

No. S 33

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

COMPANIES ACT (AMENDMENT) ORDER, 2016

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COMPANIES ACT (AMENDMENT) ORDER, 2016

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, 2016.

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), by inserting the following new definitions in the appropriate alphabetical order —

““executive director” means a director who is concurrently an executive officer and “non-executive director” shall be construed accordingly;

“executive officer” means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the company; and

(b) is concerned with or takes part in the management of the company on a day-to-day basis;

“foreign company” means any company incorporated outside Brunei Darussalam which has established a place of business in Brunei Darussalam under Part IX;

“limited company” means a company limited by shares or by guarantee;

“limited liability partnership” has the meaning given to it by section 5(1) of the Limited Liability Partnerships Order, 2010 (S 117/2010);

“related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation by virtue of section 129A;

“voting share”, in relation to a body corporate, means an issued share in the body corporate, not being —

(a) a share to which, in no circumstances, is there attached a right to vote; or

(b) a share to which there is attached a right to vote only in one or more of the following circumstances —

- (i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;
- (ii) on a proposal to reduce the share capital of the body corporate;
- (iii) on a proposal that affects rights attached to the share;
- (iv) on a proposal to wind up the body corporate;
- (v) on a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;
- (vi) during the winding up of the body corporate.”.

Insertion of new section 63A

3. The Act is amended by inserting the following new definition immediately after section 63 —

“SUBSTANTIAL SHAREHOLDINGS

Substantial shareholdings and substantial shareholders

63A. (1) For the purposes of this Act, a person has a substantial shareholding in a company if —

(a) he has an interest or interests in one or more voting shares in the company; and

(b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares in the company.

(2) For the purposes of this Act, a person has a substantial shareholding in a company, being a company the share capital of which is divided into two or more classes of shares, if —

(a) he has an interest or interests in one or more voting shares included in one of those classes; and

(b) the total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares included in that class.

(3) For the purposes of this Act, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(4) In this section “voting shares” exclude treasury shares.”.

Insertion of new sections 129A and 129B

4. The Act is amended by inserting the following two new sections immediately after section 129 —

“When corporations deemed to be related to each other

129A. Where a corporation —

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

Audit committees

129B. (1) Every public company shall have an audit committee.

(2) An audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of 3 or more members of whom a majority shall not be —

- (a) executive directors of the company or any related corporation;
- (b) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or
- (c) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

(3) The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.

(4) If a member of an audit committee resigns, dies or for any other reason ceases to be a member with the result that the number of members is reduced below 3, the board of directors shall, within 3 months of that event, appoint such number of new members as may be required to make up the minimum number of 3 members.

(5) The functions of an audit committee shall be —

(a) to review —

- (i) with the auditor, the audit plan;
- (ii) with the auditor, his evaluation of the system of internal accounting controls;
- (iii) with the auditor, his audit report;
- (iv) the assistance given by the officers of the company to the auditor;
- (v) the scope and results of the internal audit procedures; and
- (vi) the balance sheets of the company and of the parent company, submitted to it by the company or the parent company, and thereafter to submit them to the directors of the company or parent company; and

(b) to nominate a person or persons as auditor, notwithstanding anything contained in the memorandum and articles of association of the company or under section 131,

together with such other functions as may be agreed to by the audit committee and the board of directors.

(6) The auditor has the right to appear and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the audit committee.

(7) On the request of the auditor, the chairman of the audit committee shall convene a meeting of the audit committee to consider any matter the auditor believes should be brought to the attention of the directors or shareholders.

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(8) Each audit committee may regulate its own procedure and in particular the calling of meetings, the notice to be given of such meetings, the voting and proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

(9) Any reference in this section to a director who is not an executive director of a company is a reference to a director who is not an employee of, and does not hold any other office of profit in, the company or in any related corporation of that company in conjunction with his office of director and his membership of any audit committee, and any reference to an executive director shall be read accordingly.

(10) If any person being a director of a company —

(a) fails to comply with any provision of this section;

(b) fails to take all reasonable steps to secure compliance by the company with any such provision; or

(c) has by his own wilful act been the cause of any default by the company of any such provision,

he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.”.

Insertion of new section 153A

5. The Act is amended by inserting the following new section immediately after section 153 —

“Personal remedies in cases of oppression or injustice

153A. (1) Any member or holder of a debenture of a company may apply to the Court for an order under this section on the ground —

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any

class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of such grounds is established, the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in future;

(c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

(d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(e) in the case of a purchase of shares by the company, provide for a reduction accordingly of the capital of the company; or

(f) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to subsection (2)(f), the provisions of the Insolvency Order, 2016 (S 1/2016) relating to the winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made on an application duly made to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any memorandum or articles of the company, then, notwithstanding anything in any other provisions of this Act, but subject to the provisions of the order, the company concerned shall not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) A copy of any order made under this section shall be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and also to a default fine.

(7) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members shall be construed accordingly.”.

Insertion of new section 324A

6. The Act is amended by inserting the following new section immediately after section 324 —

“Rules

324A. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such rules as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

(2) Without prejudice to the generality of subsection (1), rules may be made for or with respect to the corporate governance of companies incorporated in Brunei Darussalam or their related corporations.

(3) Rules made under this section may relate to all or any class, category or description of persons or companies, and may make different provisions for different classes, categories or descriptions of persons or companies or to a particular person or company or of general or specifically limited application.

(4) Except as otherwise expressly provided in this Act, rules made under this section may provide that any contravention thereof shall be an offence punishable —

(a) in the case of an individual, with a fine not exceeding \$12,500, imprisonment for a term not exceeding 12 months or both and, in the case of a continuing offence, with a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction; or

(b) in any other case, with a fine not exceeding \$25,000 and, in the case of a continuing offence, with a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.”.

Made this 23rd. day of Sya'ban, 1437 Hijriah corresponding to the 30th. day of May, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM