

No. S 26

CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

EMERGENCY (COMPANIES ACT) (AMENDMENT) ORDER, 1998

In exercise of the powers conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty The Sultan and Yang Di-Pertuan hereby makes the following Order –

1. This Order may be cited as the Emergency (Companies Act) (Amendment) Order, 1998. Citation.

2. The Companies Act is amended by inserting the following new sections after section 135 – Amendment of section 135 of Chapter 39.

"Definitions. 135A. For the purposes of sections 135A to 135N :

(1) "company" includes any company liable to be wound up under this Act, any body corporate and any partnership or association wheresoever established ;

(2) "body corporate" includes a company incorporated elsewhere than in Brunei Darussalam.

Appointment of Inspectors. 135B. (1) The Minister of Finance may, if he considers it expedient in the public interest, appoint one or more inspectors to investigate the affairs of a company and to report on them in such manner as he may direct ;

(2) Inspectors may be appointed under subsection (1) on terms that any report (or any part of it) they may make is not for publication.

Inspectors' powers during investigation. 135C. (1) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of another company or the Minister of Finance so directs, they have power to do so ; and they shall report on the affairs of the other company so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company mentioned in section 135B.

(2) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of any other person who the

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(1) "company" includes any company liable to be wound up under this Act, any body corporate and any partnership or association wheresoever established ;

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(2) Inspectors may be appointed under subsection (1) on terms that any report (or any part of it) they may make is not for publication.

Inspectors' powers during investigation. 135C. (1) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of another company or the Minister of Finance so directs, they have power to do so ; and they shall report on the affairs of the other company so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company mentioned in section 135B.

(2) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of any other person who the

inspectors consider has had dealings with any company mentioned in sections 135B or 135C above, or is or has been connected with any such company in such a manner as the inspectors consider warrants investigation, or if the Minister of Finance directs, they have power to do so ; and they shall report on the affairs of that person so far as they think that the results of their investigation of his affairs are relevant to the investigation of the affairs of the company mentioned in sections 135B or 135C.

Production of documents and evidence to inspector.

135D. (1) Where inspectors are appointed under section 135B, it is the duty of each person mentioned in subsection (4) :

- (a) to produce to the inspectors all documents of or relating to the company referred to in sections 135B or 135C (1) or the person referred to in section 135C (2) which are in his possession, custody or power ;
- (b) to attend before the inspectors when required to do so ;
- (c) otherwise to give the inspectors all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspectors consider that any of the persons mentioned in subsection (4) is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him :

- (a) to produce to them any documents in his custody or power relating to that matter ;
- (b) to attend before them ; and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give,

and it is the duty of that person to comply with the requirement.

(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.

(4) The persons referred to above are :

- (a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser, or shareholder of the company ;
- (b) any other person who the inspectors consider is or may be in possession of information relating to a matter which the inspectors believe to be relevant to the investigation.

(5) Any answer given by a person to a question put to him in exercise of powers conferred by this section may be used in evidence against him.

(6) In this section and section 135K "documents" include :

- (a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment ;
- (b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

Obstruction of
inspectors.

135E. (1) If any person :

- (a) fails to comply with his duty under section 135D (1)(a) or (c) ;
- (b) refuses to comply with a requirement under section 135D (1)(b) or (2) ; or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the Court, and the Court may thereupon inquire into the case, and may punish the offender in like manner as if he had been guilty of contempt of Court.

Report of the
Inspectors.

135F. (1) The inspectors shall report to the Minister of Finance as the Minister of Finance may direct.

(2) Any such report shall be written or printed, as the Minister of Finance may direct.

Power to bring
civil
proceedings on
behalf of the
company.

135G. (1) If from any report made or information obtained under sections 149D, 135D or 135F it appears to the Minister of Finance that any civil proceedings ought, in the public interest, to be brought by any company, he may himself bring such proceedings in the name of and on behalf of the company.

(2) The Minister of Finance shall have the power to indemnify the company against any costs or expenses incurred by it in connection with the proceedings brought under this section.

Expenses of
investigating
the affairs of
the company.

135H. (1) The expenses of an investigation under any of the powers conferred by sections 135B to 135F shall be defrayed in the first instance by the Minister of Finance, but he may recover those expenses from the persons liable in accordance with this section. There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister of Finance may determine in respect of general staff costs and overheads.

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of the proceedings brought under section 135G, may in the same proceedings be ordered to pay those expenses to such extent as may be specified in the order.

(3) A company in whose name proceedings are brought under section 135G is liable in respect of any costs or expenses incurred in connection with those proceedings to the amount or value of any sums or property recovered by it as a result of those proceedings ; any amount for which a company is liable under this subsection is a first charge on the sums or property recovered.

For the purposes of this section, any costs or expenses incurred by the Minister of Finance in or in connection with proceedings brought under section 135G are to be treated as expenses of the investigation giving rise to the proceedings.

Power to
investigate
company
ownership.

135I. Where the Minister of Finance appoints inspectors under section 135B, such inspectors, may, if directed by the Minister of Finance, investigate and report on the membership of any company, and otherwise with respect to the company, for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

Provisions
applicable on
investigation
under section
135I.

135J. For the purpose of an investigation under section 135I, sections 135C to 135F apply with the necessary modifications of references to the affairs of the company or to those of any other company or person.

Entry and
search of
premises.

135K. (1) The Court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister of Finance, or by a person appointed or authorised to exercise powers under sections 135B and 135C, that there are reasonable grounds for believing that there are on any premises documents whose production has been required and which have not been produced in compliance with that requirement.

(2) The Court may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister of Finance, or by a person appointed or authorised to exercise powers under sections 135B and 135C :

- (a) that there are reasonable grounds for believing that an offence has been committed and that there are on any premises documents relating to whether the offence has been committed ;
- (b) that the Minister of Finance, or the person so appointed or authorised, has power to require the production of the documents under section 135D ; and
- (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under this section shall authorise a police officer :

- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose ;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsections (1) and (2), or take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them ;
- (c) to take copies of any such documents ; and
- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case where a warrant is issued under subsection (2) the Court is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise actions mentioned in subsection (3) to be taken in relation to such documents.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of contempt of Court.

**Punishment for
furnishing false
information.**

135L. A person who, in purported compliance with a requirement imposed under section 135D to provide an explanation or make a statement, provides or makes an explanation which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is also false, is guilty of contempt of Court.

**Disclosure of
information by
the Minister of
Finance.**

135M. The Minister of Finance may, if he thinks fit, authorise or require an inspector appointed under section 135B to disclose any information to any person for such purpose as the Minister of Finance may direct.

135N. (1) If from any report made under section 135F it appears to the inspectors that any person has been guilty of any offence in relation to the company for which he is criminally liable, the inspectors shall refer the matter to the Public Prosecutor.

(2) If where any matter is referred to the Public Prosecutor under this section he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly."

3. The Companies Act is amended by inserting the following new sections immediately after section 149 –

Amendment of
section 149 of
Chapter 39.

"Powers of
Minister of
Finance.

149A. The Minister of Finance 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.

Appointment of
Executive
Manager.

149B. (1) The Minister of Finance may, if he considers it expedient in the public interest, appoint any person to be the Executive Manager of any company.

(2) The Executive Manager shall be appointed for such initial period (not to exceed 6 months) as the Minister of Finance may specify on making such appointment.

(3) The Minister of Finance may from time to time extend the appointment of the Executive Manager for such period or periods as he thinks fit.

(4) The Minister of Finance may :

- (a) at any time, remove the Executive Manager ;
- (b) at any time, appoint another person in addition to or in place of the existing Executive Manager ;
- (c) make such provision as he thinks fit for the remuneration and indemnification of the Executive Manager.

(5) If the appointment by the Minister of Finance has the effect that the office of Executive Manager is to be held by more than one person, the appointment shall declare whether any act required or authorised to be done by the Executive Manager is to be done by all or any one of the persons for the time being holding the office of Executive Manager.

Effect of
appointment of
Executive
Manager.

149C. (1) On the appointment of an Executive Manager :

- (a) any petition for the winding up of the company or for the appointment of a Judicial Manager shall be dismissed ; and
- (b) any receiver or manager of all or any part of the property of the company shall vacate office upon being required to do so by the Executive Manager.

(2) During the period for which an Executive Manager is in office :

- (a) no resolution may be passed or order made for the winding up of the company ;
- (b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement, except with the consent of the Executive Manager ; and
- (c) no other legal proceedings (including a petition for a Judicial Management order) and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the Executive Manager provided that the Minister of Finance may at any time present a petition for a Judicial Management order under section 149J.

(3) During the period for which the Executive Manager is in office :

- (a) the affairs, business and property of the company shall be managed by or under the control of the Executive Manager ;
- (b) the powers of the directors to manage the affairs, business and property of the company shall be suspended ; and
- (c) any power conferred upon the company or its directors or officers or shareholders, whether under this Act or by the memorandum and articles or otherwise, which could be exercised in such a way as to interfere with the exercise by the Executive Manager of his powers, is not exercisable except with the consent of the Executive Manager.

**Duties of
the Executive
Manager.**

149D. (1) The Executive Manager shall :

- (a) take into his custody or under his control the property (wherever situate) to which the company is or appears to be entitled ;
- (b) investigate the affairs, business and property of the company ;
- (c) as soon as practicable, report to the Minister of Finance the results of his investigation in such manner as the Minister of Finance may direct ;
- (d) as soon as practicable, formulate and present to the Minister of Finance his proposals for the future conduct of the affairs, business and property of the company ; and
- (e) manage the affairs, business and property of the company.

(2) The proposals of the Executive Manager may include (without prejudice to the generality of the foregoing) proposals for :

- (a) the removal of the Executive Manager and the return of the company to the control of the directors ;

- (b) the sanctioning under section 151 of this Act of a compromise or arrangement between the company and the persons mentioned in that section ;
- (c) the appointment of a Judicial Manager pursuant to sections 149H or 149J ;
- (d) the winding up of the company.

**Powers of
the Executive
Manager.**

149E. (1) The Executive Manager has the power to do all things as may be necessary :

- (a) for the management of the affairs, business and property of the company ; and
- (b) for the discharge of his duties as specified in section 149D.

(2) Without prejudice to the generality of subsection (1), the Executive Manager has :

- (a) the powers specified in the Thirteenth Schedule to this Act ; and
- (b) the power to remove any director of the company and to appoint any person to be a director of the company.

(3) A person dealing with the Executive Manager in good faith and for value is not concerned to inquire whether the Executive Manager is acting within his powers.

(4) The Executive Manager has the power to dispose of any property of the company which is subject to a security, upon such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

(5) In exercising his powers and discharging his duties the Executive Manager :

- (a) is deemed to act as the agent of the company ;
- (b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so ; and

- (c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except in so far as the contract otherwise provides).

(6) Any sums payable in respect of debts or liabilities of the company incurred while the Executive Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company.

Duty to
co-operate
with the
Executive
Manager.

149F. (1) Where an Executive Manager is appointed, it is the duty of each of the persons mentioned in the next subsection to :

- (a) give to the Executive Manager such information concerning the company and its promotion, formation, business, dealings, affairs or property as the Executive Manager may require ;
- (b) attend on the Executive Manager at such time and place as he may require ;
- (c) otherwise give the Executive Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to above are :

- (a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company ;
- (b) any other person who the Executive Manager considers is or may be in possession of information which the Executive Manager believes to be relevant to the exercise of any of his powers.

Investigative
powers of the
Executive
Manager.

149G. (1) The Executive Manager may require to appear before him any person who he thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company, or any other information which the Executive Manager believes to be relevant to the exercise of any of his powers.

(2) The Executive Manager may for the purpose of carrying out his functions or the exercise of any of his powers examine any person on oath, and may administer an oath accordingly.

(3) The Executive Manager may require any person mentioned in section 149F (2) to produce any documents in his possession or under his control relating to the company or to any of the matters mentioned in section 149F (1)(a) ; and "documents" includes :

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment ;

(b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

(4) If any person –

(a) fails or refuses to comply with his duty under section 149F (1)(a) or (c) ;

(b) fails or refuses to comply with a requirement of the Executive Manager under section 149F (1)(b) or this section ;

(c) refuses to answer any question put to him by the Executive Manager,

the Executive Manager may certify that fact in writing to the Court, and the Court may :

(i) punish the offender in the like manner as if he had been guilty of contempt of Court ; or

- (ii) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Executive Manager of any documents (as defined in section 149G (3)) in that person's possession and authorise a person arrested under such a warrant to be kept in custody until he appears before the Executive Manager.

(5) A lien or other right to retain possession of any documents (as defined in section 149G (3)) of the company is unenforceable to the extent that its enforcement would deny possession of any documents to the Executive Manager.

Power of Court
to make Judicial
Management
order.

149H. (1) Subject to this section, if the Court :

- (a) is satisfied that a company is or is likely to become unable to pay its debts as they fall due, or it is proved to the satisfaction of the Court that the value of the assets of the company is less than the amount of its liabilities, taking into account its contingent and prospective liabilities ; and
- (b) considers that the making of a Judicial Management order under this section would be likely to achieve one or more of the purposes mentioned in section 149I,

the Court may make a Judicial Management order in relation to the company.

(2) A Judicial Management order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a Judicial Manager appointed for the purpose by the Court.

(3) Any person who has acted as Executive Manager of the company in respect of which a Judicial Management order is sought may be appointed Judicial Manager of that company by the Court.

**Purposes of
a Judicial
Management
order.**

149I. The purposes for whose achievement a Judicial Management order may be made on a petition presented under section 149K are :

- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern ;
- (b) the sanctioning under section 151 of this Act of a compromise or arrangement between the company and any such persons as are mentioned in that section ;
- (c) a more advantageous realisation of the company's assets than would be effected on a winding up,

and the order shall specify the purpose or purposes for which it is made.

**Power of
Minister of
Finance to
present Judicial
Management
petition.**

149J. (1) The Minister of Finance may, if he considers it expedient in the public interest, present a petition for a Judicial Management order in relation to any company.

(2) The Court may make a Judicial Management order on the petition of the Minister of Finance and appoint a Judicial Manager if the Court is satisfied that it is expedient in the public interest to do so, and the Court may, if it thinks fit, make a Judicial Management order forthwith or make such other order as it thinks fit.

(3) The purposes for which a Judicial Management order may be made on the petition of the Minister of Finance are :

- (a) such purpose or purposes for the promotion of the public interest as the Minister of Finance may specify in his petition ;
- (b) all or any one or more of the purposes specified in section 149I,

and the order shall specify the purpose or purposes for which it is made.

**Application for
Judicial
Management
order.**

149K. (1) An application to the Court for a Judicial Management order pursuant to section 149H shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors).

(2) Where a petition for a Judicial Management order is presented to the Court under this section :

- (a) notice of the petition shall be given forthwith to the Minister of Finance ;
- (b) notice of the petition shall be given to such other persons as may be prescribed ;
and
- (c) the petition shall not be withdrawn except with the leave of the Court.

(3) On hearing a petition presented under this section, the Court may (subject to the entitlement of the Minister of Finance to be heard) dismiss it, or adjourn the hearing conditionally or unconditionally, or make a Judicial Management order or such other order as it thinks fit.

Effect of Order.

149L. (1) On the making of a Judicial Management order :

- (a) any petition for the winding up of the company shall be dismissed ;
- (b) any Executive Manager of the company shall vacate office ; and
- (c) the Court may make such provision as it thinks fit for the remuneration and indemnification of the Judicial Manager.

(2) During the period for which a Judicial Manager is in office :

- (a) no resolution may be passed or order made for the winding up of the company ;
- (b) no steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire

purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement, except with the consent of the Judicial Manager or leave of the Court ; and

- (c) no other legal proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the Judicial Manager.

(3) During the period for which the Judicial Manager is in office :

- (a) the affairs, business and property of the company shall be managed by the Judicial Manager ;
- (b) the powers of the directors to manage the affairs, business and property of the company shall be suspended ; and
- (c) any power conferred upon the company or its directors or officers or shareholders, whether under this Act or by the memorandum and articles or otherwise, which could be exercised in such a way as to interfere with the exercise by the Judicial Manager of his powers, is not exercisable except with the consent of the Judicial Manager.

**Powers of
the Judicial
Manager.**

149M. (1) The Judicial Manager has the power to do all things as may be necessary :

- (a) for the management of the affairs, business and property of the company ;
- (b) for the achievement of one or more of the purposes for which the Judicial Management order was made.

(2) Without prejudice to the generality of subsection (1), the Judicial Manager :

- (a) has the powers specified in the Thirteenth Schedule to this Act ;
- (b) has the power to remove any director of the company and appoint any person to be a director of the company.

(3) In exercising his powers and discharging his duties the Judicial Manager :

- (a) is deemed to act as the agent of the company ;
- (b) shall not be held to have adopted any contract (including any contract of employment) except where he states in writing his intention to do so ;
- (c) shall not incur personal liability on any contract entered into by him or which he causes the company to enter into (except insofar as the contract otherwise provides).

(4) Any sums payable in respect of debts or liabilities of the company incurred while the Judicial Manager was in office, under contracts entered into by him or which he causes the company to enter into, or contracts (including contracts of employment) adopted by him, shall be charged on and paid out of any property of the company which was in his custody or under his control at that time, in priority to all other liabilities of the company except those liabilities, if any, referred to in section 149E (6).

Duty to
co-operate
with the
Judicial
Manager.

149N. (1) Where a Judicial Manager is appointed, it is the duty of each of the persons mentioned in the next subsection to :

- (a) give to the Judicial Manager such information concerning the company or its promotion, formation, business, dealings, affairs or property as the Judicial Manager may require ;
- (b) produce to the Judicial Manager any documents in his possession or under his control relating to the company or its promotion, formation, business dealings,

affairs or property ; and "documents" includes :

- (i) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment ;
- (ii) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

- (c) attend on the Judicial Manager at such time and place as he may require ;
- (d) otherwise give the Judicial Manager all assistance in connection with the carrying out of his functions or the exercise of his powers which they are reasonably able to give.

(2) The persons referred to above are :

- (a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company ;
- (b) any other person who the Judicial Manager considers is or may be in possession of information which the Judicial Manager believes to be relevant to the exercise of any of his powers.

General Powers. 149O. (1) The Judicial Manager may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(2) A person dealing with the Judicial Manager in good faith and for value is not concerned to enquire whether the Judicial Manager is acting within his powers.

(3) The Judicial Manager has the power to dispose of any property of the company which is subject to a security, upon such terms (whether as to the disposition of the proceeds of such disposal or otherwise) as may be prescribed.

Duties of the Judicial Manager.

149P. The Judicial Manager shall, on his appointment, take into his custody or under his control all the property (wherever situate) to which the company is or appears to be entitled and shall, subject to this Act, manage the affairs, business and property of the company.

Discharge of variation of Judicial Management order.

149Q. (1) The Judicial Manager may at any time apply to the Court for the Judicial Management order to be discharged, or to be varied so as to specify an additional purpose.

(2) The Judicial Manager shall make an application under this section if it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement.

(3) On the hearing of an application under this section, the Court may by order discharge or vary the Judicial Management order and make such consequential provision as it thinks fit.

Vacation of Office.

149R. (1) The Judicial Manager of a company may at any time be removed from office by order of the Court and shall cease to hold office in such other circumstances as may be prescribed.

(2) The Judicial Manager shall vacate office if the Judicial Management order is discharged.

Release of Judicial Manager.

149S. (1) A person who has ceased to be the Judicial Manager of a company has his release in such circumstances as may be prescribed.

(2) Where a person has his release under this section, he is discharged from all liability both in respect of acts or omissions of his in the Judicial Management and otherwise in relation to his conduct as Judicial Manager.

Statement of affairs to be submitted to Judicial Manager.

149T. (1) Where a Judicial Management order has been made, the Judicial Manager shall forthwith require some or all of the persons mentioned below to make out and submit to him within such time as he may require a statement in such form as he may require as to the affairs of the company.

(2) The persons referred to in subsection (1) are :

- (a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company ;
- (b) any other person who the Judicial Manager considers is or may be in possession of information which the Judicial Manager believes to be relevant to the exercise of any of his powers.

Consequences
of failure
to comply.

149U. (1) If any person fails or refuses to comply with his duty under section 149N or a requirement of the Judicial Manager under section 149T, the Judicial Manager may certify that fact in writing to the Court, and the Court may :

- (i) punish the offender in the like manner as if he had been guilty of contempt of Court ; or
- (ii) cause a warrant to be issued to a police officer for the arrest of that person and for the seizure and delivery up to the Judicial Manager of any document (as defined in section 149G (3)) in that person's possession and authorise a person arrested under such a warrant to be kept in custody until he appears before the Judicial Manager.

(2) A lien or other right to retain possession of any documents (as defined in section 149G (3)) of the company is unenforceable to the extent that its enforcement would deny possession of any documents to the Judicial Manager."

Amendment of
section 164 of
Chapter 39.

4. Section 164 of the Companies Act is amended by inserting the following new subsection immediately after subsection (3) -

"(4) A winding up petition may be presented by the Minister of Finance in a case falling within section 164A below."

Insertion of new
section 164A.

5. The Companies Act is amended by inserting the following new section immediately after section 164 -

"Power of
Minister of
Finance to
present winding
up petition.

164A. (1) If in the case of a company liable to be wound up under this Act it appears to the Minister of Finance from :

- (a) any report made by inspectors or Executive Managers under section 135F or 149D (1)(c) ; or
- (b) any information or documents obtained by inspectors appointed under section 135B ; or
- (c) any other information howsoever obtained which comes to his attention,

that it is expedient in the public interest that the company should be wound up, he may present a petition for it to be wound up if the Court thinks it just and equitable for it to be so.

(2) This section does not apply if the company is already being wound up by the Court."

6. The Companies Act is amended by adding the following new Schedule –

"THIRTEENTH SCHEDULE

POWERS OF THE EXECUTIVE MANAGER AND JUDICIAL MANAGER

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.

3. Power to raise or borrow money and grant security therefor over the property of the company.

4. Power to appoint a solicitor or accountant or other professionally qualified person in Brunei Darussalam or elsewhere to assist him in the performance of his functions.

5. Power to bring or defend any action or other legal proceedings (including proceedings directed at seeking the assistance of a Court outside Brunei Darussalam) in Brunei Darussalam or elsewhere in the name and on behalf of the company or in his own name.

6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the seal of the company.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary or desirable for the protection, preservation, or realisation of the property of the company wherever situate.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
18. Power to make any arrangements or compromise on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the company.

25th. JULY, 1998

22. Power to change the situation of the registered office of the company.

23. Power to do all other things incidental to the exercise of the foregoing powers.".

Made this 28th. day of Rabiulawal 1419 Hijrah corresponding to the 22nd. day of July, 1998 Masihi, at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM