CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

INVESTMENT INCENTIVES ORDER, 2001

ARRANGEMENT OF SECTIONS

Section

PART III

PIONEER SERVICE COMPANIES

PART IV

POST-PIONEER COMPANIES

PART V

EXPANSION OF ESTABLISHED ENTERPRISES

PART Vl

EXPANDING SERVICE COMPANIES

PART VII

PRODUCTION FOR EXPORT

PART VIII
EXPORT OF SERVICES

PART IX
INTERNATIONAL TRADE INCENTIVES

PART X

FOREIGN LOANS FOR PRODUCTIVE EQUIPMENT

PART XI

INVESTMENT ALLOWANCES

PART XII

WAREHOUSING AND SERVICING INCENTIVES

PART XIII

INVESTMENTS IN NEW TECHNOLOGY COMPANIES

PART XIV

OVERSEAS INVESTMENT AND VENTURE CAPITAL INCENTIVES

PART XV

RELIEF FROM IMPORT DUTIES

PART XVI

MISCELLANEOUS PROVISIONS

CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

INVESTMENT INCENTIVES ORDER, 2001

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 –

PART I
PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Investment Incentives Order, 2001 and shall commence on 1st. June, 2001.

(2) The long title of this Order is "An Order to make new provision for encouraging the establishment and development in Brunei Darussalam of industrial and other economic enterprises, for economic expansion and for incidental and related purposes".

Order to be construed as one with the Income Tax Act (Chapter 35).

2. This Order shall, unless otherwise expressly provided for in this Order, be construed as one with the Income Tax Act.

Interpretation.

3. In this Order, unless the context otherwise requires –

"approved foreign loan" means a loan which is certified under section 75 to be an approved foreign loan;

"approved product" means a product declared under section 30 to be an approved product;

"Collector" means the Collector of Income Tax appointed under the Income Tax Act (Chapter 35);

"company" means any company incorporated or registered in accordance with the provisions of any written law relating to companies;

"expanding enterprise" means any company which has been approved by the Minister and to which an expansion certificate has been issued under section 31;

"expansion certificate" means an expansion certificate issued under section 31;

"expansion day", in relation to an expanding enterprise, means the date specified in its expansion certificate under subsection (4) or (5) of section 31;

"export enterprise" means any company which has been approved by the Minister and to which an export certificate has been issued under section 40;

"export enterprise certificate" means an export enterprise certificate issued under section 40;

"export produce" means a produce of agriculture, forestry and fisheries approved under section 39 as export produce;

"export product" means a product approved under section 39 as export product;

"export year" means the year specified in the export enterprise certificate under subsection (2) of section 40 or section 41;

"foreign loan certificate" means a foreign loan certificate issued under section 75;

"high-tech park" means an area declared by the Minister to be a high-tech park;

"manufacture", in relation to a product, includes any process or method used in making or developing the product;

"Minister" means the Minister charged with the responsibility for industrial development;

"new trade or business" means the trade or business of a pioneer enterprise deemed under section 8 to have been set up and commenced on the day following the end of its tax relief period;

"officer of customs" and "senior officer of customs" have the same meanings as in the Customs Act (Chapter 36);

"old trade or business" means the trade or business of a pioneer enterprise carried on by it during its tax relief period in accordance with section 8, and which either ceases within or is deemed, under that section, to cease at the end of that period;

"pioneer certificate" means a pioneer certificate issued under section 5;

"pioneer enterprise" means any company which has been approved by the Minister and to which a pioneer certificate has been issued under section 5;

"pioneer industry" means an industry declared under section 4 to be a pioneer industry;

"pioneer product" means a product declared under section 4 to be a pioneer product;

"production date", in relation to a pioneer enterprise, means the date specified in its pioneer certificate under subsection (3) or (4) of section 5;

"productive equipment" means machinery or plant which would normally qualify for deduction under sections 16, 17 and 18 of the Income Tax Act (Chapter 35);

"repealed Act" means the Investment Incentives Act (Chapter 97) repealed by this Order;

"tax" means income tax imposed by the Income Tax Act (Chapter 35);

PART II
PIONEER INDUSTRIES

Power and procedure for declaring an industry and a product a pioneer industry and a pioneer product.

4. (1) Subject to subsecti6n (2), the Minister may, if he considers it expedient in the public interest to do so, by order declare an industry, which is not being carried on in Brunei Darussalam on a scale adequate to the economic needs of Brunei Darussalam and for which in his opinion there are favourable prospects for development, to be a pioneer industry and any specific product of that industry to be a pioneer product.

(2) The Minister may revoke any order made under this section but any such revocation shall not affect the operation of any pioneer certificate issued to any pioneer enterprise before the revocation.

Application for and issue and amendment of pioneer certificate.

5. (1) Any company which is desirous of producing a pioneer product may make an application in writing to the Minister to be approved as a pioneer enterprise in such form and with such particulars as may be prescribed.

(2) Where the Minister is satisfied that it is expedient in the public interest to do so and, in particular, having regard to the production or anticipated production of the pioneer product from all sources of production in Brunei Darussalam, he may approve that company a pioneer enterprise and issue a pioneer certificate to the company, subject to such terms and conditions as he thinks fit.

(3) Every pioneer certificate issued under this section shall specify –

(a) the date on or before which it is expected that the pioneer enterprise will commence to produce in marketable quantities the product specified in the certificate; and

(b) the rate of production of that product which it is expected will be attained on or before that date,

and that date shall be deemed to be the production day of the pioneer enterprise for the purposes of this Order.

(4) The Minister may, in his discretion, upon the application of any pioneer enterprise, amend its pioneer certificate by substituting for the production day specified therein such earlier or later date as he thinks fit and there upon the provisions of this Order shall have effect as if the date so substituted were the production day in relation to that pioneer enterprise.

Tax relief period of pioneer enterprise.

6. (1) The tax relief period of a pioneer enterprise shall commence on its production day and shall continue for a period of –

(a) 5 years, where its fixed capital expenditure is not less than $500,000 but is less than $2.5 million;

(b) 8 years, where its fixed capital expenditure is more than $2.5 million;

(c) 11 years, where it is located in a high tech park.

(2) Where the tax relief period of a pioneer enterprise is 5 years and the Minister is satisfied that it has incurred by the end of the year following the end of that period fixed capital of not less than $2.5 million, the Minister may extend its tax relief period to 8 years from the production day.

(3) In this section, "fixed capital expenditure" in relation to a pioneer enterprise, means capital expenditure incurred by the pioneer enterprise on its factory building (excluding land) or on plant, machinery or other apparatus used in Brunei Darussalam in connection with and for the purposes of the pioneer enterprise.

Further extension of tax relief period.

7. (1) The Minister may, subject to such terms and conditions as he may impose, extend the tax relief period of a pioneer enterprise (other than a pioneer enterprise that is located in a high-tech park) for such further period or periods as he may determine except that the tax relief period of the pioneer enterprise shall not in aggregate exceed 11 years.

(2) The Minister may, subject to such terms and conditions as he may impose, extend the tax relief period of a pioneer enterprise that is located in a high-tech park for such further period or periods not exceeding 5 years at any one time as he may determine except that the tax relief period of the pioneer enterprise shall not in aggregate exceed 20 years.

Provisions governing old and new trade or business.

8. For the purposes of the Income Tax Act (Chapter 35) and this Order –

(a) the old trade or business of a pioneer enterprise shall be deemed to have permanently ceased at the end of its tax relief period;

(b) the pioneer enterprise shall be deemed to have set up and commenced a new trade or business on the day immediately following the end of its tax relief period;

(c) the pioneer enterprise shall make up accounts of its old trade or business for a period not exceeding one year, commencing on its production day, for successive periods of one year thereafter and for the period not exceeding one year ending at the date when its tax relief period ends; and

(d) in making up the first accounts of its new trade or business the pioneer enterprise shall take as the opening figures for those accounts the closing figures in respect of its assets and liabilities as shown in its last accounts in respect of its tax relief period, and its next accounts of its new trade or business shall be made up by reference to the closing figures in such first accounts an any subsequent accounts shall be similarly made up by reference to the closing figures of the preceding accounts of its new trade or business.

Restrictions on trading before end of tax relief period.

9. (1) During its tax relief period, a pioneer enterprise shall not carry on any trade or business other than the trade or business relating to the relevant pioneer product, unless the Minister has given his permission in writing therefor.

(2) Where the carrying on of a separate trade or business has been permitted under subsection (1), separate accounts shall be maintained in respect of that trade or business and in respect of the same accounting period.

(3) Where the carrying on of such separate trade results in a loss in any accounting period, the loss shall be brought into the computation of the income of the pioneer enterprise for that period unless the Collector, having regard to all the circumstances of the case, is satisfied that the loss was not incurred for the purpose of obtaining a tax advantage.

(4) Where the carrying on of such separate trade results in a profit in any accounting period, and the profit, computed in accordance with the provisions of the Income Tax Act as modified by this section, amounts to less than 5% on the full sum receivable from the sale of goods or the provision of services, the statutory income from that source shall be deemed to be 5% (or such lower rate as the Minister may specify in any particular case) of the full sum so receivable and the income of the pioneer enterprise shall be abated accordingly.

(5) Where in the opinion of the Collector the carrying on of such separate trade is subordinate and incidental to the carrying on of the trade or business relating to the relevant pioneer product, the income or loss arising from such activities shall be deemed to form part of the income or loss of the pioneer enterprise.

(6) In this section, "relevant pioneer product" means the pioneer product specified in its pioneer certificate.

Power to give directions.

10. For the purposes of the Income Tax Act and this Order, the Collector may direct that –

(a) any sums payable to a pioneer enterprise in any accounting period which, but for the provisions of this Order, might reasonably and properly have been expected to be payable, in the normal course of business, after the end of that period shall be treated –

(i) as not having been payable in that period but as having been payable on such date, after that period as the Collector thinks fit; and

(ii) where that date is after the end of the tax relief period of the pioneer enterprise, as having been so payable, on that date, as a sum payable in respect of its new trade or business;

(b) any expense incurred by a pioneer enterprise within one year after the end of its tax relief period which, but for the provisions of this Order, might reasonable and properly have been expected to be incurred, in the normal course of business, during its tax relief period shall be treated as not having been incurred within that year but as having been incurred –

(i) for the purposes of its old trade or business; and

(ii) on such date, during its tax relief period, as the Collector thinks fit.

Ascertainment of income in respect of old trade or business.

11. (l) The income of a pioneer enterprise in respect of its old trade or business shall be ascertained in accordance with the provisions of the Income Tax Act after making such adjustments as may be necessary in consequence of any direction given under section 10.

(2) In determining the income of a pioneer enterprise referred to in subsection (l), the allowances provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act shall be taken into account.

(3) Where the tax relief period of a pioneer enterprise referred to in subsection (1) expires during the basis period for any year of assessment, for the purpose of determining the income in respect of its old trade or business and its new trade or business for that year of assessment, there shall be deducted allowances provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act; and for the purpose of computing such allowances –

(a) the allowances for that year of assessment shall be computed as if the old trade or business of the pioneer enterprise had not been deemed to have permanently ceased at the end of the tax relief period; and

(b) the allowances computed in accordance with paragraph *(a)* shall be apportioned between the old trade or business and the new trade or business of the pioneer enterprise in such manner as appears to the Collector to be reasonable in the circumstances.

(4) Where in any year of assessment full effect cannot, by reason of an insufficiency of profits for that year of assessment, be given to the allowances mentioned in subsection (2), then the balance of the allowances shall be added to, and be deemed to form part of, the corresponding allowances, if any, for the next succeeding year of assessment, and, if no such corresponding allowances fall to be made for that year, shall be deemed to constitute the corresponding allowances for that year, and so on for subsequent years of assessment.

Application of Part X of Income Tax Act (Chapter 35).

12. Part X of the Income Tax Act (relating to returns of income) shall apply in all respects as if the income of a pioneer enterprise in respect of its old trade or business were chargeable to tax.

Collector to issue statement of income.

13. For each year of assessment, the Collector shall issue to the pioneer enterprise a statement showing the amount of income for that year of assessment, and Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply with the necessary modifications, as if that statement were a notice of assessment given under those provisions.

Exemption from income tax.

14. (1) Subject to subsection (6) of section 15, where any statement issued under section 13 has become final and conclusive, the amount of the income shown by the statement shall not form part of the statutory income of the pioneer enterprise for any year of assessment and shall be exempt from tax.

(2) The Collector may, in his discretion and before such a statement has become final and conclusive, declare that a specified part of the amount of such income is not in dispute and such an undisputed amount of income is exempt from tax, pending such a statement becoming final and conclusive.

Certain dividends exempted from income tax.

15. (1) As soon as any amount of income of a pioneer enterprise has been exempt under section 14, that amount shall be credited to an account to be kept by the pioneer enterprise for the purposes of this section.

(2) Where that account is in credit at the date on which any dividends are paid by the pioneer enterprise out of income which has been exempted, an amount equal to those dividends or to that credit, whichever is the less, shall be debited to the account.

(3) So much of the amount of any dividends so debited to that account as are received by a shareholder of the pioneer enterprise shall, if the Collector is satisfied with the entries in the account, be exempt from tax in the hands of the shareholder.

(4) Notwithstanding subsection (3), where a dividend is paid on any share of a preferential nature, it shall not be so exempt in the hands of the shareholder.

(5) Any dividends debited to that account shall be treated as having been distributed to the shareholders of the pioneer enterprise or any particular class of those shareholders in the same proportions as the shareholders were entitled to payment to payment of the dividends giving rise to the debit.

(6) The pioneer enterprise shall deliver to the Collector a copy of that account, made up to a date specified by him, whenever called upon to do so by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining the account.

(7) Notwithstanding section 14 and subsections (1) to (6), where it appears to the Collector that –

(a) any amount of exempted income of a pioneer enterprise; or

(b) any dividend exempted in the hands of any shareholder, including any dividend paid by a holding company to which subsection (10) applies,

ought not to have been exempted by reason of any direction made under section 10 or the revocation under section 114 of a pioneer certificate issued to the pioneer enterprise, the Collector may subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the pioneer enterprise or any such shareholder as may appear to be necessary in order to counteract any profit obtained from any such amount; or

(ii) direct the pioneer enterprise to debit its account, kept in accordance with subsection (1), with such amount as the circumstances require.

(8) Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, to any direction given under subsection (7) as if it were a notice of assessment given under those provisions.

(9) Section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof which is debited to the account required to be kept for the purposes of this section.

(10) Where an amount has been received by way of dividend from a pioneer enterprise by a shareholder and the amount is exempt from tax under this section, if that shareholder is a company (referred to in this section as the holding company) which holds, throughout its tax relief period, the beneficial interest in all the issued shares of the pioneer enterprise (or in not less than such proportion of those shares as the Minister may require at the time when the pioneer certificate is issued to that pioneer enterprise) any dividends paid by the holding company to its shareholders, to the extent that the Collector is satisfied that those dividends are paid out of that amount, shall be exempt from tax in the hands of those

shareholders; and section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof so exempt.

(11) Any holding company may, with the approval of the Minister and subject to such terms and conditions as he may impose, pay such exempt dividends to its shareholders even if it has not held the requisite shareholding in the pioneer enterprise for the whole of the tax relief period.

Carry forward of loss and allowance.

16. (1) Where a pioneer enterprise has, during its tax relief period, incurred a loss for any year, that loss shall be deducted as provided for in subsection (2) of section 30 of the Income Tax Act but only against the income of the pioneer enterprise as ascertained under section 11, except that the balance of any such loss which remains unabsorbed at the end of its tax relief period is available to the new trade or business in accordance with that Act.

(2) Notwithstanding paragraph *(a)* of section 8, the balance of any allowance as provided for in section 11 which remains unabsorbed at the end of the tax relief period of the pioneer enterprise is available to the new trade or business in accordance with the Income Tax Act.

PART III
PIONEER SERVICE COMPANIES

Interpretation of this Part.

17. For the purposes of this Part, unless the context otherwise requires –

"commencement day", in relation to a pioneer service company, means the date specified under subsection (3) or (4) of section 18 in the certificate issued to that company under that section;

"pioneer service company" means a company which has been issued with a certificate under section 18;

"qualifying activity" means any of the following –

(a) any engineering or technical services including laboratory, consultancy and research and development activities;

(b) computer-based information and other computer related services;

(c) the development or production of any industrial design;

(d) services and activities which relate to the provision of leisure and recreation;

(e) publishing services;

(f) services which relate to the provision of education;

(g) medical services;

(h) services and activities which relate to agricultural technology;

(i) services and activities which relate to the provision of warehousing facilities;

(j) services which relate to the organisation or management of exhibitions and conferences;

(k) financial services;

(l) business consultancy, management and professional services;

(m) venture capital fund activity;

(n) operation or management of any mass rapid transit system;

(o) services provided by an auction house;

(p) maintaining and operating a private museum; and

(q) such other services or activities as the Minister may prescribe.

Application for and issue and amendment of certificate for pioneer service company.

18. (1) Where a company is engaged in any qualifying activity, the company may apply in the prescribed form to the Minister for approval as a pioneer service company.

(2) The Minister may, if he considers it expedient in the public interest to do so, approve the application and issue the company with a certificate subject to such terms and conditions as he thinks fit.

(3) Every certificate issued under this section shall specify a date as the commencement day from which the company shall be entitled to tax relief under this Part.

(4) The Minister may in his discretion, upon the application of the company, amend its certificate by substituting for the commencement day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the commencement day in relation to that certificate.

Tax relief period of pioneer service company. *[S 15/2010; S 5/2011]*

19. The tax relief period of a pioneer service company specified in any certificate issued to that company under section 18 shall commence on the commencement day and shall continue for a period of –

(a) 8 years or such longer period, not exceeding 11 years, as the Minister may determine, in relation to any qualifying activity other than financial services;

(b) 5 years, which may be extended for a further 5 years, as the Minister may determine, in relation of financial service.

Application of sections 8 to 16 to pioneer service company.

20. Sections 8 to 16 shall apply to a pioneer service company under this Part and for the purposes of such application –

(a) any reference to a pioneer enterprise shall be read as a reference to a pioneer service company;

(b) any reference to a pioneer product shall be read as a reference to a qualifying activity;

(c) any reference to the production day of a pioneer enterprise shall be read as a reference to the commencement day of a pioneer service company;

(d) any reference to a pioneer certificate shall be read as a reference to a certificate issued under section 18.

PART IV
POST-PIONEER COMPANIES

Interpretation of this Part.

21. For the purposes of this Part, unless the context otherwise requires –

"commencement day", in relation to a post-pioneer company, means the date specified under subsection (3) of section 22 in the certificate issued to that company under that section;

"pioneer company" means a company certified by a pioneer certificate to be a pioneer company under the repealed Act;

"post-pioneer company" means a company which has been issued with a certificate under subsection (2) of section 22;

"qualifying activity", in relation to a post-pioneer company, means its trade or business in respect of which tax relief had been granted under Part II, III or VII and any other trade or business approved by the Minister.

Application for and issue of certificate to post-pioneer company.

22. (1) Any company which is –

(a) a pioneer company on or after 1st. May, 1975;

(b) a pioneer enterprise or a pioneer service company;

(c) an export enterprise which had been a pioneer enterprise immediately before its tax relief period as an export enterprise,

may apply in the prescribed form to the Minister for approval as a post-pioneer company.

(2) The Minister may, if he considers it expedient in the public interest to do so, approve the application and issue the company with a certificate subject to such terms and conditions as he may impose.

(3) Every certificate issued to a post-pioneer company under this section shall specify –

(a) a date as the commencement day from which the company shall be entitled to tax relief under this Part;

(b) its qualifying activities; and

(c) the concessionary rate of tax to be levied for the purposes of this Part.

(4) The Minister may, in his discretion, upon an application of a post-pioneer company, amend its certificate by substituting for the commencement day specified therein such other date as he thinks fit and thereupon the provisions of this Part shall have effect as if that date were the commencement day in relation to that certificate.

(5) Notwithstanding section 35 of the Income Tax Act, tax at such concessionary rate, not being less than 10% as the Minister may specify, shall be levied and paid for each year of assessment upon the income derived by a post-pioneer company during its tax relief period from its qualifying activities.

Tax relief period of post-pioneer company.

23. (1) The tax relief period of a post-pioneer company shall commence on its commencement day and shall continue for a period not exceeding 6 years as the Minister may determine.

(2) The Minister may, subject to such terms and conditions as he may impose, extend the tax relief period of a post-pioneer company for such further period or periods as he may determine except that the tax relief period of the company shall not in the aggregate exceed 11 years.

Ascertainment of income in respect of other trade or business.

24. (1) Where during its tax relief period a post-pioneer company carries on any trade or business other than its qualifying activities, separate accounts shall be maintained in respect of that other trade or business and in respect of the same accounting period and the income from that other trade or business shall be computed and assessed in accordance with the Income Tax Act with such adjustments as the Collector thinks reasonable and proper.

(2) Where in the opinion of the Collector the carrying on of such other trade or business is subordinate or incidental to the carrying on of the qualifying activities of the post-pioneer company, the income or losses arising from such other trade or business shall be deemed to form part of the income or loss of the post-pioneer company in respect of its qualifying activities.

Deduction of losses.

25. The Minister may, in relation to post-pioneer companies, by regulations provide for –

(a) the manner in which expenses, capital allowances and donations allowable under the Income Tax Act are to be deducted; and

(b) the deduction of capital allowances and of losses otherwise than in accordance with sections 20 and subsection (2) of section 30 of the Income Tax Act.

Certain dividends exempted from income tax.

26. (1) As soon as any amount of income of a post-pioneer company has been subject to tax at the concessionary rate under section 22, the net amount of the income after deduction of the tax shall be credited to a special account (referred to in this section as the account) to be kept by the post-pioneer company for the purposes of this section.

(2) Where the account is in credit at the date on which any dividends are paid by the post-pioneer company out of the net amount of the income credited to that account, an amount equal to those dividends or to that credit, whichever is the less, shall be debited to the account.

(3) So much of the amount of any dividends so debited to the account as are received by a shareholder of the post-pioneer company shall, if the Collector is satisfied with the entries in the account, be exempt from tax in the hands of the shareholder.

(4) Notwithstanding subsection (3), where a dividend is paid on any share of a preferential nature, it shall not be so exempt in the hands of the shareholder.

(5) Section 36 of the Income Tax Act shall not apply in respect of any dividends or part thereof which are debited to the account.

(6) Where an amount of dividends debited to the account has been received by a shareholder, and that shareholder is a company (referred to in this section as the holding company) which holds, throughout its tax relief period, the beneficial interest in all the issued shares of the post-pioneer company (or in not less that such proportion of those shares as the

Minister may require at the time when the post-pioneer certificate is issued to the post-pioneer company) any dividends paid by the holding company to its shareholders, to the extent that the Collector is satisfied that those dividends are paid out of such amount, shall be exempt from tax in the hands of those shareholders; and section 36 of the Income Tax Act shall not apply to any such dividends or part thereof so exempt.

(7) Any holding company may, with the approval of the Minister and subject to such terms and conditions as he may impose, pay such exempt dividends to its shareholders even if it has not held the requisite shareholding in the post-pioneer company for the whole of the tax relief period.

(8) The post-pioneer company shall deliver to the Collector a copy of the account made up to any date specified by him whenever called upon to do so by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining the account.

(9) Notwithstanding subsections (1) to (7), where it appears to the Collector that –

(a) any income of a post-pioneer company which has been subject to tax at the concessionary rate under section 22; or

(b) any dividend, including a dividend paid by a holding company under subsection (6), which has been exempted from tax in the hands of any shareholder,

ought not to have been so taxed or exempted for any year of assessment, the Collector may subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the company or any such shareholder as may be necessary in order to make good any loss of tax; or

(ii) direct the company to debit the account with such amount as the circumstances require.

Power to give directions.

27. For the purposes of the Income Tax Act and this Order, the Collector may direct that –

(a) any sums payable to a post-pioneer company in the tax relief period which might reasonably and properly have been expected to be payable, in the normal course of business, after the end of that period shall be treated as not having been payable in that period but as having been payable on such date, after that period, as the Collector thinks fit; and

(b) any expense incurred by a post-pioneer company within one year after the end of its tax relief period which might reasonably and properly have been expected to be incurred, in the normal course of business, during its tax relief period shall be treated as not having been incurred within that year but as having been incurred for the purposes of its qualifying activities and on such date, during its tax relief period, as the Collector thinks fit.

Ascertainment of income in respect of qualifying activities.

28. (1) The qualifying income of a post-pioneer company shall, subject to subsection (2) and section 29, be ascertained in accordance with the provisions of the Income Tax Act after making such adjustments as may be necessary in consequence of any direction given under section 27.

(2) In determining the qualifying income of the post-pioneer company for the basis period for any year of assessment –

(a) the allowance provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act shall be taken into account;

(b) the allowances referred to in paragraph *(a)* for that year of assessment shall firstly be deducted against the qualifying income, and any unabsorbed allowances shall be deducted against the other income of the company subject to tax at the rate of tax under section 35 of the Income Tax Act in accordance with section 29;

(c) the balance, if any, of the allowances after the deduction in paragraph *(b)* shall be available for deduction for any subsequent year of assessment in accordance with section 20 of the Income Tax Act and shall be made in the manner provided in paragraph *(b)*;

(d) any loss incurred for that basis period shall be deducted in accordance with section 29 against the other income of the company subject to tax at the rate of tax under section 35 of the Income Tax Act; and

(e) the balance, if any, of the losses after the deduction in paragraph *(d)* shall be available for deduction for any subsequent year of assessment in accordance with section 30 of the Income Tax Act firstly against the qualifying income, and any balance of the losses shall be deducted against the other income of the company subject to tax at the rate of tax under section 35 of the Income Tax Act in accordance with section 29.

Adjustment of capital allowances and losses.

29. (1) Where, for any year of assessment, there are any unabsorbed allowances or losses in respect of the qualifying income of a post pioneer company, and there is any chargeable normal income of the company, those unabsorbed allowances and losses shall be deducted against the chargeable normal income in accordance with the following provisions –

(a) in the case where those unabsorbed allowances or losses do not exceed that chargeable normal income multiplied by the adjustment factor, that chargeable normal income shall be reduced by an amount arrived at by dividing those unabsorbed allowances or losses by the adjustment factor, and those unabsorbed allowances or losses shall be nil; and

(b) in any other case, those unabsorbed allowances or losses shall be reduced by an amount arrived at by multiplying that chargeable normal income by the adjustment factor, and those unabsorbed allowances or losses so reduced shall be added to, and be deemed to form part of, the corresponding allowances or losses in respect of the qualifying income, for the next succeeding year of assessment in accordance with section 20 or 30 (as the case may be) of the Income Tax Act, and that chargeable normal income shall be nil.

(2) Where, for any year of assessment, there are any unabsorbed allowances or losses in respect of the normal income of a post-pioneer company, and there is any chargeable qualifying income of the company, those unabsorbed allowances or losses shall be deducted against that qualifying income in accordance with the following provisions –

(a) in the case where those unabsorbed allowances or losses do not exceed that chargeable qualifying income multiplied by the adjustment factor, that chargeable

qualifying income shall be reduced by an amount arrived at by dividing those unabsorbed allowances or losses by the adjustment factor, and those unabsorbed allowances or losses shall be nil; and

(b) in any other case, those unabsorbed allowances or losses shall be reduced by an amount arrived at by multiplying that chargeable qualifying income by the adjustment factor, and those unabsorbed allowances or losses so reduced shall be added to, and be deemed to form part of, the corresponding allowances or losses in respect of the normal income, for the next succeeding year of assessment in accordance with section 20 or 30 (as the case may be) of the Income Tax Act, and that chargeable qualifying income shall be nil.

(3) Where a post pioneer company ceases to derive any qualifying income in the basis period for any year of assessment but derives normal income in that basis period, subsection (1) shall apply, with the necessary modifications, to any unabsorbed allowances or losses in respect of the qualifying income of the company for any year of assessment subsequent to that year of assessment.

(4) Where a post pioneer company ceases to derive any normal income in the basis period for any year of assessment but derives qualifying income in that basis period, subsection (2) shall apply, with the necessary modifications, to any unabsorbed allowances or losses in respect of the normal income of the company for any year of assessment subsequent to that year of assessment.

(5) Nothing in subsections (1) to (4) shall be construed as affecting the application of section 20 or 30 of the Income Tax Act unless otherwise provided in this section.

(6) In this section –

"adjustment factor", in relation to any year of assessment, means the factor ascertained in accordance with the formula

$$\frac{A}{B},$$

where A is the rate of tax under section 35 of the Income Tax Act for that year of assessment; and

B is the concessionary rate of tax for that year of assessment at which the qualifying income is subject to tax;

"allowances" means the allowances under section 13, 14, 16, 16A, 17, 18 or 20 including unabsorbed allowances which arose in any year of assessment prior to the year of assessment 2002;

"chargeable normal income" means normal income after deducting expenses, donations, allowances or losses allowable under the Income Tax Act against the normal income;

"chargeable qualifying income" means the qualifying income after deducting expenses, donations, allowances or losses allowable under the Income Tax Act against the qualifying income;

"losses" means losses which are deductible under section 30 of the Income Tax Act including unabsorbed losses incurred in respect of any year of assessment prior to the year of assessment 2002;

"normal income" means income subject to tax at the rate of tax under section 35 of the Income Tax Act;

"unabsorbed allowances or losses in respect of the qualifying income" means the balance of such allowances or losses after deducting expenses, donations, allowances or losses allowable under the Income Tax Act against the qualifying income;

"unabsorbed allowances or losses in respect of the normal income" means the balance of such allowances or losses after deducting expenses, donations, allowances or losses allowable under the Income Tax Act against the qualifying income;

"qualifying income" means the income of a post-pioneer company in respect of its qualifying activities.

PART V
EXPANSION OF ESTABLISHED ENTERPRISES

Power and procedure for declaring an industry and a product an approved industry and an approved product.

30. (1) Subject to subsection (2), where the Minister is satisfied that the increased manufacture of the product of any industry would be of economic benefit to Brunei Darussalam, he may, if he considers it expedient in the public interest to do so, by order, declare that industry to be an approved industry and the product thereof to be an approved product for the purposes of this Part.

(2) The Minister may revoke any order made under this section but any such revocation shall not affect the operation of any expansion certificate issued to any expanding enterprise before the revocation.

Issue of expansion certificate and amendment thereof.

31. (1) Any company intending to incur new capital expenditure for the purpose of the manufacture or increased manufacture of an approved product may –

(a) where the expenditure exceeds $1 million; or

(b) where the expenditure is less than $1 million but exceeds $500,000, and will result in an increase of not less than 30% in value at the original cost of all the productive equipment of the company,

make an application in writing to the Minister to be approved as an expanding enterprise, in such form and with such particulars as may be prescribed.

(2) Where the Minister is satisfied that it is expedient in the public interest to do so, he may approve that company as an expanding enterprise and issue an expansion certificate to the company, subject to such terms and conditions as he thinks fit.

(3) In this Part, "new capital expenditure" means expenditure incurred by a company in the purchase of productive equipment which is intended to increase its production or profitability.

(4) Any expenditure incurred in the purchase of productive equipment which is not new shall be deemed not to be new capital expenditure unless it is proved to the satisfaction of the Minister that –

(a) the purchase of the productive equipment is economically justifiable; and

(b) the purchase price represents a fair open market value of the productive equipment.

(5) Every expansion certificate issued under this section shall specify the date on or before which the productive equipment shall be put into operation and that date shall be deemed to be the expansion day for the purpose of this Part.

(6) The Minister may, in his discretion, upon the application of any expanding enterprise, amend its expansion certificate by substituting for the expansion day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the expansion day in relation to that expanding enterprise.

Tax relief period of expanding enterprise.

32. (1) The tax relief period of an expanding enterprise shall commence on its expansion day or if the expansion day falls within the tax relief period specified in any certificate previously issued to the enterprise under Part II or VII for the same or similar product, commence on the day immediately following the expiry of that tax relief period and shall –

(a) where such expanding enterprise has incurred new capital expenditure not exceeding $1 million, continue for a period of 3 years; and

(b) where such expanding enterprise has incurred new capital expenditure exceeding $1 million, continue for a period of 5 years.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of an expanding enterprise for such further period or periods, not exceeding 3 years at any one time, as he may determine, except that the tax relief period of the expanding enterprise shall not in the aggregate exceed 15 years.

Application of section 10 to expanding enterprise.

33. Section 10 shall apply, with the necessary modifications, to an expanding enterprise as it applies to a pioneer enterprise.

Tax relief.

34. (1) Subject to the provisions of this Order, an expanding enterprise is entitled, during its tax relief period, to relief in the manner provided by this section.

(2) The income of the expanding enterprise in respect of its trade or business to which its expansion certificate relates (referred to in this Part as the expansion income) shall be ascertained, for any accounting period during its tax relief period, in accordance with the provisions of the Income Tax Act and any regulations made under this Order.

(3) In determining the income of the expanding enterprise, the allowances provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act shall be taken into account.

(4) Where an expanding enterprise carries on trading activities other than those to which its expansion certificate relates, the expansion income to be ascertained for the purposes of this section shall be determined in such manner as appears to the Collector to be reasonable in the circumstances.

(5) Where in the opinion of the Collector the carrying on of such trading activities is subordinate or incidental to the carrying on of the trade or business to which its expansion certificate relates, the income or loss arising from such activities shall be deemed to form part of the expansion income of the expanding enterprise.

(6) The expansion income so ascertained shall be compared with the average corresponding income (referred to in this section as the pre-relief income) of the expanding enterprise as determined in subsection (8) and relief shall be given to the following extent –

(a) where the pre-relief income equals or exceeds the expansion income, no relief shall be given;

(b) where the expansion income exceeds the pre-relief income, the amount of the excess shall not form part of the statutory income of the expanding enterprise for any year of assessment and shall be exempt from tax.

(7) The amount of exempt income shall not, unless the Minister in his discretion otherwise decides, exceed the sum which bears the same proportion to the expansion income as the new capital expenditure on productive equipment bears to the total of such new capital expenditure and the value at original cost of the productive equipment owned or used by the expanding enterprise prior to its expansion.

(8) For the purposes of subsection (6), the average corresponding income of an expanding enterprise, in relation to a certificate issued under section 31, shall be determined by taking one-third of the total of the corresponding income of the expanding enterprise for the 3 years immediately preceding the expansion day specified in that certificate.

(9) Where an expanding enterprise has carried on the trade or business to which its certificate relates for less than 3 years immediately prior to its expansion day or where the expanding enterprise has no corresponding income for any of those 3 years, the Minister may specify such amount to be its average corresponding income as he thinks fit.

(10) Where an expanding enterprise has been approved as a pioneer enterprise or as an export enterprise or as both, the total amount of income exempted under this section and Part II or VII shall not exceed 100% of the expansion income.

Exemption from income tax of dividends from expanding enterprise.

35. (1) As soon as any amount of expansion income has become exempt under section 34, that amount shall be credited to an account to be kept by the expanding enterprise for the purposes of this section.

(2) Where that account is in credit at the date on which any dividends are paid by the expanding enterprise out of income which has been exempted, an amount equal to those dividends or to that credit, whichever is the less, shall be debited to the account.

(3) So much of the amount of any dividends so debited to that account as are received by a shareholder of the expanding enterprise shall, if the Collector is satisfied with the entries in the account, be exempt from tax in the hands of the shareholder.

(4) Notwithstanding subsection (3), where a dividend is paid on any share of a preferential nature, it shall not be so exempt in the hands of the shareholder.

(5) Any dividends debited to that account shall be treated as having been distributed to the shareholders of the expanding enterprise or any particular class of those shareholders in the same proportions as the shareholders were entitled to payment of the dividends giving rise to the debit.

(6) The expanding enterprise shall deliver to the Collector a copy of that account, made up to a date specified by him, whenever called upon to do so by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining the account.

(7) Notwithstanding section 34 and subsections (1) to (6) where it appears to the Collector that –

(a) any amount of exempted income of an expanding enterprise; or

(b) any dividend exempted in the hands of any shareholder, including any dividend paid by a holding company to which subsection (10) applies,

ought not to have been exempted by reason of a direction under section 10 (as applied to this Part by section 33) or the revocation under section 114 of an expansion certificate issued to the expanding enterprise, the Collector may, subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the expanding enterprise or any such shareholder as may appear to be necessary in order to counteract any profit obtained from any such amount; or

(ii) direct the expanding enterprise to debit its account, kept in accordance with subsection (1), with such amount as the circumstances require.

(8) Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, to any direction given under subsection (7) as if it were a notice of assessment given under those provisions.

(9) Section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof which is debited to the account required to be kept for the purposes of this section.

(10) Where an amount has been received by way of dividend from an expanding enterprise by a shareholder and the amount is exempt from tax under this section, if that shareholder is a company (referred to in this section as the holding company) which holds, at the time any dividend is declared, the beneficial interest in all the issued shares of the expanding enterprise (or in not less than such proportion of those shares as the Minister may approve), any dividends paid by the holding company to its shareholders, to the extent that the Collector is satisfied that those dividends are paid out of that amount, shall be exempt from tax in the hands of those shareholders; and section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof so exempt.

PART VI
EXPANDING SERVICE COMPANIES

Application for and issue and amendment of certificate for expanding service company.

36. (1) Where a company engaged in any qualifying activity as defined in section 17 intends to substantially increase the volume of that activity, it may make an application in writing to the Minister to be approved as an expanding service company.

(2) Where the Minister is satisfied that it is expedient in the public interest to do so, he may approve that company as an expanding service company and issue a certificate to the company, subject to such terms and conditions as he thinks fit.

(3) Every certificate issued under this section shall specify a date (not earlier than 1st. January, 2001) on or before which the expansion of the qualifying activity shall commence and that date shall be deemed to be the expansion day for the purpose of this Part.

Tax relief period of expanding service company.

37. (1) The tax relief period of an expanding service company shall –

(a) commence on its expansion day; or

(b) if the expansion day falls within the tax relief period specified in any certificate previously issued to the company for the same or similar qualifying activity under Part III, commence on the day immediately following the expiry of that tax relief period,

and shall continue for such period, not exceeding 11 years, as the Minister may, in his discretion, determine.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such· terms and conditions as he may impose, extend the tax relief period of an expanding enterprise for such further period or periods, not exceeding 5 years at any one time, as he may determine, except that the tax relief period of the expanding enterprise shall not in the aggregate exceed 20 years.

Application of certain sections to expanding service company.

38. Subsection (6) of section 31 and sections 33 to 35 shall apply to an expanding service company under this Part and for the purposes of such application –

(a) any reference to an expanding enterprise shall be read as a reference to an expanding service company;

(b) any reference to an expansion certificate shall be read as a reference to a certificate issued under subsection (2) of section 36;

(c) subsection (7) of section 34 shall not have effect.

PART VII
PRODUCTION FOR EXPORT

Power to approve a product or produce as an export product or export produce.

39. The Minister may, if he considers it expedient in the public interest to do so, approve any product manufactured in Brunei Darussalam or any produce of agriculture, forestry or fisheries as an export product or export produce for the purposes of this Part.

Application for the issue of export enterprise certificate.

40. (1) The Minister may, on the application in the prescribed form of any company which is manufacturing or proposes to manufacture any export product or is engaged or proposes to engage in agriculture, forestry and fishery activities, either wholly or partly for export, approve the company as an export enterprise and issue to the company an export enterprise certificate subject to such terms and conditions as he thinks fit.

(2) Every export enterprise certificate issued under this section shall specify the accounting period in which it is expected that the export sales of the export product or export produce –

(a) will be not less than 20% of the value of its total sales; and

(b) will not be less than $20,000,

and that accounting period shall be deemed to be the export year of the export enterprise for the purposes of this Part.

(3) For the purposes of this Part –

"export sales" means export sales (f.o.b.) whether made directly by the export enterprise or through an agent or independent contractor;

"f.o.b." means free on board.

Amendment of export enterprise certificate.

41. The Minister may, in his discretion, upon the application of the export enterprise, amend its export enterprise certificate by substituting for the export year specified therein such other earlier or later accounting period as he thinks fit and thereupon the provisions of this Part shall have effect as if the accounting period so substituted were the export year in relation to that export enterprise.

Tax relief period.

42. (1) The tax relief period of an export enterprise shall –

(a) not being a pioneer enterprise, commence from its export year and shall continue for a period of 8 years inclusive of the export year; or

(b) being a pioneer enterprise, commence on the first day of its export year or, if the export year falls within the period of its old trade or business, on the date of the commencement of its new trade or business, and shall continue for a period of 6 years and shall not in the aggregate exceed 11 years.

(2) Notwithstanding subsection (1), where an export enterprise has incurred or is intending to incur a fixed capital expenditure of –

(a) not less than $50 million; or

(b) not less than $500,000 but less than $50 million and –

(i) more than 40% of the paid-up capital of the export enterprise is held by citizens and persons to whom a Resident Permit has been granted under regulations made under the Immigration Act (Chapter 17); and

(ii) in the opinion of the Minister the export enterprise will promote or enhance the economic or technological development of Brunei Darussalam,

its tax relief period –

(A) where the export enterprise is not a pioneer enterprise, shall commence from its export year and continue for a period of 15 years inclusive of the export year; or

(B) where the export enterprise is a pioneer enterprise, shall commence from its export year or, if the export year falls within the period of its old trade or business, from the date of the commencement of its new trade or business, and continue for such period as together with its tax relief period as a pioneer enterprise will extend in the aggregate to 15 years.

(3) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of any export enterprise for such further period as he thinks fit.

(4) In subsection (2), "fixed capital expenditure" means capital expenditure which has been or is intended to be incurred by the export enterprise, in connection with its export product, on its factory building (excluding land) in Brunei Darussalam, and on any new plant or new machinery used in Brunei Darussalam and, subject to the approval of the Minister, on any secondhand plant or secondhand machinery used in Brunei Darussalam.

Power to give directions.

43. Section 10 shall apply, with the necessary modifications, to an export enterprise as it applies to a pioneer enterprise.

Application of Part X of Income Tax Act.

44. (1) Part X of the Income Tax Act (relating to returns of income) shall apply in all respects as if the whole of the income of an export enterprise in respect of its export profits were chargeable to tax.

(2) The annual return of income shall be accompanied by a separate export statement showing the quantity and value at f.o.b. prices of its export product or export produce exported during the accounting period in respect of which the return is furnished, together with such further evidence as, in the opinion of the Collector, is necessary to verify the accuracy of the export statement.

Cognizance of export.

45. For the purposes of tax relief to an export enterprise, the Collector may take cognizance of the export of any export product or export produce when the export has been made in accordance with the provisions of the Customs Act (Chapter 36) or any regulations made thereunder, as the case may be, but if the Collector is satisfied that in the course of the export of the product or produce a breach of the provisions of this Order or any regulations made thereunder has been committed, he may refuse to take cognizance of the export of the product or produce and refuse a claim for tax relief in respect of the export.

Export to be in accordance with regulations and conditions.

46. No export product or export produce shall be exported by an export enterprise except in accordance with such regulations as are prescribed and under such conditions as may be approved by the Controller of Customs.

Computation of export profits.

47. (1) The income of an export enterprise in respect of its trade or business to which its export enterprise certificate relates shall be ascertained (after making any necessary adjustments in consequence of a direction under section 10, as applied to this Part by section 43) for any accounting period during its tax relief period in accordance with the provisions of the Income Tax Act, before taking into account the allowances provided for in sections 13, 14, 15, 16, 17 and 18 of that Act.

(2) The total export profits of an export enterprise shall be deemed to be that part of the income so ascertained which bears the same proportion to that income as the total value of the export sales (f.o.b.) of its export product or export produce whether made, directly or

indirectly, by sale to an independent exporter (referred to in this Part as the export sales) bears to the total value of the sums receivable in respect of –

(a) its domestic sales of manufactured products or produce at ex-factory prices;

(b) its export sales (f.o.b.) of its export product and export produce;

(c) its export sales (f.o.b.) of other products; and

(d) all other sales and provisions of service,

(referred to in this Part as the total sales).

(3) Where a company exports any products or produce to which its export enterprise certificate relates, the amount of its export profit arising from the export of those products or produce which will qualify for the relief provided by section 49 is the excess of that profit over a fixed sum to be determined in the following manner –

(a) in the case of a company which has previously exported those products or produce, the average annual export profit of the company shall be ascertained in the manner provided by subsection (5); and

(b) in the case of a company which has not prior to its application under section 38 exported those products or produce for 3 years immediately preceding its application, the fixed sum shall be such an amount as the Minister may determine having regard to the total sales of the company and the percentage of the total sales of other major export enterprises exporting like articles.

(4) Where such a company is a pioneer enterprise, subsection (3) shall apply notwithstanding that the company was deemed to commence a new trade or business at the end of its tax relief period as a pioneer enterprise.

(5) For the purposes of this section –

(a) "average annual export profit" means a sum equal to one-third of the total export profits of the company from the export of those products or produce ascertained in the manner provided by subsection (2) during the 3 years immediately preceding the date of its application under section 40; and

(b) where a company has adopted an accounting period ending on a date other than 31st. December, the Collector may make such adjustment on a time basis as appears to him to be reasonable in ascertaining the total export profits of that period.

Conditions for relief.

48. (1) The tax relief provided under this Part applies to an export enterprise during its tax relief period subject to the following conditions –

(a) in respect of the first year of assessment, for which the export year forms the basis period, the export sales shall amount, in proportion, to not less than 20% of the total sales and, in value, to not less than $20,000 during that accounting period;

(b) in respect of subsequent years of assessment, subject to the export sales having satisfied that minimum proportion and value in the export year or where a direction has been made by the Minister under subsection (2) in respect of that year, the export sales shall amount in value to not less than $20,000 during the relevant accounting period; and

(c) where the minimum requirements as to proportion and value have not been satisfied in the export year, and no direction has been made by the Minister under subsection (2), the relief provided by this Part shall apply for the first time only in respect of a year of assessment where during the relevant accounting period the minimum requirements as to proportion and value have both been satisfied or where a direction to this effect has been made by the Minister under subsection (2), and thereafter shall continue to be available where during the relevant accounting period the minimum requirement as to value has been satisfied.

(2) Notwithstanding subsection (1), where, in its export year, the export sales of an export enterprise amount in value to $20,000 or more, but in proportion, to less than 20% of the total sales, and the Minister is satisfied, on the representations of the enterprise that the failure to realise that proportion of the total sales was due to causes beyond the control of the enterprise, or having regard to the quantum of its output and sales other than export sales, it is reasonable and expedient in the public interest to do so, the Minister may direct that the relief provided under this Part shall apply in respect of the year of assessment corresponding to its export year or in respect of any subsequent year of assessment during its tax relief period.

Tax relief on export profits.

49. (1) Where an amount of the export profit of an export enterprise qualifies under sections 47 and 48 for the relief provided by this section (referred to in this section as the qualifying export profit), there shall be deducted from that amount such part of the allowances provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act as may be attributable to the qualifying export profit; and the part of the allowances so attributable to the qualifying export profit shall be deemed to be such amount which bears the same proportion to the total allowances deductible by the export enterprise under sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act as the amount of the qualifying export profit bears to the income of the export enterprise ascertained under subsection (1) of section 47.

(2) For each year of assessment the Collector shall issue to the export enterprise a statement for that year of assessment showing the balance of the qualifying export profit after deduction of the allowances under subsection (1) and the provisions of Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, as if such a statement were a notice of assessment given under those provisions.

(3) Subject to subsection (7) of section 50, where any statement issued under subsection (2) has become final and conclusive, an amount equal to 100% of the balance of such qualifying export profit shall not form part of the statutory income of the export enterprise for that year of assessment and shall be exempt from tax.

Certain dividends exempted from income tax.

50. (1) As soon as any amount of export income has become exempt under section 49, that amount shall be credited to an account to be kept by the export enterprise for the purposes of this section.

(2) Where that account is in credit at the date on which any dividends are paid by the export enterprise out of income which has been exempted, an amount equal to those dividends or to that credit, whichever is the less, shall be debited to the account.

(3) So much of the amount of any dividends so debited to that account as are received by a shareholder of the export enterprise shall, if the Collector is satisfied with the entries in the account, be exempt from tax in the hands of the shareholder.

(4) Notwithstanding subsection (3), where a dividend is paid on any share of a preferential nature, it shall not be so exempt in the hands of the shareholder.

(5) Any dividends debited to that account shall be treated as having been distributed to the shareholders of the export enterprise or any particular class of the shareholders in the same proportions as the shareholders were entitled to payment of the dividends giving rise to the debit.

(6) The export enterprise shall deliver to the Collector a copy of that account, made up to a date specified by him, whenever called upon to do so by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining the account.

(7) Notwithstanding section 49 and subsections (1) to (6) where it appears to the Collector that –

(a) any amount of exempted income of an export enterprise; or

(b) any dividend exempted in the hands of any shareholder, including any dividend paid by a holding company to which subsection (10) applies,

ought not to have been exempted by reason of a direction under section 10, as applied to this Part by section 43, having been made with respect to the export enterprise, after any income of that enterprise has been exempted under the provisions of this Order or the revocation under section 114 of a certificate issued to the export enterprise, the Collector may, subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the export enterprise or any such shareholders as may appear to be necessary in order to counteract any profit obtained from any such amount which ought not to have been exempted; or

(ii) direct the export enterprise to debit its account, kept in accordance with subsection (1), with such amount as the circumstances require.

(8) Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, to any direction given under subsection (7) as if it were a notice of assessment given under those provisions.

(9) Section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof which is debited to the account required to be kept for the purposes of this section.

(10) Where an amount has been received by way of dividend from an export enterprise by a shareholder and the amount is exempt from tax under subsections (1) to (9), if that shareholder is a company (referred to in this section as the holding company) which holds, at the time any dividend is declared, the beneficial interest in all the issued shares of the export enterprise (or in not less than such proportion of those shares as the Minister may approve), any dividends paid by the holding company to its shareholders, to the extent that the Collector is satisfied that those dividends are paid out of that amount, shall be exempt from tax in the hands of those shareholders; and section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof so exempt.

Power of entry into premises and taking of samples.

51. Any officer, authorised by the Collector or any senior officer of customs or any officer of customs authorised by a senior officer of customs for the purpose, shall at all times have access to any premises of an export enterprise or of an independent exporter of any export product or export produce or any place where any export product or export produce is stored, for the purpose of checking the production, storage and packing of the export product or export produce and all records and accounts thereof, and for such other purpose as may be deemed necessary, and may take samples of any goods therefrom.

No relanding of export product or export produce.

52. No export product or export produce shall, unless the Controller of Customs otherwise authorises, be relanded at any time in Brunei Darussalam after they have been exported.

Powers of search, seizure and arrest by officers of customs.

53. Notwithstanding any written law to the contrary, if there is reasonable cause to believe that an offence has been or is being committed under section 46 or 52 of this Order or any regulations made thereunder in relation to any export product or export produce, sections 90 and 91 and Part XII of the Customs Act (Chapter 36) (relating to search, seizure and arrest) shall apply, insofar as they are applicable, as if the export product or export produce were goods that were dutiable and uncustomed goods or goods liable to forfeiture under the Customs Act, and as if the offence had been or were being committed under that Act.

Offence under other laws deemed to be an offence under this Order.

54. Where an export product or export produce is the subject-matter of an offence committed under the Customs Act (Chapter 36), or any regulations made thereunder, and the Collector is satisfied that, if the offence had not been detected, the export enterprise concerned in the commission of such an offence would have been able to claim relief from tax to which it was not entitled, then such an offence shall be deemed to be an offence under this Order whether a claim for tax relief has been made or not and may be dealt with accordingly but so that no person shall be punished more than once for the same offence.

Interpretation of this Part.

55. For the purposes of this Part, unless the context otherwise requires –

"commencement day", in relation to an export service company or export service firm, means the date specified under subsection (3) of section 56 in the certificate issued to that company or firm under that section;

"export service company" means a company which has been issued with a certificate under subsection (2) of section 56;

"qualifying services" means any of the following services undertaken with respect to overseas projects for persons who are neither residents of nor permanent establishments in Brunei Darussalam –

(a) technical services including construction, distribution, design and engineering services;

(b) consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business;

(c) fabrication of machinery and equipment and procurement of materials, components an equipment;

(d) data processing, programming, computer software development, telecommunications and other computer services;

(e) professional services including accounting, legal, medical and architectural services;

(f) educational and training services; and

(g) any other services as the Minister may prescribe.

Application for and issue of certificate to export service company.

56. (1) Where a company is engaged in any qualifying service, the company may apply in the prescribed form to the Minister for approval as an export service company.

(2) The Minister may if he considers it expedient in the public interest to do so, approve the application and issue the company with a certificate, subject to such terms and conditions as he may impose.

(3) Every certificate issued to an export service company under this section shall specify –

(a) a date as the commencement day from which the company shall be entitled to tax relief under this Part;

(b) its qualifying services; and

(c) its base amount of income for the purpose of subsection (2) of section 59.

(4) The Minister may, in his discretion, upon the application of an export service company, amend its certificate by substituting for the commencement day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the commencement day in relation to that certificate.

Tax relief period of export service company.

57. (1) The tax relief period of an export service company shall commence on its commencement day and shall continue for such period, not exceeding 11 years, as the Minister may, in his discretion, determine.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of any export service company or firm for such further periods, not exceeding 3 years at any one time, as he may determine, except that the tax relief period of the export service company shall not in the aggregate exceed 20 years.

Application of certain sections to export service company.

58. (1) Section 10 shall apply, with the necessary modifications, to an export service company as it applies to a pioneer enterprise.

(2) Section 50 shall apply, with the necessary modifications, to an export service company as it applies to an export enterprise.

(3) Sections 68 and 69 shall apply, with the necessary modifications, to an export service company as they apply to an international trading company and for the purposes of such application, the reference in subsection (2) of section 68 to the export sales of qualifying manufactured goods, Brunei Darussalam domestic produce and qualifying commodities shall be read as a reference to the provision of qualifying services.

Ascertainment of income of export service company.

59. (1) The income of an export service company in respect of its qualifying services shall be ascertained (after making such adjustments as may be necessary in consequence of a direction under section 10 as made applicable by section 58) for any accounting period during its tax relief period in accordance with the Income Tax Act, and, in particular, the following provisions shall apply –

(a) income from sources other than the qualifying services shall be excluded and separately assessed;

(b) there shall be deducted in arriving at the income derived from the qualifying services –

(i) all direct costs and expenses incurred in respect of the qualifying services;

(ii) all indirect expenses which are reasonably and properly attributable to the qualifying services;

(c) the allowances provided for in sections 13 to 18 of the Income Tax Act attributable to income derived from the qualifying services during the tax relief period shall be taken into account; and

(d) for the purposes of subparagraph (ii) of paragraph *(b)* and paragraph *(c)*, the amounts attributable to the qualifying services shall be determined on such basis as the Collector thinks reasonable and proper.

(2) The amount of income ascertained under subsection (1) which will qualify for the relief under section 60 shall be the excess of the amount of the income ascertained under subsection (1) over a base amount of income to be determined by the Minister.

Controller to issue statement of income.

60. (1) For each year of assessment, the Collector shall issue to an export service company or firm a statement for that year of assessment showing the amount of income ascertained under subsection (2) of section 59 which will qualify for the relief provided by this section, and Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, as if that statement were a notice of assessment given under those provisions.

(2) Subject to subsection (7) of section 50, where any statement issued under subsection (1) has become final and conclusive, 100% of the amount of the qualifying income referred to in subsection (1) shall not form part of the statutory income of the export service company or firm for the year of assessment to which the income relates and shall be exempt from tax.

Certification by auditor.

61. The Controller may require an auditor to certify the income derived by an export service company from its qualifying services and any direct costs and expenses incurred therefor.

Deduction of allowances and losses.

62. The Minister may by regulations provide, in relation to an export service company, for the deduction of –

(a) any unabsorbed allowances provided for under sections 13 to 18 of the Income Tax Act attributable to income derived from qualifying services by it during its tax relief period otherwise than in accordance with section 20 of that Act; and

(b) losses incurred by it during its tax relief period otherwise than in accordance with subsection (2) of section 30 of the Income Tax Act.

PART IX
INTERNATIONAL TRADE INCENTIVES

Interpretation of this Part.

63. For the purposes of this Part, unless the context otherwise requires –

"commencement day", in relation to an international trading company, means the date specified in the certificate issued to the company as the date from which that company shall be entitled to tax relief under this Part;

"export sales" means export sales free on board but shall exclude the cost of samples, gifts, test-market materials, trade exhibits and other promotional materials;

"international trading company" means a company which has been issued with a certificate under section 64;

"qualifying commodities" means any commodity in respect of which one or more certificates of origin or other documents have been issued by the Minister for the purpose of the export of such commodity;

"qualifying manufactured goods" means Brunei Darussalam manufactured goods in respect of which one or more certificates of origin or other documents indicating that the goods are manufactured in Brunei Darussalam have been issued by the Minister for the purpose of the export of such goods;

"relevant export sales" means the export sales of an international trading company in respect of qualifying manufactured goods and Brunei Darussalam domestic produce or in respect of qualifying commodities, as the case may be;

"Brunei Darussalam domestic produce" means prawns, fish (including aquarium fish), chicken, ornamental plants and orchids produced in Brunei Darussalam and such other domestic produce as may be approved by the Minister.

International trading company.

64. (1) Where a company is engaged in –

(a) international trade in qualifying manufactured goods or Brunei Darussalam domestic produce and the export sales of those goods or produce separately or in combination exceed or are expected to exceed $3 million per annum; or

(b) entrepot trade in any qualifying commodities and the export sales of those qualifying commodities exceed or are expected to exceed $5 million per annum,

the company may apply in the prescribed form to the Minister for approval as an international trading company.

(2) The Minister may, if he considers it expedient in the public interest to do so, approve the application and issue the company with a certificate subject to such terms and conditions as he thinks fit.

(3) The Minister may issue separate certificates to an international trading company for the purposes of paragraphs *(a)* and *(b)* of subsection (1).

(4) Every certificate issued under this section shall specify a date as the commencement day from which the company shall be entitled to tax relief under this Part.

(5) The Minister may, in his discretion upon the application of an international trading company, amend its certificate by substituting for the commencement day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the commencement day in relation to that certificate.

(6) A company shall furnish to the Minister at the time of application to be an international trading company a statement of all its associated companies and export agents and the activities they are engaged in and such other particulars as may be required; and where there is any change in the particulars, the company shall notify the Minister as soon as possible of the change.

Tax relief period of international trading company.

65. The tax relief period of an international trading company, in relation to any certificate issued to that company, shall commence on the commencement day and shall continue for a period of 8 years.

Power to give directions

66. For the purposes of the Income Tax Act and this Order, the Collector may direct that –

(a) any sums payable to an international trading company in any accounting period which, but for the provisions of this Order might reasonably and properly have been expected to be payable, in the normal course of business, after the end of that period shall be treated as not having been payable in that period but as having been payable on such date, after that period, as the Collector thinks fit and, where that date is after the end of the tax relief period of the international trading company, as having been so payable on that date as a sum payable in respect of its post tax relief trade or business; and

(b) any expenses incurred by an international trading company within one year after the end of its tax relief period which, but for the provisions of this Order might reasonably and properly have been expected to be incurred, in the normal course of business, during its tax relief period shall be treated as not having been incurred

within that year but as having been incurred on such date, during its tax relief period, as the Collector thinks fit.

Application of Part X of Income Tax Act.

67. (1) Part X of the Income Tax Act (relating to returns of income) shall apply in all respects as if the whole of the income of an international trading company were chargeable to tax.

(2) The annual return of income shall be accompanied by such evidence as, in the opinion of the Collector, is necessary to verify the income derived from the export sales of qualifying manufactured goods, Brunei Darussalam domestic produce and qualifying commodities.

Ascertainment of income in respect of other trade or business.

68. Where during its tax relief period an international trading company carries on any trade or business which is distinct from the trade or business which includes its relevant export sales, separate accounts shall be maintained in respect of that distinct trade or business and in respect of the same accounting period, and the income from that distinct trade or business shall be computed and assessed in accordance with the provisions of the Income Tax Act with such adjustments as the Collector thinks reasonable and proper.

Computation of export income and exemption from tax.

69. (1) The total income of an international trading company, in respect of its trade or business which includes its relevant export sales, shall be ascertained (after making such adjustments as may be necessary in consequence of any direction given under section 66), for any accounting period during its tax relief period in accordance with the provisions of the Income Tax Act, and, in particular, the following provisions shall apply –

(a) income from any commissions and other non-trading sources shall be excluded and separately assessed;

(b) the allowances provided for in sections 13, 14, 15, 16, 17, and 18 (where applicable) of the Income Tax Act shall be taken into account, and where in any year of assessment full effect cannot, by reason of an insufficiency of profits for that year of assessment, be given to those allowances, section 20 of the Income Tax Act shall apply;

(c) the amount of any unabsorbed allowances in respect of any year of assessment immediately preceding the tax relief period which would otherwise be available under section 20 of the Income Tax Act shall be taken into account;

(d) section 30 of the Income Tax Act shall apply in respect of any loss incurred prior to or during its tax relief period;

(e) any unabsorbed allowances granted under sections 13, 14, 16 and 17 of the Income Tax Act and losses incurred in respect of any distinct trade or business shall be brought into the computation;

(f) any unabsorbed allowances granted under sections 13, 14, 16 and 17 of the Income Tax Act and losses incurred in respect of the trade or business referred to in this subsection shall, during the tax relief period, only be deducted against the income derived from that trade or business;

(g) subject to sections 20 and 30 of the Income Tax Act, any allowances and losses which remain unabsorbed at the end of the tax relief period shall be available for deduction in its post tax relief period.

(2) The amount of the export income of an international trading company which will qualify for the relief for any year of assessment shall be deemed to be such amount which bears to the total income ascertained under subsection (1) the same proportion as the excess of the total value of the relevant export sales over the relevant base export value bears to the total amount of the sums received or receivable in respect of its total sales; and subject to section 70, one-half of the amount of the export income which qualifies for the relief as ascertained in this subsection shall not form part of the chargeable income of the international trading company for that year of assessment and shall be exempt from tax.

(3) The relevant base export value referred to in subsection (2) shall be –

(a) for the basis period for the first year of assessment within the tax relief period of an international trading company, a sum equal to one-third of the total value of the relevant export sales during the 3 years immediately preceding the date of its application to be an international trading company; and

(b) for the basis period for any subsequent year of assessment within the tax relief period, a sum equal to one-third of the total value of the relevant export sales during the 3 qualifying years immediately preceding that basis period.

(4) For the purposes of paragraph *(b)* of subsection (3), a "qualifying year" is a year in which the export sales –

(a) in respect of qualifying manufactured goods or Brunei Darussalam domestic produce exceed $3 million; and

(b) in respect of qualifying commodities exceed $5 million.

(5) Where an international trading company –

(a) was engaged in the trading of qualifying manufactured goods, Brunei Darussalam domestic produce or qualifying commodities for less than 3 years immediately preceding its application under this Part;

(b) during its tax relief period has acquired any sales in respect of qualifying manufactured goods, Brunei Darussalam domestic produce or qualifying commodities from any person or has acquired the beneficial interest, directly or indirectly, of any company engaged in similar trade or business; or

(c) has less than 3 qualifying years for the purpose of determining its relevant base export value under paragraph *(b)* of subsection (3), the Minister may specify such other relevant base export value for one or more basis periods as he thinks fit having regard to the circumstances of the case.

Conditions for relief.

70. The tax relief provided under section 69 shall, for a year of assessment, apply only if an international trading company has complied with the conditions stipulated under this Part and such other conditions as may be specified in its certificate.

Certain dividends exempted from income tax.

71. (1) As soon as any amount of chargeable income of an international trading company has become exempt under section 69, that amount shall be credited to a tax exempt account to be kept by the company for the purposes of this Part.

(2) Where a tax exempt account is in credit at the date on which any dividends are paid by a company, out of income which has been so exempted, an amount equal to those dividends or to that credit, whichever is the less, shall be debited to the account.

(3) So much of the amount of any dividends so debited to the tax exempt account as is received by a shareholder of the company shall, if the Collector is satisfied with the entries in the account, be exempt from tax in the hands of the shareholder.

(4) Notwithstanding subsection (3), where a dividend is paid on any share of a preferential nature, it shall not be exempt from tax in the hands of the shareholder.

(5) Any dividends debited to the tax exempt account shall be treated as having been distributed to the shareholders of the company or any particular class of those shareholders in the same proportions as the shareholders were entitled to payment of the dividends giving rise to the debit.

(6) The company shall deliver to the Collector a copy of the tax exempt account, made up to a date specified by him, whenever called upon to do so by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining the account.

(7) Where an amount has been received by way of dividend from a company by a shareholder and the amount is exempt from tax under this Part, if that shareholder is a company, any dividends paid by that company to its shareholders, to the extent that the Collector is satisfied that those dividends are paid out of that amount, shall be exempt from tax in the hands of those shareholders.

Recovery of tax exempted.

72. Notwithstanding any other provisions of this Part, where it appears to the Collector that –

(a) any amount of exempted income of an international trading company; or

(b) any dividend exempted in the hands of any shareholder,

ought not to have been exempted by reason of a direction made under section 66 or the revocation under section 114 of the certificate issued under section 64 to the company, the Collector may subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the company or any such shareholder as may appear to be necessary in order to recover such tax as may have been exempted under this Part; or

(ii) direct the company to debit its tax exempt account with such amount as the circumstance require.

Application of Parts XI and XII of Income Tax Act.

73. (1) Parts XI and XII of the Income Tax Act (relating to objection and appeals) and any regulations made thereunder shall apply, with the necessary modifications, to any direction given under section 72 as if it were a notice of assessment given under those provisions.

(2) Section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof which is exempted from tax under this Part.

Application of certain sections to international trading company.

74. Sections 45, 51, 52, 53 and 54 shall apply, with the necessary modifications, to an international trading company as they apply to an export enterprise and the reference to export product or export produce in those sections shall be read as a reference to qualifying manufactured goods, Brunei Darussalam domestic produce or qualifying commodities.

PART X
FOREIGN LOANS FOR PRODUCTIVE EQUIPMENT

Application for and issue of approved foreign loan certificate.

75. (1) Where a company engaged in any industry is desirous of raising a loan of not less than $200,000 from a non-resident person (referred to in this Part as a foreign lender) by means of a financial agreement whereby credit facilities are granted for the purchase of productive equipment for the purposes of its trade or business, the company may apply to the Minister for a certificate certifying that foreign loan to be an approved foreign loan.

(2) The Minister may, where he thinks it expedient to do so, consider an application for a foreign loan certificate in respect of a foreign loan of less than $200,000.

(3) The application shall be in such form and with such particulars as may be prescribed, and shall be accompanied by a copy of the financial agreement.

(4) Where the Minister is satisfied as to the *bona fides* of such an application and that it is expedient in the public interest to do so, he may issue a certificate certifying the loan specified in the application as an approved foreign loan.

(5) Every certificate issued under subsection (4) shall be in such form and contain such particulars as may be prescribed, and shall be subject to such terms and conditions as the Minister thinks fit.

Restriction on disposal of specified productive equipment.

76. Any productive equipment purchased and financed from an approved foreign loan shall not be sold, transferred, or otherwise disposed of without the prior written permission of the Minister, unless the loan has been repaid in full.

Exemption of approved foreign loan interest from tax.

77. (1) Notwithstanding section 37 of the Income Tax Act, the Minister may, subject to subsection (2), if he is satisfied that it is expedient in the public interest to do so, by an endorsement to that effect on the approved foreign loan certificate, exempt from tax any interest on an approved foreign loan payable to a foreign lender.

(2) Where a company has contravened section 76 or any conditions imposed by the Minister under subsection (4) of section 75, the amount which, but for subsection (1), would have been deductible by the company from the interest paid by it to the foreign lender under section 37 of the Income Tax Act shall be deemed to have been deducted from that interest and shall be a debt due from the company to the Government and be recoverable in the manner provided by section 76 of the Income Tax Act.

(3) No action shall be taken by the Collector to recover any debt under subsection (2) without the prior sanction of the Minister.

Exemption of additional interest on approved foreign loan from tax.

78. (1) Subject to subsection (3), section 77 shall apply to any additional interest payable on an approved foreign loan by reason of any arrangement whereby the period within which the loan must be repaid in full has been extended.

(2) The rate of interest payable in respect of any such extended period shall not, without the prior sanction of the Minister, be higher than the rate of interest specified in the certificate relating to the approved foreign loan.

(3) Any company making any such arrangement shall give notice thereof in writing to the Minister within 30 days from the date on which the arrangement is made.

PART XI
INVESTMENT ALLOWANCES

Interpretation of this Part.

79. (1) For the purposes of this Part, unless the context otherwise requires –

"approved project" means a project approved by the Minister under subsection (2) of section 80;

"construction operations" means –

(a) construction, alteration, repair, extension or demolition of buildings and structures;

(b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of any land; or

(c) any operations which form an integral part of, or are preparatory to, or are for renderings complete the operations described in paragraph *(a)* or *(b)* including site clearance, earth-moving excavation, laying of foundations, site restoration, landscaping and the provision of drains and of roadways and other access works;

"fixed capital expenditure" means capital expenditure to be incurred on an approved project by a company on factory building (excluding land) in Brunei Darussalam, on the acquisition of any know-how or patent rights, and on any new productive equipment (and, subject to the approval of the Minister, on any secondhand productive equipment) to be used in Brunei Darussalam, and the reference to factory building in this definition shall, in relation to a project under paragraph *(b), (c), (d), (f)* or *(g)* of subsection (1) of section 80, include a building or structure specially designed and used for carrying out that project;

"investment day", in relation to a company, means the date specified in its certificate as the date from which the company shall qualify for the investment allowance;

"research and development" has the same meaning as in the Income Tax Act (Chapter 35).

(2) For the purposes of this Part, fixed capital expenditure shall not be deemed to be incurred by a company unless –

(a) in the case of any factory building or productive equipment to be constructed or installed on site, the expenditure is attributable to payment against work done in the construction of the building or the construction or installation of the productive equipment;

(b) in the case of any productive equipment, other than that to be constructed or installed on site, the company has received delivery of the equipment in Brunei Darussalam.

Capital expenditure investment allowance.

80. (1) Where a company proposes to carry out a project –

(a) for the manufacture or increased manufacture of any product;

(b) for the provision of specialised engineering or technical services;

(c) for research and development;

(d) for construction operation;

(e) for the recycling of domestic and industrial waste;

(f) in relation to any qualifying activity as defined in section 17;

(g) for the promotion of the tourist industry (other than a hotel) in Brunei Darussalam,

the company may apply in the prescribed form to the Minister for the approval of an investment allowance in respect of the fixed capital expenditure for the project.

(2) Where the Minister considers it expedient, having regard to the economic, technical and other merits of the project, he may approve the project and issue the company with a certificate which shall qualify the company for an investment allowance (as stipulated in the certificate) in respect of the fixed capital expenditure for the approved project subject to such terms and conditions as he thinks fit.

(3) Every certificate issued under this section shall specify a date as the investment day from which the company shall be entitled to investment allowance under this Part.

(4) The Minister may, in his discretion upon the application of a company amend its certificate by substituting for the investment day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the investment day in relation to that certificate.

Investment allowance.

81. (1) The investment allowance granted under section 80 shall be a specified percentage not exceeding 100% of the amount (which may be subject to a specified maximum) of fixed capital expenditure incurred on each item specified by the Minister under subsection (2) on an approved project if the fixed capital expenditure is incurred –

(a) within such period (referred to in this Order as the qualifying period), not exceeding 5 years, commencing from the investment day as the Minister may determine; and

(b) in the case of a project under paragraph *(g)* of subsection (1) of section 80, within such period (hereinafter referred to as the qualifying period), not exceeding 11 years, commencing from the investment day as the Minister may determine.

(2) The Minister –

(a) shall specify the items of the fixed capital expenditure for the purposes of subsection (1); and

(b) may specify the maximum amount of the investment allowance granted for the approved project.

(3) Where any question arises as to whether a particular item qualifies as one of the items under paragraph *(a)* of subsection (2), it shall be determined by the Minister whose decision shall be final.

(4) In subsection (1), "specified" means specified by the Minister.

Crediting of investment allowance.

82. (l) Where in the basis period for a year of assessment a company has incurred fixed capital expenditure, the company shall be given for that year of assessment an investment allowance in respect of such amount of the fixed capital expenditure as qualifies for the investment allowance under the terms and conditions of its certificate and in accordance with section 81.

(2) Where any investment allowance is given to a company for an approved project, the investment allowance shall be kept in an account to be called "investment allowance account" which shall be kept by the company for the purposes of this Part.

Prohibition to sell, lease out or dispose of assets.

83. (1) During its qualifying period or within 2 years after the end of its qualifying period, a company shall not, without the written approval of the Minister, sell, lease out or otherwise dispose of any assets in respect of which an investment allowance has been given.

(2) Where during its qualifying period or within 2 years after the end of its qualifying period, a company has sold, leased out or otherwise disposed any asset in respect of which an investment allowance has been given, an amount equal to the aggregate of the investment allowance given in respect of that asset shall be recovered.

(3) Where that account is insufficient to give full effect to the recovery, an assessment or additional assessment in respect of the amount unrecovered shall be made upon the company or any shareholder of the company and the tax exempt account, kept in accordance with section 71 (as made applicable by section 85), shall be debited accordingly.

(4) Notwithstanding subsections (2) and (3), the Minister may waive wholly or partly the recovery of the investment allowance.

Exemption from income tax.

84. (1) Where for any year of assessment the investment allowance account of a company is in credit and the company has for that year of assessment any chargeable income –

(a) an amount of the chargeable income, not exceeding the credit in the investment allowance account, shall be exempt from tax and the investment allowance account shall be debited with such amount; and

(b) any remaining balance in the investment allowance account shall be carried forward to be used by the company in the first subsequent year of assessment when the company has chargeable income, and so on for subsequent year of assessment until the credit in the investment allowance account has been fully used.

(2) Any amount of chargeable income of a company debited from the investment allowance account shall be exempt from tax.

Certain dividends exempted from income tax.

85. Section 71 shall apply, with the necessary modifications, to a company which has been granted an investment allowance under this Part as it applies to an international trading company and the reference to section 69 in that section shall be read as a reference to section 84.

Recovery of tax exempted.

86. Notwithstanding any other provisions in this Part, where it appears to the Collector that –

(a) any amount exempted income of a company; or

(b) any dividend exempted in the hands of any shareholder,

ought not to have been exempted by reason of the revocation under section 114 of the certificate issued under section 80 to the company, the Collector may subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the company or any such shareholder as may appear to be necessary in order to recover such tax as may have been exempted under this Part; or

(ii) direct the company to debit its tax exempt account with such amount as the circumstances require.

Application of Parts XI and XII of Income Tax Act.

87. (1) Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, to any direction given under section 86 as if it were a notice of assessment given under those provisions.

(2) Section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof which is exempted from tax under this Part.

PART XII
WAREHOUSING AND SERVICING INCENTIVES

Interpretation of this Part.

88. For the purposes of this Part, unless the context otherwise requires –

"commencement day", in relation to a warehousing company or a servicing company, means the date specified in its certificate as the date from which that company shall be entitled to tax relief under this Part;

"earnings" means –

(a) in relation to a warehousing company, the consideration received or receivable from the sales of goods (including the provisions of services connected with or related to such sales) or the commissions received or receivable therefrom; and

(b) in relation to a service company, the consideration received or receivable from the provision of services;

"eligible goods or services", in relation to a warehousing company or a servicing company, means the eligible goods or services specified in the certificate issued to that company under subsection (3) of section 89;

"export earnings" means –

(a) in relation to a warehousing company, the consideration received or receivable from export sales free on board of eligible goods (including the provision of services connected with or related to such sales) or the commissions received or receivable therefrom; and

(b) in relation to a servicing company, the consideration received or receivable from the provision of eligible services to persons outside Brunei Darussalam who are not resident in Brunei Darussalam.

"fixed capital expenditure" means capital expenditure to be incurred on any building (excluding land) and on any new productive equipment (and, subject to the approval of the Minister, on any secondhand productive equipment) to be used in Brunei Darussalam;

"servicing company" means a company which has been approved as a servicing company under section 89;

"warehousing company" means a company which has been approved as a warehousing company under section 89.

Approved warehousing company or servicing company.

89. (1) Any company intending to incur fixed capital expenditure of not less than $2 million for –

(a) the establishment or improvement of warehousing facilities wholly or mainly for the storage and distribution of manufacture goods to be sold and exported by the company, with or without processing or the provision of related services; or

(b) the purpose of providing technical or engineering services (or such other services as the Minister may, by notification in the *Gazette*, specify) wholly or mainly to persons not resident in Brunei Darussalam,

may apply in the prescribed form to the Minister for approval as a warehousing company or a servicing company.

(2) Where the Minister considers it expedient in the public interest to do so, he may approve the application and issue a certificate to the company subject to such terms and conditions as he thinks fit.

(3) Every certificate issued under this section shall specify –

(a) a date as the commencement day from which the company shall be entitled to tax relief under this Part; and

(b) the eligible goods or services for the purpose of tax relief under this Part.

(4) The Minister may, in his discretion, upon the application of a warehousing company or a servicing company, amend its certificate by substituting for the commencement day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the commencement day in relation to that certificate.

Tax relief period of warehousing company or servicing company.

90. (1) The tax relief period of a warehousing company or a servicing company shall commence on its commencement day and shall continue for such period, not exceeding 11 years, as the Minister may, in his discretion, determine.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of any warehousing company or servicing company for such further period or periods, not exceeding 3 years at any one time, as he may determine, except that the tax relief period of the warehousing company or servicing company shall not in the aggregate exceed 20 years.

Prohibition of acquisition without approval.

91. (l) During its tax relief period, a warehousing company shall not acquire any sales and a servicing company shall not acquire any services from any other person in connection with its trade or business without the written approval of the Minister.

(2) Where the Minister permits a warehousing company or a servicing company to acquire such sales or services, he may vary the base export earnings as determined under subsection (3) of section 94 and impose such terms and conditions as he thinks fit.

Application of certain sections to warehousing company or servicing company.

92. (1) Sections 66 and 68 shall apply, with the necessary modifications, to a warehousing company or a servicing company as they apply to an international trading company, and the reference in section 68 to relevant export sales shall be read as a reference to export of eligible goods or provision of eligible services.

(2) Sections 45, 46, 51, 52, 53 and 54 shall apply, with the necessary modifications, to a warehousing company as they apply to an export enterprise and the reference to export product or export produce in those sections shall be read as a reference to eligible goods.

Application of Part X of Income Tax Act.

93. (1) Part X of the Income Tax Act (relating to returns of income) shall apply in all respects as if the whole of the income of a warehousing company or a servicing company were chargeable to tax.

(2) The annual return of income shall be accompanied by such evidence as, in the opinion of the Collector, is necessary to verify the income derived by a warehousing company or a servicing company.

Computation of export earnings and exemption from tax.

94. (1) The total income of a warehousing company or a servicing company in respect of its trade or business which includes its export of eligible goods or provision of eligible services shall be ascertained (after making such adjustments as may be necessary in consequence of any direction given under section 66 as made applicable by section 92), for any accounting period during its tax relief period in accordance with the provisions of the Income Tax Act, and, in particular, the following provisions shall apply –

(a) income from other non-trading sources shall be excluded and separately assessed;

(b) the allowances provided for in sections 13, 14, 15, 16, 17 and 18 (where applicable) of the Income Tax Act shall be taken into account notwithstanding that no claim for those allowances has been made, and where in any year of assessment full effect cannot, by reason of an insufficiency of profits for that year of assessment, be given to those allowances, section 20 of the Income Tax Act shall apply;

(c) the amount of any unabsorbed allowances in respect of any year of assessment immediately preceding the tax relief period which would otherwise be available under section 20 of the Income Tax Act shall be taken into account;

(d) section 30 of the Income Tax Act shall apply in respect of any loss incurred prior to or during its tax relief period;

(e) any unabsorbed allowances granted under sections 13, 14, 16, 17 and 18 of the Income Tax Act and losses incurred in respect of any distinct trade or business shall be brought into the computation;

(f) any unabsorbed allowances granted under sections 13, 14, 16, 17 and 18 of the Income Tax Act and losses incurred in respect of the trade or business referred to in this subsection shall, during the tax relief period, only be deducted against the income derived from that trade or business; and

(g) subject to sections 20 and 30 of the Income Tax Act, any allowances and losses which remain unabsorbed at the end of the tax relief period shall be available for deduction in its post tax relief period.

(2) The amount of the export income of a warehousing company or a servicing company which will qualify for the relief for any year of assessment shall be deemed to be such amount which bears to the total income ascertained under subsection (1) the same proportion as the excess of the total amount of the export earnings of that company over its base export earnings bears to the total amount of its earnings; and one-half of the amount of the export income which qualifies for the relief as ascertained in this subsection shall not form part of the chargeable income of the company for the year of assessment and shall be exempt from tax.

(3) The base export earnings referred to in subsection (2) shall be where a warehousing company or a servicing company has been carrying on its trade or business –

(a) for 3 or more years immediately preceding the date of its application under this Part, an amount equal to one-third of the export earnings for the 3 years immediately preceding the date of its application under this Part; and

(b) for less than 3 years immediately preceding the date of its application under this Part, such amount as the Minister may specify having regard to the export earnings of other warehousing companies or servicing companies, as the case may be.

Certain dividends exempted from income tax.

95. Section 71 shall apply, with the necessary modifications, to a warehousing company or a servicing company as it applies to an international trading company and the reference to section 69 in subsection (1) of section 71 shall be read as a reference to section 94.

Recovery of tax exempted.

96. Notwithstanding any other provisions of this Part, where it appears to the Collector that –

(a) any amount of exempted income of a warehousing company or a servicing company; or

(b) any dividend exempted in the hand of any shareholder,

ought not to have been exempted by reason of a direction made under section 66 (as made applicable by section 92) or the revocation under section 114 of the certificate issued under section 89 to the warehousing company or the servicing company, the Collector may subject to section 62 of the Income Tax Act –

(i) make such assessment or additional assessment upon the company or any such shareholder as may appear to be necessary in order to recover such tax as may have been exempted under this Part; or

(ii) direct the company to debit its tax exempt account with such amount as the circumstances may require.

Application of Parts XI and XII of Income Tax Act.

97. (1) Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, to any direction given under section 96 as if it were a notice of assessment given under those provisions.

(2) Section 36 of the Income Tax Act shall not apply in respect of any dividend or part thereof which is exempted from tax under this Part.

PART XIII
INVESTMENTS IN NEW TECHNOLOGY COMPANIES

Interpretation of this Part.

98. For the purposes of this Part, unless the context otherwise requires –

"eligible holding company", in relation to a technology company, means a company incorporated in Brunei Darussalam –

(a) which is resident in Brunei Darussalam;

(b) which holds shares in the technology company; and

(c) in respect of which not less than 30% of the paid-up capital is beneficially owned by citizens or person to whom a Resident Permit has been granted under regulations made under the Immigration Act (Chapter 17) throughout the whole of the qualifying period of the technology company, unless the Minister otherwise decides;

"qualifying period", in relation to a technology company, means a period of 3 years from the day it commences, for the purposes of the Income Tax Act (Chapter 35), to carry on its relevant trade or business;

"relevant trade or business", in relation to a technology company, means the trade or business to which the certificate, issued to the company under subsection (2) of section 99, relates;

"technology company" means a company approved as a technology company under subsection (2) of section 99.

Application for and issue of certificate to technology company.

99. (1) Any company incorporated in Brunei Darussalam which is desirous of using in Brunei Darussalam a new technology in relation to a product, process or service may make an application in the prescribed form to the Minister to be approved as a technology company.

(2) Where the Minister is satisfied that the technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development in Brunei Darussalam, he may approve the company as a technology company and issue a certificate to that company subject to such conditions as he thinks fit.

(3) Every certificate issued under this section shall specify a percentage, not exceeding 30%, of such amount of the paid-up capital of the technology company as is held by any eligible holding company for the purpose of determining the deduction under section 100.

Deductions allowable to eligible holding company.

100. (1) Where a technology company has incurred an overall loss in respect of its relevant trade or business at the end of its qualifying period, it may, within 6 years from that date, by notice in writing to the Collector elect for the overall loss (less any amount which has been deducted up to the date of the notice) and the amount of any unabsorbed capital allowances (less any amount which has been deducted up to the date of the notice) to be made available to an eligible holding company as a deduction against the statutory income of the eligible holding company.

(2) The deduction to be made available to an eligible holding company under subsection (1) shall be an amount to be ascertained by multiplying the overall loss (less any amount which has been deducted up to the date of the notice) or the unabsorbed capital allowances (less any amount which has been deducted up to the date of the notice), as the case may be, by the percentage of the paid-up capital of the technology company held by that eligible holding company throughout the whole of the qualifying period of the technology company.

(3) The deduction shall not in the aggregate exceed such percentage as may be specified in the certificate issued to the technology company under section 99 of the paid-up capital of the technology company held by the eligible holding company (excluding any shares acquired from other shareholders of the technology company) as at the end of such qualifying period.

(4) Notwithstanding subsections (2) and (3), where the percentage of the paid-up capital of the technology company held by an eligible holding company is increased at any time during the qualifying period of the technology company, the Minister may, upon the application by the eligible holding company, if he considers it just and reasonable to do so, increase the amount of the deduction available under subsection (2) up to 50% of the paid-up capital of the technology company held by the eligible holding company as at the end of such qualifying period.

(5) Where any deduction is made available to an eligible holding company in accordance with this section, any overall loss or unabsorbed capital allowances to the extent of the deductions so made available shall cease to be deductible by the technology company under section 20 or 30 of the Income Tax Act (Chapter 35), and those sections shall apply to the eligible holding company in respect of the deduction made available as if the eligible holding company was carrying on the trade or business in respect of which the overall loss or the unabsorbed capital allowances were made.

(6) The overall loss or unabsorbed capital allowances made available to an eligible holding company under this section shall first be deducted against the statutory income of the eligible holding company for the year of assessment immediately following the year in which the notice given under subsection (1).

(7) In this section –

"overall loss", in relation to a technology company, means the amount by which the total of the losses exceed the total of the statutory income arising from its relevant trade or business for the whole of its qualifying period ascertained in accordance with the provisions of the Income Tax Act and subject to such regulations as may be prescribed under this Order;

"unabsorbed capital allowances", in relation to a technology company, means the balance of any allowance provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act which remain unabsorbed at the end of the qualifying period of the

company in respect of capital expenditure incurred for the purpose of its relevant trade or business before the end of the qualifying period.

(8) For the purposes of the Income Tax Act and this Part, the Collector may direct that –

(a) any sums payable to a technology company before or after its qualifying period which, but for the provisions of this Part, might reasonably and properly have been expected to be payable to the technology company, in the normal course of business, during its qualifying period shall be treated as having been payable on such date within the qualifying period, as the Collector thinks fit; and

(b) any expense incurred by a technology company during its qualifying period which, but for the provisions of this Part, might reasonably and properly have been expected to be incurred, in the normal course of business, before or after the qualifying period shall be treated as not having been incurred within the qualifying period but as having been incurred on such date before or after that qualifying period, as the Collector thinks fit.

Prohibition of other trade or business.

101. (1) During its qualifying period, a technology company shall not, without the written approval of the Minister, carry on any trade or business other than its relevant trade or business.

(2) Where the carrying on of a separate trade or business has been approved under subsection (1), separate accounts shall be maintained in respect of that trade or business.

Recovery of tax.

102. Notwithstanding anything in this Part, where it appears to the Collector that any deduction under section 100 ought not to have been given to an eligible holding company by reason of any direction under subsection (8) of section 100 or the revocation under section 114 of a certificate issued to a technology company, the Collector may, subject to section 62 of the Income Tax Act, make such assessment or additional assessment upon the eligible holding company or any of its shareholders as may be necessary in order to recover any tax which should have been payable by the eligible holding company.

PART XIV

OVERSEAS INVESTMENT AND VENTURE CAPITAL INCENTIVES

Interpretation of this Part.

103. For the purposes of this Part, unless the context otherwise requires –

"eligible holding company", in relation to a venture company, a technology investment company or an overseas investment company, means a company incorporated in Brunei Darussalam –

(a) which is resident in Brunei Darussalam;

(b) which has invested not less than 60% of its shareholders' fund in Brunei Darussalam;

(c) which holds not less than 30% of the shares in the venture company, the technology investment company or the overseas investment company; and

(d) in respect of which not less than 30% of the paid-up capital is beneficially owned by citizens or person to whom a Resident Permit has been granted under regulations made under the Immigration Act (Chapter 17) throughout the period during which it holds shares in the venture company, the technology investment company or the overseas investment company, unless the Minister otherwise decides;

"overseas investment company" means a company approved as an overseas investment company under subsection (4) of section 105;

"technology investment company" means a company approved as a technology investment company under subsection (2) of section 105;

"venture company" means a company approved as a venture company under subsection (2) of section 104;

"shareholders' fund" means the aggregate amount of a company's paid up capital (in respect of preference shares and ordinary shares and not including any amount in

respect of bonus shares to the extent they were issued out of capital reserves created by revaluation of fixed assets), reserves (other than any capital reserve which was created by revaluation of fixed assets and provisions for depreciation, renewals or replacements and diminution in value of assets), balance of share premium account (not including any amount credited therein at the instance of issuing bonus shares at premium out of capital reserve created by revaluation of fixed assets), and balance of profit and loss appropriation account.

Application for and issue of certificate to venture company.

104. (1) Any company incorporated in Brunei Darussalam which is desirous of developing or using in Brunei Darussalam a new technology in relation to a product, process or service may make an application in the prescribed form to the Minister to be approved as a venture company.

(2) Where the Minister is satisfied that the technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development of Brunei Darussalam, he may approve the company as a venture company and issue a certificate to the company subject to such terms and conditions as he may impose.

Application for and issue of certificate to technology investment company or overseas investment company.

105. (1) Any company, incorporated and resident in Brunei Darussalam, desirous of investing in an overseas company which is developing or using a new technology in relation to a product, process or service may make an application in the prescribed form to the Minister to be approved as a technology investment company.

(2) Where the Minister is satisfied in respect of any application under subsection (1) that the technology, if introduced in Brunei Darussalam would promote or enhance the economic or technological development of Brunei Darussalam, he may approve the company as a technology investment company and issue a certificate to the company subject to such terms and conditions as he may impose.

(3) Any company, incorporated and resident in Brunei Darussalam, desirous of investing in an overseas company for the purpose of acquiring for use in Brunei Darussalam any technology from the overseas company or for the purpose of gaining access to any overseas market for its eligible holding company or any subsidiary thereof, may make an application in the prescribed form to the Minister to be approved as an overseas investment company.

(4) Where the Minister is satisfied in respect of any application under subsection (3) that the technology acquired, if introduced in Brunei Darussalam or the access which would be gained to any overseas market, would promote or enhance the technological or economic development of Brunei Darussalam, he may approve the company as an overseas investment company and issue a certificate to the company subject to such terms and conditions as he may impose.

Deduction of losses allowable to eligible holding company.

106. (1) Where any eligible holding company has incurred any loss arising from –

(a) the sale of shares held by it in a venture company; or

(b) the liquidation of a venture company,

the loss shall be allowed as a deduction against the statutory income of the company in accordance with subsection 2 of section 30 of the Income Tax Act as if the loss were incurred from a trade or business carried on by it.

(2) Where any eligible holding company has incurred any loss arising from –

(a) the sale of shares held by it in a technology investment company or an overseas investment company; or

(b) the liquidation of a technology investment company or an overseas investment company,

the loss shall be allowed as a deduction against its statutory income in accordance with subsection (2) of section 30 of the Income Tax Act as if the loss were incurred from a trade or business carried on by it.

(3) Notwithstanding subsections (l) and (2), no deduction shall be allowed in respect of any loss referred to in those subsection if –

(a) the shares in respect of which the loss was incurred were held by an eligible holding company in a venture company, or by an eligible holding company in a technology investment company or in an overseas investment company, for a period of less than 3 years from the date of issue of the shares, unless the loss was incurred as a result of the liquidation of the venture company, technology investment company or overseas investment company; or

(b) the sale of shares or liquidation occurred after 8 years from the date of approval under this Part of the venture company, technology investment company or overseas investment company.

(4) For the purposes of subsections (1) and (2), the loss shall be the excess of the purchase price of the shares –

(a) over the proceeds from the sale; and where the open market value at the date of the sale (or the value of net asset backing as determined by the Collector in the case of a company not quoted on any stock exchange) of the shares is greater than the sale proceeds, that value shall be deemed to be the proceeds from the sale; or

(b) over the proceeds from the liquidation,

as the case may be.

Prohibition of other trade or business.

107. (l) A venture company shall not, without the written approval of the Minister, carry on any trade or business other than the trade or business to which its certificate relates.

(2) A technology investment company and an overseas investment company shall not carry on any trade or business.

Recovery of tax.

108. Notwithstanding anything in this Part, where it appears to the Collector that any deduction under section 106 ought not to have been given to an eligible holding company by reason of the revocation under section 114 of a certificate issued to a venture company, a technology investment company or an overseas investment company, the Collector may,

subject to section 62 of the Income Tax Act, make such assessment or additional assessment upon the eligible holding company (or any of its shareholders) as may be necessary in order to recover any tax which should have been payable by the eligible holding company (or any of its shareholders).

PART XV
RELIEF FROM IMPORT DUTIES

Exemption from import duties.

109. (l) Notwithstanding the provision of section 11 of the Customs Act (Chapter 36) or any written laws or regulations in force, the Minister may, subject to such terms and conditions as he thinks fit, exempt a pioneer enterprise or an export enterprise from the payment of the whole or any part of any customs duty which may be payable on any machinery, equipment, component parts and accessories including prefabricated factory or building structures to be installed as necessary part of parts of the factory:

Provided that similar machinery, equipment, component parts, accessories or building structures of approximately equal price and equal quality are not being produced or available within Brunei Darussalam.

Restriction on disposal.

110. No machinery, equipment, component parts and accessories imported under section 109 shall be sold, transferred, mortgaged or otherwise disposed of or used for other purposes than those specified or allowed by the Minister without the written Approval of the Minister.

Duty to be paid if disposed.

111. (1) Any machinery, equipment, component parts and accessories imported under section 109 which are sold, transferred, mortgaged or otherwise disposed of under section 110 shall be subject to payment of customs duty imposed under the Custom Act (Chapter 36).

(2) For the purpose of determining the duty imposed under subsection (1), all machinery, equipment, component parts and accessories shall be assessed and valued by the Controller of Customs and duties shall be payable on the assessed value.

Exemption from import duties on raw material.

112. Notwithstanding the provision of section 11 of the Customs Act or any written laws or regulations in force, a pioneer enterprise and an export enterprise shall be exempt from the payment of import duties on raw materials imported for use in the pioneer enterprise to be used in the production of a pioneer product specified in the pioneer certificate:

Provided that such raw materials are not available or produced within Brunei Darussalam.

PART XVl
MISCELLANEOUS PROVISIONS

Prohibition of publication of application and certificate.

113. (1) The contents of any application made by, or of any certificate issued to, any company under any of the provisions of this Order shall not, except at the instance of the company, be published.

(2) The Minister may cause to be published by notification in the *Gazette* the name of any company to which any such certificate has been issued or whose certificate has been revoked, and the industry and product or produce to which the certificate relates.

Revocation of certificate.

114. (1) Where the Minister is satisfied that any company to which a certificate has been issued under the provisions of this Order has contravened or has failed to comply with any of the provisions of this Order or any regulations made thereunder, or of any terms or conditions imposed on the certificate, he may, by notice in writing, require the company within 30 days from the date of service of the notice to show cause why the certificate should not be revoked;

and if the Minister is satisfied that, having regard to all the circumstances of the case it is expedient to do so, he may revoke the certificate.

(2) Where a certificate is revoked under subsection (1), the Minister shall specify the date, which may be the date of the certificate, from which its revocation shall be operative and the provisions of this Order shall cease to have effect in relation to the certificate from that date.

Provisions of Income Tax Act (Chapter 35) not affected.

115. Except as otherwise provided, nothing in this Order shall exempt any company to which a certificate has been issued under the provisions of this Order from making any return to the Collector or from complying with the provisions of the Income Tax Act in any respect so as to establish the liability to tax, if any, of the company.

Offences and penalties.

116. (1) Any person who contravenes or fails to comply with section 46 or 52 or any regulations made under this Order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000, to imprisonment for a term not exceeding 2 years or both.

(2) Any person who –

(a) obstructs or hinders any senior officer of customs or officer of customs acting in the discharge of his duty under this Order or any regulations made thereunder; or

(b) fails to produce to a senior officer of customs or officer of customs any invoices, bills of lading, certificates of origin or of analysis or any other documents relating to the export of any export product or export produce which the officer may require, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000, to imprisonment for a term not exceeding 12 months or both.

(3) Any person required by a senior officer of customs or officer of customs to give information on any subject into which it is the officer's duty to inquire and which it is in the person's power to give, who refuses to give such information or furnishes as true information that which he knows or has reason to believe is false shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000, or imprisonment for a term not exceeding 12 months or both.

(4) When any such information is proved to be untrue or incorrect, in whole or in part, it is no defence to allege that the information, or any part thereof, was furnished inadvertently, without criminal intent or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the informant.

(5) Nothing in subsection (3) shall oblige a person to furnish any information which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Attempts or abetments.

117. Any person who attempts to commit any offence punishable under section 46, 52 or 116 or any regulations made under this Order or abets the commission of any such offence shall be liable to the punishment provided for that offence.

Conduct of prosecution.

118. Any prosecution in respect of an offence under section 46, 52 or 116 or any regulations made under this Order may be conducted by an officer authorised by the Controller of Customs.

Composition of offences.

119. (1) Any officer authorised by the Collector or any senior officer of customs may compound any offence which is prescribed to be a compoundable offence by accepting from the person reasonably suspected of having committed the offence a sum not exceeding $1,000.

(2) On payment of that sum, the person reasonably suspected of having committed an offence, if in custody, shall be discharged, any property seized shall be released and no further proceedings shall be taken against that person or property.

Offences by companies and by employees and agents.

120. (1) Where an offence under section 46, 52 or 116 or any regulations made under this Order has been committed by a company, any person who at the time of the commission of the offence was a director, secretary or other similar officer of the company, or was purporting to act in such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(2) Where any person would be liable under section 46, 52 or 116 to any punishment, penalty or forfeiture for any act, omission, neglect or default, he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any employee or agent, or of the employee of an agent, provided that the act, omission, neglect or default was committed by the employee in the course of his employment or by the agent when acting on behalf of that person or by the employee of the agent when acting in the course of his employment in such circumstance that had the act, omission, neglect or default been committed by the agent his principal would have been liable under this section.

Action of officers no offence.

121. Nothing done by an officer of the Government in the course of his duties shall be deemed to be offence under this Order.

Regulations.

122. (1) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make such regulations as may be necessary or expedient for the purpose of carrying out the provisions of this Order.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters –

(a) any matters required by this Order to be prescribed;

(b) the procedure relating to applications for and the issue of certificates under this Order;

(c) the terms and conditions to be imposed on any certificate issued under this Order; and

(d) the furnishing of such information, including progress and sales reports and statements of accounts, as may be required for the purposes of this Order.

(3) The Minister may in writing authorise any person or authority to prescribe such forms as are required to be or may be prescribed under this Order.

Repeal of Chapter 97, saving and transitional.

123. (1) The Investment Incentives Act is repealed.

(2) Anything done under the Investment Incentives Act (repealed by this Order) shall, upon the commencement of this Order, continue to be of full force and effect until other provisions has been made therefor under this Order.

Made this 28th. day of Safar, 1422 Hijriah corresponding to the 22nd. day of May, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.