

No. S 45

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

**EMERGENCY (DANA PENGIRAN MUDA MAHKOTA AL-MUHTADEE BILLAH
FOR ORPHANS) ORDER, 1998**

In exercise of the powers conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam hereby makes the following Order :-

1. This Order may be cited as the Emergency (Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans) Order, 1998 and shall be deemed to have come into force on the 25th. day of August, 1998.

Citation and
Commencement.

2. In this Order, unless the context otherwise require -

Interpretation.

"Constitution" means the Constitution of the Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans contained in the Schedule to this Order ;

"Dana" means the Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans .

3. The provisions of the Constitution shall take effect and have the force of law on the date this Order is deemed to have come into force.

Constitution of
Dana.

4. (1) The Dana shall keep and maintain an office in Brunei Darussalam and the office shall be the address for service of notices and other written communications of all kinds.

Office of Dana.

(2) All notices and other written communications shall, if left at the office kept and maintained under subsection (1), be deemed as having been duly served upon or delivered to the Dana.

5. The Minister responsible for finance with the approval of His Majesty the Sultan and Yang Di-Pertuan and on the recommendation of a majority of not less than two-thirds of the members of the Board of Trustees of the Dana may amend, vary or add to the provisions of the Constitution.

Amendment of
Constitution.

SCHEDULE

THE CONSTITUTION OF THE DANA PENGIRAN MUDA MAHKOTA
AL-MUHTADEE BILLAH FOR ORPHANS

PART I

CITATION AND INTERPRETATION

- Citation. 1. This Constitution may be cited as the Constitution of the Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans.
- Interpretation. 2. In this Constitution, unless the context otherwise requires –
- “Board” means the Board of Trustees appointed under section 4 of this Constitution ;
- “Chief Executive Officer” means the Chief Executive Officer appointed under section 6 of this Constitution ;
- “Dana” means the Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans ;
- “financial year” means a period of twelve months ending on the 31st day of December ;
- “orphan” means an unmarried child either male or female who has not attained 18 years according to the Islamic calendar (qamariah) and without a father according to one or more of the following circumstances –
- (i) his father has died ;
 - (ii) the whereabouts of his father are unknown ;
 - (iii) abandoned by his father and the identity of his father is unknown ;
 - (iv) he is an illegitimate child.

PART II

ESTABLISHMENT AND ADMINISTRATION OF THE DANA

- Establishment of Dana. 3. {1} There is hereby established a Charitable Foundation called the “Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans” which shall have perpetual succession and may sue and be sued in that name and subject to and for the purposes of this Constitution, may acquire,

purchase, take, hold and enjoy movable and immovable property, and may enter into contracts and may assign, surrender, yield-up, charge, mortgage, demise, reassign, transfer or otherwise dispose of or deal with, any movable or immovable property or any interest therein vested in the Dana upon such terms as it deems fit from time to time.

(2) The Dana shall have a common seal and such seal may, from time to time, be broken, changed, altered and made anew as it deems fit and, until a seal is provided under this section, a stamp bearing the inscription "Dana Pengiran Muda Mahkota Al-Muhtadee Billah For Orphans" may be used as the common seal.

(3) All deeds, documents and other instruments requiring the seal of the Dana shall be sealed with the common seal of the Dana by the authority of the Dana in the presence of the Chief Executive Officer and such other trustee duly authorised in writing by the Dana to act in that behalf and shall be signed by the Chief Executive Officer and by such duly authorised trustee, and such signing shall, until the contrary is proved, be sufficient evidence that the common seal of the Dana has been duly and properly affixed and that the seal is the lawful common seal of the Dana.

(4) The Dana may by resolution or otherwise confer on any of the members of the Board (not being less than two in number) a general authority, or an authority limited in such manner as the Board thinks fit, to execute or sign on behalf of the Dana any agreement or other instrument not under seal in relation to any matter coming within the powers of the Dana.

(5) The common seal or the stamp under subsection (2) shall be kept in the custody of the Chief Executive Officer.

4. (1) There shall be a Board of Trustees of the Dana which shall be responsible for the general control and management of the administration of the Dana.

Board of
Trustees.

(2) The Board shall consist of a Chairman, Deputy Chairman and such number of other trustees, all of whom shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

(3) The members of the Board shall be appointed from among subjects of His Majesty the Sultan and Yang Di-Pertuan who are Muslims according to Ahli Sunnah Wal-Jamaah.

(4) The members of the Board so appointed shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(5) If the Chairman is unable to exercise his functions under this Constitution owing to illness, absence from Brunei Darussalam or for any

other cause whatsoever, his functions shall be exercised by the Deputy Chairman.

(6) The Chairman shall summon meetings as often as may be required but not less frequently than once in four months and at every meeting of the Board, a quorum shall consist of three trustees, including the Chairman or the Deputy Chairman.

(7) The Chairman shall have a casting vote in the event of an equality of votes.

(8) The Board may 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.

(9) Subject to this Constitution, the Board shall have the power to prescribe its own procedure and make rules for the better carrying out of its duties under this Constitution.

**Disqualification
of Trustees.**

5. His Majesty the Sultan and Yang Di-Pertuan may terminate the appointment of any trustee appointed under subsection (2) of section 4 of this Constitution if he –

- (a) resigns his office ;
- (b) becomes of unsound mind or incapable of carrying out his duties ;
- (c) becomes bankrupt or suspends payment to or compounds with his creditors ;
- (d) is convicted of an offence involving dishonesty or fraud or moral turpitude ;
- (e) is guilty of serious misconduct in relation to his duties ;
- (f) is absent, without leave of the Chairman, from three consecutive meetings of the Board ; or
- (g) fails to comply with his obligation under section 9 of this Constitution.

**Chief Executive
Officer.**

6. (1) His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Chairman of the Board (after consultation with the Board) may appoint a suitable person who is a Muslim according to Ahli Sunnah Wal-Jamaah as the Chief Executive Officer.

(2) The Chief Executive Officer shall be appointed on such terms and conditions as His Majesty the Sultan and Yang Di-Pertuan may decide.

(3) The Chief Executive Officer shall be entrusted with the day-to-day administration of the Dana, preparation of programmes, scheme or projects for the consideration of the Board and the implementation of decisions of the Board.

(4) The Chief Executive Officer shall be answerable to the Board for his acts and decisions.

(5) In the event of the absence or inability to act of the Chief Executive Officer, the Chairman of the Board with the approval of His Majesty the Sultan and Yang Di-Pertuan may appoint another person to discharge his duties during the period of such absence or inability.

7. If any trustee dies or 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 trustee in whose place he is appointed.

Vacancies in the Office of trustee.

8. No member of the Board of the Dana shall incur any personal liability for any loss or damage caused by any act or omission in the administration of the affairs of the Dana unless such loss or damage is occasioned by an intentionally wrongful act or omission on his part.

Liability of members.

9. (1) Any trustee who has or acquires, directly or indirectly by himself, through his partner or agent –

Disclosure of interest.

(a) any share or interest –

(i) in any contract made with the Dana ;

(ii) in any work done for the Dana ; or

(iii) in any company or firm or in respect of any undertaking with which the Dana proposes to enter into a contract ; or

(b) any beneficial interest in land proposed to be acquired, purchased, leased or otherwise dealt with by the Dana, which he knows to be affected or likely to be affected by any project, scheme or enterprise approved or proposed to be approved by the Dana,

shall declare the nature and extent of his share or interest to the Dana.

(2) The declaration required to be made by a trustee under subsection (1) shall be made at a meeting of the Board at which any question relating to such contract, work, undertaking, acquisition, purchase, lease, dealing, project, scheme or enterprise is first taken into consideration, or if the trustee has not at the date of that meeting any such share or interest, at the next such meeting held after he acquired such share or interest, and in a case where a trustee acquires any such share or interest in any contract with the Dana after it has been made, the said declaration shall be made at the first meeting held after that trustee acquires such share or interest.

(3) For the purposes of this section, a general notice given to other trustees by a trustee to the effect that he is a member of any specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with or by that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract or application so made :

Provided that such notice shall be of no effect unless either it is given at a meeting of the Board or the trustee concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the Board after it is given.

(4) Every declaration made in pursuance of this section shall be recorded in the minutes of the meeting at which it was made or read.

(5) A trustee shall not vote upon any resolution or question relating to any contract, work, undertaking, acquisition, purchase, lease, dealing, project, scheme or enterprise in which he has any share or interest, whether or not he has declared the same, nor shall he take part in any deliberation (except by the invitation of the Board) or decision relating thereto or to any matter incidental thereto, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting for the purpose of such resolution or question.

PART III

PRINCIPLES OF THE ESTABLISHMENT, OBJECTS AND POWERS OF THE DANA

Principles of the
establishment
of the Dana.

10. The principles of the establishment of the Dana are as follows –

- (a) to nurture and mould orphans to become a generation which is knowledgeable and skilful and of good character in line with the concept of Malay Islamic Monarchy, loyal and faithful to the King, Religion and their Nation ;
- (b) to be a charitable endowment (amal jariah or sedekah tathauwu') in order to enhance and develop a feeling of

affection, sympathy and care towards the welfare and well-being of the orphans.

11. (1) The objects of the Dana are to render assistance to orphans in order to enable them to obtain proper upbringing, guidance and education, and make them to become useful citizens. Objects of the Dana.

(2) Subject to the appropriateness and circumstance of any particular case, the benefit or assistance under this section may be granted to any orphan who is resident in Brunei Darussalam regardless of citizenship, race or religion.

(3) The Minister responsible for finance with the approval of His Majesty the Sultan and Yang Di-Pertuan and on the recommendation of a majority of not less than two-thirds of the members of the Board may alter, add to or delete all or any of the objects of the Dana provided that no alteration in the objects of the Dana shall be made which would authorise the application of the property of the Dana for objects which are not charitable.

12. In furtherance of the object of the Dana, but not further or otherwise the Dana shall have the power – Powers of the Dana.

(1) to accept subscriptions, donations, devises and bequests of, and to purchase, take or lease or in exchange, hire or otherwise acquire and hold, any movable or immovable property, and alter any of the same as are necessary for any of the objects of the Dana and sell, lease or otherwise dispose or mortgage any such movable or immovable property ;

(2) to issue appeals, hold public meetings and take such other steps as may be required for the purpose of procuring contributions to the funds of the Dana in the shape of donations, subscriptions or otherwise ;

(3) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Dana ;

(4) to borrow or raise money for the objects of the Dana on such terms and conditions and on such security as may be thought fit ;

(5) to co-operate with other charities, voluntary bodies and authorities operating in furtherance of the objects or of a similar charitable purpose and to exchange information and advice with them ;

(6) to take and accept any gift of money, property or other assets, whether subject to any special trust or not, for any one or more of the objects of the Dana ;

- (7) to invest the money of the Dana not immediately required for its objects in or on such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law ;
- (8) to make any charitable donation either in cash or assets for the furtherance of the objects of the Dana ;
- (9) to establish and support any charitable association or body and to subscribe or guarantee money for charitable purposes calculated to further the objects of the Dana ;
- (10) to employ and pay any person, not being a trustee to supervise, organise, carry on the work of and advise the Dana ;
- (11) to apply monies in insuring any buildings to their full value ;
- (12) to insure and arrange insurance cover for, and indemnify its officers, servants and voluntary workers from and against, all such risks as may be thought fit ;
- (13) to amalgamate with any companies, institutions, societies or associations which are charitable at law and have objects altogether or mainly similar to those of the Dana and prohibit the payment of any dividend or profit to, and the distribution of any of their assets amongst, their members ;
- (14) to establish where necessary branches (whether autonomous or not) ;
- (15) to cause to be written, and printed or otherwise reproduced and circulated, gratuitously or otherwise, periodicals, magazines, books, leaflets or other documents or films or recorded tapes ;
- (16) to hold exhibitions, meetings, lectures, classes, seminars, workshops and courses either alone or with others ;
- (17) to do all such other lawful things as shall further the above objects or any of them.

Delegation of
power.

13. (1) The Board may delegate any of its powers to a committee consisting of not less than three trustees.

(2) Any committee so formed under subsection (1) shall conform to any directions or regulations that may be imposed on it by the Board and shall report all acts and proceedings to the Board fully and promptly.

14. The income and property of the Dana shall be applied solely towards the promotion of its objects as set forth in this Constitution and no portion of such income and property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the Board and no member of the Board shall be appointed to any office of the Dana paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Dana, provided that nothing shall prevent any payment in good faith by the Dana –

Payments.

- (a) of reasonable and proper remuneration to an officer or servant of the Dana not being a member of the Board for any services rendered to the Dana ;
- (b) of reasonable and proper rent for premises demised or let by the Board ; and
- (c) to any member of the Board of out-of-pocket expenses.

PART IV

ADMINISTRATION AND FINANCE

15. (1) The Board shall ensure that accounting records are properly kept to show and explain all the Dana's transactions, and which are such as to disclose at any time, with reasonable accuracy, the financial position of the Dana at that time.

Duty to keep accounting records.

(2) The accounting records shall in particular contain –

- (a) entries showing from day to day all sums of money received and expended by the Dana, and the matters in respect of which the receipt and expenditure takes place ; and
- (b) a record of the assets and liabilities of the Dana.

(3) The Board shall preserve any accounting records made for the purposes of this section in respect of the Dana for at least six years from the end of the financial year of the Dana in which they are made.

16. (1) The Board shall prepare in respect of each financial year of the Dana a statement of accounts.

Statement of accounts.

(2) The Board shall preserve any statements of accounts prepared by them under subsection (1) for at least six years from the end of the financial year to which any such statement relates.

- Auditors.** 17. The Dana shall appoint recognised auditors to audit the accounts of the Dana.
- Annual reports.** 18. (1) The Board shall prepare in respect of each financial year of the Dana an annual report containing –
- (a) such a report by the Board on the activities of the Dana during that year ; and
 - (b) such other information relating to the Dana or to its Board or officers.
- (2) The annual report required to be prepared under this section in respect of any financial year of the Dana shall be transmitted to the Minister responsible for finance by the Board within six months from the end of that year.
- (3) Any such annual report shall have attached to it the statement of accounts prepared for the financial year in question under section 16, together with the report made by the auditors on that statement of accounts.
- Publication of statement of accounts.** 19. The Dana shall within six months after its statement of account has been audited publish in at least one local newspaper the audited statement of accounts in respect of each financial year of the Dana.
- Dissolution.** 20. If on the dissolution of the Dana there remains, after the satisfaction of all its debts and liabilities any property whatever, the same shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Dana, and which shall prohibit the distribution of its or their income and property to an extent at least as great as is imposed on the Dana under or by virtue of section 14, such institution or institutions to be determined by the Board at or before the time of dissolution, and in so far as effect cannot be given to such provision, then to some other charitable object.
- List of posts and appointments of employees.** 21. (1) The Dana may from time to time approve a list of posts (excluding the trustees) which it thinks necessary for the purposes of this Constitution 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 Dana ; and
 - (b) the termination of appointment, dismissal and disciplinary control of the employees of the Dana shall be vested in the Dana.

{3} The Dana may make rules, not inconsistent with the provisions of this Constitution or of any other written laws, for the appointment, promotion, disciplinary control and terms and conditions of service to all persons employed by the Dana.

{4} Without prejudice to the generality of subsection {3}, the Dana shall prescribe the rates of remuneration payable to persons employed by the Dana and no person so employed shall be paid otherwise than in accordance with such rates.

22. The Dana shall within six months of the end of its financial year transmit to His Majesty the Sultan and Yang Di-Pertuan a report on the proceedings of the Dana throughout the year. Annual Report.

Made this 4th. day of Ramadan, 1419 Hijriah corresponding to the 23rd. day of December, 1998 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM