

No. S 62

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

COMPANIES ACT (AMENDMENT) (NO. 2) ORDER, 2014

ARRANGEMENT OF SECTIONS

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COMPANIES ACT (AMENDMENT) (NO. 2) ORDER, 2014

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 and commencement.

1. (1) This Order may be cited as the Companies Act (Amendment) (No. 2) Order, 2014.

(2) Section 7 shall be deemed to have commenced on 1st April 2013.

Amendment of section 17 of Chapter 39.

2. Section 17 of the Companies Act, in this Order referred to as the Act, is amended by deleting “and a common seal” from the third and fourth last lines.

Substitution of section 19.

3. Section 19 of the Act is repealed and the following new section substituted therefor —

“Declaration to Registrar.

19. A declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company to the Registrar that —

(a) all of the requirements of the Act relating to the formation of the company have been complied with; and

(b) he has verified the identities of the subscribers to the memorandum, and of the persons named in the memorandum or articles as officers of the proposed company,

and the Registrar may accept such declaration as evidence of compliance.”.

Amendment of section 94.

4. Section 94 of the Act is amended —

(a) in subsection (1)(c) —

- (i) by deleting “statutory” from the second line;
 - (ii) by inserting “a person entitled to practise as an advocate, who is engaged in the formation of the company, or” immediately after “by” in the second line;
- (b) in subsection (2)(c) —
- (i) by deleting “statutory” from the second line;
 - (ii) by inserting “a person entitled to practise as an advocate, who is engaged in the formation of the company, or” immediately after “by” in the second line;
- (c) in subsection (3), by deleting “statutory” from the second line.

Insertion of new sections 133A, 133B, 133C and 133D.

5. The Act is amended by inserting the following four new sections immediately after section 133 —

“Certain companies exempt from obligation to appoint auditors.

133A. (1) Notwithstanding section 131, a company which is exempt from audit requirements under section 133B or 133C, and its directors, shall be exempt from section 131(1).

(2) Where a company ceases to be so exempt, the company shall appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Dormant company exempt from audit requirements.

133B. (1) A company shall be exempt from audit requirements if it has been dormant —

- (a) from the time of its formation; or
- (b) since the end of the previous financial year.

(2) A company is dormant during a period in which no accounting transaction occurs and the company ceases to be dormant on the occurrence of such a transaction.

(3) For the purposes of subsection (2), there shall be disregarded transactions of a company arising from any of the following –

(a) the taking of shares in the company by a subscriber to the memorandum in pursuance of his undertaking in the memorandum;

(b) the appointment of an auditor under section 131;

(c) the maintenance of a registered office under sections 92 and 93;

(d) the keeping of registers and books under sections 83, 98, 120 and 143;

(e) the payment of any fee specified in the Eighth Schedule or an amount of any fine or penalty paid to the Registrar under Part XI;

(f) other matters as may be prescribed.

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) –

(a) a copy of balance sheet of the company, including every document required by law to be annexed thereto to be sent under section 129, need not be audited;

(b) section 129 has effect with the omission of any reference to the auditor's report or a copy of the report;

(c) a copy of an auditor's report need not be laid before the company in a general meeting; and

(d) the annual return of the company to be lodged with the Registrar shall be accompanied by a statement by the directors –

(i) that the company is a company referred to in subsection (1)(a) or (b) as at the end of the financial year;

(ii) that no notice has been received under subsection (6) in relation to that financial year; and

(iii) as to whether the books of account required by this Act to be kept by the company have been kept in accordance with section 121.

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it shall thereupon cease to be so exempt; but it shall remain so exempt in relation to accounts for the financial year in which it was dormant throughout.

(6) Member or members holding in the aggregate —

(a) not less than 5 *per cent* in nominal value of a company's issued share capital or any class of it; or

(b) if the company does not have a share capital, not less than 5 *per cent* in number of the members of the company,

may, by notice in writing to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

(8) In this section, "accounting transaction" means a transaction the record of which is in the books of account required to be kept under section 121.

Private company exempt from audit requirements.

133C. (1) A company, being a private company shall be exempt from audit requirements in respect of a financial year if —

(a) its revenue in that year does not exceed \$1,000,000;

(b) the beneficial interest in its shares is not held, directly or indirectly, by any corporation; and

(c) it consists of not more than twenty members.

(2) For a period which is an exempt private company's financial year but is less than 12 months, the amount of revenue under subsection (1) shall be proportionately adjusted.

(3) Section 133B(4), (6) and (7) apply, with the necessary modifications, to an exempt private company so exempt.

Registrar may require company exempt from audit requirements to lodge audited accounts.

133D. Notwithstanding sections 133B and 133C, the Registrar may, if he is satisfied that there has been a breach of any provision of section 121 or 122 or that it is otherwise in the public interest to do so, by notice in writing to a company exempt under section 133B or 133C, require that company to lodge with him, within such time as may be specified in that notice —

(a) its accounts duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or auditors to be appointed by the directors of the company for this purpose; and

(b) an auditor's report referred to in section 133 in relation to those accounts prepared by the auditor or auditors of the company.”.

Amendment of section 143.

6. Section 143 of the Act is amended —

(a) in subsection (1)(a), by deleting “christian” wherever it appears;

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

“(2) The company shall send to the Registrar a return in such form as the Registrar may determine —

(a) forthwith from the date of appointment of the first directors of the company, the particulars specified in the register;

(b) one month from the date of any change among its directors or in any of the particular contained in the register, a notification of such change.”.

Amendment of Eighth Schedule.

7. The Eighth Schedule to the Act is amended —

(a) on page 310, in item 1, by deleting “registration of a company whose nominal share capital does not exceed \$25,000” and by substituting “incorporation of a company” therefor;

(b) on page 310, in item 2, by deleting “registration of a company whose nominal share capital exceeds \$25,000 the above fee of \$300” from the first two lines and by substituting “increase of share capital of a company whose nominal share capital exceeds \$25,000” therefor;

(c) on page 312, in item 20, by inserting “foreign” immediately before “company”.

Amendment of Eleventh Schedule.

8. The Eleventh Schedule to the Act is amended, on page 338, in Form X —

(a) by inserting “and identification number” immediately after “names” in the first column;

(b) in the footnote, in paragraph *(b)*, by adding “In the case of foreign directors, the Brunei National Registration number and passport number should be entered after the name of each director.”.

Made this 1st. day of Safar, 1436 Hijriah corresponding to the 24th. day of November, 2014 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM