

Brunei Constitution 1959

In the name of God, the Compassionate, the Merciful, Praise be to God, the Lord of the Universe, and may the benediction and peace of God be upon Our Leader Muhammed and upon all his Relations and Friends.

By the grace of God, Omar Ali Saifuddin Sa'Adul Khairi Waddin *ibni* Almarhum Mohamed Jamal-ul Alam of the State and Territory of Brunei and all its Dependencies, Sultan, Sovereign and Chief of the most esteemed Family Order, Sovereign, and Chief of the most honourable Order of the Crown of Brunei, Order of Sri Mahkota Negara, most esteemed Family Order (First Class) Kelantan, most esteemed honorary Knight Commander of the most distinguished Order of Saint Michael and Saint George.

Whereas provision is being made a separate Proclamation (in this Constitution referred to as "The Succession and Regency Proclamation") for certain matters affecting the Sultan, the Succession to the Sultanate and the Sultan's family;

Whereas We intend to govern in accordance with the provisions of this Constitution and the laws of the State and, by progressive steps hereafter, to introduce further representative institutions into the government of the State;

And whereas We have, with the advice and consent of OUR traditional advisers, decided to make such provisions for the regulation of the government of the State as is hereinafter contained;

Now, therefore, We, by the rights and powers of Our Prerogatives as Sultan of the State of Brunei and all its Dependencies do Hereby Proclaim in Our name and on Our behalf and for and on behalf of Our Successors as hereinafter follows:

1

PRELIMINARY

Citation and Commencement

- 1.—(i) This Constitution may be cited as the Constitution of the State of Brunei, 1959.
- (ii) Save as is otherwise provided by this Constitution, the provisions of this Constitution shall come into force on such date as the Sultan may by notification in the *Gazette* appoint, and for that purpose the Sultan may appoint different dates with respect to different provisions.

Interpretation

- 2.—(i) In this Constitution, unless the context otherwise requires:
- (a) “Adat Isti’adat Officer” means the noble and illustrious personage known as the *Duli Pengiran Pemancha*;
 - (b) “Assistant Ministers” means the person appointed under sub-section (viii) of section 4;
 - (c) “Attorney-General” means the officer appointed under paragraph (b) of subsection (iv) of section 4;
 - (d) “British Subject” has the meaning assigned to it by the British Nationality Act, 1948; as from time to time amended;
 - (e) “a Brunei” means, except where subsection (ii) of section 29 is applicable, a subject of the Sultan by virtue of the provisions of any written law relating to nationality;
 - (f) “Civil List” means the provision made for the maintenance of the Sultan or Consort out of public funds;

- (g) “Clerk to the Council of Ministers” includes any person appointed by the Sultan to be Deputy Clerk to that Council;
- (h) “Clerk to the Legislative Council” includes any person appointed by the Sultan to be Deputy Clerk to that Council;
- (i) “Clerk to the Privy Council” includes any person appointed by the Sultan to be Deputy Clerk to that Council;
- (j) “Commonwealth country” means the United Kingdom, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, the Federation of Malaya, Nigeria, Cyprus, Sierra Leone, Tanganyika, Jamaica, Trinidad and Tobago, Uganda, the State of Singapore and any other country declared by Act of Parliament of the United Kingdom to be a Commonwealth country and “part of the Commonwealth” means any Commonwealth country, any colony, protectorate or protected state, and any other territory administered by the Government of any Commonwealth country;
- (k) “Council of Regency” means a Council of Regency appointed under subsection (i) of section 13 of the Succession and Regency Proclamation;
- (l) “debt” includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee;
- (m) “Deputy *Mentri Besar*” means the officer appointed under subsection (iia) of section 4;
- (n) “Council of Ministers” means the Council of Ministers established by section 10;

- (o) “High Commissioner” means Her Majesty’s High Commissioner in the State of Brunei, and references to the High Commissioner include any person for the time being discharging the functions of the High Commissioner;
- (p) “high judicial office” means the office of a Judge of the Supreme Court, or of a court having unlimited jurisdiction in civil or criminal matters, or of a court having jurisdiction in appeals from any such court;
- (q) “instrument” includes any publication in the *Gazette*, whether or not such publication merely purports to publish the doing of an act or the occurrence of a fact or event, or otherwise conveys or purports to convey information;
- (r) ‘Legislature’ means the authority competent to make Enactments for the State;
- (s) “Legislative Council” means the Legislative Council established by section 23;
- (t) “meeting”, in relation to the Legislative Council, means all sittings of that Council held during a period beginning when that Council first meets after being summoned at any time and ending when that Council is next thereafter either adjourned *sine die* or prorogued or dissolved without having been prorogued;
- (u) “*Mentri Besar*” means the officer appointed under subsection (iii) of section 4;
- (v) “Ministers” means persons appointed under sub-section (iv) of section 4;
- (w) “Muslim Religion” means the Muslim Religion according to *Ahlissunnah Waljammaah*;

- (x) “Muslim revenue and funds” means all revenues and funds to which Part IV of the Religious Council, State Custom and Kathis Courts Enactment, 1955, apply;
- (y) “pension rights” includes superannuation rights and provident funds rights;
- (z) “Privy Council” means the Privy Council established by subsection (i) of section 5;
- (aa) “public office” means any office of emolument under the Government of the State but does not include the Sultanate, the office of Regent or *Wazir*, or membership of a District Council;
- (bb) “public officer” means the holder of any public office and includes any person appointed to act in any such office;
- (cc) “Regent” means a Regent duly appointed under subsection (i) of section 13 of the Succession and Regency Proclamation;
- (dd) “Religious Adviser” means the person duly appointed by the Sultan to hold that office;
- (ee) “Seal of the State” means the Seal of State referred to in section 79;
- (ff) “Secretary of State” means one of Her Majesty’s principal Secretaries of State for the time being;
- (gg) “Senior *Wazir*” means the noble and illustrious personage known as the *Duli Pengiran Bandahara*; and “the *Wazirs*” means the *Duli Pengiran Bendahara* and the *Duli Pengiran Pemancha*;
- (hh) “session”, in relation to the Legislative Council, means the meetings of that Council commencing when it first meets after being constituted under the Constitution, or after its prorogation or dissolution at any time, and

terminating when that Council is prorogued or is dissolved without having been prorogued;

- (ii) “sitting”, in relation to the Legislative Council, means the period during which that Council is sitting continuously without adjournment, and includes any period during which that Council is in Committee;
- (jj) “Standing Orders” means the Standing Orders of the Legislative Council made in pursuance of section 48;
- (kk) “State” means the State of Brunei, Darul-Salam;
- (ll) “State Auditor” means the officer appointed under subsection (i) of section 66;
- (mm) “State Financial Officer” means the officer appointed under paragraph (c) of subsection (iv) of section 4;
- (nn) “State Secretary” means the officer appointed under paragraph (a) of subsection (iv) of section 4;
- (oo) “Sultan” means the Sultan of Brunei and includes:
 - (i) where appropriate, a Council of Regency; and
 - (ii) to the extent to which a Sultan's Deputy is authorised to act, that Deputy;
- (pp) “Sultan in Council” means the Sultan acting after consultation with the Executive Council but not necessarily in accordance with the advice of that Council nor necessarily in that Council assembled;
- (qq) “Supreme Court” means the Supreme Court of Sarawak, North Borneo and Brunei;
- (rr) “tax” includes an impost or a duty but does not include a rate levied for local purposes or a fee for services rendered;
- (ss) “Welfare Officer” means the officer appointed by the Sultan to be responsible to him for the welfare of Muslims in the State;

- (tt) “written law” includes all Enactments, Proclamations and subsidiary legislation, or any part thereof, but does not include any Act of Parliament nor any Order of Her Majesty in Council, Royal Charter or Royal Letters Patent nor any Law which no authority in the State is empowered to amend.
- (ii) Where in this Constitution reference is made to any public officer by the term designating his office, such reference shall be construed as a reference to the officer for the time being discharging the functions of that office.
- (iii) For the purposes of this Constitution, a person shall not be considered to hold a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under Her Majesty or the Government.
- (iv) If it shall be declared by any law for the time being in force in the State that an office shall not be a public office for all or any of the purposes of this Constitution, this Constitution shall have effect accordingly as if such law were enacted herein.
- (v) References in this Constitution to “this Constitution” shall not, unless the context otherwise requires, be construed as referring to subsidiary legislation made under this Constitution.
- (vi) Save as in this Constitution otherwise provided or required by context, the Interpretation and General Clauses Enactment, 1959 (except sections 30, 31 and 42 thereof) shall apply for the interpretation of this Constitution as it applies for the interpretation of all other written laws.

2

RELIGION

Religion of the State and Religious Observance

3.—(i) The religion of the State shall be the Muslim Religion:

Provided that all other religions may be practised in peace and harmony by the persons professing them in any part of the State.

(ii) The Head of the religion of the State shall be the Sultan.

(ii) The principal officers responsible to the Sultan for the State Religion, Custom and Welfare shall be the Religious Adviser, the *Adat Isti'adat* Officer and the Welfare Officer, respectively.

3

EXECUTIVE AUTHORITY

Executive Authority and Principal Officers

4.—(i) The supreme executive authority of the State shall be vested in the Sultan.

(ii) Subject to this Constitution and to any other written law, the executive authority of the State shall be exercised by the Sultan directly or by officers subordinate to him acting in his name and on his behalf.

(iii) There shall be a *Mentri Besar*, that is to say, a Chief Minister who, subject to the provisions of this Constitution and any other written law, shall be responsible to the Sultan for the exercise in the State of all executive authority.

(iiia) There shall be a Deputy *Mentri Besar* who shall assist the *Mentri Besar* in the exercise of his powers and he performance of his duties and, on the directions of the

Mentri Besar, he shall exercise such powers and perform such duties of the *Mentri Besar*.

- (iv) The *Mentri Besar* shall be assisted by the following Ministers:
 - (a) a State Secretary, who shall be the principal officer in charge of administrative affairs;
 - (b) an Attorney-General, who shall be the principal officer in charge of legal affairs; and
 - (c) a State Financial Officer, who shall be the principal officer in charge of financial affairs;
 - (d) Such other ministers as the Sultan may appoint from amongst the members of the Council of Ministers to exercise executive authority.
- (v) No person shall be appointed to be *Mentri Besar* or Deputy *Mentri Besar* or State Secretary unless he is a Malay professing the Muslim religion and belonging to the *Shafeite* sect of that religion.
- (va) No person shall be appointed to be *Mentri Besar* or Deputy *Mentri Besar* unless he is a subject of the Sultan.
- (vi) The *Mentri Besar*, the Deputy *Mentri Besar* and the State Secretary shall be appointed by the Sultan by Instrument under His Sign Manual and the State Seal and shall hold office during the pleasure of the Sultan.
- (vii) The Attorney-General and the State Financial Officer shall be appointed by the Sultan by notification in the *Gazette* and, subject to any regulations made under section 77, shall hold office during the pleasure of the Sultan.
- (viii) The Ministers mentioned in subsection (iv) shall be assisted by such number of persons whom the Sultan may appoint from amongst the Members of the Council of Ministers to be Assistant Ministers.

- (ix) The remuneration of Ministers and Assistant Ministers shall be such as may be provided by the Legislative Council.

4

PRIVY COUNCIL

Establishment of the Privy Council

- 5.—(i) There shall be in and for the State a Privy Council, to be styled in Malay the *Majlis Meshuarat di-Raja*, constituted in accordance with this Part.
- (ii) The Privy Council, the Members of which shall be styled Privy Councillors, shall consist of:
- (a) the Regents, if a Council of Regency has been appointed;
 - (b) six *ex officio* Members, namely, the *Wazirs*, the *Mentri Besar*, the Deputy *Mentri Besar*, the Religious Adviser and the person who holds such other office as may from time to time be designated by the Sultan by Proclamation in the *Gazette*;
 - (c) the High Commissioner; and
 - (d) such other persons (who shall be styled “Appointed Members”) as the Sultan, may, by Instrument under the Seal of the State, appoint.
- (iii) Every Appointed Member of the Privy Council shall hold office during the Sultan’s pleasure and subject thereto for such period and upon such conditions as may be specified in the Instrument appointing him.
- (iv) Every Member of the Privy Council shall, before entering on the duties of his office, make and subscribe before the Sultan, or if a Council of Regency has been appointed, before the senior male Regent, or before such other person as

the Sultan or, as the case may be, the senior male Regent may decide, an oath or declaration in the form set out as Form I in the Schedule.

- (v) Notwithstanding that he is not a Member of the Privy Council, the Attorney-General:
 - (a) shall have the right to attend meetings of that Council for the purpose of assisting the Council in advising the Sultan on the exercise of the powers vested in the Sultan by subsection (i) of section 9; and
 - (b) may, if requested by the Sultan or by any other person presiding in that Council, attend any meeting of that Council for the purpose of advising the Council in connection with any other matter.

Functions of the Privy Council

6.—(i) The Privy Council:

- (a) shall advise the Sultan in relation to the exercise of the prerogative of mercy and in relation to the amendment or revocation of any of the provisions of this Constitution, in accordance with sections 9 and 85 respectively ;
 - (b) shall, subject to the provisions of any written law, advise the Sultan on the appointment of persons to Malay customary ranks, titles, honours and dignities, and the designation of the functions appertaining thereto; and
 - (c) shall perform such other functions as may be conferred on it by any written law or, subject to this Constitution and any such law, by the Sultan.
- (ii) Minutes shall be kept of all proceedings of the Privy Council.

- (iii) The Sultan shall appoint some fit and proper person to be Clerk to the Privy Council, and such person shall, before entering upon the duties of his office, make and subscribe before the Sultan or the senior male Regent, as the case may be, an oath or declaration in the form set out as Form II in the Schedule.
- (iv) Subject to any provision contained in any other written law, the exercise of any power conferred on, or the doing of any act or thing by, the Privy Council may be signified under the hand of the Clerk to the Privy Council.

Summoning and Quorum

- 7.—(i) The Privy Council shall not be summoned except by the authority of the Sultan, or, if a Council of Regency has been appointed, by the senior male Regent, or, if the Sultan is not present in the State and if no Council of Regency has been appointed, by the Senior *Wazir*.
- (ii) (a) No business shall be transacted at any meeting of the Privy Council if there are less than one-third of the Members of the Council (besides the Sultan or other person presiding) present at the meeting, and the Sultan or any other Member of the Council present at the meeting has objected to the transaction of business on that account.
 - (b) If the number of members of the Privy Council is not a multiple of three, then, for the purpose of this subsection, the number of members shall be deemed to be the next highest multiple of three.
 - (iii) Any proceedings in the Privy Council shall be valid notwithstanding that some person who was not entitled to do so took part in the proceedings.

Presiding in Privy Council

- 8.—(i) The Sultan shall, so far as practicable, preside at meetings of the Privy Council.
- (ii) In the absence of the Sultan, the person who shall preside shall be:
- (a) if a Council of Regency has been appointed, the senior male Regent present;
 - (b) if no Council of Regency has been appointed, such Member of the Privy Council as the Sultan may appoint or, in the absence of such Member or where no such Member has been appointed, the Senior *Wazir*; and
 - (c) in any other case, the *ex officio* Member of the Privy Council present who stands first in the order in which those Officers are referred to in paragraph (b) of subsection (ii) of section 5.

Prerogative of Mercy

- 9.—(i) The Sultan may, at any time, exercise, in respect of any offence for which the offender may be tried in the State, such one or more of the following powers as he may think fit, namely power to:
- (a) grant to any person concerned in, or convicted of, any such offence a pardon either free or subject to lawful conditions;
 - (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person for such an offence;
 - (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence;

- (d) remit the whole or any part of any sentence passed for such an offence or of any sum of money imposed as a penalty or forfeiture, or otherwise due to the State, the Sultan or any other person on account of such offence; or
 - (e) order the discharge of any person who may be imprisoned for nonpayment of any sum of money as aforesaid.
- (ii) The Sultan shall not pardon or reprieve any offender under subsection (i) unless it shall appear to him expedient to do so upon receiving the advice of the Privy Council thereon; but, in all such cases, he shall decide either to extend or to withhold a pardon or reprieve according to his own deliberate judgment, whether the Members of the Privy Council concur therein or otherwise, but, if he should decide any question in opposition to the judgment of the majority of such Members, he shall record his reasons at length in the minutes of the Privy Council.
- (iii) Notwithstanding that no provision is made in any written law for the imposition of a sentence of imprisonment for life or for a term exceeding fifteen years, it may be made a condition of the reprieve of any person sentenced to death that he shall suffer imprisonment for life; and such condition shall be deemed to be for all purposes a “lawful condition” within the meaning of such expression in subsection (i).

- 10.—There shall be in and for the State a Council of Ministers, to be styled in Malay the “*Majlis Meshuarat Mentri*”, constituted in accordance with the provisions of this Part.

Constitution of the Council of Ministers

- 11.—(i) The Council of Ministers shall be presided over by the Sultan and shall, subject to section 13 consist of:
- (a) Seven *ex officio* Members, namely *Yang Teramat Mulia Seri Paduka Duli Pengiran Perdana Wazir*, the *Mentri Besar*, the Deputy *Mentri Besar*, the State Secretary, the Attorney-General, the State Financial Officer and the Religious Adviser;
 - (b) The High Commissioner; and
 - (c) Four other Members all of whom shall be persons who are members of the Legislative Council.
- (ii) The Members of the Council of Ministers other than the *ex officio* Members shall be appointed by the Sultan by Instrument under the Seal of the State.
- (iii) For the purpose of subsection (i), (v) and (vi) of section 12, the High Commissioner shall be deemed to be an *ex officio* member of the Council of Ministers.

Tenure of Office and Vacation of Seats

- 12.—(i) Subject to this Constitution, every Member, other than a Regent or an *ex officio* Member, shall hold his seat in the Council of Ministers during the Sultan’s pleasure and shall in any case cease to be a Member not later than five years from the date of the Instrument by which he is appointed, or at such earlier date as may be provided in that Instrument or previously thereto if his seat shall become vacant under the provisions of this section.

