

No. S 118

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

COMPANIES ACT (AMENDMENT) ORDER, 2010

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

COMPANIES ACT (AMENDMENT) ORDER, 2010

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

Citation.

1. This Order may be cited as the Companies Act (Amendment) Order, 2010.

Amendment of section 2 of Chapter 39.

2. Section 2 of the Companies Act, in this Order referred to as the Act, is amended in subsection (1) —

(a) by inserting the following 2 new definitions immediately before the definition of "annual return" —

"accounting standards" means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Order, 2010 and applicable to companies and to companies to which Part IX applies in respect of their operations in Brunei Darussalam for the purposes of this Act;

"annual general meeting", in relation to a company, means a meeting of the company required to be held by section 111(1);"

(b) by inserting the following 2 new definitions immediately after the definition of "book and paper" —

"certified", in relation to a copy of a document, means certified in the prescribed manner to be a true copy of that document and, in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of that document into the English language;

"charge" includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;"

(c) by inserting the following new definition immediately after the definition of "company" —

"corporation" means any body corporate formed, incorporated or existing in Brunei Darussalam or outside Brunei Darussalam and includes any

company to which Part IX applies and any limited liability partnership but does not include —

- (i) any body corporate incorporated in Brunei Darussalam which is by notification by *Gazette* declared to be a public body or agency of the Government or a body corporate which is not incorporated for commercial purposes;
- (ii) any corporation sole;
- (iii) any co-operative society;
- (iv) any registered trade union;"

(d) by inserting the following new definition immediately after the definition of "debenture" —

" "default fine" means a default fine within the meaning of section 314;"

(e) by deleting the definition of "director" and by substituting the following new definition therefor —

" "director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director;"

(f) by inserting the following new definition immediately after the definition of "document" —

" "financial year", in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;"

(g) by inserting the following new definition immediately after the definition of "general rules" —

" "manager", in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;"

(h) by inserting the following new definition immediately after the definition of "memorandum" —

"officer", in relation to a corporation, includes —

- (i) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;
- (ii) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- (iii) any liquidator of a company appointed in a voluntary winding-up,

but does not include —

- (a) any receiver who is not also a manager;
- (b) any receiver and manager appointed by the Court;
- (c) any liquidator appointed by the Court or by the creditors; and
- (d) an Executive Manager appointed by the Minister under section 149B(1);

(i) by inserting the following new definition immediately after the definition of "prescribed" —

"private company" means —

- (i) any company which immediately prior to the commencement of the Companies Act (Amendment) Order, 2010 was a private company;
- (ii) any company incorporated as a private company by virtue of section 29; or
- (iii) any company converted into a private company pursuant to section 30,

being a company which has not ceased to be a private company under section 30;

(j) by inserting the following new definition immediately after the definition of "prospectus" —

"public company" means a company other than a private company;"

(k) by inserting the following new definition immediately after the definition of "Registrar" —

"resident in Brunei Darussalam" has the same meaning as in section 2 of the Income Tax Act (Chapter 35);"

(l) in the definition of "Table A", by deleting the fullstop and by substituting a semicolon therefor;

(m) by adding the following new definition —

"unlimited company" means a company formed on the principle of having no limit placed on the liability of its members."

Amendment of section 4.

3. Section 4 of the Act is amended by adding the following 2 new subsections —

"(3) No company, association or partnership consisting of more than 20 persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of any other written law in Brunei Darussalam or letters patent.

(4) So much of subsection (3) as prohibits the formation of an association or partnership consisting of more than 20 persons shall not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the qualifications laid down in such written law for the purpose of carrying on that profession or calling."

Amendment of section 5.

4. Section 5 of the Act is amended, in subsection (1) —

(a) in paragraph (b), by deleting the semicolon and by substituting a fullstop therefor;

(b) by deleting paragraph (c).

Insertion of new sections 5A, 5B and 5C.

5. The Act is amended by inserting the following 3 new sections immediately after section 5 –

"Capacity and powers of company.

5A. (1) Subject to the provisions of this Act and any other written law and its memorandum or articles, a company has –

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) A company may have the objects of the company included in its memorandum.

(3) The memorandum or articles of a company may contain a provision restricting its capacity, rights, powers or privileges.

Ultra vires transactions.

5B. (1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether expressed or implied, of the company) and no conveyance or transfer of property, whether removable or immovable, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in –

(a) proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(b) any proceedings by the company or by any member of the company against the present or former officers of the company; or

(c) any application by the Minister of Finance to wind up the company.

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

No constructive notice.

5C. Notwithstanding anything in the memorandum or articles of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the memorandum or articles of, or any other document relating to, the company merely because —

(a) the memorandum, articles or document is registered by the Registrar; or

(b) the memorandum, articles or document is available for inspection at the registered office of the company."

Insertion of new section 19A.

6. The Act is amended by inserting the following new section immediately after section 19 —

"Power to refuse registration.

19A. Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register the memorandum and the articles of a proposed company where he is satisfied that —

(a) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam; or

(b) it would be contrary to the national security or interests for the proposed company to be registered."

Amendment of section 20.

7. Section 20 of the Act is amended —

(a) in subsection (1) —

(i) by inserting the following new paragraph immediately after paragraph (a) —

"(aa) is identical to that of any limited liability partnership;"

(ii) by deleting the fullstop at the end of paragraph (f) and by substituting a semicolon therefor;

(iii) by adding the following 2 new paragraphs —

"(g) in the opinion of the Registrar is undesirable;

(h) is a name of a kind that the Minister of Finance has directed the Registrar not to accept for registration.";

(b) by adding the following 8 new subsections —

"(3) Notwithstanding anything in this section and section 22, where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after the commencement of the Companies Act (Amendment) Order, 2010, by a name which is referred to in subsections (1) and (2), the Registrar may direct the first-mentioned company to change its name, and the company shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow.

(4) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that section, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in subsections (1) and (2) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

(5) If the company fails to comply with subsection (1), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and also to a default fine.

(6) Prior to the registration of —

(a) an intended company or a foreign company; or

(b) the change of name of a company or a foreign company,

the applicant for registration shall apply to the Registrar for a search as to the availability of the proposed name of the intended company, company or foreign company and for reservation of that name, if available.

(7) If the Registrar is satisfied that the application is *bona fide* and that the proposed name is a name by which the intended company, company or a foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of one month from the date of the lodging of the application.

(8) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied that the application is *bona fide*, he may extend that period for a further period of 3 months.

(9) During a period for which a name is reserved, no company or a foreign company (other than the intended company, company or a foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(10) The reservation of name under this section in respect of an intended company, company or a foreign company does not in itself entitle the intended company, or a foreign company to be registered by that name, either originally or on change of name."

Amendment of section 22.

8. Section 22 of the Act is amended —

(a) by inserting the following new subsection immediately after subsection (1) —

"(1A) If the Registrar approves the name which the company has resolved should be its new name, he shall register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name shall become effective.";

(b) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which

the company could not be registered without contravention of sections 20(1) and (2) the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar allows."

(c) by repealing subsections (4) and (5) and by substituting the following 4 new subsections therefor —

"(4) Any person may apply in writing to the Registrar to give a direction to a company under sections 20(1) and (2) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in sections 20(1) and (2) unless the Registrar receives the application within 12 months from the date of change of name of the company.

(5) If the company fails to comply with subsection (2), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and also to a default fine.

(6) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company under the new name.

(7) The change of name pursuant to this Act shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name."

Insertion of new section 31A.

9. The Act is amended by inserting the following new section immediately before section 32 —

"Ratification by company of contracts made before incorporation.

31A. (1) Any contract or other transaction purporting to be entered into by a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by company the persons or persons who purported to act in the name or on behalf of the company shall in the

absence of express agreement to the contrary be personally bound by the contract or other transaction and entitled to the benefit thereof."

Amendment of section 93.

10. Section 93 of the Act is amended, in subsection (4), by inserting "duly paid" immediately after "is" in the last line.

Substitution of section 111.

11. Section 111 of the Act is repealed and the following new section substituted therefor —

"Annual general meetings.

111. (1) A general meeting of every company, to be called the annual general meeting, shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) Notwithstanding subsection (1), the Registrar, on the application of the company, may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

(a) the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and also to a default fine; and

(b) the Court may on the application of any member order a general meeting to be called."

Repeal of section 130.

12. Section 130 of the Act is repealed.

Amendment of section 135E.

13. Section 135E of the Act is amended by deleting "(1)" from the first line.

Amendment of section 138.

14. Section 138 of the Act is amended —

(a) by deleting subsection (2) and by substituting the following new subsection therefor —

"(2) One of the 2 directors or, where there are more than 2 directors, at least 2 of them shall be ordinarily resident in Brunei Darussalam.";

(b) by inserting the following 2 new subsections immediately after subsection (2) —

"(2A) No person other than an individual who has attained the age of 18 years and who is otherwise of full legal capacity shall be a director of a company.

(2B) A company shall comply with the requirements of subsection (2) within 6 months of the commencement of the Companies Act (Amendment) Order, 2010."

Insertion of new sections 141A, 141B, 141C, 141D, 141E, 141F and 141G.

15. The Act is amended by inserting the following 7 new sections immediately after section 141 —

"Disqualification of unfit directors of insolvent companies.

141A. (1) The Court may —

(a) on the application of the Minister of Finance or the Official Receiver as provided for in subsection (9)(a); and

(b) on being satisfied as to the matters referred to in subsection (2), make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or take part in, the management of a company during such period not exceeding 5 years after the date of the order as is specified in the order (referred to in this section as a disqualification order).

{2} The Court shall make a disqualification order under subsection {1} if it is satisfied that —

(a) the person against whom the order is sought has been given not less than 14 days' notice of the application; and

(b) that person —

- (i)* is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or within 3 years of his ceasing to be a director) and was insolvent at that time; and
- (ii)* that his conduct as director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of or in any way, whether directly or indirectly, be concerned in, or take part in, the management of a company.

{3} If in the case of a person who is or has been a director of a company which is —

(a) being wound-up by the Court, it appears to the Official Receiver or to the liquidator (if he is not the Official Receiver); or

(b) being wound-up otherwise than as mentioned in paragraph *(a)*, it appears to the liquidator,

that the conditions mentioned in subsection {2}/*(b)* are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister of Finance.

{4} The Minister of Finance may require the Official Receiver or the liquidator or the former liquidator of a company —

(a) to furnish him with such information with respect to any person's conduct as a director of the company; and

(b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister of Finance may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section; and if default is made in complying with that requirement the Court may, on the application of the Minister of Finance, make an order requiring that person to make good the default within such time as is specified in the order.

(5) For the purposes of this section —

(a) a company has gone into liquidation —

- (i) if it is wound-up by the Court, on the date of the filing of the winding-up application;
- (ii) in any other case, on the date of the passing of the resolution for the voluntary winding-up; and

(b) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of that expression in section 163,

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(6) In deciding whether a person's conduct as a director of any particular company or companies make him unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)(b), the Court shall in relation to his conduct as a director of that company or, as the case may be, each of those companies have regard, generally to the matters referred to in paragraph (a), and, in particular, to the matters referred to in paragraph (b), notwithstanding that the director has not been convicted or may be criminally liable in respect of any of these matters —

(a) (i) as to whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;

(ii) as to whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;

(iii) as to the extent of the director's responsibility for any failure by the company to comply with sections 88, 89(1), 90(1), 95, 96, 98, 107, 121 and 122; and

(b) (i) as to the extent of the director's responsibility for the causes of the company becoming insolvent;

(ii) as to the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

- (iii) as to the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 167;
- (iv) as to whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(7) The Minister of Finance may, by notification in the *Gazette*, amend any of the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister of Finance to be necessary or expedient.

(8) In this section, "company" includes a corporation and a company incorporated outside Brunei Darussalam but does not include a partnership or association to which Part VIII applies.

(9) (a) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound-up by the Court, an application under this section shall be made by the Official Receiver but in any other case an application shall be made by the Minister of Finance;

(b) On a hearing of an application under this section —

- (i) the Minister of Finance or the Official Receiver, as the case may be, shall appear and call the attention of the Court to any matter which appears to him to be relevant (and for this purpose the Minister of Finance may be represented) and may give evidence or call witnesses; and
- (ii) the person against whom an order is sought may appear and himself give evidence or call witnesses.

(10) This section shall not apply unless the company mentioned in subsection (2)(b) has gone into insolvent liquidation on or after the commencement of the Companies Act (Amendment) Order, 2010 and the conduct to which the Court shall have regard shall not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as Judicial Manager, executive manager, receiver or receiver manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as Judicial Manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(13) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the Court to be concerned in or take part in the management of a company.

(14) On the hearing of an application made under subsections (13) or (15), the Minister of Finance or the Official Receiver shall appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him to be relevant to the application and may himself give evidence or call witnesses.

(15) Any right to apply for leave of the Court to be concerned or take part in the management of a company that was subsisting immediately before the commencement of the Companies Act (Amendment) Order, 2010 shall, after that date, be treated as subsisting by virtue of the corresponding provision made under this section.

Disqualification of directors of companies wound-up on grounds of national security or interest.

141B. (1) Subject to subsections (2) and (3), where a company is ordered to be wound-up by the Court on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister of Finance, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or company incorporated outside Brunei Darussalam for a period of 3 years from the date of the making of the winding-up order.

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister of Finance's application for the order.

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

(a) the company had been used for purposes against national security or interest without his consent or connivance; and

(b) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(5) In this section, "company incorporated outside Brunei Darussalam" means a company incorporated outside Brunei Darussalam to which Part IX applies.

Disqualification to act as director on conviction of certain offences.

141C. (1) Where a person is convicted (whether in Brunei Darussalam or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more, he shall be subject to the disqualifications provided in subsection (3).

(2) Where a person is convicted in Brunei Darussalam of —

(a) any offence in connection with the formation or management of a corporation; or

(b) any offence under section 259, the Court may make a disqualification order in addition to any other sentence imposed.

(3) A person who is disqualified under subsection (1) or who has had a disqualification order made against him under subsection (2) shall not act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part IX applies nor shall he take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam.

(4) (a) Where a disqualified person has not been sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years or for such shorter period as the Court may order under subsection (2);

(b) Where a disqualified person is sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years after his release from prison.

(5) A person who acts in contravention of a disqualification under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(6) An application for leave to act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part IX applies or to take part whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam may be made by a person against whom a disqualification order has been made upon that person giving the Minister of Finance not less than 14 days' notice of his intention to apply for such leave.

(7) On the hearing of any application under this section, the Minister of Finance may be represented at the hearing and may oppose the granting of the application.

(8) The High Court may make a disqualification order under this section.

(9) Any right to apply for leave of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before the commencement of the Companies Act (Amendment) Order, 2010 shall on or after that date be treated as subsisting by virtue of the corresponding provision made under this section.

Disqualification under Limited Liability Partnerships Order, 2010.

141D. Any person who is subject to a disqualification or disqualification order under sections 34, 35 or 36 of the Limited Liability Partnerships Order, 2010 shall not act as director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, a corporation during the period of the disqualification or disqualification order.

Duty and liability of officers.

141E. (1) A director shall act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

(3) An officer or agent who commits a breach of any of the provisions of this section —

(a) is liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding one year.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

"agent" includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company;

"officer" includes a person who at any time has been an officer of the company.

Powers of directors.

141F. (1) The business of a company shall be managed by or under the direction of the directors.

(2) The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

Use of information and advice.

141G. (1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given by —

(a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within such person's professional or expert competence; or

(c) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) shall apply to a director only if the director —

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted."

Substitution of section 288.

16. Section 288 of the Act is repealed and the following new section substituted therefor —

"Appointment of Registrar of Companies etc.

288. His Majesty the Sultan and Yang Di-Pertuan shall appoint fit and proper persons to be the Registrar of Companies, Deputy Registrars and Assistant Registrars of Companies under and for the purposes of this Act."

Substitution of section 289.

17. Section 289 of the Act is repealed and the following new section substituted therefor —

"Fees.

289. (1) There shall be paid to the Registrar —

(a) the fees specified in the Eight Schedule;

(b) such other fees as may be prescribed.

(2) The Registrar may add, vary or amend the fees specified in the Eight Schedule or prescribed under this Act.

(3) All fees paid to the Registrar shall be paid into the Treasury."

Substitution of section 299.

18. Section 299 of the Act is repealed and the following new section substituted therefor —

"Documents to be delivered to Registrar by companies carrying on business in Brunei Darussalam.

299. (1) Every company incorporated outside Brunei Darussalam shall, before it establishes a place of business or commences to carry on business in Brunei Darussalam, lodge with the Registrar for registration —

(a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;

(d) where the list includes directors resident in Brunei Darussalam who are members of the local board of directors, a memorandum duly executed by or on behalf of the company incorporated outside Brunei Darussalam stating the powers of the local directors;

(e) a memorandum of appointment or power of attorney under the seal of the company incorporated outside Brunei Darussalam or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the names and addresses of 2 or more individuals resident in Brunei Darussalam authorised to accept on its behalf service of process and any notices required to be served on the company; and

(f) notice of the situation of its registered office in Brunei Darussalam and, unless the office is open and accessible to the public during ordinary business hours on each business day, the days and hours during which it is open and accessible to the public,

and on payment of the appropriate fees and subject to this Act the Registrar shall register the company by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) shall apply to a company registered outside Brunei Darussalam which was not registered but which, immediately before the commencement of the Companies Act (Amendment) Order, 2010, had a place of business or was carrying on business in Brunei Darussalam and, on that date, had a place of business or was carrying on business in Brunei Darussalam, as if it established that place of business or commenced to carry on that business on that date."

Insertion of new section 300A.

19. The Act is amended by inserting the following new section immediately after section 300 —

"Power to refuse registration of a company incorporated outside Brunei Darussalam in certain circumstances.

300A. Notwithstanding anything in this Act or any written law, the Registrar shall refuse to register a company under this Part if he is satisfied that the company incorporated outside Brunei Darussalam is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or is acting or likely to act against the national security or interest."

Substitution of section 301.

20. Section 301 of the Act is repealed and the following new section substituted therefor —

"Returns to be delivered to Registrar where documents etc. altered.

301. (1) If in the case of any company to which this Part applies any alteration is made in —

(a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid;

(b) the directors of the company or the particulars contained in the list of the directors;

(c) the names or addresses of the persons authorised to accept service on behalf of the company;

(d) the situation or address or designation of situation or address of the registered office of the company incorporated outside Brunei Darussalam or the days or hours during which it is open and accessible to the public;

(e) the address of the registered office of the company incorporated outside Brunei Darussalam in its place of incorporation or origin;

(f) the name of the company incorporated outside Brunei Darussalam; or

(g) the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of the company incorporated outside Brunei Darussalam,

the company incorporated outside Brunei Darussalam shall, within one month or within such further period as the Registrar in special circumstances allow after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as are required."

Amendment of section 302.

21. Section 302 of the Act is amended by adding the following 10 new subsections —

"(3) Subject to this section a company incorporated outside Brunei Darussalam shall, within 2 months of its annual general meeting, lodge with the Registrar, a copy of its balance sheet made up to the end of its last financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance sheet by the law for the time being applicable to that company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(4) The Registrar may, if he is of the opinion that the balance sheet and other documents referred to in subsection (3) do not sufficiently disclose the company's financial position, require the company to lodge a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as the Registrar by notice in writing to the company requires but this subsection does not authorise the Registrar to require a balance sheet to contain any particulars or the company to annex,

attach or to send any documents that would not be required to be furnished if the company were a public company incorporated under this Act.

(5) The company shall comply with the requirements set out in the notice.

(6) Where a company to which this Part applies, is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance sheet, the company shall prepare and lodge with the Registrar a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company incorporated under this Act.

(7) In addition to the balance sheet and other documents required to be lodged with the Registrar by subsections (3) to (6), a company incorporated outside Brunei Darussalam shall lodge with the Registrar with such balance sheet and other documents a duly audited statement showing its assets used in and liabilities arising out of its operations in Brunei Darussalam as at the date to which its balance sheet was made up and a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the accounting standards which gives a true and fair view of the profit or loss arising out of the company's operation in Brunei Darussalam for the last preceding financial year of the company —

Provided that —

(a) the company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Brunei Darussalam and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operation in Brunei Darussalam; and

(b) the Registrar may waive compliance with this subsection in relation to any company incorporated outside Brunei Darussalam if he is satisfied that —

- (i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Brunei Darussalam;
- (ii) it would be of no real value having regard to the amount involved;
- (iii) it would involve expense unduly out of proportion to its value; or

(iv) it would be misleading or harmful to the business of the company or to any company related to the company.

(8) A statement and profit and loss account shall be deemed to have been duly audited for the purposes of subsection (7) if it is accompanied by a report by an authorised auditor appointed to provide auditing services in respect of the company's operations in Brunei Darussalam.

(9) Without prejudice to the powers of the Registrar under paragraph (b) of the proviso to subsection (7), a company incorporated outside Brunei Darussalam may apply to the Registrar in writing for an order relieving the company incorporated outside Brunei Darussalam from any requirement of this section relating to the form and content of accounts or reports and the Registrar may make such an order either unconditionally or on condition that the company incorporated outside Brunei Darussalam complies with such other requirements relating to the form and content of the accounts or reports as the Registrar thinks fit to impose.

(10) The Registrar shall not make an order under subsection (9) unless he is of the opinion that compliance with the requirements of this section would render the accounts or reports misleading or inappropriate to the circumstances of the company incorporated outside Brunei Darussalam or would impose unreasonable burdens on the company incorporated outside Brunei Darussalam.

(11) The Registrar may make an order under subsection (9) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

(12) In this section, "authorised auditor" means a person authorised to perform the duties required by this Act to be performed by an auditor."

Insertion of new sections 304A and 304B.

22. The Act is amended by inserting the following 2 new sections immediately after section 304 —

"Cesser of business in Brunei Darussalam.

(1) If a Part IX company ceases to have a place of business or to carry on business in Brunei Darussalam, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration of 12 months after the lodging of such notice remove the name of that company incorporated outside Brunei Darussalam from the register.

(2) If a company incorporated outside Brunei Darussalam goes into liquidation or is dissolved in its place of incorporation or origin —

(a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and

(b) the liquidator shall, until a liquidator for Brunei Darussalam is duly appointed by the Court, have the powers and functions of a liquidator for Brunei Darussalam.

(3) A liquidator of a company incorporated outside Brunei Darussalam appointed for Brunei Darussalam by the Court or a person exercising the powers and functions of such a liquidator —

(a) shall, before any distribution of the company incorporated outside Brunei Darussalam's assets is made, by advertisement in a newspaper circulating generally in each country where the company incorporated outside Brunei Darussalam had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the company incorporated outside Brunei Darussalam within a reasonable time prior to the distribution;

(b) subject to subsection (7), shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the company incorporated outside Brunei Darussalam; and

(c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the company incorporated outside Brunei Darussalam in Brunei Darussalam and shall, subject to paragraph *(b)* and subsection (7), pay the net amount so recovered and realised to the liquidator of that company incorporated outside Brunei Darussalam for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Brunei Darussalam by the company incorporated outside Brunei Darussalam.

(4) Where a company incorporated outside Brunei Darussalam has been wound-up so far as its assets in Brunei Darussalam are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(6) Where the Registrar has reasonable cause to believe that a company incorporated outside Brunei Darussalam has ceased to carry on business or to have a place of business in Brunei Darussalam, the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

(7) Section 250 shall apply to a company incorporated outside Brunei Darussalam wound-up or dissolved pursuant to this section as if for references to a company there were substituted references to a company incorporated outside Brunei Darussalam.

(8) Where the Registrar is satisfied that a company incorporated outside Brunei Darussalam is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or against the national security or interest, he shall strike the name of the company incorporated outside Brunei Darussalam off the register and it shall thereupon cease to be registered as a company incorporated outside Brunei Darussalam under this Part.

(9) Any person aggrieved by the decision of the Registrar under subsection (8), may, within 30 days of the date of the decision, appeal to the Minister of Finance whose decision shall be final.

Restriction on use of certain names.

304B. (1) No company incorporated outside Brunei Darussalam shall be registered by a name that, in the opinion of the Registrar, is undesirable, or is a name, or a name of a kind, that the Minister of Finance has directed the Registrar not to be accept for registration.

(2) Any change in the name of a company incorporated outside Brunei Darussalam shall not be registered if in the opinion of the Registrar the new name of the company is undesirable notwithstanding that particulars of the change have been lodged in accordance with section 301.

(3) No company incorporated outside Brunei Darussalam to which this Part applies shall use in Brunei Darussalam any name other than that under which it is registered under this Part.

(4) If default is made in complying with subsection (3), the company incorporated outside Brunei Darussalam, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and also to a default fine."

Substitution of section 313.

23. Section 313 of the Act is repealed and the following new section substituted therefor —

"Penalty for improper use of word "Berhad".

313. Any person who uses any name or title or trades or carries on business under any name or title of which "Limited", "Berhad", or any abbreviation, imitation or translation of any of those words is the last word, or in any way holds out that the business is registered or incorporated that person is, unless at that time that business was duly incorporated under this Act or registered under the Limited Liability Partnerships Order, 2010 or the Business Names Act (Chapter 92) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both."

Amendment of section 314.

24. Section 314 of the Act is amended, in subsection (1), by deleting "\$50" from the last line and by substituting "\$100" therefor.

Insertion of new section 319A.

25. The Act is amended by inserting the following new section immediately after section 319 —

"Electronic filing.

319A. (1) The Registrar may require any document to be lodged under the Act to be filed electronically with the Registrar using the service provided by the Registry of Companies whereby the document under this Act may be filed with or submitted to the Registrar electronically.

(2) When any document is required to be filed with or submitted to the Registrar electronically by any person using the service referred to in subsection (1), the Registrar may allow the document to be filed or

submitted by a prescribed person on behalf of the first-mentioned person, subject to such conditions as may be imposed from time to time by the Registrar on the prescribed person.

(3) When the Registry of Companies provides a service whereby documents required under this Act may be filed electronically with the Registrar, the Registrar and his officers shall not be liable for any loss and damage suffered by any person by reason of any error or omission of whatsoever nature or however caused appearing in any document obtained by any person under the services, if the error or omission —

(a) is made in good faith and in the ordinary course of the discharge of the duties of the Registrar or any such members, officers; or

(b) has occurred or arise as a result of any defect or breakdown of the service or in any of the equipment used for the service.

(4) A copy of or an extract from any document electronically filed with or submitted to the Registrar using the service referred to in subsection (1) which is supplied or issued by the Registrar and certified under his hand and seal to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(5) Any information supplied by the Registrar that is certified by the Registrar under his hand and seal to be a true extract from any document filed or lodged with or submitted to the Registrar using the service referred to in subsection (1) shall, in any proceedings, be admissible."

Made this 25th. day of Muharram, 1432 Hijriah corresponding to the 31st. day of December, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM