

No. S 39

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

TAKAFUL (AMENDMENT) ORDER, 2015

ARRANGEMENT OF SECTIONS

Section

1. Citation.
2. Amendment of section 5 of S 100/2008.
3. Amendment of section 6.
4. Amendment of section 7.
5. Amendment of section 15.
6. Amendment of section 16.
7. Amendment of section 18.
8. Amendment of section 20.
9. Amendment of section 21.
10. Amendment of section 23.
11. Amendment of section 24.
12. Amendment of section 25.
13. Amendment of section 27.
14. Amendment of section 29.
15. Amendment of section 30.
16. Amendment of section 32.
17. Amendment of section 33.
18. Amendment of section 34.

19. Amendment of section 39.
20. Amendment of section 41.
21. Amendment of section 42.
22. Amendment of section 43.
23. Amendment of section 44.
24. Amendment of section 45.
25. Amendment of section 46.
26. Amendment of section 49.
27. Amendment of section 50.
28. Amendment of section 51.
29. Amendment of section 54.
30. Amendment of section 55.
31. Substitution of section 57.
32. Amendment of section 60.
33. Amendment of section 61.
34. Amendment of section 64.
35. Amendment of section 65.
36. Amendment of section 66.
37. Amendment of section 75.
38. Insertion of new section 78A.
39. Amendment of section 79.
40. Amendment of section 82.

41. Amendment of section 92.
 42. Amendment of First Schedule.
-

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

TAKAFUL (AMENDMENT) ORDER, 2015

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

Citation.

1. This Order may be cited as the Takaful (Amendment) Order, 2015.

Amendment of section 5 of S 100/2008.

2. Section 5 of the Takaful Order, 2008, in this Order referred to as the principal Order, is amended, in subsection (6), by deleting “a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$150,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 6.

3. Section 6 of the principal Order is amended by deleting “a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$100,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 7.

4. Section 7 of the principal Order is amended, in subsection (3), by deleting “a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$50,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 15.

5. Section 15 of the principal Order is amended by adding the following new subsection immediately after subsection (2) —

“(3) Any takaful operator who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.”.

Amendment of section 16.

6. Section 16 of the principal Order is amended —

(a) in subsection (1), by deleting “prescribed” from the last line and by substituting “determined” therefor;

(b) in subsection (2), by deleting “prescribed” from the last line and by substituting “determined” therefor;

(c) in subsection (5), by deleting “prescribed” from the fourth line and by substituting “determined” therefor;

(d) in subsection (6), by deleting “prescribed” from the penultimate line and by substituting “determined” therefor;

(e) by adding the following new subsection immediately after subsection (8) —

“(9) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.”.

Amendment of section 18.

7. Section 18 of the principal Order is amended —

(a) by inserting “(1)” immediately before “Any” in the first line;

(b) by adding the following new subsection immediately after subsection (1) —

“(2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, and in the case of a continuing offence to a further fine not

exceeding \$1,000 for every day during which the offence continues after conviction.”.

Amendment of section 20.

8. Section 20 of the principal Order is amended by adding the following new subsection immediately after subsection (12) —

“(13) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.”.

Amendment of section 21.

9. Section 21 of the principal Order is amended by adding the following new subsection immediately after subsection (4) —

“(5) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500,000, and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.”.

Amendment of section 23.

10. Section 23 of the principal Order is amended by adding the following new subsection immediately after subsection (6) —

“(7) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.”.

Amendment of section 24.

11. Section 24 of the principal Order is amended by adding the following new subsection immediately after subsection (5) —

“(6) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000, and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.”.

Amendment of section 25.

12. Section 25 of the principal Order is amended, in subsection (6), by deleting “a fine not exceeding \$20,000, imprisonment for a term not exceeding 3 years, or

both” and by substituting “a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years, or both” therefor.

Amendment of section 27.

13. Section 27 of the principal Order is amended, in subsection (5), by deleting “a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 29.

14. Section 29 of the principal Order is amended —

(a) in subsection (1), by deleting “sections 19, 20 or 23” from the first 2 lines and by substituting “section 19 or 20” therefor;

(b) in subsection (2), by deleting “sections 19, 20 or 23” from the last line and by substituting “section 19 or 20” therefor.

Amendment of section 30.

15. Section 30 of the principal Order is amended, in subsection (4), by deleting “a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 32.

16. Section 32 of the principal Order is amended, in subsection (7), by deleting “a fine not exceeding \$10,000” and by substituting “a fine not exceeding \$50,000” therefor.

Amendment of section 33.

17. Section 33 of the principal Order is amended by adding the following new subsection immediately after subsection (2) —

“(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.”.

Amendment of section 34.

18. Section 34 of the principal Order is amended, in subsection (7), by deleting “a fine not exceeding \$5,000” and by substituting “a fine not exceeding \$10,000” therefor.

Amendment of section 39.

19. Section 39 of the principal Order is amended by deleting “a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both” and by substituting “a fine not exceeding \$50,000, imprisonment for a term not exceeding one year or both” therefor.

Amendment of section 41.

20. Section 41 of the principal Order is amended by adding the following new subsection immediately after subsection (2) —

“(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.”.

Amendment of section 42.

21. Section 42 of the principal Order is amended —

(a) in subsection (1)(a), by deleting “prescribed” and by substituting “determined” therefor;

(b) by adding the following new subsection immediately after subsection (5) —

“(6) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.”.

Amendment of section 43.

22. Section 43 of the principal Order is amended —

(a) in subsection (1)(a), by deleting “prescribed” and by substituting “determined” therefor;

(b) by adding the following new subsection immediately after subsection (4) —

“(5) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.”.

Amendment of section 44.

23. Section 44 of the principal Order is amended, in subsection (4), by deleting “a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both” and by substituting “a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both” therefor.

Amendment of section 45.

24. Section 45 of the principal Order is amended by adding the following new subsection immediately after subsection (2) —

“(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.”.

Amendment of section 46.

25. Section 46 of the principal Order is amended, in subsection (4), by deleting “a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$50,000, and in the case of a continuing offence to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 49.

26. Section 49 of the principal Order is amended —

(a) by inserting the following three new subsections immediately after subsection (2) —

“(2A) In registering a takaful agent, the Authority may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(2B) The Authority may revoke the registration of any takaful agent if he is satisfied that any of the conditions imposed in relation to the registration has been breached or that it is in the interests of the public to do so.

(2C) The Authority shall cause notice of any registration or of the revocation of any registration of a takaful agent to be published in the *Gazette*.”;

(b) by deleting subsection {9} and by substituting the following new subsection therefor —

“{9} Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 6 months or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.”.

Amendment of section 50.

27. Section 50 of the principal Order is amended, in subsection (2), by deleting “a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both” and by substituting “a fine not exceeding \$20,000, imprisonment for a term not exceeding 6 months or both” therefor.

Amendment of section 51.

28. Section 51 of the principal Order is amended —

(a) in subsection (1) —

- (i)* in paragraph *(a)*, by deleting “an individual” and by substituting “a” therefor;
- (ii)* in paragraph *(b)*, by deleting “corporate”;

(b) in subsection (3), by deleting “a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both” and by substituting “a fine not exceeding \$20,000, imprisonment for a term not exceeding 6 months or both” therefor.

Amendment of section 54.

29. Section 54 of the principal Order is amended —

(a) by deleting subsection (1) and by substituting the following new subsection therefor —

“(1) No person shall, without being registered by the Authority, carry on takaful business in Brunei Darussalam as a takaful broker.”;

(b) by inserting the following new subsection immediately after subsection (1) —

“(1A) Such person shall not be registered by the Authority unless —

- (a)* it is a company defined in the Companies Act (Chapter 39);

(b) it has such minimum paid-up share capital as may be prescribed;

(c) it has such professional indemnity takaful as may be prescribed; and

(d) the Authority has been furnished with such documents and information as may be prescribed or as he may require in any particular case.”;

(c) by inserting the following new subsection immediately after subsection (5) —

“(5A) The Authority shall cause notice of any registration or the revocation of any registration of a takaful broker to be published in the *Gazette*.”;

(d) by deleting subsection (8) and by substituting the following new subsection therefor —

“(8) Any person who contravenes subsection (1) or (1A) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 6 months or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.”.

Amendment of section 55.

30. Section 55 of the principal Order is amended, in subsection (3), by deleting “a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both” and by substituting “a fine not exceeding \$20,000, imprisonment for a term not exceeding 6 months or both” therefor.

Substitution of section 57.

31. Section 57 of the principal Order is repealed and the following new section substituted therefor —

“Registration of adjusters.

57. (1) No person shall, without being registered by the Authority, act or hold himself out as an adjuster.

(2) Such person shall not be registered by the Authority unless —

(a) he is a member of an association of adjusters;

(b) he has such minimum paid-up share capital as may be prescribed; and

(c) the Authority has been furnished with such documents and information as may be prescribed or as he may require in any particular case.

(3) In registering an adjuster, the Authority may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(4) The registration of an adjuster shall be for a period of one year and be renewable every year.

(5) Adjusters shall pay such registration and annual fees as may be prescribed.

(6) The Authority shall cause notice of any registration or the revocation of any registration of an adjuster to be published in the *Gazette*.

(7) The Authority may revoke the registration of any adjuster if he is satisfied that any of the conditions imposed in relation to the registration has been breached or that it is in the interests of the public for him to do so.

(8) Nothing in this section shall apply to —

(a) advocates and solicitors and members of other professions who act or assist in adjusting takaful claims as an incident to the practice of their professions and who do not hold themselves out as adjusters;

(b) adjusters of maritime losses;

(c) employees of a takaful operator who, in the course of their employment, act or assist in adjusting takaful claims and who do not hold themselves out as adjusters.

(9) Every adjuster shall within one month after the end of each quarter of the year submit to the Authority a report in the prescribed form of all losses which were the subject of adjustments effected by him during that quarter.

(10) Sections 41 to 46 shall apply to adjusters.

(11) No person who carries on the business of takaful loss adjuster, loss assessor, surveyor or other registered persons providing auxiliary services to the takaful industry or any member of their immediate family, shall hold shares or other interests in a takaful company.

(12) For the purpose of subsection (11), “member of their immediate family” includes any wife, husband, father, mother, son and daughter of a loss adjuster, loss assessor, surveyor or other registered persons providing auxiliary services to the takaful industry.

(13) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both and in the case of a continuing offence, to a further fine not exceeding \$800 for every day during which the offence continues after conviction.

(14) Where a person fails to submit a report as required by subsection (9), he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.”.

Amendment of section 60.

32. Section 60 of the principal Order is amended by adding the following new subsection immediately after subsection (12) —

“(13) Any registered takaful operator or registered takaful broker who fails to comply with any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.”.

Amendment of section 61.

33. Section 61 of the principal Order is amended by adding the following new subsection immediately after subsection (4) —

“(5) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.”.

Amendment of section 64.

34. Section 64 of the principal Order is amended by adding the following new subsection immediately after subsection (4) —

“(5) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.”.

Amendment of section 65.

35. Section 65 of the principal Order is amended, in subsection (6), by deleting “a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$50,000, and in the case of a continuing offence to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 66.

36. Section 66 of the principal Order is amended by deleting subsection (3) and by substituting the following new subsection therefor —

“(3) Any insurer which fails to comply with any direction made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 6 months or both, and in the case of a continuing offence to a further fine not exceeding \$10,000 for every day during which the offence continues after conviction.”.

Amendment of section 75.

37. Section 75 of the principal Order is amended by adding the following new subsection immediately after subsection (3) —

“(4) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.”.

Insertion of new section 78A.

38. The principal Order is amended by inserting the following new section immediately after section 78 —

“Power of Authority to compound.

78A. (1) The Authority may, without instituting proceedings against any person for any offence under this Order, or any regulations made thereunder, which is punishable only by a fine or a penalty, demand and receive the amount of the fine or penalty or such reduced amount as it thinks fit from that person.

(2) If that person —

(a) pays that amount to the Authority within 14 days or such other period as determined by the Authority after the demand, no proceedings shall be taken against him in relation to that offence; or

(b) does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to the offence.

(3) All sums collected under this section shall be paid to the Authority.”.

Amendment of section 79.

39. Section 79 of the principal Order is amended, in subsection (2), by deleting “a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” and by substituting “a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction” therefor.

Amendment of section 82.

40. Section 82 of the principal Order is amended, in subsection (3), by inserting “on” immediately after “or” in the penultimate line.

Amendment of section 92.

41. Section 92 of the principal Order is amended, in subsection (2), by inserting “or from such later date as the Authority may in any particular case determine” immediately after “months” in the first line.

Amendment of First Schedule.

42. The First Schedule to the principal Order is amended by deleting Parts I and III.

Made this 6th. day of Ramadhan, 1436 Hijriah corresponding to the 23rd. day of June, 2015 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM