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

COMPANIES ACT (AMENDMENT) (NO. 2) ORDER, 2017

ARRANGEMENT OF SECTIONS

Section

1. Citation
 2. Insertion of new section 3A in Chapter 39
 3. Insertion of new section 48A
 4. Insertion of new sections 63B to 63F
 5. Insertion of new sections 113A and 113B
 6. Amendment of section 114
 7. Amendment of section 116
 8. Insertion of new section 116A
 9. Insertion of new section 118A
 10. Insertion of new sections 141H and 141I
 11. Insertion of new section 143A
 12. Amendment of section 145A
 13. Substitution of section 147
 14. Amendment of section 147A
 15. Insertion of new section 148A
 16. Insertion of new sections 153B, 153C and 153D
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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

COMPANIES ACT (AMENDMENT) (NO. 2) ORDER, 2017

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) (No. 2) Order, 2017.

Insertion of new section 3A in Chapter 39

2. The Companies Act, in this Order referred to as the Act, is amended by inserting the following new section immediately after section 3 —

“Interest in shares

3A. (1) This section has effect for the purposes of sections 63A, 63B, 63C, 63D, 63E, 63F, 145A and 147A.

(2) Subject to the provisions of this section, a person has an interest in shares if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares.

(3) For the purposes of subsection (2), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction.

(4) Where any property held in trust consists of or includes shares and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he is deemed to have an interest in those shares.

(5) A unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013) —

(a) that is issued or offered to the public for subscription or purchase, or for which the public is invited to subscribe for or purchase, and that has been so subscribed or purchased; or

(b) that is issued for the purpose of an offer to the public by and is held by the manager concerned within the meaning of section 207 of the Securities Markets Order, 2013 (S 59/2013),

does not constitute an interest in a share.

(6) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

(a) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or

(b) a person has a controlling interest in the body corporate,
that person is deemed to have an interest in that share.

(7) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20 *per cent* of the voting power in the body corporate, that person is deemed to have an interest in that share.

(8) For the purposes of subsection (7), a person is an associate of another person if the first-mentioned person is —

(a) a subsidiary of that other person;

(b) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in subsection (7); or

(c) a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in subsection (7).

(9) Where a person —

(a) has entered into a contract to purchase a share;

(b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order,

whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person is deemed to have an interest in that share.

(10) A person is not deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

(11) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(12) There shall be disregarded —

(a) an interest in a share, if the interest is that of a person who holds the share as bare trustee;

(b) an interest in a share, if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(c) an interest of a person in a share, if that interest is an interest held by him by reason of his holding a prescribed office; and

(d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(13) An interest in a share shall not be disregarded by reason only of —

(a) its remoteness;

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.”.

Insertion of new section 48A

3. The Act is amended by inserting the following new section immediately after section 48 —

“Acquisition of shares of holding company

48A. (1) A company shall not, whether directly or indirectly, in any way acquire or purport to acquire shares or units of shares in a holding company of the company.

(2) A contract or transaction by which a company acquires or purports to acquire shares or units of shares in its holding company in contravention of subsection (1) shall be void.”.

Insertion of new sections 63B to 63F

4. The Act is amended by inserting the following five new sections immediately after section 63A —

“Substantial shareholder to notify company of his interests

63B. (1) A person who is a substantial shareholder in a public company shall give notice in writing to the company stating —

(a) his name and address; and

(b) full particulars (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder) of —

(i) the voting shares in the company in which he has an interest or interests; and

(ii) each such interest and the circumstances by reason of which he has that interest.

(2) The notice shall be given —

(a) if the person was a substantial shareholder on 31st March 2017, within six months after that date; or

(b) if the person became a substantial shareholder after that date, within 7 business days after becoming a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable.

Substantial shareholder to notify company of change in interests

63C. (1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a public company in voting shares in the company, the substantial shareholder shall give notice in writing to the company stating the information specified in subsection (2) within 2 business days after he becomes aware of such a change.

(2) The information referred to in subsection (1) shall be —

(a) the name and address of the substantial shareholder;

(b) the date of the change and the circumstances leading to that change; and

(c) such other particulars as the Registrar may determine.

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or immediately after, as the case may be, the relevant time as a percentage of the total votes attached to —

(a) all the voting shares in the company; or

(b) where the share capital of the company is divided into two or more classes of shares, all the voting shares included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Person who ceases to be substantial shareholder to notify company

63D. (1) A person who ceases to be a substantial shareholder in a public company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) The notice shall be given within 2 business days after the person ceased to be a substantial shareholder.

References to operation of section 3A

63E. (1) The circumstances required to be stated in the notice under section 63B, 63C or 63D include circumstances by reason of which, having regard to section 3A —

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company, respectively.

Company to keep register of substantial shareholders

63F. (1) A public company shall keep a register in which it shall immediately enter —

(a) in alphabetical order, the names of persons from whom it has received a notice under section 63B; and

(b) against each name so entered, the information given in the notice and, where it receives a notice under section 63C or 63D, the information given in that notice.

(2) The register shall be kept —

(a) at the registered office of the public company; or

(b) if the company does not have a registered office, at the principal place of business of the company in Brunei Darussalam,

and shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the company requires.

(3) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person, within 14 days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

(4) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within 7 days after the day on which the requirement is received by the company.

(5) If default is made in complying with this section, 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 in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction.

(6) A company is not, by reason of anything done under this Part —

(a) to be taken for any purpose to have notice of; or

(b) to be put on inquiry as to,

a right of a person to or in relation to a share in the company.”.

Insertion of new sections 113A and 113B

5. The Act is amended by inserting the following two new sections immediately after section 113 —

“Calling of meetings

113A. A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 21 days or such longer period as provided in the articles.

Members’ rights of meetings

113B. A member shall, notwithstanding any provision in the memorandum or articles of a company, have a right to attend any general meeting of the company and to speak on any resolution before the meeting.”.

Amendment of section 114

6. Section 114 of the Act is amended, in subsection (1) —

(a) by deleting “The” from the first line and by substituting “Without prejudice to the provisions of sections 113A and 113B, the” therefor;

(b) by deleting paragraph (a).

Amendment of section 116

7. Section 116 of the Act is amended —

(a) by repealing subsection (4);

(b) by repealing subsection (5).

Insertion of new section 116A

8. The Act is amended by inserting the following new section immediately after section 116 —

“Right to demand poll

116A. (1) Any provision in the memorandum or articles of a company shall be void in so far as it would have the effect —

(a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made —

- (i) by not less than 5 members having the right to vote at the meeting;
- (ii) by a member or members representing not less than 5 *per cent* of the total voting rights of all the members having the right to vote at the meeting; or
- (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5 *per cent* of the total sum paid up on all the shares conferring that right.

(2) Notwithstanding subsection (1)(b), where any provision of the memorandum and articles of a company incorporated before 31st March 2017 is void under subsection (1)(b)(ii) or (iii), a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting may be made —

(a) by a member or members representing not less than 5 *per cent* of the total voting rights of all the members having the right to vote at the meeting; or

(b) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5 *per cent* of the total sum paid up on all the shares conferring that right.”.

Insertion of new section 118A

9. The Act is amended by inserting the following new section immediately after section 118 —

“Resolution requiring special notice

118A. Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this subsection, is deemed to be properly given.”

Insertion of new sections 141H and 141I

10. The Act is amended by inserting the following two new sections immediately after section 141G —

“Approval of company required for disposal by directors of company’s undertaking or property

141H. (1) Notwithstanding anything in the memorandum or articles of a company, the directors shall not carry into effect any proposals for disposing of more than half of the company’s undertaking or property unless those proposals have been approved by the company in general meeting.

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) shall, in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention, be as valid as if that subsection had been complied with.

(4) This section does not apply to proposals for disposing of more than half of the company’s undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or a liquidator of a company appointed in a voluntary winding up under the Insolvency Order, 2016 (S 1/2016).

Approval of company required for issue of shares by directors

141I. (1) Notwithstanding anything in the memorandum or articles of a company, the directors shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until —

(a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or

(b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 117 applies to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.

(7) Any director who knowingly contravenes, or permits or authorises the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs shall be commenced after the expiration of 2 years from the date of the issue.”.

Insertion of new section 143A

11. The Act is amended by inserting the following new section immediately after section 143 —

“Removal of directors

143A. (1) A public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between the company and the director; but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove him shall not take effect until his successor has been appointed.

(2) (a) Special notice shall be required of any resolution to remove a director of a public company under subsection (1) or to appoint some person in place of a director so removed at the meeting at which he is removed.

(b) On receipt of notice of an intended resolution to remove a director under subsection (1), the company shall immediately send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the public company, not exceeding a reasonable length, and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so —

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,

and if a copy of the representations is not so sent because they were received too late or because of the company's default, the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.

(4) Notwithstanding subsections (1), (2) and (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the public company or

of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director of a public company under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed director of a public company in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed as a director of a public company thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the memorandum or articles or any agreement.

(9) Subject to any provision to the contrary in the memorandum or articles, a private company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in any agreement between the private company and the director.”.

Amendment of section 145A

12. Section 145A of the Act is amended by inserting the following new subsection immediately after subsection (13) —

“(13A) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 3A, except subsections (1) and (5) thereof, have effect and, in applying those provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.”.

Substitution of section 147

13. The Act is amended by repealing section 147 and by substituting the following new section therefor –

“Disclosure of interests in transactions, property, offices etc.

147. (1) Subject to this section, every director or executive officer of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company shall as soon as is practicable after the relevant facts have come to his knowledge –

(a) declare the nature of his interest at a meeting of the directors of the company; or

(b) send a written notice to the company containing details on the nature, character and extent of his interest in the transaction or proposed transaction with the company.

(2) A notice under subsection (1)(b) shall be given as soon as is practicable after –

(a) the date on which the director or executive officer became a director or executive officer, as the case may be; or

(b) (if already a director or executive officer, as the case may be) the date on which the director or executive officer became, directly or indirectly, interested in a transaction or proposed transaction with the company,

as the case requires.

(3) The requirements of subsection (1) do not apply in any case where the interest of the director or executive officer, as the case may be, consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the first-mentioned company if the interest of the director or executive officer, as the case may be, may properly be regarded as not being a material interest.

(4) A director or executive officer of a company is not deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only –

(a) in the case where the transaction or proposed transaction relates to any loan to the company, that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 129A is deemed to be related to the company, that he is a director or executive officer, as the case may be, of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other written law, but shall not affect the operation of any provision in the memorandum and articles of the company.

(5) A declaration given by a director or executive officer under subsection (1)(a), or a written notice given by a director or executive officer under subsection (1)(b), shall be treated as a sufficient declaration or written notice under those provisions in relation to a transaction or proposed transaction if —

(a) in the case of a declaration, the declaration is given at a meeting of the directors, or the director or executive officer, as the case may be, takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given;

(b) the declaration or written notice is to the effect that —

(i) he is an officer or a member of a specified corporation, a member of a specified firm, or a partner or officer of a specified limited liability partnership; and

(ii) he is to be regarded as interested in any transaction which may, after the date of the declaration or written notice, be made with the specified corporation, firm or limited liability partnership;

(c) the declaration or written notice specifies the nature and extent of his interest in the specified corporation, firm or limited liability partnership; and

(d) at the time any transaction is made with the specified corporation, firm or limited liability partnership, his interest is not different in nature or greater in extent than the nature and extent specified in the declaration or written notice.

(6) Every director and executive officer of a company who holds any office or possess any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with their duties or interests as director or executive officer, as the case may be, shall —

(a) declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict; or

(b) send a written notice to the company setting out the fact and the nature, character and extent of the conflict.

(7) A declaration under subsection (6)(a) shall be made at the first meeting of the directors of the company held —

(a) after he becomes a director or executive officer, as the case may be;

(b) (if already a director or executive officer, as the case may be) after he commenced to hold the office or to possess the property,

as the case requires.

(8) A written notice under subsection (6)(b) shall be given as soon as is practicable after —

(a) the date on which the director or executive officer became a director or executive officer, as the case may be; or

(b) (if already a director or executive officer, as the case may be) after he commenced to hold the office or to possess the property,

as the case requires.

(9) The company shall, as soon as practicable after the receipt of the written notice referred to in subsection (1)(b) or (6)(b), send a copy of the notice to —

(a) in the case where the notice is given by an executive officer, all the directors; or

(b) in the case where the notice is given by a director, all the other directors.

(10) Where an executive officer or a director of the company declares an interest or conflict by a written notice referred to in subsection (1)(b) or (6)(b), respectively, in accordance with this section —

(a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given; and

(b) the provisions of section 119 apply as if the declaration had been made at that meeting.

(11) The director or secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made and keep records of every written resolution duly signed and returned to the company under this section.

(12) The directors of a company shall permit an executive officer of the company who is not a director to attend a meeting of the board of directors where such attendance is necessary for the executive officer to make a declaration for the purpose of complying with this section.

(13) Subject to subsection (4), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the memorandum or articles restricting a director or executive officer from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director or executive officer, as the case may be.

(14) Any director or executive officer of a company who fails to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months.

(15) For the purposes of this section —

(a) an interest of a member of a director's family shall be treated as an interest of the director and the words "member of a director's family" shall include his spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter; and

(b) an interest of a member of an executive officer's family shall be treated as an interest of the executive officer and the words "member of the executive officer's family" shall include his spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter."

Amendment of section 147A

14. Section 147A of the Act is amended by inserting the following new subsection immediately after subsection (6) —

"(6A) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 3A, except subsections (1) and (5) thereof, have effect and, in applying those

provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.”.

Insertion of new section 148A

15. The Act is amended by inserting the following new section immediately after section 148 —

“Provision and improvement of director’s emoluments

148A. (1) A company shall not at any meeting or otherwise provide emoluments or improve emoluments for a director of a company in respect of his office as such unless the provision is approved by a resolution that is not related to other matters and any resolution passed in breach of this section shall be void.

(2) In this section, “emoluments”, in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax in Brunei Darussalam, any contribution paid in respect of a director under any pension scheme and any benefits received by him otherwise than in cash in respect of his services as director.”.

Insertion of new sections 153B, 153C and 153D

16. The Act is amended by inserting the following three new sections immediately after section 153A —

“Powers of Minister

153B. The Minister may, if he considers it expedient in the public interest, remove, replace or appoint such directors or additional directors of any company in such numbers and on such terms as he considers expedient in the public interest.

Derivative or representative actions

153C. (1) In this section and section 153D, “complainant” means —

(a) any member of a company;

(b) the Minister; or

(c) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

(2) Subject to subsection (3), a complainant may apply to the Court for leave to bring an action or arbitration in the name and on behalf of the company or intervene in an action or arbitration to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the company.

(3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —

(a) the complainant has given 14 days' notice to the directors of the company of his intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action or arbitration;

(b) the complainant is acting in good faith; and

(c) it appears to be *prima facie* in the interests of the company that the action or arbitration be brought, prosecuted, defended or discontinued.

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3)(a), the Court may make such interim order as it thinks fit pending the complainant giving notice as required.

(5) In granting leave under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following —

(a) an order authorising the complainant or any other person to control the conduct of the action or arbitration;

(b) an order giving directions for the conduct of the action or arbitration by the person so authorised; and

(c) an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action or arbitration.

Evidence of shareholders' approval not decisive; Court approval to discontinue action under section 153C

153D. (1) An application made or an action brought or intervened in under section 153C shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company has been or may be approved by the members of the company, but evidence of approval

by the members may be taken into account by the Court in making an order under section 153C.

(2) An application made or an action brought or intervened in under section 153C shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on such terms as the Court thinks fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 153C, the Court may at any time order the company to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.”.

Made this 7th. day of Sya'ban, 1438 Hijriah corresponding to the 4th. day of May, 2017 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM