

LAWS OF BRUNEI

CHAPTER 137

BRUNEI INVESTMENT AGENCY

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CHAPTER 137
BRUNEI INVESTMENT AGENCY
ARRANGEMENT OF SECTIONS

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BRUNEI INVESTMENT AGENCY ACT

An Act to establish a body corporate to be called the Brunei Investment Agency, the principal objects of which shall be the holding and management of the General Reserve Fund of the Government and all external assets of the Government, to provide the Government with money management services and to carry out such other objects as His Majesty the Sultan and Yang Di-Pertuan may specify

Commencement: 1st July 1983

PART I

PRELIMINARY

Citation.

1. This Act may be cited as the Brunei Investment Agency Act.

Interpretation.

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

“Agency” means the Brunei Investment Agency established under section 3;

“bank” means a bank licensed under the Banking Order, 2006 (S 45/2006) or the Islamic Banking Act (Chapter 168);

“Board” means the Board of Directors of the Agency;

“director” means a director appointed under section 5(2) and the Chairman of the Board and the Deputy Chairman;

“General Reserve Fund of the Government and all external assets of the Government” means the moneys as defined in section 7(3A) of the Constitution (Financial Procedure) Order (Const. III);

[S 15/2008]

“Managing Director” means a director appointed under section 7(1).

PART II

ESTABLISHMENT AND ADMINISTRATION OF AGENCY

Establishment of Agency.

3. (1) There shall be established an agency to be called the “Brunei Investment Agency” which shall be a body corporate and shall have perpetual succession and may sue and be sued in its own name.

(2) The Agency shall have a common seal and such seal may be broken, changed, altered and made anew as to the Agency seems fit, and until a seal is provided under this section, a stamp bearing the inscription “The Brunei Investment Agency” may be used as the common seal.

(3) All deeds, documents and other instruments requiring the seal of the Agency shall be sealed with the common seal of the Agency by the authority of the Agency in the presence of the Managing Director and of some other person duly authorised by the Agency to act in that behalf and shall be signed by the Managing Director and by such duly authorised person, and the signing shall be sufficient evidence that the common seal of the Agency has been duly and properly affixed and that the seal is the lawful common seal of the Agency.

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

Principal objects.

4. The principal objects of the Agency shall be —

(a) to hold and manage in Brunei Darussalam and overseas the General Reserve Fund of the Government and all external assets of the Government;

(b) to provide the Government with money management services in respect of such sums as the Government may from time to time remit and in respect of interest, dividend and any other payments or corporate actions arising from the investment of such sums;

(ba) to take all steps and incur any expenditure that may be required in order to recover or protect assets and property that, are or may be, or are or may be derived (directly or indirectly and in whole or in part) from, the property of the Government or the Agency and to hold, manage and deal with the assets and property on such terms as the Agency (acting in its own name or by the use of subsidiaries or agents) in its absolute discretion shall see fit;

(c) to carry out such other objects as His Majesty the Sultan and Yang Di-Pertuan may by order published in the *Gazette* specify.

Board of Directors.

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

(2) The Board shall consist of a Chairman, Deputy Chairman and such number of other directors as His Majesty the Sultan and Yang Di-Pertuan may appoint.

[S 78/2008]

(2A) If the Chairman is unable to exercise his functions under this Act owing to illness, absence from Brunei Darussalam or for any other cause whatsoever, his functions shall be exercised by the Deputy Chairman.

[S 78/2008]

(3) The Board may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, invite any person as it thinks fit to attend a meeting of the Board for the purpose of giving advice to the Board on any matter.

Appointment of directors.

6. (1) The directors so appointed —

(a) shall not act as delegates on the Board from any commercial, financial, agricultural, industrial or other interests with which they may be connected;

(b) shall hold office for a term not exceeding 3 years and shall be eligible for re-appointment;

(c) may be paid by the Agency out of the funds of the Agency such remuneration and allowances as may be determined by His Majesty the Sultan and Yang Di-Pertuan.

(2) The provisions of subsection (1)(b) does not apply to a director who is appointed Managing Director under section 7.

Appointment of Managing Director.

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

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

(3) The Managing Director shall be entrusted with the day-to-day administration of the Agency, and may, subject to this Act, make decisions and exercise all powers and do all acts which may be exercised or done by the Agency.

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

(5) In the event of the absence or inability to act of the Managing Director, His Majesty the Sultan and Yang Di-Pertuan may appoint a director to discharge his duties during the period of such absence or inability.

Disqualification of directors. [S 64/2004]

8. (1) His Majesty the Sultan and Yang Di-Pertuan may terminate the appointment of any director or a Managing Director at any time without furnishing any reasons for such termination.

(2) Any director or Managing Director whose appointment has been terminated under subsection (1) shall not be entitled, unless His Majesty the Sultan and Yang Di-Pertuan otherwise decides, to any damages or other compensation, and there shall be no claim, appeal or judicial review in any court against such termination.

Vacancies in office of director.

9. If any director dies, resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by His Majesty the Sultan and Yang Di-Pertuan for the unexpired period of the term of office of the director in whose place he is appointed.

Meeting and decisions of Board.

10. (1) The Chairman of the Board shall summon meetings as often as may be required but not less frequently than once in 3 months.

(2) At every meeting of the Board a *quorum* shall consist of three directors, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that in the case of an equality of votes, the Chairman shall have a casting vote.

(3) The Chairman shall cause all decisions of the Board and the minutes of meetings to be sent to His Majesty the Sultan and Yang Di-Pertuan as soon as practicable.

[S 64/2004]

Director's interest in contract to be made known.

11. (1) A director who is directly or indirectly interested in a contract or investment made or disposed of, or proposed to be made or disposed of, by the Agency shall disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Board and, after the disclosure, the director —

(a) shall not take part in any deliberation or decision of the Board with respect to that contract; and

(b) shall be disregarded for the purpose of constituting a *quorum* of the Board for any such deliberation or decision.

(3) No act or proceedings of the Board shall be questioned by any person who is not a member of the Board on the ground that a director has contravened the provisions of this section.

Preservation of secrecy.

12. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any written law, no director, officer or employee of the Agency shall disclose to any person any information relating to the affairs of the Agency or any person which he has acquired in the performance of his duties or the exercise of his functions.

(2) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for 3 years.

Remuneration not to be related to profits.

13. No salary, fee, wage or other remuneration shall be computed by reference to the results of any money management services undertaken by or on behalf of the Agency pursuant to this Act.

Public servants.

14. (1) The directors, including the Managing Director, and the officers and employees of the Agency of every description shall be deemed to be public servants within the meaning of the Penal Code (Chapter 22).

(2) The officers and employees of the Agency shall be deemed to hold office in the public service for the purposes of the Pensions Act (Chapter 38) and shall be eligible for the allowances, pensions and gratuities provided thereunder.

PART III

PROVISIONS RELATING TO STAFF, TRANSFER OF FUNCTIONS, EMPLOYEES AND ASSETS ETC.

List of posts and appointment of employees.

15. (1) The Agency may approve a list of posts (excluding the directors) which it thinks necessary for the purposes of this Act and may add to or amend this list.

(2) Subject to the provisions of this section —

(a) appointments and promotions to all posts shall be made by the Agency; and

(b) the termination of appointment, dismissal and disciplinary control of the employees of the Agency shall be vested in the Agency.

(3) In the discharge of its functions under subsection (2), the Agency shall, if directed by His Majesty the Sultan and Yang Di-Pertuan, in any particular case or generally, consult with the Public Service Commission before exercising any of its powers under subsection (2).

(4) Notwithstanding the provisions of this section, the Agency may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint persons temporarily for a period not exceeding one year to posts in the list of posts for the time being in force.

[S 64/2004]

(5) The Agency may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules, not inconsistent with the provisions of this Act or of any other written law, for the appointment, promotion, disciplinary control and terms and conditions of service of all persons employed by the Agency.

(6) Without prejudice to the generality of subsection (5), the Agency shall, with the approval of His Majesty the Sultan and Yang Di-Pertuan, prescribe the rates of remuneration payable to persons employed by the Agency and no person so employed shall be paid otherwise than in accordance with such rates.

[S 64/2004]

Transfer of assets and liabilities to Agency.

16. (1) Upon the coming into operation of this Act, such movable property, assets, rights, interests and privileges as constitute any part of the General Reserve Fund, together with any debts, liabilities or obligations connected therewith or appertaining thereto shall be deemed to have been transferred to and vested in the Agency without the requirement of any further action.

(2) The Minister of Finance shall have power to do all acts or things that he considers necessary or expedient to give effect to the provisions of subsection (1).

(3) If the question arises as to whether —

(a) any of the functions, duties and powers; or

(b) any movable property, assets, rights, interests, privileges, debts, liabilities and obligations,

have been transferred to or vested in the Agency under subsection (1), a certificate executed by the Minister of Finance shall be conclusive evidence of such transfer or vesting.

PART IV

POWERS, DUTIES AND FUNCTIONS OF AGENCY

Powers, duties and functions of Agency.

17. (1) The Agency may, for the purpose of carrying out the provisions of this Act, and subject to the approval of His Majesty the Sultan and Yang Di-Pertuan, exercise and discharge the following powers, duties and functions —

[S 64/2004]

(a) open and operate securities and cash clearing accounts and place deposits on such terms as it may decide;

(b) purchase, acquire by exchange or other means, hold, sell or otherwise dispose of various types of investment assets as shall be specifically authorised by this Act or by His Majesty the Sultan and Yang Di-Pertuan;

[S 64/2004]

(c) borrow money, establish credits and give guarantees in any currency inside and outside Brunei Darussalam on such terms and conditions as it may deem fit;

(d) open and operate accounts with central banks outside Brunei Darussalam;

(e) purchase, acquire or develop, inside or outside Brunei Darussalam facilities for accounting for and reporting on the assets and liabilities of the General Reserve Fund and any other assets or liabilities vested in the Agency;

(f) enter into contracts with third parties inside or outside Brunei Darussalam for the purposes set forth in section 20;

(g) underwrite loans and securities in which it may invest;

(h) undertake the issue and management of loans publicly issued by the Government or by any public authority;

(i) pay the expenses of the Agency, including specifically any payments contemplated by sections 6(1)(c), 7(2), 15(6) and 20(b) out of the assets transferred to and vested in the Agency pursuant to section 16(1); and

(j) do generally all such things as may be commonly done by investment managers and are not inconsistent with the exercise of its powers or the discharge of its duties under this Act.

(2) After the coming into operation of this Act, there shall be vested in the Agency such other functions, duties and powers as His Majesty the Sultan and Yang Di-Pertuan may, from time to time, by notification in the *Gazette*, specify.

Investment of funds.

18. Investments which the Agency may hold, as provided in section 17(1)(b) shall include —

(a) gold coin or bullion and other precious metals;

(b) real property and interests therein;

(c) notes, coin, bank balances and money at call in such country or countries as may be approved by the Board;

(d) treasury bills of such government or governments as may be approved by the Board;

(e) securities of, or guarantees by, such government or governments or international financial institutions as may be approved by the Board;

(f) such other classes of investments assets as may be authorised by the Board from time to time and set forth in a written investment guideline to the Agency; and

(g) such other specific investments not otherwise authorised under this section as may be authorised by His Majesty the Sultan and Yang Di-Pertuan.

[S 64/2004]

Agency as financial agent of Government and manager of its external assets.

19. (1) The Agency shall act as a financial agent of the Government.

(2) Whenever the Agency receives and disburses Government moneys, it shall keep account thereof.

(3) The Agency may act generally as representative for the Government on such terms and conditions as may be approved by His Majesty the Sultan and Yang Di-Pertuan, where the Agency can do so appropriately and consistently with the provisions of this Act and with its duties and functions.

[S 64/2004]

Representatives.

20. In the exercise of its powers and the performance of its functions under this Act, the Agency may, with the approval of His Majesty the Sultan and Yang Di-Pertuan —

[S 64/2004]

(a) establish offices and representatives at such places outside Brunei Darussalam as it thinks fit;

(b) arrange or contract with and authorise a person or persons, which may be individuals or corporate entities, to act as agent or representative of the Agency outside Brunei Darussalam, including the performance of investment management, legal, auditing and measurement of investment performance activities on behalf of the Agency, and in conjunction with the performance of such activities the agents or representatives may be paid fees for services rendered and may be reimbursed by the Agency for out-of-pocket expenses.

PART V

GENERAL

Agency's financial year.

21. The financial year of the Agency shall begin on the 1st day of January and end on the 31st day of December of each year except that for the year 1983 the financial year shall begin on the date of the establishment of the Agency and shall end on the 31st day of December 1983.

Audit. [S 14/2003]

22. The accounts of the Agency 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 of the Agency have been audited by a person appointed under paragraph (b), they may be verified by the Auditor General before a copy thereof is submitted to His Majesty the Sultan and Yang Di-Pertuan in Council pursuant to section 23.

Preparation and publication of annual account and annual report.

23. The Agency shall, within 6 months from the close of its financial year, submit to His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam in Council —

(a) a copy of the annual accounts; and

(b) a report by the Board on the working of the Agency throughout the year.

His Majesty the Sultan and Yang Di-Pertuan may require accounts, statements or information. [S 64/2004]

23A. His Majesty the Sultan and Yang Di-Pertuan may, by notice in writing, require the Agency to submit to His Majesty the Sultan and Yang Di-Pertuan, in respect of any specified period, such accounts, statements or information as His Majesty the Sultan and Yang Di-Pertuan may think fit.

Power to appoint attorney.

24. The Agency may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by instrument under its common seal, appoint a person (whether in Brunei Darussalam or in a place outside Brunei Darussalam) to be its attorney, and the person so appointed may, subject to the instrument, do any act or execute any power or function which he is authorised by the instrument to do or execute.

[S 64/2004]

Validity of act and transactions of Agency.

25. The validity of an act or transaction of the Agency shall not be called in question in any court, or be the subject of any judicial review, on the ground that any provision of this Act has not been complied with.

[S 64/2004]

Guarantee by Government.

26. The Government shall be responsible for the payment of all moneys due by the Agency but nothing in this section authorises a creditor or other person claiming against the Agency to sue the Government in respect of his claim.

Fiat of Attorney General.

27. No prosecution in respect of any offence against this Act shall be instituted without the consent in writing of the Attorney General.

Jurisdiction.

28. Notwithstanding the provisions of any other written law, a Court of a Magistrate has jurisdiction to try all offences under this Act and to impose the full penalty prescribed therefor.

Power of Agency to make regulations.

29. The Agency may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the better carrying out of the objects and purposes of this Act.