

No. S 49

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

COMPANIES ACT (AMENDMENT) ORDER, 2018

ARRANGEMENT OF SECTIONS

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(Order made under Article 83(3))

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In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation

1. This Order may be cited as the Companies Act (Amendment) Order, 2018.

Insertion of new Part VIA into Chapter 39

2. The Companies Act, in this Order referred to as the Act, is amended by inserting the following new Part immediately after Part VI —

“PART VIA

STRIKING OFF

Power of Registrar to strike defunct company off register

287A. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within 30 days from the date thereof, a notice shall be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Without prejudice to the generality of subsection (1), in determining whether there is reasonable ground to believe that a company is not carrying on business, the Registrar may have regard to such conditions as may be prescribed.

(3) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post, a notice that at the expiration of 3 months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If in any case where a company is being wound up and the Registrar has reasonable cause to believe that —

(a) no liquidator is acting;

(b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him; or

(c) the affairs of the company have been fully wound up by the Court under Chapter VI of Part V of the Insolvency Order, 2016 [S 1/2016] and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (3).

(5) Where the Registrar is of the opinion that —

(a) the registered office of a company or the name and address of a liquidator or subscriber to the memorandum of association of a company cannot be ascertained; or

(b) letter or notice to be sent under subsection (1), (3) or (4) is unlikely to be received by the person to whom it would be directed,

it shall be sufficient compliance with the provisions of those subsections if the Registrar publishes in the *Gazette* a notice stating that at the expiration of 3 months from the date of the publication of such notice the name of the company mentioned therein shall, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(6) At the expiration of the time mentioned in the notice, the Registrar —

(a) may, unless cause to the contrary is previously shown, strike the name of the company off the register; and

(b) shall publish notice thereof in the *Gazette*,

and on the publication in the *Gazette* of the notice, the company shall be dissolved; but —

(i) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

- (ii) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(7) If any person feels aggrieved by the name of the company having been struck off the register, the Court may on an application made by the person at any time within 15 years after the name of the company has been so struck off, if satisfied —

(a) that the company was at the time of the striking off carrying on business or in operation; or

(b) otherwise that it is just that the name of the company be restored to the register,

order the name of the company to be restored to the register.

(8) On a copy of the order being lodged with the Registrar, the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed to the memorandum of the company addressed to him at the address mentioned in the memorandum.

(10) The Registrar shall ensure that —

(a) such particulars of the company referred to in subsection (1) and of his belief that the company is not carrying on business or is not in operation, as he may determine, is sent to —

- (i) the Collector of Income Tax appointed under the Income Tax Act (Chapter 35); and
- (ii) the Tabung Amanah Pekerja Fund established by the Tabung Amanah Pekerja Board Order, 2016 (S 2/2016); and

(b) the substance of the notices to be published in the *Gazette* referred to in subsections (3), (4) and (5) is also published by the Registrar in such other manner as the Registrar thinks appropriate.

Striking off on application by company

287B. (1) The Registrar may, on the application by a company and on payment of the prescribed fee, strike the company's name off the register on such grounds and subject to such conditions as may be prescribed.

(2) An application under subsection (1) shall be made on the company's behalf by its directors or by a majority of them.

(3) On receipt of the application, the Registrar shall, if satisfied that the grounds and conditions [if any] referred to in subsection (1) have been satisfied, send to the company and its directors, secretaries and members a letter informing them of the application and stating that if an answer showing cause to the contrary is not received within 30 days after the date of the letter, a notice, details of which are set out in subsection (4), will be published in the *Gazette* with a view to striking the name of the company off the register.

(4) The Registrar may not strike a company's name off the register under this section until after the expiration of 60 days after the publication by the Registrar in the *Gazette* of a notice —

(a) stating that the Registrar intends to exercise the power under this section in relation to the company; and

(b) inviting any person to show cause why that should not be done within such period as the Registrar may prescribe.

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(b) as to why the name of the company should not be struck off the register, the Registrar shall strike off the name of the company from the register and publish a notice in the *Gazette* of the company's name having been so struck off.

(6) On the publication of the notice in the *Gazette* under subsection (5), the company is dissolved.

(7) Notwithstanding the dissolution of the company under subsection (6) —

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this section shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(8) The Registrar shall ensure that —

(a) such particulars of the company and of the application referred to in subsection (1), as he may determine, is sent to —

(i) the Collector of Income Tax appointed under the Income Tax Act (Chapter 35); and

(ii) the Tabung Amanah Pekerja Fund established by the Tabung Amanah Pekerja Board Order, 2016 (S 2/2016); and

(b) the substance of the notices to be published in the *Gazette* referred to in subsections [4] and [5] is also published by the Registrar in such other manner as he thinks appropriate.

[9] The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other manner as he thinks appropriate.

Withdrawal of application

287C. [1] The applicant or applicants may, by written notice to the Registrar and on payment of the prescribed fee, withdraw an application to strike a company's name off the register under section 287B at any time before the name of the company has been struck off the register.

[2] On receipt of the notice referred to in subsection (1), the Registrar shall —

(a) send to the company by ordinary post a notice that the application to strike the company's name off the register has been withdrawn; and

(b) publish a notice, in such manner as the Registrar thinks appropriate, that the application to strike the company's name off the register has been withdrawn.

Objections to striking off

287D. [1] Where a notice is given or published by the Registrar under section 287A(3) or 287A(4) of the Registrar's intention to strike the company's name off the register, any person may deliver, not later than the

date specified in the notice, an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be so struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 287A(1) or 287B(1).

(2) An objection to the striking the name of the company off the register referred to in subsection (1) shall be given to the Registrar by notice.

(3) On receipt of a notice of objection, which is made in such form and manner as the Registrar may determine, and on payment of the prescribed fee, within the time referred to in subsection (1), the Registrar shall –

(a) where applicable, give the applicant or applicants for striking the name of the company off the register, notice of the objection; and

(b) in deciding whether to allow the objection, take into account such considerations as may be prescribed.

Application for administrative restoration to register

287E. (1) Subject to such conditions as may be prescribed, an application may be made to the Registrar to restore to the register the name of a company whose name has been struck off the register by the Registrar under section 287A(6), if no application has been or is being made to the Court to restore the name of the company to the register under section 287A(7).

(2) An application under this section may be made whether or not the company has in consequence been dissolved.

(3) An application under this section may only be made by a former director or former member of the company.

(4) An application under this section is not valid unless the application is received by the Registrar within 15 years after the date on which the company is dissolved.

Registrar's decision on application for administrative restoration

287F. (1) The Registrar shall give notice to the applicant of the decision on an application under section 287E.

(2) If the Registrar's decision is that the name of the company should be restored to the register –

(a) the restoration takes effect as from the date that notice is sent; and

(b) the Registrar shall —

(i) enter in the register a note of the date on which the restoration takes effect; and

(ii) cause notice of the restoration to be published in the *Gazette* or in such other manner as the Registrar thinks appropriate.

(3) The notice under subsection (2)(b)(ii) shall state —

(a) the name of the company or, if the company is restored to the register under a different name, that name and its former name;

(b) the company's registration number; and

(c) the date as on which the restoration of the name of the company to the register takes effect.

(4) If the Registrar's decision is that the name of the company should not be restored to the register, the person who made the application under section 287E or any other person aggrieved by the decision of the Registrar may appeal to the Court.

(5) On an appeal made under subsection (4), the Court may —

(a) confirm the Registrar's decision; or

(b) restore the name of the company to the register and give such directions and make such orders as the Court is empowered to give and make under section 287H(3).

Registrar may restore company deregistered by mistake

287G. (1) The Registrar may, on his own initiative, restore the name of a company to the register if he is satisfied that the name of the company has been struck off the register and the company is dissolved under section 287A or 287B as a result of a mistake of the Registrar.

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the company off the register under section 287B.

(3) The Registrar may restore the name of a company to the register by publishing in the *Gazette* or in such other manner as the Registrar thinks appropriate, a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

Effect of restoration

287H. (1) If the name of a company is restored to the register under section 287F(2) or 287G, or on appeal to the Court under section 287F(5), the company is to be regarded as having continued in existence as if its name had not been struck off the register.

(2) The company and its directors, or every authorised representatives of a foreign company, are not liable to a penalty under section 312 for a financial year in relation to which the period for filing its profit and loss accounts and balance sheet and other related documents ended —

(a) after the date of dissolution or striking off; and

(b) before the restoration of the name of the company to the register.

(3) On the application by any person, the Court may give such directions and make such orders as it seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or its name had not been struck off the register.

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the company to the register.”.

Amendment of section 304A

3. Section 304A of the Act is amended, in subsection (6), by deleting “the Insolvency Order, 2016” from the fourth line and by substituting “this Act” therefor.

Consequential amendment to S 1/2016

4. The Insolvency Order, 2016 is amended by repealing section 157.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Made this 3rd. day of Muharram, 1440 Hijriah corresponding to the 13th. day of September, 2018 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM