

No. S 47

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

**AUTORITI MONETARI BRUNEI DARUSSALAM (AMENDMENT) (NO. 2) ORDER, 2018**

**ARRANGEMENT OF SECTIONS**

Section

1. Citation
  2. Amendment of section 12 of S 103/2010
  3. Insertion of new sections 34A, 34B and 34C
  4. Insertion of new Part IIIA
  5. Amendment of section 36
  6. Insertion of new section 74A
  7. Amendment of section 75B
  8. Amendment of section 77
  9. Amendment to First Schedule
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(Order made under Article 83(3))**

**AUTORITI MONETARI BRUNEI DARUSSALAM (AMENDMENT) (NO. 2) ORDER, 2018**

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 Autoriti Monetari Brunei Darussalam (Amendment) (No. 2) Order, 2018.

**Amendment of section 12 of S 103/2010**

2. Section 12 of the Autoriti Monetari Brunei Darussalam Order, 2010, in this Order referred to as the principal Order, is amended, in subsection (2)/*b*, by deleting “of” and by substituting “not exceeding” therefor.

**Insertion of new sections 34A, 34B and 34C**

3. The principal Order is amended by inserting the following three new sections immediately after section 34 —

**“Inspection of financial institutions for compliance with directions and regulations under sections 33 and 34**

**34A. (1) The Authority may inspect under conditions of secrecy the books of —**

*(a)* a financial institution; or

*(b)* any subsidiary, branch, agency or office outside Brunei Darussalam of a financial institution incorporated or established in Brunei Darussalam,

for the purpose of determining the extent of compliance by the financial institution with the directions issued and the regulations made under sections 33 and 34.

(2) The Authority may appoint any person, including an auditor (not being an auditor of the financial institution), to carry out an inspection under this section.

(3) If the inspection is carried out on the ground that the Authority has reason to believe that the financial institution has contravened or is

contravening any direction issued or regulation made under section 33 or 34, and if the Authority so directs, then the financial institution is liable to pay for the remuneration and expenses of any person appointed under subsection (2) for the inspection.

(4) The Authority may recover from the financial institution the remuneration and expenses referred to in subsection (3) as a civil debt due to the Authority.

(5) The Authority may, in its discretion, waive the payment of all or any part of the remuneration and expenses referred to in subsection (3).

(6) Where, in the course of an inspection under subsection (1), the Authority obtains any protected information and that information is not necessary for taking any action regarding non-compliance with any direction issued and regulation made under section 33 and 34, then the Authority must treat that information as secret.

(7) In this section, “protected information” means information that is protected from unauthorised disclosure under any written laws set out in the First Schedule.

(8) In this section and section 34B, “book” includes any record, register, document or other record of information and any account or accounting record, however compiled, recorded or stored, and whether in written or printed form or on microfilm or any electronic form or otherwise.

(9) In this section and sections 34B and 34C, “financial institution” has the same meaning as in section 33(6).

#### **Obligation of financial institution under inspection**

**34B.** (1) For the purposes of an inspection under section 34A(1), the financial institution shall —

*(a)* give the Authority access to such of the books of the financial institution as the Authority may reasonably require to conduct the inspection;

*(b)* procure a person who is in possession of such of the books of the financial institution as the Authority may reasonably require to conduct the inspection, to give the Authority access to the books;

*(c)* provide such information (including information relating to the internal control systems of the financial institution) and facilities as the Authority may reasonably require to conduct the inspection; and

*(d)* procure a person who is in possession of such information (including information relating to the internal control systems of the financial institution) and facilities as the Authority may reasonably require to conduct the inspection, to provide the information and facilities to the Authority.

(2) Subsection (1) has effect despite any obligation of confidentiality or other restrictions on the disclosure of information imposed on the financial institution or any of its officers, or on any person referred to in subsection (1)*(b)* or *(d)*, by any written laws set out in the First Schedule or any requirement imposed under any such written law, any rule of law, any contract or any rule of professional conduct.

(3) A financial institution which refuses or neglects, without reasonable excuse, to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

(4) No civil or criminal liability is incurred by a financial institution or any of its officers, or by any person referred to in subsection (1)*(b)* or *(d)*, in respect of any obligation or restriction referred to in subsection (2), for doing or omitting to do any act, if the act is done or omitted to be done with reasonable care and in good faith and for the purpose of complying with subsection (1).

(5) A financial institution or any of its officers, or any person referred to in subsection (1)*(b)* or *(d)*, that, with reasonable care and in good faith, does or omits to do any act for the purpose of complying with subsection (1) is not to be treated as being in breach of any obligation or restriction referred to in subsection (2).

#### **Confidentiality of inspection reports**

34C. (1) Except as provided in subsection (2), where a written report has been produced in respect of a financial institution by the Authority following an inspection under section 34A, the report shall not be disclosed to any person by —

*(a)* the financial institution; or

*(b)* any officer or auditor of the financial institution.

(2) Disclosure of the report may be made —

*(a)* by the financial institution to any officer or auditor of that financial institution solely in connection with the performance of the

duties of the officer or auditor, as the case may be, in that financial institution;

*(b)* by any officer or auditor of the financial institution to any other officer or auditor of that financial institution, solely in connection with the performance of their respective duties in that financial institution; or

*(c)* to such other person as the Authority may approve in writing.

(3) In granting approval for any disclosure under subsection (2)(c), the Authority may impose such conditions as it thinks fit on the financial institution, any officer or auditor of that financial institution or the person to whom disclosure is approved, and that financial institution, officer, auditor or person (as the case may be) shall comply with those conditions.

(4) The obligations of an officer or auditor under subsections (1) and (3) continue after the termination or cessation of the employment or appointment of the officer or auditor by the financial institution.

(5) Any person who contravenes subsection (1) or fails to comply with any condition imposed by the Authority under subsection (3) is guilty of an offence and liable on conviction —

*(a)* in any case where the person is an individual, to a fine not exceeding \$125,000, imprisonment for a term not exceeding 3 years or both; or

*(b)* in any other case, to a fine not exceeding \$250,000.

(6) Any person to whom the report is disclosed and who knows or has reasonable grounds for believing, at the time of the disclosure, that the report was disclosed to the person in contravention of subsection (1) is guilty of an offence and liable on conviction —

*(a)* in any case where the person is an individual, to a fine not exceeding \$125,000, imprisonment for a term not exceeding 3 years or both; or

*(b)* in any other case, to a fine not exceeding \$250,000.

(7) Where a person is charged with an offence under subsection (6), it is a defence for the person to prove that —

*(a)* the disclosure was made contrary to the person's desire;

*(b)* where the disclosure was made in any written or printed form, the person had as soon as practicable after receiving the report surrendered, or taken all reasonable steps to surrender, the report and all copies of the report to the Authority; and

*(c)* where the disclosure was made in an electronic form, the person had, as soon as practicable after receiving the report, taken all reasonable steps to ensure the deletion of all electronic copies of the report and the surrender of the report and all copies of the report in other forms to the Authority.”.

#### **Insertion of new Part IIIA**

4. The principal Order is amended by inserting the following new Part immediately after section 35 —

### **“PART IIIA**

#### **BOOK-ENTRY SECURITIES ISSUED BY AUTHORITY**

##### **Interpretation of this Part**

35A. In this Part, unless the context otherwise requires —

“book-entry AMBD securities” means any securities issued by the Authority under this Part in the form of an entry in the records of the Authority;

“depository institution” means a financial institution approved by the Authority which regularly —

*(a)* accepts in the course of its business book-entry AMBD securities by way of a custodial service for its customers; and

*(b)* maintains accounts in the names of its customers reflecting ownership or interest in such book-entry AMBD securities;

“depositor” means any person in whose name an account is established and maintained on the records of the Authority;

“pledge” includes a pledge of, or any security interest in, book-entry AMBD securities —

*(a)* as collateral for loans or advances; or

*(b)* to secure the performance of an obligation;

“security interest” means an interest, not being an interest arising from a trust, in property which secures the payment of a debt or performance of an obligation.

**Issue of book-entry AMBD securities**

**35B.** (1) The Authority may —

*(a)* issue book-entry AMBD securities upon such terms as may be prescribed by means of entries on its records which include the name of the depositor and the amount and description of the securities;

*(b)* maintain accounts of book-entry AMBD securities —

*(i)* for any depositor on such terms and conditions as may be specified by the Authority for such securities the depositor holds for its own account and, where the depositor is a depository institution, for the account of its customers;

*(ii)* for the Government; and

*(iii)* for the Authority; and

*(c)* otherwise service and maintain book-entry AMBD securities.

(2) The Authority may take all action necessary in respect of book-entry AMBD securities to enable the Authority to perform its obligations as depository with respect to such securities.

**Transfers and pledges effected by Authority under book-entry clearing system**

**35C.** (1) A transfer or a pledge of book-entry AMBD securities to the Authority or to any transferee or pledgee eligible to maintain an appropriate account in its name with the Authority shall be effected, notwithstanding any written law to the contrary, by the Authority making an appropriate entry in its records of the securities transferred or pledged.

(2) The making of an entry in the records of the Authority under subsection (1) shall —

*(a)* have the effect of delivery of the book-entry AMBD securities as if the securities had been issued in the form of an engraved or printed certificate;

(b) have the effect of a taking of delivery by the transferee or pledgee;

(c) constitute the transferee or pledgee a holder; and

(d) in the case of a pledge, have the effect of vesting a security interest in favour of the pledgee.

(3) A transfer or pledge of any book-entry AMBD securities effected in accordance with this section shall have priority over any transfer or pledge involving, or any interest in, the securities effected or created in any other manner before, on or after the date of the transfer or pledge in accordance with this section.

#### **Transfers and pledges effected by other means**

**35D.** (1) Notwithstanding section 35C, a transfer or pledge of book-entry AMBD securities, or any interest therein, which is maintained by the Authority in an account may be effected by any means that would be effective to effect a transfer or pledge of book-entry AMBD securities, or any interest therein, if the securities were issued by the Authority in the form of engraved or printed certificates.

(2) The Authority shall be deemed not to be —

(a) a bailee for the purposes of notification of pledges of book-entry AMBD securities not effected in accordance with section 35C; and

(b) a person in possession of book-entry AMBD securities for the purposes of acknowledgment of transfers of such securities not effected in accordance with section 35C.

(3) Where book-entry AMBD securities are recorded on the books of a depository institution for account of the pledgor or transferor thereof and such securities are on deposit with the Authority in an account, that depository institution shall, for the purposes of effecting delivery of the securities to a purchaser or pledgee, be deemed to be —

(a) the bailee to which notification of the pledge of the securities may be given; or

(b) the person in possession from which acknowledgment of the holding of the securities may be obtained.



(4) The Authority shall not accept any notice or advice of a transfer or pledge of any book-entry AMBD securities not effected in accordance with section 35C and any such notice or advice shall be void.

(5) The Authority may continue to deal with its depositor in accordance with this Part notwithstanding any transfer or pledge not effected in accordance with section 35C.

**Authority to be discharged by action on instructions**

35E. (1) The Authority shall not be liable for conversion or for participation in any breach of fiduciary duty where the Authority has, in respect of book-entry AMBD securities maintained in accounts maintained by the Authority –

(a) made entries regarding the securities; or

(b) transferred or delivered the securities,

according to the instructions of its depositor, notwithstanding that the depositor had no right to dispose of or take any other action in respect of the securities.

(2) The Authority shall be fully discharged of its obligations under this Part by the transfer or delivery of book-entry AMBD securities upon the instructions of its depositor.

**Confirmation of transaction**

35F. (1) The Authority shall, following any transaction affecting book-entry AMBD securities maintained for any depositor under this Part, issue to each depositor a confirmation thereof in the form of an advice (serially numbered or otherwise).

(2) The advice referred to in subsection (1) shall specify the amount and description of the securities and any other pertinent transaction data.

**Payment of interest or profit**

35G. (1) Subject to subsection (2), the interest or profit, as the case may be, payable on any book-entry AMBD securities issued under this Part, if any, shall be paid on such date as may be specified by the Authority.

(2) Where any book-entry AMBD securities that are redeemable at the election of the holder thereof at any time are redeemed before the date of maturity of the securities, a portion of the interest or profit payable on the securities (calculated on a *pro-rata* basis) shall be payable on such date as

may be specified as the redemption date in the duly served notice of intention to redeem the securities.

**Redemption of book-entry AMBD securities**

**35H.** (1) Subject to section 35I, book-entry AMBD securities shall be redeemable *at par* —

(a) on such date as may be determined by the Authority (in this Part referred to as the date of maturity); or

(b) in the case of book-entry AMBD securities that are redeemable at the election of the holder thereof at any time, on the earlier of the following dates —

(i) the date of maturity;

(ii) such date as may be specified as the redemption date in any notice of intention to redeem that is duly served.

(2) After the date of maturity of the book-entry AMBD securities under subsection (1), all the interest or profit on the principal sums payable on the securities shall cease and determine, whether or not payment of the principal sums has been demanded.

(3) Redemption proceeds of book-entry AMBD securities shall be disposed of in accordance with the instructions from the depositor for whose account the securities shall have been maintained by the Authority.

**Early redemption**

**35I.** (1) The Authority may, by public notice invite the public to apply to redeem any book-entry AMBD securities specified in the public notice before the date of maturity of those securities.

(2) The public notice referred to in subsection (1) may specify —

(a) the terms and conditions relating to the early redemption of the book-entry AMBD securities specified in the public notice, including the manner in which any offer for early redemption shall be made; and

(b) such other information as the Authority may consider necessary.

(3) The Authority may refuse any application to redeem any book-entry AMBD securities before the date of maturity of those securities without assigning any reason.

**Invitation to take up book-entry AMBD securities and refusal of application**

35J. (1) The Authority may by public notice invite the public to apply to take up book-entry AMBD securities issued under this Part.

(2) The Authority may refuse any application to take up book-entry AMBD securities issued under this Part without assigning any reason.

**Securities lending arrangements**

35K. (1) The Authority may enter into securities lending arrangements by lending book-entry AMBD securities issued under this Part to primary dealers.

(2) Lending book-entry AMBD securities shall include an arrangement under which book-entry AMBD securities are sold and repurchased.”.

**Amendment of section 36**

5. Section 36 of the principal Order is amended, in subsection (1) —

(a) in paragraph (j), by deleting “and”;

(b) by inserting the following three new paragraphs immediately after paragraph (j) —

“(ja) purchase, repurchase and sell currency, and purchase, repurchase, sell, discount and re-discount bills of exchange and Treasury bills drawn within or outside Brunei Darussalam;

(jb) for the purposes of money market operations —

- (i) issue securities in the name of the Authority and to purchase, in accordance with Part IIIA;
- (ii) purchase, repurchase, sell, redeem, discount and re-discount such securities; and
- (iii) do all things which the Authority may do under Part IIIA in connection with such securities;

*(jc)* undertake the issue and management of securities issued by the Government or any public authority; and”.

**Insertion of new section 74A**

6. The principal Order is amended by inserting the following new section immediately after section 74 —

**“Name, symbol, design or representation of Authority**

74A. Any person who —

*(a)* uses the Authority’s name, symbol, design or representation without its express written permission; or

*(b)* uses a name, symbol, design or representation which is identical or resembles the Authority’s name, symbol, design or representation thereof as to deceive or cause confusion or to be likely to deceive or cause confusion,

is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 7 years or both.”.

**Amendment of section 75B**

7. Section 75B of the principal Order is amended, in subsection (1), by deleting “Minister” from the first line and by substituting “Authority” therefor.

**Amendment of section 77**

8. Section 77 of the principal Order is amended —

*(a)* in subsection (1), by deleting “Minister” from the first line and by substituting “Authority” therefor;

*(b)* in subsection (2), by deleting “Minister” and by substituting “Authority” therefor.

**Amendment to First Schedule**

9. The First Schedule to the principal Order is amended —

*(a)* by deleting the following five items —

“the Anti Money-Laundering Order, 2000 (S 44/2000);

the Anti-Terrorism (Financial and Other Measures) Act (Chapter 197);

the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S 52/2000);

the Mutual Funds Order, 2001 (S 18/2001);  
the Securities Order, 2001 (S 31/2001);”;

*/b/* by inserting the following three new items in the appropriate alphabetical order –

“the Payment and Settlement System (Finality and Netting) Order, 2015 (S 37/2015)  
the Payment and Settlement System (Oversight) Order, 2015 (S 36/2015)  
the Secured Transactions Order, 2016 (S 10/2016)”.

Made this 15th. day of Zulhijjah, 1439 Hijriah corresponding to the 27th. day of August, 2018 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM