

No. S 79

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

BRUNEI NATIONAL ENERGY RESEARCH INSTITUTE ORDER, 2011

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

BRUNEI NATIONAL ENERGY RESEARCH INSTITUTE ORDER, 2011

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 Brunei National Energy Research Institute Order, 2011 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 establishment of the Brunei National Energy Research Institute and for matters connected therewith".

Interpretation.

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

"Board" means the Board established by section 5;

"chief executive officer" means the chief executive officer of the Institute appointed under section 10;

"energy" means oil, gas, renewable energy, electricity and includes energy efficiency and conservation;

"Institute" means the Brunei National Energy Research Institute established by section 3;

"member" means member of the Board appointed under section 5 and includes the chairman;

"Minister" means the Minister of Energy at the Office of the Prime Minister;

"Permanent Secretary" means the Permanent Secretary at the Office of the Prime Minister.

PART II

ESTABLISHMENT OF INSTITUTE

Establishment of Institute.

3. There is hereby established an Institute called the Brunei National Energy Research Institute 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 Institute shall have a common seal and the seal may, from time to time, be broken, altered or made anew as the Institute thinks fit.

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

PART III

CONSTITUTION OF BOARD

Membership of Board.

5. (1) There shall be a Board which shall consist of —

(a) a chairman;

(b) a deputy chairman; and

(c) not more than 15 other members,

all of whom shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

(2) The Board shall be the executive body of the Institute, which may exercise all the powers conferred on the Institute under this Order.

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

Appointment of committees and delegation of powers.

6. (1) The Board may appoint from among its own members or other persons who are not members such number of committees as it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Board, would be better regulated and managed by means of such committees.

(2) The Board may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee or to any member, officer or employee of the Board, any of the functions or powers of the Board under this Order or any other written law, except the power of delegation conferred by this section.

(3) No delegation under this section shall prevent the performance or exercise of any function or power by the Board.

Secretary of Board.

7. The chief executive officer shall be the secretary to the Board.

PART IV

FUNCTIONS, DUTIES AND POWERS OF INSTITUTE

Functions of Institute.

8. (1) The functions of the Institute shall include the following —

(a) to create and develop a world class premier energy research and development capabilities in Brunei Darussalam;

(b) to conduct research and development in all fields of energy including energy technology development and verification;

(c) to initiate and undertake or enter into contractual testing, consultancy, research or development projects for the purpose of its functions;

(d) to promote and commercialise and enable deployment of research products and innovative solutions into the local and international marketplace in the field of energy;

(e) to provide financial assistance for appropriate and approved energy research and development activities;

(f) to promote collaborative links between governments, businesses, industries, universities and societies in identifying and exploiting key *niches* for developments and progress in energy;

(g) to encourage a multi-disciplinary and holistic approach to problem-solving in the field of energy;

(h) to encourage a culture that is energy-conscious and committed towards energy security and environmental sustainability;

(i) to disseminate, share and promote research findings through published papers, seminars and conferences, in the field of energy;

(j) to promote research and development among youths, and to develop public awareness of the importance of energy research and development in Brunei Darussalam; and

(k) to do all such things as may be necessary, incidental or conducive to the attainment of all or any of its functions and powers.

(2) In addition to the functions specified in subsection (1), the Minister may assign other functions to the Institute and the Institute shall be deemed to be fulfilling the purposes of this Order.

(3) In carrying out its functions, the Institute shall –

(a) have regard to the needs of Brunei Darussalam and its resources; and

(b) promote developments, commercial applications that increase economic growth, productivity and employment opportunities in Brunei Darussalam.

Powers of Institute.

9. (1) Subject to this Order, the Institute may carry on such activities as appear to the Institute to be advantageous, necessary or convenient for it to carry on for or in connection with the discharge of its functions and duties under this Order or any other written law, and in particular, the Institute may exercise any of the powers specified in the Second Schedule.

(2) This section shall not be construed as limiting any power of the Institute conferred by or under any other written law.

PART V

PROVISIONS RELATING TO STAFF

Appointment of chief executive officer and other employees etc.

10. (1) The Board shall, with the approval of the Minister, appoint a chief executive officer on such terms and conditions as the Board may determine.

(2) The chief executive officer shall be the chief administrative and academic officer of the Institute and shall be responsible for —

(a) the proper administration and management of the Institute in accordance with the policy of the Institute;

(b) the collaboration, communication and *liaison* with the Government and other industry sectors;

(c) the academic and research management of the Institute in accordance with the policy of the Institute; and

(d) the overall discipline of the fellows, officers and employees of the Institute,

and for those purposes the chief executive officer shall, subject to this Order, have all such powers as are necessary or advantageous and proper.

(3) If the chief executive officer is temporarily absent from Brunei Darussalam, or is temporarily unable to perform his duties, by reason of illness or otherwise, another person may be appointed by the Minister to act in place of the chief executive officer during any such period of absence from duty.

(4) The Minister may, from time to time, appoint and employ on such terms and conditions as he may determine such other employees, consultants and agents as may be necessary for the effective performance of its functions.

Protection from personal liability.

11. No suit or other legal proceedings shall lie personally against any member, officer or employee of the Institute or other person acting under the direction of the Institute for anything which is done in good faith or intended to be done in execution or purported execution of this Order.

Public servants.

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

PART VI

FINANCIAL PROVISIONS

Bank accounts.

13. The Institute shall open and maintain an account or accounts with such bank or banks as the Institute thinks fit; and every such account shall be operated upon as far as practicable by cheque signed by such person or persons as may from time to time be authorised in that behalf by the Institute.

Application of funds.

14. The funds of the Institute shall be applied only in payment or discharge of the expenses, obligations and liabilities of the Institute and in making any payments that the Institute is authorised or required to make.

Power to borrow.

15. For the discharge of its functions or duties under this Order or any other written law, the Institute may, from time to time, raise loans from the Government or, with the approval of the Minister, raise loans from banks and other financial institutions (whether in Brunei Darussalam or elsewhere) by —

(a) mortgage, overdraft or otherwise;

(b) charge, whether legal or equitable, on any property vested in the Institute or on any revenue receivable by the Institute under this Order or any other written law; or

(c) the creation and issue of debentures or bonds or other instruments.

Investment.

16. The Institute may invest any of its funds available for investment in such shares, funds, securities or investments as may be authorised by the Minister.

Grants-in-aid.

17. (1) The Minister of Finance shall cause to be paid to the Institute such moneys as may be approved by the Government from time to time as grants-in-aid to the Institute.

(2) All money provided for under subsection (1) may be applied or expended by the Institute for all or any of the purposes of the Institute.

Other financial provisions.

18. The financial provisions set out in the Third Schedule shall have effect with respect to the Institute.

PART VII

GENERAL

Preservation of secrecy.

19. (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 person who is or has been a member, an officer, an employee or an agent of the Institute or a member of a committee of the Institute shall disclose any information relating to the affairs of the Institute or of any other person which has been obtained by him in the performance of his duties or the exercise of his functions.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 12 months or both.

Annual report.

20. The Institute shall, as soon as practicable after the end of each financial year, submit to the Minister an annual report on the activities of the Institute during that financial year and the Minister shall cause a copy of every such report to be presented to His Majesty the Sultan in Council.

Directions by Minister.

21. The Minister may give to the Board such directions, not inconsistent with the provision of this Order, as he thinks fit as to the performance of its functions and exercise of its powers.

Rules.

22. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for carrying out the purposes and provisions of this Order.

(2) Without prejudice to the generality of subsection (1), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for or with respect to all or any of the following matters —

(a) the manner of appointment, conduct and discipline and the terms and conditions of service of the employees of the Institute;

(b) the establishment of funds for the payment of gratuities and other benefits to the employees of the Institute; and

(c) the fees to be charged in respect of anything done or any services rendered by the Institute under or by virtue of this Order or any other written law.

FIRST SCHEDULE

(section 5(3))

CONSTITUTION AND PROCEEDINGS OF BOARD

Appointment of chairman and members.

1. The Board shall consist of —

(a) a chairman;

(b) a deputy chairman; and

(c) not more than 15 other members,

all of whom shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

Term of office of members.

2. (1) Members shall hold office on such conditions and for such terms as His Majesty the Sultan and Yang Di-Pertuan may determine —

Provided that His Majesty may at any time revoke any such appointment.

(2) Any member may resign from his office at any time by giving notice in writing to that effect addressed to the chairman, and shall cease to be a member on the date to be determined by the chairman.

(3) If at any time it appears to His Majesty the Sultan and Yang Di-Pertuan that removal from office of all or any of the members of the Board is necessary in the interests of the effective and economical performance of the functions of the Board under this Order, or in the public interest, His Majesty may remove from

office all or so many of those members of the Board as His Majesty considers necessary in such interests.

(4) If a member dies or resigns or has his appointment revoked, His Majesty the Sultan and Yang Di-Pertuan may appoint any person to fill the vacancy for the residue of the term for which such member was appointed.

(5) The Institute shall pay to the chairman and other members, out of the funds of the Institute, such salaries, fees and allowances as His Majesty the Sultan and Yang Di-Pertuan may determine.

Temporary members.

3. The Minister may appoint any person to be a temporary member of the Board during the temporary incapacity from illness or otherwise, or during the temporary absence from Brunei Darussalam of any member.

Temporary chairman.

4. The Minister may appoint any member of the Board to be a temporary chairman during the temporary incapacity from illness or otherwise, during the temporary absence from Brunei Darussalam, of the chairman.

Resignation.

5. A member may resign his office at any time by giving notice in writing to that effect addressed to the chairman, and shall cease to be a member on the date to the determined by the chairman.

Chairman may delegate functions.

6. The chairman may, in writing, authorise the deputy chairman or any member to exercise any power or perform any function or duty conferred on the chairman by or under this Order.

Vacation of office.

7. The seat of a member of the Board shall become vacant —

(a) on his death;

(b) if he, without sufficient cause (the sufficiency thereof to be decided by the Board) fails to attend 3 consecutive meetings of the Board;

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

- (d)* if he resigns his seat; or
- (e)* if his appointment is revoked.

Filling of vacancies.

8. If a vacancy occurs in the membership of the Board, the Minister may subject to paragraph 1, appoint any person to fill vacancy and the person so appointed shall hold office for so long as the member in whose place he is appointed would have held office.

Disqualification from membership.

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

- (a)* is an undischarged bankrupt or has made any arrangement with his creditors;
- (b)* is incapacitated by physical or mental illness; or
- (c)* is otherwise unable or unfit to discharge the functions of a member.

Disclosure of interest by members.

10. (1) Subject to sub-paragraph (2), if a member of the Board has a pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is before any meeting of the Board, he shall at that meeting declare the nature of his interest and shall not take part in the consideration or discussion of, or vote on any question with respect to, that contract or other matter, and if the chairman or the person presiding at that meeting so directs, he shall withdraw from the meeting during the consideration or discussion.

(2) For the purposes of sub-paragraph (1), a general notice given to the members of the Board by a member to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made if it specifies the nature and extent of his interest in the specified corporation or firm and his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any contract is so made, but no such notice shall be of effect unless either it is given at a meeting of the Board or the member takes reasonable steps to ensure that it is brought and read at the next meeting of the Board after it is given.

(3) For the purposes of this paragraph, a pecuniary interest of a spouse, parent, son or an adopted son, or daughter or an adopted daughter, of a member shall be treated as a pecuniary interest of the member.

(4) For the purpose of determining whether there is a *quorum*, a member shall be treated as being present at a meeting notwithstanding that, under this paragraph, he cannot vote or has withdrawn from the meeting.

Sealing of documents.

11. (1) All deeds, documents and other instruments requiring the seal of the Institute shall be sealed with the common seal of the Institute in the presence of any 2 officers of the Board duly authorised by the Board to act in that behalf and shall be signed by those officers and such signing shall be sufficient evidence that the common seal of the Board has been duly and properly affixed and that the seal is the lawful common seal of the Institute.

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

Salaries, fees and allowances payable to members of Board.

12. There shall be paid to the members of the Board, out of the funds of the Institute, such salaries, fees and allowances as the Minister may from time to time determine.

Quorum.

13. (1) The Board shall ordinarily meet for the dispatch of business at such times and places as the chairman may from time to time appoint.

(2) At every meeting of the Board, one-third of the total number of members or 3 members, whichever is the higher, shall form a *quorum*.

(3) A decision at a meeting of the Board 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.

Vacancies.

14. The Board may act notwithstanding any vacancy in its membership.

Procedure at meetings.

15. Subject to this Order, the Board may make rules regulating its own procedure generally and, in particular, regarding the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes, the custody, production and inspection of such minutes, and the opening, keeping, closing and auditing of accounts.

Appointment of committees and delegation of powers.

16. (1) The Board may, in its discretion, appoint from among its own members or other persons who are not members of the Board such number of committees as it thinks fit consisting of members or other persons or members and other persons for purposes which, in the opinion of the Board, would be better regulated and managed by means of such committees.

(2) The Board may, subject to such conditions or restrictions as it thinks fit, delegate to any such committee or the chairman or the chief executive officer, all or any of the powers, functions and duties vested in the Board by this Order or any written law, and any power, function or duty so delegated may be exercised or performed by such committee or the chairman or the chief executive officer, as the case may be, in the name and on behalf of the Board.

(3) The Board may, subject to such conditions or restrictions as it thinks fit, delegate to any officer or employee thereof or any other person all or any of its powers, functions and duties vested in the Board by this Order or any other written law, and any power, function or duty so delegated may be exercised or performed by the officer or employee or other person, as the case may be, in the name and on behalf of the Board.

(4) The Board may continue to exercise a power conferred upon it, or perform a function or duty under this Order or any other written law made thereunder, notwithstanding the delegation of the power, function or duty under this paragraph.

SECOND SCHEDULE

(section 9(1))

POWERS OF INSTITUTE

1. To receive donations and contributions from any source and raise funds by all lawful means.
2. To do anything incidental to any of its functions under this Order or any other written law.

THIRD SCHEDULE
(section 18)

FINANCIAL PROVISIONS

1. The financial year of the Institute shall begin on 1st. April of each year and end on 31st. March of the succeeding year, except that the first financial year of the Institute shall begin on the appointed day and end on 31st. March of the succeeding year.

2. The Institute 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 Institute and over the expenditure incurred by the Institute.

3. The accounts of the Institute shall be audited by the Auditor General or by an auditor appointed annually by the Minister in consultation with the Auditor General.

4. A person shall not be qualified for appointment as an auditor under paragraph 3 unless he is an authorised to perform the duties of an auditor under section 131 of the Companies Act (Chapter 39).

5. The remuneration of the auditor shall be paid out of the funds of the Institute.

6. The Institute shall, as soon as practicable after the close of the financial year, prepare and submit the financial statements in respect of that year to the auditor who shall audit and report on them.

7. The auditor shall in his report state —

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

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

(c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the Institute during the year have been in accordance with this Order; and

(d) such other matters arising from the audit as he considers should be reported.

8. The auditor shall, as soon as practicable after the accounts have been submitted for audit, send a report of his audit to the Institute, and shall also submit such periodical and special reports to the Institute as may appear to him to be necessary or as the Minister or the Institute may require.

9. The auditor or any person authorised by him is entitled at any reasonable time to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the Institute.

10. The auditor or any person authorised by him may make copies of, or take extracts from, any such accounting and other records.

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

12. Any person who fails, without any reasonable cause, to comply with any requirement of the auditor under paragraph 11 or who otherwise hinders, obstructs or delays the auditor in the performance of his functions under this Order is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part thereof during which the offence continues after conviction.

13. As soon as the accounts of the Institute and the financial statements have been audited in accordance with the Order, a copy of the audited financial statements signed by the chairman, together with a copy of any report made by the auditor, shall be submitted to the Minister.

14. Where the Auditor General is not appointed as the auditor, a copy of the audited financial statements and any report made by the auditor shall be forwarded to the Auditor General at the same time they are submitted to the Minister.

15. The Minister shall as soon as practicable cause a copy of the audited financial statements and of the auditor's report to be presented to His Majesty the Sultan and Yang Di-Pertuan in Council.

Made this 14th. day of Muharam, 1433 Hijriah corresponding to the 10th. day of December, 2011 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM