government (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the company.

(5) References in this section to the statutory accounts of the telecommunication successor company are references to any accounts prepared by the company for the purposes of any provision of the Companies Act [Chapter 39].

Regulations.

11. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations, not inconsistent with this Order, prescribing matters —

- (a) required or permitted by this Order to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Order.

Made this 16th. day of Safar, 1422 Hijriah corresponding to the 10th. day of May, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM