

No. S 2

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

TABUNG AMANAH PEKERJA BOARD ORDER, 2016

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation, commencement and long title
2. Interpretation

PART II

TABUNG AMANAH PEKERJA BOARD

3. Establishment of Board
4. Common seal
5. Board of Directors
6. Managing Director
7. Directions of Minister
8. Delegation of powers
9. Committees
10. Employment of staff

PART III

FUNCTIONS AND POWERS

11. Establishment of Fund
12. Functions and duties of Board
13. Powers of Board

PART IV

FINANCIAL PROVISIONS

14. Financial year
15. Accounts and financial statements
16. Expenses
17. Audit
18. Powers of auditor
19. Annual report

PART V

GENERAL

20. Protection from personal liability
21. Public servants
22. Amendment of Schedules
23. Regulations
24. Transfer of functions, property etc.
25. Transitional
26. Savings
27. Consequential and related amendments to other written laws

FIRST SCHEDULE – CONSTITUTION AND PROCEEDINGS OF BOARD OF DIRECTORS

SECOND SCHEDULE – LIST OF WRITTEN LAWS

THIRD SCHEDULE – TRANSFER OF FUNCTIONS, PROPERTY ETC. TO BOARD

FOURTH SCHEDULE – CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER WRITTEN LAWS

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

TABUNG AMANAH PEKERJA BOARD ORDER, 2016

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 —

PART I

PRELIMINARY

Citation, commencement and long title

1. (1) This Order may be cited as the Tabung Amanah Pekerja Board Order, 2016 and shall be deemed to have commenced on 1st April 2014.

(2) The long title of this Order is “An Order to establish and incorporate the Tabung Amanah Pekerja Board and to provide for all matters connected therewith or incidental thereto”.

Interpretation

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

“Board” means the Tabung Amanah Pekerja Board established under section 3;

“Board of Directors” means the Board of Directors referred to in section 5;

“Chairman” means the Chairman of the Board of Directors referred to in section 5(2)(a);

“committee” means a committee appointed under section 9(1);

“Deputy Chairmen” means the Deputy Chairmen of the Board of Directors referred to in section 5(2)(b);

“Fund” means the Tabung Amanah Pekerja Fund established under section 11;

“Managing Director” means the Managing Director appointed under section 5(3);

“member” means a member of the Board of Directors referred to in section 5(2);

“Minister” means the Minister of Finance.

PART II

TABUNG AMANAH PEKERJA BOARD

Establishment of Board

3. There is hereby established a board known as the Tabung Amanah Pekerja Board which shall be a body corporate with perpetual succession and a common seal and shall, by that name, be capable of —

- (a) suing and being sued;
- (b) acquiring, owning, holding, developing or disposing of property, both movable and immovable; and
- (c) doing all such other acts or things as a body corporate may lawfully do.

Common seal

4. (1) The Board shall have a common seal and such seal may be changed, altered or made anew as the Board thinks fit.

(2) All deeds and other documents requiring the seal of the Board shall be sealed with the common seal of the Board.

(3) All instruments to which the common seal is affixed shall be signed by any two members generally or specially authorised by the Board for that purpose.

(4) The Board may, by resolution or otherwise in writing, appoint an officer of the Board or any other person either generally or in any particular case to execute or sign on behalf of the Board any agreement or other instrument not under seal in relation to any matter within the powers of the Board.

(5) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to any document and shall presume that it was duly affixed.

Board of Directors

5. (1) There shall be a Board of Directors which shall be responsible for the policy and general administration of the affairs and business of the Board.

(2) The Board of Directors shall consist of the following members —

- (a) a Chairman;
- (b) not more than two Deputy Chairmen;

(c) such number of other directors, of whom not less than five shall be representatives of the Government,

as His Majesty the Sultan and Yang Di-Pertuan may appoint.

(3) His Majesty the Sultan and Yang Di-Pertuan shall appoint one of the directors to be the Managing Director.

(4) The First Schedule shall have effect with respect to the Board, its members and proceedings.

Managing Director

6. (1) The Managing Director shall be entrusted with the day to day administration of the Board and the Fund, preparation of programmes, schemes or projects for the consideration of the Board and the implementation of decisions of the Board.

(2) The Managing Director shall be an employee of the Board on such terms and conditions of service as His Majesty the Sultan and Yang Di-Pertuan may decide.

(3) The Managing Director shall be answerable to the Board of Directors for his acts and decisions.

Directions of Minister

7. (1) The Minister may give the Board such directions in writing, not inconsistent with the provisions of this Order, as he thinks fit, as to exercise of any power or the performance of any functions conferred or imposed on it by this Order, and the Board shall give effect to any such direction.

(2) The Board shall furnish the Minister with such information with respect to its property, the exercise of its powers and performance of its functions as he may require.

Delegation of powers

8. (1) The Board of Directors may, in respect of a specified matter or class of matter, in writing, delegate to any person or committee of the Board of Directors the exercise of any power or the performance of any function conferred or imposed on it by this Order, except for the power of delegation conferred by this section.

(2) A delegation under subsection (1) may be —

(a) subject to such conditions as may be determined by the Board of Directors in the instrument of delegation; and

(b) revoked or varied by a subsequent order made in the same manner.

(3) The Board of Directors may continue to exercise any power and perform any function conferred or imposed on it by this Order notwithstanding the delegation by it of such power or function.

Committees

9. (1) The Board of Directors may, in its discretion, appoint committees consisting of persons who are members or otherwise, for purposes which, in the opinion of the Board of Directors, would be better regulated and managed by such committees.

(2) The Board of Directors may define or vary the terms of reference of the committees.

(3) Subject to this Order and to the control of the Board of Directors, each committee may regulate its procedure in such manner as the committee thinks fit.

Employment of staff

10. The Board may appoint and employ for such terms of office and on such conditions of service as the Board may determine such other officers, employees and consultants as may be necessary for the effective performance of its functions.

PART III

FUNCTIONS AND POWERS

Establishment of Fund

11. For the purposes of this Order, there shall be established a fund known as Tabung Amanah Pekerja Fund into which shall be paid all contributions to the trusts established under the written laws set out in the Second Schedule and out of which shall be met all payments authorised to be paid under those written laws.

Functions and duties of Board

12. (1) The Board shall be the trustee of the Fund and all monies of the Fund may be —

(a) deposited in a bank or banks approved by the Board;

(b) invested in any of the investments authorised by the Government for the investment of trust money and the Board shall have power to convert the same into cash; or

(c) used for the purchase of any property and for the construction of buildings for the purposes of the Board and to let the buildings or part thereof for the purposes of deriving income therefrom and the Board may dispose of all or any part of those property and buildings.

(2) The Board shall be charged with the general administration of the written laws set out in the Second Schedule and the exercise of the functions and duties imposed on the Board by those written laws.

(3) The Board may authorise any person to assist the Board in the exercise of its functions and duties under the written laws set out in the Second Schedule, either generally or in a particular case.

Powers of Board

13. (1) Subject to this Order, the Board may carry on such activities as appear to the Board to be advantageous, necessary or convenient for it to carry on, for or in connection with, the discharge of its functions under this Order.

(2) The Board shall, in addition to its powers and functions set out in this Order, exercise all the powers conferred or imposed on the Board under the written laws set out in the Second Schedule.

PART IV

FINANCIAL PROVISIONS

Financial year

14. The financial year of the Fund shall be determined by the Board.

Accounts and financial statements

15. (1) The Board shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Board and over the expenditure incurred by it.

(2) The Board shall, as soon as practicable after the close of each financial year, cause financial statements in respect of that year to be prepared and submitted to the auditor of the Board.

Expenses

16. All expenses incurred by the Board including the cost of auditing the accounts of the trusts established under the written laws set out in the Second Schedule shall be defrayed out of the monies of the Fund.

Audit

17. (1) The accounts of the Fund shall be audited at least once 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 the Board:

Provided that where the accounts of the Fund have been audited by a person appointed under subsection (1)(b), the report submitted under that subsection may be verified by the Auditor General before it is submitted to the Board.

(2) The auditor shall in his report state —

(a) whether the financial statements show fairly the financial transactions and the state of affairs of the Board;

(b) whether proper accounting and other records have been kept, including records of all assets of the Board whether purchased or otherwise;

(c) whether receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the Board during the financial year were in accordance with the provisions of this Order; and

(d) such other matter arising from the audit as he considers necessary.

Powers of auditor

18. (1) The auditor or any person authorised by him shall be entitled at all reasonable time to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the Board.

(2) The auditor or a person authorised by him may make copies of, or make extracts from, any such accounting and other records.

(3) The auditor or any person authorised by him may require any person to furnish him with such information which that person possesses or has access to as the auditor or any duly authorised person considers necessary for the purposes of the functions of the auditor under this Order.

Annual report

19. The Board shall, as soon as practicable after the end of each financial year, submit to the Minister an annual report on the activities of the Board during the

preceding financial year, and the Minister shall cause a copy of every such annual report to be presented to His Majesty the Sultan and Yang Di-Pertuan.

PART V

GENERAL

Protection from personal liability

20. No suit or other legal proceedings shall lie against any member, officer or employee of the Board or any other person acting under the direction of the Board which is done in good faith or intended to be done in execution or purported execution of this Order or of the written laws set out in the Second Schedule.

Public servants

21. All members, officers and employees of the Board shall be deemed to be public servants for the purposes of the Penal Code (Chapter 22).

Amendment of Schedules

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

Regulations

23. (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 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.

Transfer of functions, property etc.

24. The provisions of the Third Schedule shall have effect for the purpose of the transfer to the Board of functions, property and for other transitional purposes specified in the Third Schedule.

Transitional

25. On the date of commencement of this Order —

(a) the Lembaga Tabung Amanah Pekerja established under the Tabung Amanah Pekerja Act (Chapter 167) shall be known as the Tabung Amanah Pekerja Board established under section 3;

(b) the Tabung Amanah Pekerja established under the Tabung Amanah Pekerja Act (Chapter 167) shall be known as the Tabung Amanah Pekerja Fund established under section 11.

Savings

26. (1) The Managing Director appointed under section 3A of the Tabung Amanah Pekerja Act (Chapter 167) immediately before the commencement of this Order shall be deemed for the purposes of this Order to have been appointed as the Managing Director on the commencement of this Order.

(2) The members of the Lembaga Tabung Amanah Pekerja appointed under section 4(2) of the Tabung Amanah Pekerja Act (Chapter 167) immediately before the commencement of this Order shall be deemed for the purposes of this Order to have been appointed to be members of the Tabung Amanah Pekerja Board on the commencement of this Order.

Consequential and related amendments to other written laws

27. The provisions of the other written laws specified in the first column of the Fourth Schedule are amended in the manner set out in second column thereof.

FIRST SCHEDULE (section 5(4))

CONSTITUTION AND PROCEEDINGS OF BOARD OF DIRECTORS

Terms and conditions of office

1. The appointment of members including the Chairman and Deputy Chairmen shall be liable to be revoked at any time by His Majesty the Sultan and Yang Di-Pertuan but they shall, unless their appointment is so revoked or they resign in the meantime, hold office for a term of 2 years or for such shorter period as His Majesty the Sultan and Yang Di-Pertuan may in each case determine:

Provided that the term of 2 years does not apply to the Managing Director.

Times, places and *quorum* of meetings

2. (1) The Board of Directors shall meet at least once a year at such time and place as the Chairman may determine.

(2) At every meeting of the Board of Directors, the *quorum* of the Board of Directors shall be five.

(3) A decision at a meeting of the Board of Directors shall be adopted by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairman of the meeting shall have a casting vote.

(4) The Board of Directors may invite or request any person, who is not a member, to attend a meeting of the Board of Directors for the purpose of giving advice to the Board on any matter.

Presiding at meetings of Board of Directors

3. (1) The Chairman shall preside at all meetings of the Board of Directors at which he is present.

(2) The Chairman or in his absence, one of the Deputy Chairmen, to be appointed by him, shall preside at meetings of the Board of Directors.

Conduct of business

4. (1) The Board of Directors may conduct its business and regulate its own procedure, including its meetings, in the way it considers appropriate.

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

Disqualification from membership

5. No person shall be eligible to be appointed or to remain a member if he —

(a) is of unsound mind or otherwise incapable of performing his duties;

(b) has been convicted of any offence involving fraud, dishonesty or moral turpitude; or

(c) is an undischarged bankrupt or has made an arrangement with his creditors.

Vacation of office

6. The seat of a member shall become vacant —

(a) on his death;

(b) if he becomes in any manner disqualified for membership of the Board of Directors;

(c) if he resigns his seat; or

(d) if his appointment is revoked.

SECOND SCHEDULE

(sections 11, 12(2) and (3), 13(2), 16 and 20)

LIST OF WRITTEN LAWS

Employee Trust Act (Chapter 167)

Supplemental Contributory Pensions Trust Order, 2009 (S 58/2009)

THIRD SCHEDULE

(section 24)

TRANSFER OF FUNCTIONS, PROPERTY ETC. TO BOARD

Dissolution of Supplemental Contributory Pensions Board

1. On 1st April 2014, the Supplemental Contributory Pensions Board shall be dissolved.

Power of Board to exercise functions and powers under S 58/2009

2. (1) On 1st April 2014, the Board shall, in addition to its powers, duties and functions set out in this Act, exercise all the powers and perform all the functions and duties conferred or imposed on the Supplemental Contributory Pensions Board under the Supplemental Contributory Pensions Order, 2009 (S 58/2009).

(2) Any decision made by the Supplemental Contributory Pensions Board or any other person authorised under the Supplemental Contributory Pensions Order, 2009 (S 58/2009) before 1st April 2014 shall be deemed to be a decision by the Board.

(3) Any permission, consent, approval or authorisation granted by the Supplemental Contributory Pensions Board or any other person authorised under the Supplemental Contributory Pensions Order, 2009 (S 58/2009) before 1st April 2014 shall, so far as it is not inconsistent with any provision of this Order, be deemed to be a permission, consent, approval or authorisation granted by the Board.

(4) Any certificate, notice, order, direction or declaration issued or made by the Supplemental Contributory Pensions Board or any other person authorised under the Supplemental Contributory Pensions Order, 2009 (S 58/2009) before 1st April 2014 shall be deemed to be a certificate, notice, order, direction or declaration issued or made by the Board or an officer of the Board.

(5) Where in any document made before 1st April 2014 in connection with or related to the Supplemental Contributory Pensions Order, 2009 (S 58/2009), any reference is made to the Supplemental Contributory Pensions Board, such

reference shall, as from 1st April 2014, be read as the Tabung Amanah Pekerja Board.

Transfer of property, assets and liabilities

3. (1) On 1st April 2014, all property vested in the Supplemental Contributory Pensions Board and all assets, rights, interests, privileges, liabilities and obligations of the Supplemental Contributory Pensions Board shall be transferred to and vested in the Board without further assurance.

(2) If any question arises as to whether any particular property, asset, right, interest, privilege, liability or obligation has been transferred to or vested in the Board under subparagraph (1), a certificate under the hand of the Minister shall be conclusive evidence that the property, asset, right, interest, privilege, liability or obligation was or was not so transferred or vested.

Transfer of employees

4. (1) On 1st April 2014, all persons employed immediately before that date by the Supplemental Contributory Pensions Board shall be transferred to the service of the Board on terms no less favourable than those enjoyed by them immediately prior to their transfer.

(2) Until such time as the scheme and terms and conditions of service are drawn up by the Board, the scheme and terms and conditions of service in the Supplemental Contributory Pensions Board shall continue to apply to every person transferred to the service of the Board under subparagraph (1) as if he were still in the service of the Supplemental Contributory Pensions Board.

Existing contracts, agreements etc.

5. All contracts, deeds, bonds, agreements, instruments and working arrangements, subsisting immediately before 1st April 2014 to which the Supplemental Contributory Pensions Board or any person acting on its behalf, is a party and relating to –

(a) any property, assets, rights, interests, privileges, liabilities or obligations transferred to or vested in the Board under paragraph 3(1); or

(b) any employee of the Supplemental Contributory Pensions Board transferred to the service of the Board under paragraph 4(1),

shall continue in force on and after that date and shall be enforceable by or against the Board as if, instead of the Supplemental Contributory Pensions Board or a person acting on behalf of the Supplemental Contributory Pensions Board, the Board had been named therein or had been a party thereto.

Pending proceedings

6. Any proceedings or cause of action pending or existing immediately before 1st April 2014 by or against the Supplemental Contributory Pensions Board or any person acting on behalf of the Supplemental Contributory Pensions Board may be continued and shall be enforced by or against the Board.

FOURTH SCHEDULE

(section 27)

CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER WRITTEN LAWS

FIRST COLUMN	SECOND COLUMN
1. Tabung Amanah Pekerja Act (Chapter 167)	
Long title	Delete “and incorporate the Lembaga Tabung Amanah Pekerja,” and substitute with “the Employee Trust”.
Section 1	Delete “Tabung Amanah Pekerja” and substitute with “Employee Trust”.
Section 2	Delete the definitions of “approved fund”, “Chairman”, “Deputy Chairmen” and “Managing Director”. Delete the definition of “Board” and substitute with the following new definition – “ “Board” means the Tabung Amanah Pekerja Board established under section 3 of the Tabung Amanah Pekerja Board Order, 2015;”.
	Delete the definition of “Chief Executive”.
	Delete the definition of “Fund” and substitute with the following new definition – “ “Fund” means the Tabung Amanah Pekerja Fund established under section 11 of the Tabung Amanah Pekerja Board Order, 2015;”.
	Delete the definition of “members of the Fund” or “members” and substitute with the following new definition –

FOURTH SCHEDULE – Continued

“ “member” means a member of the Trust to whose credit any amount is standing in the Trust;”.

Insert the following definition immediately after the definition of “ordinary account” –

“Trust” means the Employee Trust established under section 6(1);”.

Delete the definition of “wages” and substitute with the following new definition –

“ “wages” means the remuneration in money due to an employee in respect of his employment whether agreed to be paid monthly, weekly, daily or otherwise and includes any bonus, commission or allowance payable by the employer whether such bonus, commission or allowance is payable under his contract of service, apprenticeship or agreement or otherwise, but does not include –

- (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any amenity or services;
- (b) any contribution paid by the employer on his own account to any pension fund or provident fund;
- (c) any travelling allowance or the value of any travelling concession;
- (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) any gratuity payable on discharge or retirement;
- (f) service charge;
- (g) overtime benefit;
- (h) retrenchment, lay-off or termination benefits; or

FOURTH SCHEDULE – *Continued*

	(i) such other remuneration or payment as the Minister may, by notification published in the <i>Gazette</i> , specify.”.
Section 3	Repeal section 3.
Section 3A	Repeal section 3A.
Section 4	Repeal section 4.
Section 5A	Repeal section 5A.
Section 5D	Delete “Chief Executive” and substitute with “Managing Director” wherever they appear in the section.
Section 6 (marginal note)	Delete “Tabung Amanah Pekerja” and substitute with “Employee Trust”.
Section 6(1)	Delete “fund to be called the Tabung Amanah Pekerja (Employee Trust Fund)” and substitute with “trust to be known as the Employee Trust”.
Section 6(2)	Delete subsection (2).
Section 6(3)	Delete subsection (3).
Section 6(5)	Delete “Fund” from the second line and substitute with “Trust”.
Section 12	Repeal section 12.
Section 13	Repeal section 13.
Section 14	Delete “Fund” wherever it appears in the section (except in the marginal note and in the last line of section 14(1)) and substitute with “Trust”.
Section 14(1)	Delete “may be prescribed” and substitute with “the Board may determine”.
Section 31B(1)	Delete “fund” from the last line and substitute with “Trust”.
Section 32A	Repeal section 32A.
Section 34	Repeal section 34.
Section 35	Repeal section 35.
Section 36	Delete “Fund” from the second last line and substitute with “Trust”.

FOURTH SCHEDULE – *Continued*

- | | |
|---|--|
| Section 38(2) | Insert the following new paragraph immediately after paragraph (j) –
“(ja) to prescribe fees;”. |
| All applicable sections | Delete “Fund” wherever it appears in the Act (except references to “Consolidated Fund”, “pension fund” and “provident fund”) and substitute with “Trust”.

Delete “member of the Fund” wherever they appear in the Act and substitute with “member”. |
| 2. Tabung Amanah Pekerja (Definition of Employees) Order | |
| Schedule | Delete item (c). |
| 3. Tabung Amanah Pekerja Rules, 1999 (S 10/1999) | |
| Rule 10(2) | Delete “of Tabung Amanah Pekerja” from the last two lines. |
| Rule 24 | Delete “Fund” from the third and fourth lines and substitute with “Trust”. |
| 4. Supplemental Contributory Pensions Order, 2009 (S 58/2009) | |
| Section 1(1) | Insert “Trust” immediately after “Pensions”. |
| Section 1(2) | Delete “Fund” from the second last line. |
| Section 2 | Delete the definition of “Board” and substitute with the following new definition –

“Board” means the Tabung Amanah Pekerja Board established under section 3 of the Tabung Amanah Pekerja Board Order, 2016;”. |
| | Delete the definition of “Fund” and substitute with the following new definition –

“ “Fund” means the Tabung Amanah Pekerja Fund established under section 11 of the Tabung Amanah Pekerja Board Order, 2016;”. |
| | Delete the definition of “members of the Fund” and substitute with the following new definition – |

FOURTH SCHEDULE – *Continued*

	<p>“ “member” means a member of the Trust to whose credit any amount is standing in the Trust and includes a self-employed person who contributes to the Trust voluntarily under section 9;”.</p>
	<p>Delete the definition of “SCP member”.</p>
Section 3A	<p>Repeal section 3A.</p>
Section 5	<p>Repeal section 5.</p>
Section 7 (section heading)	<p>Delete “Fund”.</p>
Section 7(1)	<p>Delete “fund to be called the Supplemental Contributory Pensions Trust Fund” and substitute with “trust to be known as the Supplemental Contributory Pensions Trust”.</p>
Section 7(2)	<p>Delete subsection (2).</p>
Section 7(3)	<p>Delete subsection (3).</p>
Section 7(10)	<p>Delete “Fund” from first line and substitute with “Trust”.</p>
Section 12	<p>Delete “9” from the second line and substitute with “8”.</p>
Section 14	<p>Repeal section 14.</p>
Section 15	<p>Repeal section 15.</p>
Section 16	<p>Delete “Fund” wherever it appears in the section (except in the section heading and in the second line of section 16(1)) and substitute with “Trust”.</p>
Section 16(1)	<p>Delete “may be prescribed by the Board” and substitute with “as the Board may determine”.</p>
All applicable sections	<p>Delete “Fund” wherever it appears in the Order (except references to “survivorship protection fund”, “protection fund”, “pension fund”, “provident fund” and “Consolidated Fund”) and substitute with “Trust”.</p>