- (ii) The seat of a Member other than an *ex officio* Member shall become vacant:
 - (a) on his appointment as a Regent;
 - (b) if he shall, by writing addressed to the Clerk of the Council, resign his seat in the Council of Ministers;
 - (c) if he shall cease to be a Member of the Legislative Council; or
 - (d) if, without the permission of the Sultan he shall be absent from the State for a continuous period of more than one month.
- (iii) If any person is appointed to be a temporary Member of the Council of Ministers and his temporary appointment is immediately followed by his definitive appointment as a Member other than an *ex officio* Member, then, the period of five years referred to in subsection (i) shall run from the date of the Instrument by which he is appointed to be a temporary Member.
- (iv) If a Member other than an *ex officio* Member shall be appointed temporarily to any public office or to act in any public office by virtue of which he becomes an *ex officio* or an Official Member of the Legislative Council, he shall not sit as a Member or take part in the proceedings of the Council of Ministers by virtue of his appointment as a Member other than an *ex officio* Member so long as he continues to hold or act in that office.
- (v) The Sultan may, for such reason as may appear to him to be good and sufficient, by Instrument under the Seal of the State, declare any Member, other than a Regent or an *ex officio* Member, to be incapable of discharging his functions as a Member of the Council of Ministers and, thereupon, such Member shall not sit in or take part in the proceedings

of the Council of Ministers until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

- (vi) The Sultan may, for such reason as may appear to him to be good and sufficient, by Instrument under the Seal of the State, suspend any Member, other than a Regent or an *ex officio* Member from the exercise of his functions as such; and, thereupon, such Member shall not sit in or take part in the proceedings of the Council of Ministers so long as his suspension remains in force; and every such suspension shall remain in force until it shall be removed by the Sultan by Instrument under the Seal of the State or until the person suspended ceases to be a Member of the Council of Ministers.
- (vii) Any person vacating a seat as a Member of the Council of Ministers may be reappointed as a Member, from time to time.

Temporary Members

13.—(i) Where for the time being:

- (a) one of the Members is appointed Regent;
- (b) the functions of the offices qualifying for *ex officio* membership of the Council of Ministers are being discharged by less than seven persons;
- (c) a Member other than an *ex officio* Member is unable to sit in the Council of Ministers by virtue of subsection (iv) of section 12;
- (d) a Member is unable to sit in the Council of Ministers in consequence of a declaration by the Sultan, as provided in subsection (v) of section 12, that he is incapable of discharging his functions as a Member;

- (e) a Member is unable to sit in the Council of Ministers in consequence of his suspension as provided in subsection (vi) of section 12; or
 - (f) a Member is absent from the State for a continuous period of more than one month without the permission of the Sultan.
 - (g) the Sultan may, by Instrument under the Seal of the State, appoint a person to be a temporary Member for the period of such vacancy.
- (ii) The person to be appointed a temporary Member under subsection (i) shall:
- (a) if the deficiency is in the number of *ex officio* Members, be a person who is a public officer;
 - (b) if the seat of a Member other than an *ex officio* Member is vacant be a person who is a Member other than an *ex officio* Member of the Legislative Council.
- (iii) Every person so appointed shall, so long as his appointment shall subsist, be to all intents and purposes a Member of the Council of Minister; and, subject to the provisions of this section, section 12 shall apply accordingly.
- (iv) A temporary appointment shall cease to have effect on notification by the Clerk to the Council of Ministers to the person appointed of the revocation of the appointment, or on the supersession of the appointment by the definitive appointment of a person to fill the vacancy, or when the vacancy shall otherwise cease to exist.

Attendance at the Council of Ministers of Non-members

14.—Whenever the Sultan or other person presiding desires to obtain the advice of any person touching the affairs of

government, he may require such person to attend any meeting of the Council of Ministers for such purpose.

Precedence

- 15.**—(i) The Members of the Council of Ministers other than the High Commissioner, shall have seniority and precedence among themselves in that Council as the Sultan may, by Proclamation, especially assign and, in default of and subject to any such Proclamation, as follows:
- (a) first, the *ex officio* Members in the order in which their offices are referred to in paragraph (a) of subsection (i) of section 11,
 - (b) secondly, the Member other than *ex officio* Members according to the date of the Instruments by which they were respectively appointed or, if appointed on the same day, in such order as the Sultan may assign; and
 - (c) thirdly, the temporary Members in such order as the Sultan may assign.
- (ii) If a Council of Regency has been appointed, the Regents shall take precedence over the *ex officio* Members and shall have such precedence and seniority among themselves as may be assigned by the Succession and Regency Proclamation or by any Proclamation made thereunder, and, in default of such assigned, in the order in which they have been appointed.
- (iii) When any person is reappointed to the Council of Ministers to fill a vacancy caused by the termination of his own term of office, any interval between such termination and reappointment shall be disregarded in calculating, for the purposes of this section, the length of time for which such person has been continuously a Member of that Council.

Summoning and Quorum

- 16.**—(i) The Council of Ministers shall not be summoned except by the authority of the Sultan, or, if a Council of Regency has been appointed, of the senior male Regent.
- (ii) No business shall be transacted at any meeting of the Council of Ministers if there are less than five members of the Council (besides the Sultan or other person presiding) present at the meeting, and the Sultan or any Member of the Council present at the meeting has objected to the transaction of business on that account.
- (iii) The Council of Ministers shall not be disqualified for the transaction of business by reason of any vacancy among its Members, including any vacancy not filled when that Council is first Constituted or is reconstituted at any time; and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so took part in the proceedings.

Presiding in Council of Ministers

- 17.**—In the absence of the Sultan, the person who shall preside shall be:
- (i) if a Council of Regency has been appointed, the senior male Regent present;
- (ii) if no Council of Regency has been appointed, such member of the Council of Ministers as the Sultan may appoint;
- (iii) in any other case, the *ex officio* Member of the Council of Ministers present who stands that in order of precedence according to subsection (i) of section 15.

Consultation with the Council of Ministers

18.—(i) In the exercise of his powers and the performance of his duties, the Sultan shall, subject to the provisions of this section, consult with the Council of Ministers.

(ii) Subsection (i) of this section shall not apply to the exercise or performance by the Sultan of any power or duty (whether conferred or imposed on him by this Constitution or by any other written law) if the law by which that power or duty is conferred or imposed empowers or requires the Sultan to exercise that power or perform that duty after consultation with some authority other than the Council of Ministers or does not require him to consult with any authority.

(iii) Notwithstanding subsection (i), the Sultan shall not be obliged to consult the Council of Ministers in cases:

(i) which are of such a nature that, in his judgment, the State would sustain material prejudice by his consulting the Council of Ministers thereon;

(ii) in which the matters to be decided are, in his judgment, too unimportant to require the advice of the Council of Ministers; or

(iii) in which the matters to be decided are, in his judgment, too urgent to admit of the advice of the Council of Ministers being given by the time within which it may be necessary for him to act:

Provided that, in every case falling within paragraph (c), the Sultan shall, as soon as practicable, inform the Council of Ministers of the measures which he has adopted with the reasons therefor.

(iv) Only the Sultan or the *Mentri Besar* shall be entitled to submit questions to the Council of Ministers, but if the *Mentri Besar* declines to submit any question to that Council

when requested in writing by any Member of that Council so to do, it shall be competent to such Member to require that there be recorded upon the minutes his written application together with the answer returned by the *Mentri Besar* thereon.

Sultan May Act in Opposition to the Advice of the Council of Ministers

- 19.—(i) The Sultan may act in opposition to the advice given to him by the majority of the Members of the Council of Ministers if he shall, in any case, consider it right so to do, but, in any such case, he shall record fully in writing, for inclusion in the minutes, the reasons for his decision.
- (ii) Whenever the Sultan shall so act against the advice of the Council of Ministers, it shall be competent for any Member to require that there be recorded upon the minutes any advice or opinion he may have given upon the question together with the reasons therefor.

Minutes

- 20.—(i) Minutes shall be kept of all the proceedings of the Council of Ministers.
- (ii) As soon as practicable after the minutes of a meeting of the Council of Ministers have been confirmed, a full transcript thereof shall be transmitted by the Clerk to the Council of Ministers to the Sultan.

Oath to be Taken by Members

- 21.—Every Member of the Council of Ministers, other than the Sultan, shall, before entering on the duties of his office, make and subscribe before the Sultan, or some other person

authorised by the Sultan, an oath or declaration in the form set out as Form III in the Schedule:

Provided that any person who, having previously been a Member of that Council of Ministers, again becomes a Member of that Council within one month after the termination of his previous Membership thereof may enter on the duties of his office without again making and subscribing such oath or declaration.

Clerk to the Council of Ministers

22.—The Sultan shall appoint some fit and proper person to be Clerk to the Council of Ministers, and such person shall, before entering upon the duties of his office, make and subscribe before the Sultan or other Member presiding an oath or declaration in the form set out as Form II in the Schedule.

6

THE LEGISLATIVE COUNCIL

Establishment of Legislative Council

23.—There shall be a Legislative Council, to be styled in Malay the “*Majlis Mesuarat Negeri*”, constituted in accordance with the provisions of this Part.

Composition of the Legislative Council

24.—The Legislative Council shall consist of six *ex officio* Members, five Official Members and ten Nominated Members.

***Ex Officio* Members (Repealed)**

25.—The *ex officio* Members of the Legislative Council shall be the *Mentri Besar*, the Deputy *Mentri Besar*, the State Secretary, the Attorney-General, the State Financial Officer and the Religious Adviser.

Official Members

26.—The Official Members of the Legislative Council shall be persons who hold public office and shall be appointed by the Sultan by Instrument under the Seal of the State.

Elected Members

27.—Revoked.

Nominated Members

28.—The Nominated Members of the Legislative Council shall be persons who do not hold public office, and shall be appointed by the Sultan by Instrument under the Seal of the State.

Qualifications for Official and Nominated Members

- 29.**—(i) Subject to section 30, any person other than a Regent who is a Subject of the Sultan and who has attained the age of 21 years, or a British Subject who has been resident in Brunei for two out of the immediate preceding three years, shall be qualified to be appointed as an Official Member or a Nominated Member of the Legislative Council.
- (ii) For the purposes of this section, the term a subject of the Sultan shall have the same meaning as that assigned to it by the Nationality Enactment for the time being in force.
- (iii) In calculating, for the purposes of this section, a period of residence in the State:

- (a) a period of absence from the State of less than six months;
 - (b) a period of absence from the State for the purposes of education of such kind, in such county and for such time as may be prescribed by any written law; and
 - (c) a period of absence from the State for reasons of health or for any other cause prescribed by any written law, and for such time as may be so prescribed,
- shall be treated as residence in the State.

Disqualification for Official and Nominated Members

30.—No person shall be qualified to be appointed as an Official Member or a Nominated Member of the Legislative Council or having been so appointed shall sit or vote therein, who:

- (i) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a power or state outside the Commonwealth other than the Republic of Ireland;
- (ii) is a person declared to be of unsound mind under any law in force in the State;
- (iii) has been sentenced by a Court in the State, in any part of the Commonwealth or in the Republic of Ireland to death or to imprisonment (by whatever name called) without the option of a fine:

Provided that this paragraph shall not apply to any person:

- (a) until the time for lodging an appeal has lapsed or, if an appeal has been lodged, until such appeal has been dismissed or has been allowed but the appellate court has imposed a sentence of death or imprisonment (by whatever name called);

- (b) who has received a free pardon;
- (c) if three years or more have elapsed since the termination of the imprisonment; or
- (d) in respect of whom the Sultan has, after full consideration of the circumstances, directed that this paragraph shall not apply;
- (iv) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in the State or in any part, of the Commonwealth; or
- (v) is a party to, or a partner in, a firm or a direct or manager of a company, which is a party to any contract the consideration for which exceeds in value the sum of one thousand dollars with the Government for or on account of the public service, and has not disclosed to the Speaker the nature of such contract and his interest, or the interest of such firm or company therein.

Provided that a person shall not be considered to be a party to a contract with the Government for the purposes of this paragraph by reason of his holding, or acting in, any public office;

Tenure of Office and Vacation of Seats

- 31.**—(i) Every Official and Nominated Member of the Legislative Council shall hold his seat therein during the Sultan's pleasure.
- (ii) Every Official and Nominated Member of the Legislative Council shall cease to be a Member at the next dissolution of the Council after he has been appointed or previously thereto if his seat shall become vacant under this Constitution.
- (iii) The seat of the Official or Nominated Member shall become vacant:

- (a) if he shall be appointed as a Regent;
 - (b) if he shall, by writing under his hand addressed to the Clerk of the Legislative Council; resign his seat in the Legislative Council, and, in the case of an Official Member, his resignation shall be accepted by the Sultan;
 - (c) if he shall be absent from two consecutive meetings of the Legislative Council without having obtained from the Speaker, before the termination of either of such meetings, permission to be or to remain absent therefrom;
 - (d) if being an Official Member, he shall cease to hold public office;
 - (e) if, being a Nominated Member, he shall be appointed permanently to any public office; or
 - (f) if any circumstances arise which, if he were not a Member of the Legislative Council, would cause him to be disqualified under section 30.
- (iv) If a Nominated Member shall be appointed temporarily to any public office or to act in any such office, he shall not sit as a Member or take part in the proceedings of the Legislative Council by virtue of his appointment as a Nominated Member so long as he continues to hold or act in that office,
- (v) The Sultan may, for such reason as may appeared to him to be good and sufficient, by Instrument under the Seal of the State, declare any Member, other than an *ex officio* Member, to be incapable of discharging his functions as a Member of the Legislative Council, and thereupon, such Member shall not sit in or take part in the proceedings of the Legislative

Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

- (vi) The Sultan may, for such reason as may appear to him good and sufficient, by Instrument under the Seal of the State suspend any Member, other than an *ex officio* Member from the exercise of his functions as such, and, thereupon such Member shall not sit in or take part in the proceedings of the Legislative Council so long as his suspension remains in force; and every such suspension shall remain in force until it shall be removed by the Sultan, by Instrument under the Seal of the State, or the person suspended ceases to be a Member of the Legislative Council.
- (vii) If any *ex officio* Member of the Legislative Council is appointed as a Regent and continues to hold the office by virtue of which he is an *ex officio* Member of the Legislative Council, he shall not, so long as he is a Regent, sit or take part in the proceedings of the Legislative Council as an *ex officio* Member thereof.
- (viii) Any person vacating a seat as a Member of the Legislative Council may, if qualified, be again appointed as, or elected to be, as the case may be, Member from time to time.

Decisions of Questions as to Membership of Legislative Councils, etc.

- 32.**—(i) The Sultan shall have exclusive jurisdiction to determine any question whether:
- (a) any Official Member or any Nominated Member of the Legislative Council has been validly appointed as a Member of that Council; or
 - (b) any such Member has vacated his seat therein.
- (ii) Revoked.

Temporary Appointments

33.—(i) Where for the time being:

- (a) one of the Members is appointed to act as Regent;
- (b) the functions of the offices qualifying for *ex officio* membership of the Legislative Council are being discharged by less than eight persons;
- (c) an Official Member is discharging the functions of any of those offices;
- (d) the seat of an Official Member or a Nominated Member is vacant otherwise than by reason of a dissolution of the Council;
- (e) a Member is unable to sit in the Legislative Council in consequence of a declaration by the Sultan, as provided in subsection (v) of section 31, that he is incapable of discharging his functions as a Member;
- (f) a Member, other than an *ex officio* Member or an Elected Member, is unable to sit in the Legislative Council in consequence of his suspension as provided in subsection (vi) of section 31;
- (g) a Nominated Member has been appointed temporarily to a public office or to act in any such office; or
- (h) an Official Member or a Nominated Member is absent from the State,

the Sultan may, by Instrument under the Seal of the State, appoint a person to be a Member for the period of such vacancy.

- (ii) if the deficiency is in the number of *ex officio* Members or Official Members, the person so appointed shall be a person who is a public officer.

- (iii) Every person so appointed shall, so long as his appointment shall subsist, be to all intents and purposes:
 - (a) in the case of a deficiency in the number of persons sitting in the Legislative Council as *ex officio* Members or Official Members an Official Member; and
 - (b) in the case of a deficiency in the number of persons sitting in the Legislative Council as Nominated Members, a Nominated Member,
 and, subject to this section, section 31 shall apply accordingly.
- (iv) Any such temporary appointment may be revoked by the Sultan by Instrument under the Seal of the State.
- (v) A temporary appointment shall cease to have effect on notification by the Clerk of the Legislative Council to the person appointed of the revocation of the appointment, or on the supersession of the appointment by the definitive appointment of a person to fill the vacancy or when the deficiency shall otherwise cease to exist.

Attendance at Legislative Council of Non-members

- 34.**—(i) Whenever the Speaker desires to obtain the advice of any person in the State touching any business about to be brought before the Legislative Council, he may summon any such person to attend the Legislative Council for such purpose.
- (ii) Any person so required may, with the permission of the Speaker and subject to Standing Orders, address the Legislative Council but, save as aforesaid, shall take no part in the proceedings thereof.

Filling of Vacancies

- 35.**—(i) Whenever the seat of an Official Member or a Nominated Member of the Legislative Council becomes vacant, the vacancy shall be filled by appointment by the Sultan in accordance with this Constitution.
- (ii) Revoked

Precedence

- 36.**—(i) The Members of the Legislative Council shall have seniority and precedence in the Council as follows:
- (a) First the *ex officio* Members in the order in which their offices are referred to in section 25;
 - (b) Secondly, the Official Members and the Nominated Members according to the date of the Instruments by which they were respectively appointed, or if appointed on the same day, in such order as the Sultan shall assign; and
 - (c) Thirdly the temporary Members in such order as the Sultan shall assign.
- (ii) When any person is re-appointed to the Legislative Council to fill the vacancy caused by the termination of his own term of office, any interval between such termination and re-appointment shall be disregarded in calculating for the purposes of this section, the length of time for which such person has been continuously a Member of the Council.

Speaker

- 37.**—(i) The Sultan may, by Instrument under the Seal of the State, appoint a Speaker of the Legislative Council either from among the Members of the Council or from among persons who are not Members thereof; but, unless and until a Speaker is so appointed or if at any time there is no

subsisting appointment of a Speaker, references in this Constitution (other than in this section) to the Speaker shall be construed as references to the *Mentri Besar*.

- (ii) Any person appointed as Speaker shall hold office at the Sultan's pleasure and, subject thereto, for such period as may be specified in the Instrument by which he is appointed:
 Provided that the Speaker may, by writing under his hand addressed to the Sultan, resign his office and, in the case of a Speaker appointed from among the Members of the Legislative Council, shall vacate his office if he ceases to be a Member of that Council.

Speaker to Attend and Preside

- 38.**—The Speaker shall, so far as is practicable, attend and preside at all meetings of the Legislative Council and in his absence such Member of the Legislative Council as the Speaker may, after consultation with the Sultan, generally or specially appoint, or, in the absence of such Member or if no Member be so appointed, the Member of the Legislative Council present who stands first in the order of precedence, shall preside.

7

LEGISLATION AND PROCEDURE IN THE LEGISLATIVE COUNCIL

Power to Make Laws

- 39.**—(i) It shall be lawful for the Sultan, with the advice and consent of the Legislative Council, and subjects to the provisions of this Constitution, to make laws for the peace, order and good government of the State.

- (ii) For the avoidance of doubts it is declared that laws made under subsection (i) may have extraterritorial operation.

40.—(i) Subject to this Constitution and to Standing Orders, any Members of the Legislative Council may introduce any Bill or propose any motion for debate in, or may present any petition to, the Legislative Council; and such Bill, motion or petition shall be debated and disposed of in accordance with Standing Orders.

- (ii) Except with the prior approval of the Sultan, the Legislative Council shall not proceed upon any Bill, motion or petition which would provide for or affect:

- (a) the finance or currency of the State;
- (b) the compounding or remitting of any debt due to the State;
- (c) the custody of the Consolidated Fund, the charging of any money on the Consolidated Fund or the abolition of any such charge;
- (d) the payment of moneys into the Consolidated Fund or the payment, issue or withdrawal from the Consolidated Fund of any moneys not charged thereon or any alteration in any such payment, issue or withdrawal otherwise than by reducing it;
- (e) the receipt of moneys on account of the Consolidated Fund or the custody or issue of such moneys, or the audit of the accounts of the State;
- (f) the borrowing of money, or the giving of any guarantee by the State, or the amendment of the law relating to the financial obligations of the State; or
- (g) the assignment of any tax or fee.

- (iii) A Bill or an amendment to a Bill shall not be deemed to make provision for any of the matters specified in subsection (ii) by reason only that it provides:
- (a) for the imposition or alteration of any fine or other pecuniary penalty or for the payment or demand of a licence fee, or a fee or charge for any service rendered; or
 - (b) for the imposition, alteration or regulation of any tax or rate by any local authority or body for local purposes.

Publication of Bills

41.—Save in case of urgency to be certified in writing by the *Mentri Besar*, every Bill shall be published for general information in the *Gazette* at least fourteen days prior to its introduction into the Legislative Council.

Description of Bills, etc. not to be Proceeded without Approval

- 42.**—(i) Except with the prior approval of the Sultan signified thereto, the Legislative Council shall not proceed upon any Bill or upon any amendment to any Bill which, in the opinion of the Speaker, falls within any of the following classes:
- (a) any Bill relating to the issue of Bank Notes or the establishment of any Bank Association or the amendment of the constitution thereof;
 - (b) any Bill the provisions of which shall appear inconsistent with obligations imposed upon the Sultan or Her Majesty by Treaty or Agreement; or
 - (c) any Bill relating to questions of defence or public security, or any matter affecting the discipline or

control or movement of Her Majesty's Forces by land, sea or air.

- (ii) The approval of the Sultan in relation to any Bill or any amendment to any Bill under this section may be expressed at any time before the Sultan has assented thereto, and may, if given while the Legislative Council is sitting, be given verbally through the *Mentri Besar* and, if given at any other time, shall be given in writing under the hand of the *Mentri Besar*.
- (iii) The Speaker may, at any time in his discretion, adjourn the Legislative Council or suspend the sitting so as to obtain the advice of the Sultan under subsection (i) on any Bill, or any amendment to any Bill, which may be before that Council, or may require the Legislative Council not to proceed thereon until the Sultan has given his approval.

Voting

- 43.**—(i) All questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the Members present and voting.
- (ii) The Speaker, if appointed as such by Instrument under the Seal of the State from among persons who are not Members of the Legislative Council, shall not have an original vote, but he shall have and exercise a casting vote.
 - (iii) In the absence of the Speaker the Member presiding shall have an original vote and shall in addition, if upon any question the votes are equally divided, have and exercise a casting vote.

Vacancies and Quorum

- 44.**—(i) The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members, including any vacancy not filled when the Council is first constituted or reconstituted at any time; and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in that Council, or otherwise took part in those proceedings.
- (ii) If, at any sitting of the Legislative Council, any Member who is present draws the attention of the person presiding at the sitting to the fact that less than seven members are present apart from any Member presiding and, after such interval, if any, as may be provided for by the Standing Orders the person presiding is satisfied that there are less than that number of Members so present, the Council shall be adjourned.

Assent to Bills, etc.

- 45.**—(i) No Bill shall become law unless the Sultan shall have assented thereto, and shall have signed the same, and the same shall have been sealed with the Seal of the State in token of assent.
- (ii) A law assented to by the Sultan shall come into operation on the date on which such assent shall be given, or, if it shall be enacted either in such law or in some other law (including any law in force on the commencement of this Part) that it shall come into operation on some other date, on that date.

Style of Laws and Enacting Words

- 46.**—All laws shall be styled Enactments and the enacting words shall be “Be it enacted by His Highness the Sultan with the advice and consent of the Legislative Council as follows:”.

Reserved Powers

47.—(i) If the Sultan shall consider that it is expedient in the interests of public order, good faith or good government of the State that any Bill introduced, or any motion proposed, in the Legislative Council shall have effect, then, if the Council fail to pass that Bill or carry that motion within such time and in such form as the Sultan may think reasonable and expedient, the Sultan may, at any time, notwithstanding any provision of this Constitution or of any Standing Orders, declare that that Bill or motion shall have effect as if it had been passed or carried by the Council either in the form in which it was so introduced or proposed or with such amendments as the Sultan shall think fit which have been moved or proposed in the Legislative Council or in any Committee thereof; and the Bill or motion shall be deemed thereupon to have been so passed or carried; and the provisions of this Constitution, and, in particular, the provisions of section 45, relating to assent to Bills shall have effect accordingly. The *Mentri Besar* shall notify in the *Gazette* any such declaration together with the Bill or motion so deemed to have been passed or carried.

- (ii) Any such declaration, other than a declaration relating to a Bill, may be revoked by the Sultan; and the *Mentri Besar* shall notify such revocation in the *Gazette*; and, from the date of such notification, any motion which shall have been deemed to have been carried by virtue of the declaration revoked shall cease to have effect; and such cession shall have the same effect as the repeal of a written law.

Standing Orders

- 48.**—(i) Subject to this Constitution, the Legislative Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business; but no such Orders, and no amendment or revocation thereof, shall have effect unless approved by the Sultan.
- (ii) The first Standing Orders of the Legislative Council shall be made by the Sultan and may be amended or revoked by that Council under subsection (i).
 - (iii) No Standing Order shall be suspended without the approval of the Speaker and such approval shall only be granted by him if he is satisfied that such suspension is necessary for the proper and expeditious conduct of the business of the Legislative Council.

Oath to be Taken by Members

- 49.**—Every Member of the Legislative Council shall before taking his seat make and subscribe before the Speaker or other Member presiding an oath or declaration in the form set out as Form IV in the Schedule:

Provided that any person, who, having previously been a Member of the Legislative Council, again becomes a Member of that Council within one month after the termination of his previous membership thereof may enter on the duties of his office without again making or subscribing such oath or declaration.

Clerk to the Legislative Council

50.—The Sultan shall appoint some fit and proper person to be Clerk to the Legislative Council, and such person shall, before entering upon the duties of his office, make and subscribe before the Speaker or other Member presiding an oath or declaration in the form set out as Form V in the Schedule.

Minutes

- 51.**—(i) Minutes shall be kept of all the proceedings of the Legislative Council.
- (ii) As soon as practicable a full transcript of the minutes of every sitting of the Legislative Council shall be transmitted by the Clerk to the Legislative Council to the Sultan.

Sessions, etc. of the Legislative Council

- 52.**—(i) There shall be a session of the Legislative Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting in one session and the date appointed for its first sitting in the next session.
- (ii) Each session of the Legislative Council shall be held at such place and shall commence at such time as the Sultan may from time to time, by notice published in the *Gazette*, appoint.

Privileges of the Legislative Council

- 53.**—(i) Every Member of the Legislative Council may express his opinion freely in the Legislative Council upon any matter which comes before it.
- (ii) The validity of any proceedings in the Legislative Council or any committee thereof shall not be questioned in any court.
- (iii) No person shall be liable to any proceedings in any court in respect of anything said, or any vote given, by him when taking part in any proceedings of the Legislative Council or any committee thereof.
- (iv) No person shall be liable to any proceedings in any court in respect of anything published by or under the authority of the Legislative Council.

Right of Sultan to Address Legislative Council

- 54.**—The Sultan shall have the right to address the Legislative Council at any time upon any matter.

Prorogation and Dissolution

- 55.**—(i) The Sultan may at any time, by Proclamation published in the *Gazette*, prorogue or dissolve the Legislative Council.
- (ii) The Sultan shall dissolve the Legislative Council at the expiration of five years from the date when it first meets after it is first constituted or is reconstituted at any time unless it has been sooner dissolved.

56.—No tax or rate shall be levied by or for the purposes of the State except by or under the authority of law.

Civil List of the Sultan and His Consort

57.—The Legislature shall by law provide a Civil List of the Sultan and a Civil List of his Consort, which Civil Lists shall be a charge on the Consolidated Fund.

Consolidated Fund

58.—All revenues and moneys howsoever raised or received by the State from whatsoever source shall, subject to this Constitution and any written law, be paid into and form one fund to be known as the “Consolidated Fund”.

Expenditure Charged on Consolidated Fund

59.—(i) There shall be charged on the Consolidated Fund in addition to any grant, remuneration or other moneys so charged by any other provision of this Constitution or by any written law:

- (a) the costs, charges and expenses, other than the emoluments of members of the public service, incidental to the collection and management of the revenues raised or received by the State;
- (b) all pensions, compensation for loss of office and gratuities for which the State is liable;
- (c) all debt charges for which the State is liable;
- (d) all moneys required to satisfy any judgment, decision or award against the State by any court or tribunal; and
- (e) all moneys required to discharge and obligation which has been incurred in respect of the High Commissioner or his establishment consequent upon any agreement

Her Majesty's Government of the entered into by the Sultan with United Kingdom.

- (ii) For the purposes of this section, “debt charges” include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the Consolidated Fund and the service and redemption of debt created thereby.

Annual Estimates of Revenue and Expenditure

- 60.**—(i) The Sultan in Council shall, in respect of every financial year, cause to be laid before the Legislative Council a Statement of the estimated receipts and expenditure of the State for that year, and, unless the Legislature by Enactment in respect of any year otherwise provides, that Statement shall be so laid before the commencement of that year.
- (ii) The estimates of expenditure shall show separately:
 - (a) the total sums required to meet expenditure charged on the Consolidated Fund; and
 - (b) subject to subsection (iii), the sums respectively required to meet the heads of other expenditure proposed to be met from the Consolidated Fund.
 - (iii) The sums to be shown under paragraph (b) of subsection (ii) shall not include:
 - (a) sums representing the proceeds of any loan raised by the State for specific purposes and appropriated for those purposes by or under the Enactment authorizing the raising of the loan; and
 - (b) sums representing any money, or interest on money, received by the State subject to a trust and to be applied in accordance with the terms of the trust.
 - (iv) That Statement shall also show, so far as practicable, the assets and liabilities of the State at the end of the last

completed financial year, the manner in which those assets are invested or held and the general heads in respect of which those liabilities are outstanding.

Supply Bills

61.—The heads of expenditure to be met from the Consolidated Fund but not charged thereon, other than expenditure to be met by such sums as are mentioned in subsection (iii) of section 60, shall be included in a Bill, to be known as the Annual Supply Bill, providing the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

Supplementary and Excess Expenditure

62.—If, in respect of any financial year, it is found:

- (i) that the amount appropriated by the Annual Supply Enactment for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Annual Supply Enactment; or
- (ii) that any moneys have been expended for any purpose in excess of the amount, if any appropriated for that purpose by the Annual Supply Enactment,

a Supplementary Estimate showing the sums required or spent shall be caused by the Sultan in Council to be laid before the Legislative Council and the heads of any such expenditure shall be included in a Supplementary Supply Bill.

Power to Authorise Expenditure on Account or for Unspecified Purposes

63.—The Legislative shall have power in respect of any financial year:

- (i) before the passing of the Annual Supply Bill to authorize by Enactment expenditure for part of the year; and
- (ii) to authorize by Enactment expenditure for the whole or part of the year otherwise than in accordance with sections 59 to 62 inclusive if, owing to the magnitude or indefinite character of any services or to circumstances of unusual urgency, it appears to the Legislative Council to be desirable so to do.

Contingencies Fund

- 64.**—(i) The Legislature may by law provide for the creation of a Contingencies Fund and for authorizing the *Mentri Besar*, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Contingencies Fund to meet that need.
- (ii) Where any advance is made in accordance with subsection (i), a Supplementary Estimate shall be presented and a Supplementary Supply Bill introduced as soon as possible for the purpose of replacing the amount so advanced.

Withdrawals from Consolidated Funds

- 65.**—(i) Subject to subsection (ii), no moneys shall be withdrawn from the Consolidated Fund unless they are:
- (a) charged on the Consolidated Fund;
 - (b) authorized to be issued **by** a Supply Enactment; or
 - (c) authorized to be issued **under section 63**.
- (ii) Subsection (i) shall not apply to any such sums as are mentioned in subsection (iii) of section 60.

- (iii) No moneys shall be withdraw from the Consolidated Fund except in the manner provided by law.

State Auditor

66.—(i) There shall be a State Auditor who shall be appointed by the Sultan.

- (ii) A person who has held the office of State Auditor shall be eligible for reappointment but shall not, while holding that office be eligible for any other appointment in the service of the State.
- (iii) The State Auditor may at any time resign his office, but shall not be removed from office except on the like grounds and in the like manner as a member of the Public Service Commission.
- (iv) The Legislature shall provide for the remuneration of the State Auditor and the remuneration so provided shall be charged on the Consolidated Fund.
- (v) The remuneration and other terms of office, including pension rights, of the State Auditor shall not be altered to his disadvantage after his appointment.
- (vi) Subject to this section, the terms and conditions of the service of the State Auditor shall be determined by the Sultan.

Power and Duties of the State Auditor

- 67.**—(i) The accounts of the State shall be audited and reported upon by the State Auditor, who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts.
- (ii) The State Auditor shall perform such other duties and exercise such powers in relation to the accounts of the State

and to the accounts of other public authorities and bodies administering public funds as may be provided by any written law.

Reports of the State Auditor

68.—The State Auditor shall submit his reports to the Sultan who shall cause them to be laid before the Legislative Council.

Exclusion of Muslim Revenues and Funds

69.—The provisions of this Part shall not be applicable to Muslim revenues and funds.

9

THE PUBLIC SERVICES

Tenure of Office in the Public Service

70.—Save as otherwise provided in this Constitution, every person holding office in the service of the Government of the State shall hold office during the pleasure of the Sultan.

The Public Service Commission

- 71.**—(i) There shall be a Public Service Commission which shall consist of a Chairman and four other persons appointed by the Sultan.
- (ii) Subject to subsection (iii), every person who is appointed to be a member of the Public Service Commission shall, unless he earlier resigns his office or is removed therefrom, hold office for a period of three years from the date of his appointment and shall be eligible for reappointment.

- (iii) (a) Subject to paragraph (b), a member of the Public Service Commission may be removed from his office by the Sultan.
- (b) A member of the Public Service Commission shall only be removed from his office for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed unless his case has been investigated by a person who holds or has held high judicial office in any part of the Commonwealth, nominated for that purpose by the Sultan, and that person has recommended that he should be so removed.
- (c) The Sultan in Council may from time to time make, amend or revoke rules relating to the procedure to be followed in investigating any question under this subsection, and may make arrangements as to the remuneration to be paid to any person appointed under paragraph (b), which remuneration shall be a charge on the Consolidated Fund.
- (iv) The Sultan may grant leave of absence from his duties to any member of the Public Service Commission, and may appoint a person to be a temporary member for the period of such leave.
- (v) The procedure of the Public Service Commission shall, subject to any regulations made under section 75, be as determined by the Commission.
- (vi) For the purposes of Chapter IX of the Penal Code, a member of the Public Service Commission shall be deemed to be a public servant.

Public Service Secretary of Commission

72.—There shall be a Secretary to the Public Service Commission who shall be appointed by the Sultan.

Salaries of Members of the Public Service Commission

73.—Every person appointed to be a member of the Public Service Commission shall be paid such salary or allowances, or both, as may be determined by the Legislature; and all such salaries and allowances shall be a charge on the Consolidated Fund.

Appointments in the Public Service

- 74.**—(i) The power to appoint, transfer, promote, dismiss or exercise disciplinary control over public officers is hereby vested in the Sultan.
- (ii) In the exercise of the power conferred upon him by subsection (i), the Sultan shall, except in the case of the *Mentri Besar*, the State Secretary, Overseas Officers and such other public officers as the Sultan in Council may prescribe by notification in the *Gazette*, and unless regulations under section 75 otherwise provide, consult and act in accordance with the recommendation of the Public Service Commission.
- (iii) Nothing in this section shall affect the provisions of any written law relating to members of the Armed Forces, the Police Force or the Prison Service of the State.

Regulations

75.—The Sultan in Council may make regulations to provide for:

- (i) the exercise by the Public Service Commission of any of its functions; or
- (ii) the exercise by the Public Service Commission or by any person, subject to such conditions as may be prescribed, of any of the powers vested in the Sultan by section 74 and may further provide that any such person shall be free from the restriction imposed by subsection (ii) of section 74.

Sultan to Administer Oaths

76.—The Sultan may, whenever he thinks fit, require any person in the public service of the State to make and subscribe before him or such person as he may appoint an oath or declaration of allegiance in the form set out as Form VI in the Schedule.

Special Provisions for Overseas Officers

77.—The Sultan in Council shall make regulations for implementing any agreement between Her Majesty's Government of the United Kingdom and the Sultan relating to the terms and conditions of service of Overseas Officers; and this Part shall apply in relation to Overseas Officers subject to any such regulations.

Overseas Officers

78.—In this Part, “Overseas Officer” means an officer (other than an officer serving on contract with the Government of the State) whom the Secretary of State has, in pursuance of any agreement with the Sultan, nominated for appointment to the service of the Government of the State.

10

THE STATE SEAL

The State Seal

79.—The Sultan shall keep and use the Seal of the State for sealing all things whatsoever that shall pass that Seal; and, until a Seal shall be provided for the State, a stamp bearing the inscription “State of Brunei: Seal of the State” may be used as the Seal of the State.

11

MISCELLANEOUS

Provisions to Give Effect to Constitution

80.—(i) The Sultan may by Order, at any time within three years after the publication in the *Gazette* of this Constitution, make such provision as appears to him necessary or expedient for the purpose of bringing existing instruments who accord with the provisions of this Constitution or otherwise for giving effect, or enabling effect to be given, to those provisions; and, in particular and without prejudice to the generality of the foregoing power the Sultan may by such Orders:

- (a) modify, add to or adapt any provisions in existing instruments which refer, in whatever terms, to the Sultan in Council, the State Council or the Council of State;
- (b) provide for the transfer of functions, powers and duties conferred or imposed by existing instruments upon any person or authority to such other person or authority as may be specified by such Orders;
- (c) proceed to make any appointment which he would be authorized to make under Part VI if this Constitution

were in operation and may also, at any time after such appointments, proceed to make any appointment which he would be authorized to make under section 11 if that section and Part VI were in force and the appointments made under Part VI had taken effect:

Provided that, except in so far as may be necessary to give effect to the provisions of this subsection, no appointment made by virtue hereof shall have effect before the commencement of that Part;

- (d) provide for the financial procedure of the State including, until other provision has been made under subsection (i) section 64, the establishment of a Contingencies Fund.
- (e) provide for the audit of the moneys of the State and of other public bodies administering public funds, and, until otherwise provided by the Legislative Council pursuant to subsection (iv) of section 66, provide for the remuneration of the State Auditor;
- (f) until otherwise provided by the Legislative Council pursuant to section 73, provide for the remuneration of the member of the Public Service Commission;
- (g) provide for the incorporation of the *Mentri Besar* for the purpose of holding and disposing of property, movable and immovable, in his corporate capacity, on behalf of the State, and for the purpose of transferring to him, in that capacity on behalf of the State, certain property, movable without the State, at present held on behalf of the State by certain other persons and bodies;
- (h) provide for the procedure in administrative appeals to the Sultan in Council.

- (ii) Subject to this section, the existing instruments shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after the commencement of this Constitution, or any Part thereof, with such modifications as may be made therein by any Order made under this section or by any other written law.
- (iii) Notwithstanding anything in this Constitution contained, the State Council existing immediately before the commencement of this Constitution shall continue to have full legislative and executive authority until the commencement of Parts V, VI and VII.
- (iv) In this section, “existing instruments” means Enactments, rules, regulations, by-laws, proclamations, orders, licences, permits and other instruments having the force of law, or issued in pursuance of statutory powers, and in force in the State at the date of the Order by which they are affected.
- (v) An Order made under this section may be amended or revoked by a further Order and may be given a retrospective effect to a date not earlier than the date of the publication in the *Gazette* of this Constitution.

Attorney-General

- 81.**—(i) The Attorney-General shall advise on all legal matters connected with the affairs of the State referred to him by the Sultan or by the Government of the State through the State Secretary.
- (ii) The Attorney-General shall have power exercisable at his discretion to institute, conduct or discontinue any proceedings for an offence other than:
- (a) proceedings before a Muslim Court, subject to the provisions of any written law to the contrary; or

(b) proceedings before a Court Martial.

In the exercise of this power, the Attorney-General shall not be subject to the direction or control of any other person of authority.

- (iii) The Attorney-General shall have the right of audience in, and shall take precedence over any other person appearing before, any court or tribunal in the State.

Official Language

- 82.**—(i) The official language of the State shall be the Malay language and shall be in such script as may by written law be provided.
- (ii) Notwithstanding subsection (i), for a period of five years after the coming into operation of this section, and thereafter until otherwise by written law provided, the English language may be used for all official purposes.
- (iii) The official language of the proceedings of the Privy Council, of the Council of Ministers and of the Legislative Council shall be Malay:

Provided that:

- (a) with the leave of the person presiding, any Member may speak English; and
- (b) whenever it shall be necessary for the better convenience of any Member of any Council as aforesaid who is not conversant with the Malay Language to do so, such Member may, with the leave of the person presiding, employ an interpreter during the proceedings of such Council; and every interpreter so employed shall, before entering upon his duties for the first time, make and subscribe before the person

presiding an oath or declaration in the form set out as Form VII in the Schedule.

- (iv) An official version in the English language shall be provided of anything which, by this Constitution, or by any written law, or by the Standing Orders, is required to be printed or in writing, and such version shall, in addition to the official Malay version, be accepted as an authentic text.
- (v) Notwithstanding subsection (i), for a period of five years after the coming into operation of this section, and thereafter until otherwise by written law provided, the authoritative text of:
 - (a) all Bills to be introduced, or amendments thereto to be moved, in the Legislative Council; and
 - (b) all written laws and instruments, shall be printed in both the Malay and English languages; but in case of any doubt or conflict between the Malay and the English texts:
 - (i) subject to paragraph (ii), if such conflict or doubt arises in any Bill, written law or instrument, other than this Constitution, the Succession and Regency Proclamation or the Nationality Legislation the English text shall prevail; and
 - (ii) if such conflict or doubt arises in this Constitution, the Succession and Regency Proclamation or the Nationality Legislation but not any Order made thereunder, the Malay text shall prevail.

State of Emergency

- 83.**—(i) Whenever it appears to the Sultan that an occasion of public danger exists whereby the security or economic life of

the State, or any part thereof, is threatened, whether by war or external aggression or internal disturbance, actual or threatened, he may by Proclamation (hereinafter referred to as a “Proclamation of Emergency”) declare a state of emergency either in the whole State or in such part of the State as may be specified in the Proclamation.

- (ii) No Proclamation of Emergency shall be in force for more than two years, without prejudice, however, to the issue of another such proclamation at or before the end of that period.
- (iii) When a Proclamation of Emergency has been made and so long as such Proclamation is in force, the Sultan may make any Orders whatsoever which he considers desirable in the public interest; and may prescribe penalties which may be imposed for any offence against any such Order; and may provide for the trial by any court of persons guilty of such offences:

Provided that no such Order shall confer any right to punish, without trial, by death, imprisonment or fine and that, except in so far as such procedure may be modified by any such Order, or of any offence created by any such Order, in respect of which breach or offence it is sought to make the offender liable to death, imprisonment or fine.

- (iv) Without prejudice to the generality of subsection (iii), such Orders may be made with regard to any matters coming within the classes of subjects hereinafter enumerated, that is to say:
 - (a) censorship, and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
 - (b) arrest, detention, exclusion and deportation;

- (c) control of the harbours, ports and territorial waters of the State, and of the movements of vessels;
 - (d) transportation by land, air or water, and the control of the transport and movement of persons, animals and things;
 - (e) trading, storage, exportation, importation, production and manufacture;
 - (f) supply and distribution of food, water, fuel, light and other necessities;
 - (g) appropriation, control, forfeiture and disposition of property and the use thereof;
 - (h) conferring powers on public officers and others;
 - (i) requiring persons to do work or render services;
 - (j) constituting a special police force;
 - (k) formation of tribunals and other bodies for the purpose of deciding any matters specified in any such Orders, but having no power to inflict imprisonment or fines;
 - (l) modification, amendment, supersession or suspension of all or any of the provisions of any written law;
 - (m) entry into, and search of, premises or other places, and search and interrogation of persons;
 - (n) prescribing fees or other payments.
- (v) Notwithstanding anything contained in Part VIII, the Sultan may, by any such Order, make all such financial provisions as may be necessary during the period of the emergency, including provision for the public service, and for the payment of compensation for work required compulsorily to be undertaken, and for property compulsorily taken.
- (vi) Any Order made under this section shall, unless the Sultan otherwise directs, come into force on the day on which it is made.

- (vii) Every Order made under this section shall, at the next meeting of the Legislative Council, be laid on the table of that Council and the Legislative Council may resolve that any such Order shall, to the extent and as from such date as may be specified in such resolution, cease to have effect; and any such cessation shall, if assented to by the Sultan, have the same effect as the repeal of a written law.
- (viii) Such Orders shall be publicly notified as soon as circumstances permit; and any rescission of such Orders shall also be so published.
- (ix) Any Order made under this section shall, if the Proclamation of Emergency specifies only part of the State, have effect only in such part:
 Provided that, if, while a Proclamation of Emergency is in force in any part of the State, another Proclamation of Emergency is made in respect of any other part of the State, any Order already made and still in force when the last Proclamation comes into operation shall, forthwith, have effect in the part of the state specified in the last Proclamation.
- (x) Every Order made in pursuance of this section, and every instrument made in pursuance of any such Order, shall have effect notwithstanding inconsistent therewith contained in this Constitution or in any written law.

Effect of Constitution on the Sultan's Prerogative

- 84.**—(i) The Government of the State shall be regulated in accordance with the provisions of this Constitution, and the form of such Government shall not be altered save in pursuance of the power conferred by section 85.

- (ii) Save as provided in subsection (i), and save to such extent as may be necessary to avoid inconsistency with any of the provisions of this Constitution, nothing in this Constitution shall be deemed to derogate from the prerogative powers and jurisdiction of the Sultan and, for the avoidance of doubt, it is declared that the Sultan retains the power to proclaim a further Part or further Parts of the law of the Constitution as to him from time to time may seem expedient.

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AMENDMENT AND INTERPRETATION OF THE CONSTITUTION

Amendment of Constitution

- 85.**—(i) The Sultan may, by Proclamation, amend or revoke any of the provisions of this Constitution including this section; and this Constitution shall not otherwise be amended.
- (ii) The Sultan shall consult the Privy Council in relation to the exercise of the powers vested in him by this section but shall not be obliged to act in accordance with the advice of that Council.
 - (iii) The Sultan shall not make any Proclamation for the amendment or revocation of any provision of this Constitution unless a draft of the Proclamation has been approved by resolution of the Legislative Council.

Interpretation Tribunal

- 86.**—(i) The Sultan may refer any question involving the meaning, interpretation, construction or effect of any of the provisions of this Constitution to the Interpretation Tribunal

established in accordance with subsection (vii) for their determination.

- (ii) When any such question arises in any legal proceedings before any court, either party thereto may request that court to report such question to the Sultan, with a submission that the Sultan should refer that question to the Interpretation Tribunal; and, thereupon, the court shall so report such question unless in the opinion of the court the request is frivolous or vexatious, on the question has already been decided by the Interpretation Tribunal.
- (iii) If the Sultan does not refer a question reported under subsection (ii), he shall cause the court by whom the report thereof was made to be so informed, and the court shall thereupon proceed with the determination of the legal proceedings before it.
- (iv) The decision of a majority of the Interpretation Tribunal upon any question referred to it under this section shall be deemed to be a decision of the Tribunal; and any decision of the Tribunal shall be in writing and shall be published in the *Gazette*, and may be proved by production of the *Gazette*.
- (v) In the case of a reference made by the Sultan to the Interpretation Tribunal pursuant to a report under subsection (ii), the Sultan shall cause the determination of the Interpretation Tribunal to be communicated to the court by which the question has been reported and, in such case, that court may make such provision as may be just as to the costs of, and incurred by, such reference.
- (vi) The determination of the Interpretation Tribunal in any case referred to it under this section shall be binding and conclusive upon all persons, and shall not be called in question in any court.

- (vii) The Interpretation Tribunal shall consist of a Chairman, who shall be a person who holds or has held high judicial office in, or has for at least ten years been engaged in legal practice in, any part of the Commonwealth, and two other members, which Chairman and other members shall be appointed by the Sultan by Instrument under the Seal of the State.
- (viii) The Sultan in Council may from time to time make, amend or revoke rules relating to the procedure to be followed in referring or determining questions under this section, and may make arrangements as to the remuneration to be paid to members of the Interpretation Tribunal, which remuneration shall be a charge on the Consolidated Fund.

SCHEDULE

FORM I

(Section 5 (4))

Oath and Declaration to be Taken or Made by a Privy Councillor

Wallahi Wa-Billahi Wa-Taallahi

I, (being an *ex officio* Member/having been appointed a Member) Of His Highness's Privy Council (swear by Almighty God/solemnly and sincerely declare) that, except with the authority of His Highness the Sultan, I will not directly or indirectly reveal the business or proceedings of the Privy Council, or the nature or contents of any documents communicated to me as a Member of the Council, or any matter coming to my knowledge in my capacity as a Member of the Council and that in all things I will be a true and faithful Councillor.

Dated this day of 19

Signature

FORM II

(Section 6 (3), 22)**Oath and Declaration to be Taken or Made by the Clerk to the Privy Council and the Clerk to the Council of Ministers***Wallahi Wa-Billahi Wa-Taallahi*

I, having been appointed Clerk to the (Privy Council/Council of Ministers) (swear by Almighty God/solemnly and sincerely declare) that I will not directly or indirectly reveal such matters as shall be debated in the Council and committed to my secrecy but that I will well and truly serve in the said office as Clerk to the (Privy Council/Council of Ministers).

Dated this day of 19

Signature

FORM III

(Section 21)**Oath and Declaration to be Taken or Made by a Member of the Council of Ministers***Wallahi Wa-Billahi Wa-Taallahi*

I, (being an *ex officio* Member/having been appointed a Member) Of His Highness's Privy Council (swear by Almighty God/solemnly and sincerely declare) that, except with the authority of His Highness the Sultan, I will not directly or indirectly reveal the business or proceedings of the Privy Council, or the nature or contents of any documents communicated to me as a Member of the Council, or any matter coming to my knowledge in my capacity as a Member of the Council and that in all things I will be a true and faithful Councillor.

Dated this day of 19

Signature

FORM IV

(Section 49)

Oath and Declaration to be Taken or Made by a Member of the Legislative Council

Wallahi Wa-Billahi Wa-Taallahi

I, (being an *ex officio* Member/having been appointed a Member) of the Legislative Council (swear by Almighty God/solemnly and sincerely declare) that I will to the best of my ability and judgment, serve as a true and faithful Member of the Legislative Council.

Dated this day of 19

Signature

FORM V

(Section 50)

Oath and Declaration to be Taken or Made by the Clerk to the Legislative Council

Wallahi Wa-Billahi Wa-Taallahi

I, having been appointed Clerk to the Legislative Council (swear by Almighty God/solemnly and sincerely declare) that I will well and truly serve in the said office of Clerk to the Legislative Council.

Dated this day of 19

Signature

FORM VI

(Section 76)**Oath or Declaration of Allegiance***Wallahi Wa-Billahi Wa-Taallahi*

I, (swear by Almighty God/solemnly and sincerely declare) that I will be faithful and bear true allegiance to His Highness Sultan and His Successors according to law. That I will without fear or favour and to the best of my ability and judgment, serve as a true and faithful member of the public service of the State of Brunei.

Dated this day of 19

Signature

FORM VII

(Section 82 (3) (b))**Oath and Declaration to be Taken or Made by an Interpreter Employed in the Privy Council, the Council of Ministers or the Legislative Council***Wallahi Wa-Billahi Wa-Taallahi*

I, (swear by Almighty God/solemnly and sincerely declare) that I understand the Malay and languages and that I will, to the best of my skill and understanding, well and truly interpret and true explanation make between the Members of the (Privy Council/Council of Ministers/Legislative Council) who are conversant with the Malay language and those who are conversant with the language(s).

Dated this day of 19

Signature

CONFIRMATION

So be it. Such is the Constitution of the State of Brunei, 1959.

INVOCATION

May God, to Whom be Praise and Whose name be exalted, the King of Kings, vouchsafe His grace and may the Prophet Muhammad (on whom be the benediction and peace of God) grant His Blessing to this Constitution, for ever and ever. Amen! O Lord of the Universe!

Made at the Lapau, Brunei, Darul-Salam, this 26th day of Rabiul Awal, the Hajira of Prophet (on Whom be the benediction and peace of God) One thousand three hundred and seventy-nine corresponding to the 29th day of September, One thousand nine hundred and fifty-nine of the Christian era, being the tenth year of the reign of His Highness.

In witness of the granting and confirmation of this Constitution and of the concurrence and assent of the Traditional Advisers, we have hereunder affixed our respective signatures:

Duli Pengiran Bendahara, Dato' Paduka Muda Hashim ibni Pengiran Anak Abdul Rahman, D.P.M.B., P.O.A.S.

Duli Pengiran Pemancha, Dato' Paduka Haji Mohammed Alam ibni Pengiran Anak Abdul Rahman, D.K., P.O.A.S., O.B.E.

Pengiran Shahbandar Sahibul Bandar, Dato' Paduka Haji Mohammed Salleh bin Pengiran Haji Mohammed, D.P.M.B., P.O.A.S.

Pehin Dato Perdana Menteri, Dato' Paduka Haji Ibrahim bin Mohammed Jahfar, D.K., D.P.M.B., O.B.E., P.O.A.S.

Pehin Orang Kaya Di-Gadong. Awang Haji Mohammed Yussof bin Awang Haji Husain, P.O.A.S.

Pehin Orang Kaya Shahbandar, Haji Ahmad bin Mohammed Baud, P.O.A.S., M.B.E.

Pehin Jawatan Dalam, Awang Haji Mohammed Noor bin Haji Abdul Razak, P.O.A.S.

Pengiran Ali bin Pengiran Haji Mohammed Daud, S.M.B.

Pehin Laksamana. Haji Mohammed Taha bin Awang Mohammed Husain, P.O.A.S.

Pengir Mohammed Yussof bin Pengiran Haji Abdul Rahim, S.M.B.

Marsal in Ma'un, S.M.B.

Pengiran Haji Abu Bakar bin Pengiran Mohammed Salleh, P.O.A.S.

Pehin Dato' Temenggong, Lim Cheng Choo.

Pengiran Anak Safar ibni Al-marhom Sultan Hashim, P.O.A.S.

Pengiran Anak Khamis ibni Al-marhom Sultan Hashim, P.O.A.S.