

No. S 75

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

MONEY-LAUNDERING (AMENDMENT) ORDER, 2010

ARRANGEMENT OF SECTIONS

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

Citation.

1. This Order may be cited as the Money-Laundering (Amendment) Order, 2010.

Amendment of section 1 of S 44/00.

2. Section 1 of the Money-Laundering Order, 2000, in this Order referred to as the principal Order, is amended, in subsection (1), by inserting "Anti" immediately before "Money-Laundering" in the first line.

Amendment of section 2.

3. Section 2 of the principal Order is amended —

(a) in subsection (1), in the definition of "relevant financial business", by deleting "financial";

(b) in subsection (2) —

(i) in paragraph *(a)*, by deleting "Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96)" and by substituting "Drug Trafficking (Recovery of Proceeds) Act (Chapter 178)" therefor;

(ii) in paragraph *(b)*, by adding "{S 52/00)".

Amendment of section 4.

4. Section 4 of the principal Order is amended —

(a) in the sub-heading, by deleting "financial";

(b) in subsection (1) —

- (i) by deleting "financial" from the first line;
 - (ii) in paragraph (a), by deleting "Banking Act (Chapter 95)" from the penultimate line and by substituting "Banking Order, 2006 (S 45/06)";
 - (iii) in paragraph (b), by adding "(S 53/00)";
- (c) in subsection (2), by deleting "financial" from the first line.

Amendment of section 9.

5. Section 9 of the principal Order is amended, in subsection (6), by deleting ", as the Minister may, for the purpose of that subsection, designate by order in the *Gazette*" from the last 2 lines.

Insertion of new section 11A.

6. The principal Order is amended by inserting the following new section immediately after section 11 —

"Opening account in false etc. name.

11A. (1) No person shall open, operate or authorise the opening or the operation of an account with a person carrying on any relevant business in a false, fictitious or incorrect name.

(2) Where a person is commonly known by 2 or more different names, he shall not use one of those names in opening an account with a person carrying on any relevant business unless he has previously disclosed the other name or names to that person.

(3) Where a person using a particular name in his dealings with a person carrying on any business discloses to him a different name or names by which he is commonly known, the person carrying on any relevant business shall make a record of the disclosure and shall, upon request in writing from a supervisory authority, give the supervisory authority a copy of that record.

(4) For the purposes of this section —

(a) a person opens an account in a false, fictitious or incorrect name if he, in opening the account, or becoming a signatory to the account, uses a name other than a name by which he is commonly known;

(b) a person operates an account in a false, fictitious or incorrect name if he does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with a person carrying on any relevant business or otherwise) and, in doing so, uses a name other than a name by which he is commonly known; and

(c) an account is in a false, fictitious or incorrect name if it was opened in a false, fictitious or incorrect name, whether before or after the commencement date of this Order.

(5) Any person who contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding one million dollars, imprisonment for a term not exceeding one or both."

Amendment of section 14.

7. Section 14 of the principal Order is amended, in paragraph (d), by inserting "supervisory authority or a" immediately before "police officer" in the second line.

Insertion of new sections 16A to 16M.

8. The principal Order is amended by inserting the following 13 new sections immediately after section 16 —

**"Cross border movements of physical currency and bearer negotiable instruments:
Object.**

16A. The object of sections 16A to 16H is to impose measures for the disclosure of information regarding movements of physical currency and bearer negotiable instruments into and out of Brunei Darussalam for the purpose of detecting, investigating and prosecuting any offence involving money-laundering and related offences made under any written law.

Interpretation of sections 16A to 16H.

16B. (1) In sections 16A to 16H —

"authorised officer" means an immigration officer, officer of customs, police officer, officer of the Anti-Corruption Bureau, officer of the Narcotics Control Bureau or such other person as the Minister may authorise;

"bearer negotiable instrument" means —

(a) a traveller's cheque; or

(b) any negotiable instrument that is in bearer form, indorsed without any restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery,

and includes a negotiable instrument that has been signed but with the payee's name omitted;

"business day" means a day other than a Saturday, Sunday or public holiday;

"cash" means physical currency or a bearer negotiable instrument;

"commercial goods carrier" means a person who, in the normal course of a business, carries goods or mail for reward, and includes his employee;

"commercial passenger carrier" means a person who, in the normal course of a business, carries passengers for reward, and includes his employee;

"eligible place" means any islet, landing place, wharf, dock or quay or premises of a provider of port services or facilities licensed or exempted under the Merchant Shipping Order, 2002 (S 27/02), Ports Act (Chapter 144) or the Civil Aviation Order, 2006 (S 63/06);

"embarkation location" means an immigration control post, place of embarkation, authorised airport, authorised point of departure or authorised departing place prescribed under section 5(2) of the Immigration Act (Chapter 17);

"physical currency" means the coin and printed money (whether of Brunei Darussalam or of a foreign country) that —

(a) is designated as legal tender; and

(b) circulates as, and is customarily used and accepted as, a medium of exchange in the country or territory of issue;

"printed money" means money comprising a note printed, written or otherwise made on polymer, paper or any other material;

"send" includes send through the post or by means of another person.

(2) In determining whether an amount of foreign currency (including an amount in which a document is denominated) is equivalent to a Brunei Darussalam dollar amount under sections 16A to 16G, the amount of foreign currency is to be translated to Brunei Darussalam currency at the exchange rate applicable at the relevant time.

(3) For the purposes of sections 16A to 16G —

(a) a person moves cash out of Brunei Darussalam if the person takes or sends the cash (whether in a receptacle or otherwise) out of Brunei Darussalam; and

(b) a person moves cash into Brunei Darussalam if the person brings or sends the cash (whether in a receptacle or otherwise) into Brunei Darussalam.

Reports about cross border movements of cash.

16C. (1) A person shall not move or attempt to move into or out of Brunei Darussalam cash the total value of which exceeds the prescribed amount, without giving a report in respect of the movement in accordance with this section.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that he did not know and had no reasonable grounds to believe that the receptacle within which the cash was moved or attempted to be moved contained cash.

(4) For the purposes of subsection (1), the prescribed amount is \$15,000 (or its equivalent in a foreign currency) or such other amount as the Minister may, by notification in the *Gazette*, specify.

(5) A report under this section shall —

(a) be in a form approved by a supervisory authority;

(b) contain full and accurate information relating to the matter being reported as is specified in the form;

(c) be given —

- (i) to an officer of customs, or an immigration officer if the movement of the cash is to be effected by a person bringing or taking the cash into or out of Brunei Darussalam with the person; or
- (ii) in any other case, to a supervisory authority or, if regulations permit, to an authorised officer; and

(d) be given at the prescribed time.

(6) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan make regulations for the matters referred to in subsections (5)(a), (c) and (d); and may, for the purposes of subsections (5)(a) and (d), prescribe different forms and different times —

(a) for different manners of moving cash into and out of Brunei Darussalam; and

(b) for different classes of persons.

(7) Subsection (1) shall not apply if —

(a) the person is a commercial passenger carrier; and

(b) the cash is in the possession of any of the carrier's passengers.

(8) Subsection (1) shall not apply if —

(a) the person is a commercial goods carrier;

(b) the cash is carried on behalf of another person;

(c) the other person has not disclosed to the carrier that the goods carried on behalf of the other person include cash; and

(d) the carrier does not know and has no reasonable grounds to believe that the goods carried on behalf of the other person include cash.

(9) The burden of proving the matters referred to in subsections (7) or (8) lies with the person who wishes to rely on that subsection.

Obligation of immigration officers or officers of customs.

16D. If a report under section 16C is given to an immigration officer or officer of customs, he shall, on request, forward it to a supervisory authority.

Reports about receipts of cash from outside Brunei Darussalam.

16E. (1) A person who receives cash the total value of which exceeds the prescribed amount, which is moved to the person from outside Brunei Darussalam, shall make a report in respect of the receipt in accordance with this section before the end of the period of 5 business days beginning on the day of the receipt.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(3) It shall be a defence for a person charged with an offence under subsection (2) to prove that he did not know and had no reasonable ground to believe that the cash was moved from outside Brunei Darussalam.

(4) For the purposes of subsection (1), the prescribed amount is \$15,000 (or its equivalent in a foreign currency) or such other amount as the Minister may, by notification in the *Gazette*, specify.

(5) A report under this section shall —

(a) be in a form approved by a supervisory authority;

(b) contain full and accurate information relating to the receipt being reported as is specified in the form; and

(c) be given to a supervisory authority.

Questioning and search powers in relation to cash.

16F. (1) A person who —

(a) is about to leave Brunei Darussalam;

(b) is in an embarkation location for the purpose of leaving Brunei Darussalam; or

(c) arrives in Brunei Darussalam,

shall, if required to do so by an authorised officer —

(i) declare whether or not he has with him any cash;

(ii) declare the total value of any cash that he has with him;

- (iii) declare whether or not, to the best of his knowledge and belief, a report under section 16C has been given in respect of any cash that he has with him;
- (iv) produce to the officer any cash that he has with him; and
- (v) answer any question the officer may have with respect to the cash.

(2) An authorised officer may, with such assistance as is reasonable and necessary, examine any article or baggage which a person has with him if he —

(a) is about to leave Brunei Darussalam;

(b) is in an embarkation location for the purpose of leaving Brunei Darussalam; or

(c) has arrived in Brunei Darussalam,

for the purpose of finding out whether he has with him any cash in respect of which a report under section 16C is required.

(3) An authorised officer, may, with such assistance as is reasonable and necessary, search a person for the purpose of finding out whether he has with him any cash in respect of which a report under section 16C is required, so long as —

(a) he —

(i) is about to leave Brunei Darussalam;

(ii) is in an embarkation location for the purpose of leaving Brunei Darussalam; or

(iii) has arrived in Brunei Darussalam; and

(b) the officer has reasonable grounds to suspect that there is on him or in clothing being worn by him, cash in respect of which a report under section 16C is required.

(4) If an authorised officer has reasonable grounds to suspect that any cash found in the course of an examination or search under subsections (2) or (3) may afford evidence as to the commission of an offence under section 16C, he may seize the cash and surrender the cash so seized to any appropriate authority for further investigation.

(5) A person must not be searched under subsection (3) except by a person of the same sex.

(6) An authorised officer and any person assisting the officer may board any motor vehicle, vessel or aircraft or enter any premises for the purpose of exercising the powers conferred by subsections (1), (2), (3) and (4).

(7) An authorised officer, may, with such assistance as is reasonable and necessary –

(a) board a motor vehicle, vessel or aircraft; and

(b) examine or search that motor vehicle, vessel or aircraft, and any thing found on that motor vehicle, vessel or aircraft,

for the purpose of ascertaining whether there is on board that motor vehicle, vessel or aircraft any cash in respect of which a report under section 16C is required.

(8) Where an authorised officer has reasonable grounds to suspect that an offence under section 16C may have been committed, he may, with such assistance as is reasonable and necessary –

(a) enter any eligible place; and

(b) search that place, and any thing found at or in it,

for the purpose of ascertaining whether there is at or in the place, or in the thing, any cash in respect of which a report under section 16C is required.

(9) If an authorised officer has reasonable grounds to suspect that any cash found in the course of a search under subsections (7) or (8) may afford evidence as to the commission of an offence under section 16C, he may seize the cash and surrender the cash so seized to any appropriate authority for further investigation.

(10) A person who, without reasonable excuse, fails to comply with a requirement under subsection (1), or pursuant to any such requirement knowingly or recklessly makes a declaration or gives an answer that is false in a material particular, is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

Power to exempt.

16G. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette*, with or without

conditions, exempt any person or class of person from sections 16C or 16E or both.

Obstructing supervisory authority and authorised officers.

16H. Any person who obstructs or hinders a supervisory authority and authorised officer acting in the discharge of his duty under this Order or any regulations made thereunder is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both.

Directions to discharge Brunei Darussalam's international obligations.

16I. (1) The Minister may issue such directions to any person or any class of person as he considers necessary in order to discharge or facilitate the discharge of any international obligation binding on Brunei Darussalam relating to money-laundering.

(2) Any person or any class of person to which the direction has been issued shall comply with it notwithstanding any other duty imposed on him by any written law, rule of law or contract.

(3) No person or any class of person shall disclose any direction issued to him if the Minister has notified him that he is of the opinion that any such disclosure would be against public interest.

(4) Any person or class of person who fails or refuses to comply with a direction issued to him, or which discloses a direction issued to him in contravention of subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

Communication of information to foreign authority.

16J. (1) Notwithstanding any other written law, a supervisory authority may communicate anything —

(a) disclosed to him under sections 14(d), 16C or 16E; or

(b) forwarded to him under section 16D,

to a corresponding authority of a foreign country if —

(i) that thing may be relevant to an investigation by that authority into an offence involving money-laundering and related offences made under any written law; and

(ii) the conditions in subsection (2) are satisfied.

(2) The conditions referred to in subsection (1) are as follows —

(a) there exists an arrangement under which the corresponding authority of the foreign country or territory has agreed to communicate to Brunei Darussalam, information received by the corresponding authority that corresponds to any thing required to be disclosed to a supervisory authority under sections 14(d), 16C or 16E;

(b) the supervisory authority is satisfied that the corresponding authority has given appropriate undertakings —

(i) for protecting the confidentiality of any thing communicated to it; and

(ii) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any proceedings; and

(c) such other conditions as the Minister may determine.

(3) In this section —

"corresponding authority" means, in relation to a foreign country or territory the authority of that foreign country or territory responsible for receiving information that corresponds to any information required to be reported to a supervisory authority under sections 14(d), 16C, 16D or 16E.

Power to issue directions, guidelines etc.

16K. (1) A supervisory authority may, from time to time, issue such directions, guidelines, circulars or notices concerning any relevant business or class of relevant business as a supervisory authority may consider desirable in respect of any particular provision of this Order or generally for the prevention of money laundering.

(2) Any relevant business which fails or refuses to comply with any guidelines, circulars or notices issued under subsection (1), is guilty of an offence and liable on conviction to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

Immunity from proceedings.

16L. No action, suit or other legal proceedings shall lie against —

(a) any party to a contract for failing, neglecting or refusing to carry out any act required by that contract; or

(b) any person for failing, neglecting or refusing to carry out any act under any written law,

where such failure, neglect or refusal is solely attributable to, or occasioned by, the provisions of this Order or any directions, guidelines, circulars or notices made under section 16K of this Order.

Regulations.

16M. The Minister, may, with the approval from His Majesty the Sultan and Yang Di-Pertuan make such regulations as he considers necessary or expedient for giving effect to or carrying out the provisions of this Order."

Amendment of Schedule.

9. The Schedule to the principal Order is amended by adding the following 5 new items —

- "19. Real estate.
20. Dealings in precious metals.
21. Dealings in precious stones.
22. Services provided by an advocate and solicitor under the Legal Profession Act (Chapter 132).
23. Services provided by any person registered under any written law relating to accountants."

Made this 10th. day of Syaaban, 1431 Hijriah corresponding to the 22nd. day of July, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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