

No. S 6

CONSTITUTION OF BRUNEI DARUSSALAM
{Order made under Article 83{3}}

COMPANIES ACT (AMENDMENT) ORDER, 2015

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(Order made under Article 83(3))

COMPANIES ACT (AMENDMENT) ORDER, 2015

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. This Order may be cited as the Companies Act (Amendment) Order, 2015 and shall commence on 1st. February, 2015.

Amendment of section 122 of Chapter 39.

2. Section 122 of the Companies Act, in this Order referred to as the Act, is amended by inserting the following four new subsections immediately after subsection (2) —

“(2A) The report to which subsection (2) relates shall state with appropriate details —

(a) the names of the directors in office during the period under report;

(b) whether during the financial year under report, the company was party, to any arrangements whose objects were, (or one of whose objects was), to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company. If so, the report shall contain —

(i) a statement explaining the effect of the arrangements;

(ii) the names of the persons who at any time during that year were —

(A) directors of the company; and

(B) had held (or whose nominees held) shares or debentures acquired in pursuance of the arrangements; and

(c) the following information —

(i) whether or not any director of the company was interested (at the end of the year under report) in shares in (or debentures of) the company or any other body corporate

(being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested; and

- (ii) whether or not, any director of the company was interested, at the beginning of the year under report (or if he was not then a director, when he became a director) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested.

(2B) The director of a company shall state in the report whether since the end of the previous financial year a director of the company has received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts; if the company is a holding company, the consolidated accounts in accordance with the applicable accounting standards or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

(2C) The Minister may prescribe additional information to be provided in the report under this section. The additional information shall be such as considered necessary by the Minister to facilitate understanding of the business of the company (or group of companies of the holding company, as the case may be) by members of the company (or holding company, as the case may be).".

Insertion of new section 145A.

3. The Act is amended by inserting the following new section immediately after section 145 —

"Register of directors' shareholdings.

145A. (1) A company shall keep a register showing with respect to each direction of the company particulars of —

- (a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;

(b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he has an interest and the nature and extent of that interest;

(c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than —

(a) the second-mentioned company;

(b) a nominee of the second-mentioned company;

(c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or

(d) a nominee of such a subsidiary.

(5) A company shall, within 3 days after receiving notice from a director under section 147A(1)(a), enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director —

(a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and

(b) the date of —

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(6) A company shall, within 3 days after receiving a notice from a director under section 147A(1)(b), enter in its register the particulars of the change referred to in the notice.

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of a participatory interest made available by the company.

(8) A company shall, subject to this section, keep its register at the registered office of the company and the register 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 \$3 or such lesser sum as the company requires.

(9) A person may request a company to furnish him with a copy of its register or any part thereof 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 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

(10) The Registrar may by notice in writing require a company to send to him within such time as may be specified in the notice a copy of its register or any part thereof.

(11) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 147 with respect to those particulars.

(13) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(14) For the purposes of this section —

(a) a director of a company shall be deemed to hold or have an interest or a right in or over any shares or debentures if a spouse of the director (not being a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and

(b) any contract, assignment or right of subscription exercised or made by or grant made to the wife or husband of a director of a company (not being herself or himself a director thereof) shall be deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director; and so shall a contract, assignment or right of subscription entered into, exercised or made by or grant made to an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).

(15) In subsection (14), “son” includes step-son and adopted son and “daughter” includes step-daughter and adopted daughter.

(16) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.”.

Insertion of new section 147A.

4. The Act is amended by inserting the following new section immediately after section 147 —

“General duty to make disclosure.

147A. (1) A director of a company shall give notice in writing to the company —

(a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance with section 145A by the wholly-owned subsidiary company referred to in section 145A(3);

(b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change; and

(c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with section 143 that are applicable in relation to him.

(2) A notice under subsection (1) shall be given —

(a) in the case of a notice under subsection (1)(a), within 2 business days after —

- (i) the date on which the director became a director; or
- (ii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs;

(b) in the case of a notice under subsection (1)(b), within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph; and

(c) in the case of a notice under subsection (1)(d), within 2 business days after the date on which the director became a director.

(3) A company shall, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

(4) It is a defence to a prosecution for failing to comply with subsection (1)(a) or (b) or with subsection (2) if the defendant proves that his

failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) he was not so aware on the date of the information or summons; or

(b) he became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

(6) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 [S 59/2013]; and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

(7) Any director who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.”.

Insertion of new section 311A.

5. The Act is amended by inserting the following new section immediately after section 311 —

“ENFORCEMENT

Court may compel compliance.

311A. (1) If any person in contravention of this Act, refuses or fails to permit the inspection of any register, minute book or document, or to supply a copy of any register, minute book or document, the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member of the company, the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.”.

Made this 13th. day of Rabiulakhir, 1436 Hijriah corresponding to the 3rd. day of February, 2015 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM