

No. S 16

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

BANKING (AMENDMENT) ORDER, 2002

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

BANKING (AMENDMENT) ORDER, 2002

In exercise of the power conferred by subsection (3) of section 83 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 Banking (Amendment) Order, 2002.

Amendment of section 2 of Chapter 95.

2. Section 2 of the Banking Act, in this Order referred to as the Act, is amended, in subsection (1), by inserting the following definitions in the appropriate alphabetical order —

" "advertisement" means the disseminating or conveying of information, invitation or solicitation by any means or in any form, including by means of —

- (a) publication in a newspaper, magazine, journal or other periodical;
- (b) display of a poster or notice;
- (c) a circular, handbill, brochure, pamphlet, book or other document;
- (d) a letter addressed to an individual or a body;
- (e) a photograph or cinematograph film; and

(f) sound broadcasting, television, the Internet or other electronic media;"

" "deposit" means a sum of money or any precious metal, any precious stone or any article which is comprised, in part or in whole, of any precious metal or precious stone, and any other article or thing as may be prescribed by the Minister, received, paid or delivered on terms —

(a) under which it will be repaid or returned, with or without interest or at a premium or discount; or

(b) under which it is repayable or returnable, either wholly or in part, with any consideration in money or money's worth,

and such repayment or return being either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment or delivery and the person receiving it, regardless whether the transaction is described as a loan, an advance, an investment, a saving, a sale or a sale and repurchase, but does not include money paid *bona fide* —

- (i) by way of an advance or part payment or delivery under a contract for the sale, hire or other provision of property or services, and repayable or returnable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
- (ii) by way of security for the performance of a contract or by way of security in respect of any loss which may result from the non-performance of a contract;
- (iii) without prejudice to sub-paragraph (ii), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise; or
- (iv) in such other circumstances or to or by such other person as the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, specify by notification published in the *Gazette*;"

" "document" includes —

(a) any letter, figure, mark, symbol, signal, inscription, writing, sign, caricature, picture, drawing or other representation in any form; and

(b) any visual recording (whether of still or moving images), any sound recording, or any electronic, magnetic, mechanical or other recording, whatsoever and howsoever made,

on any substance, material, thing or article;"

" "investigating officer" means a person appointed under subsection (1) of section 14;"

Insertion of new sections 13A, 13B, 13C, 13D and 13E.

3. The Act is amended by inserting the following 5 new sections immediately after section 13 —

"Receiving, taking or acceptance of deposits prohibited, except under and in accordance with a licence granted under section 4(1).

13A. (1) Subject to section 13D, no person shall receive, take or accept deposits except under and in accordance with a licence granted under subsection (1) of section 4 to carry on banking business.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both, and in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day during which the offence continues after conviction.

Unsolicited calls.

13B. (1) Subject to section 13D, no person shall, without the written consent of the Minister, make an unsolicited call —

(a) to solicit or procure the making of any deposit; or

(b) to enter into or offer to enter into, any agreement with a view to the acceptance of any deposit,

from any person in Brunei Darussalam or outside Brunei Darussalam.

(2) The consent of the Minister under subsection (1) may be given to such person or such classes, categories or descriptions of persons, and be made subject to such terms and conditions, including a condition requiring the disclosure of such information to the persons on whom unsolicited calls are made, as may be set out in the consent.

(3) In this section —

"Minister" includes the Deputy Minister responsible for finance;

"unsolicited call" includes a personal visit or verbal communication made without express invitation.

(4) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both.

Advertisements for deposits.

13C. (1) Subject to section 13D and to subsection (2), no person other than a licensed bank shall issue, publish or otherwise facilitate any person to issue or publish an advertisement containing —

(a) any invitation to make a deposit or to enter into or offer to enter into any agreement to make a deposit; or

(b) any information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit.

(2) Subsection (1) does not apply to the publication by any person of any such advertisement for or on behalf of a licensed bank.

(3) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 5 years or both.

Non-application of sections 13A, 13B and 13C.

13D. Sections 13A, 13B and 13C do not apply to —

(a) the Government;

(b) any person licensed to carry on the business of a money-lender under the Moneylenders Act (Chapter 62);

(c) any person licensed to carry on the business of a pawnbroker under the Pawnbrokers Act (Chapter 63);

(d) any co-operative society registered under the Co-operative Societies Act (Chapter 84);

(e) any finance company licensed under the Finance Companies Act (Chapter 89);

(f) the Tabung Amanah Islam Brunei Corporation established under the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);

(g) any Islamic bank licensed under the Islamic Banking Act (Chapter 168);

(h) any person carrying on the business of insurance with the approval of the Minister;

(i) a statutory body which is authorised under any written law to accept, receive or take deposit; and

(j) any person related or associated with any person referred to in paragraphs (a) to (i).

Fraudulent inducement in relation to deposits.

13E. Any person who —

(a) makes, publishes or facilitates the making or publication of, any statement, promise or forecast which he knows to be misleading, false or deceptive;

(b) dishonestly conceals any material fact; or

(c) recklessly makes or publishes (dishonestly or otherwise), or recklessly facilitates the making or publication (dishonestly or otherwise) of, a statement, promise or forecast which is misleading, false or deceptive,

when he makes, publishes or facilitates the making or publication of such statement, promise or forecast or conceals such material fact, for the purpose of inducing, or who is reckless as to whether the same may induce, another person (whether or not it is the person to whom the statement, promise or forecast is made or from whom such material fact is concealed) —

(i) to make or refrain from making a deposit; or

(ii) to enter or refrain from entering into an agreement for the purpose of making a deposit, with him or any other person,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both."

Substitution of section 14.

4. The Act is amended by repealing section 14 and by substituting the following new section therefor —

"Investigating officers.

14. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint such number of investigating officers as he may consider necessary for the purpose of this Act.

(2) The Permanent Secretary of the Ministry of Finance and any public officer authorised by him to act on his behalf shall have all the powers and duties of an investigating officer for the purposes of this Act.

(3) An investigating officer conducting any examination of any person under this Act shall have the power to administer an oath to the person who is being examined.

(4) An investigating officer shall be deemed to be a public servant for the purposes of the Penal Code [Chapter 22].”.

Insertion of new sections 14A to 14N.

5. The Act is amended by inserting the following 14 new sections immediately after section 14 —

“Powers of entry, search and seizure.

14A. (1) Where an investigating officer or a police officer is satisfied or has any reason to believe that any person has committed an offence under this Act, he may without warrant, if in his opinion it is necessary to do so for the purposes of investigating such offence —

(a) enter any premises and therein search for, seize and detain any property, book or other document, article or thing;

(b) inspect, make copies of or take extracts from, any book or other document so seized and detained;

(c) take possession of and remove from the premises, any property, book or other document, article or thing so seized and detained;

(d) search any person who is in or on such premises and for the purpose of such search, detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any property, book or other document, article or thing found on such person;

(e) break open, examine and search, any article, container or receptacle; and

(f) stop, detain or search any conveyance.

(2) An investigating officer or a police officer may if it is necessary to do so —

(a) break open any outer or inner door of such premises and enter thereinto;

(b) forcibly enter such premises and every part thereof;

(c) remove by force any obstruction to such entry, search, seizure, detention or removal as he is empowered to effect; and

(d) detain all or any person found on any premises or in any conveyance searched under subsection (1) until the search has been completed.

(3) A list of all things seized in the course of a search made under this section and of the premises or conveyance in which they are found shall be prepared by the investigating officer or the police officer conducting the search, and shall be signed by him.

(4) The occupant of the premises entered under subsection (1) or some person on his behalf shall in every instance be permitted to attend during the search and a copy of the list prepared and signed under subsection (3) shall be delivered to such occupant or person at his request.

(5) No female person shall be searched under this section except by another female.

Search of person.

14B. (1) An investigating officer or a police officer may search any person whom he has reason to believe has on such person any property, book or other document, article or thing whatsoever, if in his opinion is necessary for the purpose of investigation into any offence under this Act.

(2) An investigating officer or a police officer making a search of any person under subsection (1) may seize, detain or take possession of any property, book or other document, article or thing found upon such person for the purpose of carrying out the investigation.

(3) No female person shall be searched under this section except by another female.

Power to examine persons.

14C. (1) Where an investigating officer or a police officer suspects any person to have committed an offence under this Act, he may, if in his opinion it is necessary to do so for the purpose of investigation into such offence —

(a) order any person verbally or in writing to attend before him for the purpose of being examined verbally by the investigating officer or the police officer in relation to any matter which may, in the opinion of the investigating officer or the police officer, assist in the investigation into the offence;

(b) order any person verbally or in writing to produce before the investigating officer or the police officer any property, book or other document, article or thing which may, in the opinion of the investigating officer or the police officer, assist in the investigation into the offence; or

(c) by written notice, require any person to furnish a statement in writing made on oath setting out all such information which may be required under such notice, being information which may, in the opinion of the investigating officer or the police officer, assist in the investigation into the offence.

(2) A person to whom an order under paragraph (a) or (b) of subsection (1) or a written notice under paragraph (c) of subsection (1), has been given shall comply with the terms of such order or written notice, and in particular —

(a) a person to whom an order has been given under paragraph (a) of subsection (1) shall attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day as directed by the investigating officer or the police officer until the examination is completed, and shall during such examination disclose all information which is within his knowledge or which is available to him or which is capable of being obtained by him, in respect of the matter in relation to which he is being examined, whether or not any question is put to him with regard thereto, and where any question is put to him he shall answer the same truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse;

(b) a person to whom an order has been given under paragraph (b) of subsection (1) shall not conceal, hide, destroy, alter, remove from or send out of Brunei Darussalam, or deal with or dispose of, any property, book or document, article or thing specified in the order, or alter or deface any entry in any such book or other document, or cause the same to be done, or assist or conspire to do the same; and

(c) a person to whom a written notice has been given under paragraph (c) of subsection (1) shall, in his statement made on oath, furnish and disclose truthfully all information required under the notice which is within his knowledge or which is available to him or which is capable of being obtained by him, and shall not fail to furnish or disclose the same on the ground that it tends to incriminate him or his spouse.

(3) A person to whom an order or a written notice is given under subsection (1) shall comply with such order or written notice and with the provisions of subsection (2) in relation thereto, notwithstanding the pro-

visions of any other written law, whether enacted or made before or after the commencement of the Banking (Amendment) Order, 2002, or of any oath, undertaking or requirement of secrecy (including bank secrecy) to the contrary, or any obligation under any contract, agreement or arrangement, whether express or implied, to the contrary.

(4) Where any person discloses any information or produces any property, book or other document, article or thing pursuant to subsections (1) or (2), neither that person nor any other person on whose behalf or direction or as whose agent or employee, the first-mentioned person may be acting shall, on account of such disclosure or production, be liable to any prosecution for any offence under or by virtue of any law, or to any proceeding or claim in any form or any description by any person under or by virtue of any agreement, arrangement or otherwise howsoever.

(5) An investigating officer or a police officer may seize, take possession of and retain for such duration as he thinks necessary, any property, book or other document, article or thing produced before him in the course of an investigation under subsection (1), or search the person who is being examined by him under paragraph (a) of subsection (1) or who is producing anything to him under paragraph (b) of subsection (1), for ascertaining whether anything relevant to the investigation is concealed or is otherwise, upon such person.

(6) An examination under paragraph (a) of subsection (1) shall be reduced into writing by the investigating officer or the police officer and shall be read to and signed by the person being examined, and where such person refuses to sign the record, the investigating officer or the police officer shall endorse thereon under his hand the fact of such refusal and the reasons thereof, if any, stated by the person examined.

(7) The record of an examination under paragraph (a) of subsection (1), a written statement on oath made pursuant to paragraph (c) of subsection (1), any property, book or other document, article or thing produced under paragraph (b) of subsection (1), or otherwise in the course of an examination under paragraph (a) of subsection (1) or under a written statement on oath or affirmation made pursuant to paragraph (c) of subsection (1) shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court —

(a) for or in relation to, an offence under this Act;

(b) for or in relation to, any other matter under this Act; or

(c) for or in relation to, any offence under any other written law,

regardless whether such proceedings are against the person who was examined or who produced the property, book or other document, article or

thing or who made the written statement on oath, or against any other person.

Requirement to provide translation.

14D. (1) Where an investigating officer or a police officer finds, seizes, detains or takes possession of, any book or other document in exercise of any power under this Act, and such book or other document or any part thereof is in a language other than the Malay or English languages, or in any sign or code, the investigating officer or the police officer may verbally or in writing require the person who had the possession, custody or control of such book or other document, to furnish to the investigating officer or the police officer a translation into the Malay or English languages of such book or other document within such period as, in the opinion of the investigating officer or the police officer, would be reasonable having regard to the length of the book or other document or other circumstances relating to it.

(2) Any person who knowingly furnishes a translation under subsection (1) which is not an accurate, a faithful and true translation or who knowingly makes a translation under that subsection which is not accurate, faithful and true is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000, and in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Powers of arrest.

14E. An investigating officer or a police officer may arrest without warrant any person who has committed or whom he reasonably suspects to have committed an offence under this Act.

Powers of investigation.

14F. In any case relating to the offence mentioned in section 14E, an investigating officer shall have all the powers of a police officer under the Criminal Procedure Code (Chapter 7).

Restriction on disposal of property etc.

14G. (1) The Public Prosecutor may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Public Prosecutor.

(2) Where any property specified in a notice under subsection (1) includes any debt or obligation due by a licensed bank or any other person to the person to whom the notice is given, the Public Prosecutor may serve on that bank or other person a copy of that notice, which shall have the effect of directing that bank or other person not to pay any money to the person specified in the notice without the consent of the Public Prosecutor.

(3) A notice under subsection (1) —

(a) may be served by delivering it personally to the person to whom it is addressed or may, where a Court of a Magistrate is satisfied that such person cannot be found or is not in Brunei Darussalam, be served in such other manner as the court may direct on application *ex parte* by or on behalf of the Public Prosecutor;

(b) shall have effect from the time of service and shall continue in force for a period of 12 months or until cancelled by the Public Prosecutor, whichever is the earlier.

(4) Nothing in subsection (3) shall prevent the Public Prosecutor from giving a further notice in respect of the same property.

(5) The Public Prosecutor may impose such terms and conditions as he thinks fit to a consent to the disposal of or other dealing with any property specified in a notice under subsection (1).

(6) A person who disposes of or otherwise deals with any property specified in a notice under subsection (1) or any licensed bank or other person who pays any money to a person specified in the notice served on that bank or other person under subsection (2) other than in accordance with the consent of the Public Prosecutor is guilty of an offence and liable on conviction to a fine of not exceeding \$50,000 or the value of the property disposed of or otherwise dealt with, whichever is the greater, imprisonment for a term not exceeding 3 years or both.

Surrender of travel documents.

14H. (1) A magistrate may, on the application of a police officer not below the rank of Assistant Superintendent, by written notice require any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Act to surrender to the Commissioner of Police any travel documents in his possession.

(2) A notice under subsection (1) shall be served by delivering it personally to the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a magistrate.

(5) Where a person is taken before a magistrate under subsection (4), the magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, by warrant commit him to prison to be safely kept —

(a) until the expiry of the period of 28 days from the date of his committal to prison; or

(b) until such person complies with the notice under subsection (1) and a magistrate, by order in that behalf, orders and directs the Director of Prisons to discharge such person from prison (which order shall be sufficient warrant for the Director of Prisons to do so),

whichever occurs first.

(6) A travel document which is surrendered to the Commissioner of Police under this section may be detained for 6 months from the date on which it was surrendered and may be detained for a further 3 months if a magistrate, on application by a police officer not below the rank of Assistant Superintendent, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorises such further detention.

(7) All proceedings before a magistrate under this section shall be conducted in chambers.

(8) In this section, "travel document" means a passport or other document establishing the identity or nationality of the holder.

Obstruction to exercise of powers by investigating officer or police officer.

14I. (1) No person shall —

(a) refuse any investigating officer or any police officer exercising his power under sections 14A or 14B access to any premises or conveyance or part thereof, or fail to submit to a search of himself;

(b) assault, obstruct, hinder or delay such investigating officer or police officer in effecting any entrance which he is entitled to effect;

(c) fail to comply with any lawful demands of any investigating officer or police officer in the execution of his duties under sections 14A, 14B or 14C;

(d) refuse to give to an investigating officer or a police officer any information which may reasonably be required of him and which he has in his power to give;

(e) fail to produce to or conceal or attempt to conceal from, an investigating officer or a police officer, any property, book or other document, article or thing in relation to which the investigating officer or the police officer has reasonable grounds for suspecting that an offence has been or is being committed under this Act;

(f) retrieve or endeavour to retrieve any book or other document, article or thing which has been duly seized;

(g) furnish to an investigating officer or a police officer as true, information which he knows or has reason to believe to be false; or

(h) before or after any seizure, break or otherwise destroy any book or other document, article or thing to prevent the seizure thereof or the securing of the same.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 5 years or both, and in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction.

Attempts, preparations, abetments and conspiracies punishable as offences.

14J. (1) Any person who —

(a) attempts to commit any offence under this Act;

(b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit (as defined in section 120A of the Penal Code (Chapter 22)) any offence under this Act, whether or not the offence is committed in consequence thereof,

shall be guilty of such offence and liable to the penalty provided for such offence.

(2) Any provision of this Act which contains a reference to an offence under any specific provisions of this Act shall be read as including a reference to an offence under subsection (1) in relation to the offence under that specific provision.

Service of notice etc.

14K. Without prejudice to subsection (3) of section 14G and to subsection (2) of section 14H, any notice or order given to any person under this Act may —

(a) be delivered to that person personally;

(b) be left at the place of abode or the place of business of that person; or

(c) be sent by registered post to the last known place of abode or place of business of that person.

Offences committed by partnerships and companies.

14L. (1) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under this Act is committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that company, or of a person purporting to act in any such capacity, he, as well as the company, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In relation to a company whose affairs are managed by its members, "director", in subsection (2), means any member of that company.

Offences to be seizable offences.

14M. Every offence under this Act shall be a seizable offence for the purposes of the law relating to criminal procedure.

Exemption.

14N. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, exempt any person or classes, categories or descriptions of persons from any of the provisions of this Act."

Amendment of section 15.

6. Section 15 of the Act is amended by deleting "imprisonment for 3 years and to a fine of \$80,000" from the last line and by substituting "a fine of not exceeding \$10,000,000, imprisonment for a term not exceeding 10 years or both" therefor.

Made this 13th. day of Muharam, 1423 Hijriah corresponding to the 27th. day of March, 2002 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM