

No. S 34

COMPANIES ACT  
(Chapter 39)

COMPANIES (CORPORATE GOVERNANCE) (PUBLIC COMPANIES)  
RULES, 2016

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**COMPANIES ACT**  
**(Chapter 39)**

**COMPANIES (CORPORATE GOVERNANCE) (PUBLIC COMPANIES)**  
**RULES, 2016**

In exercise of the power conferred by section 324A(2) of the Companies Act, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

**Citation and commencement**

1. These Rules may be cited as the Companies (Corporate Governance) (Public Companies) Rules, 2016 and shall commence on the same date as the Companies Act (Amendment) Order, 2016.

**Interpretation**

2. In these Rules, unless the context otherwise requires —

“immediate family”, in relation to an individual, means the spouse, child, adopted child, stepchild, parent, step-parent, brother, stepbrother, sister or stepsister;

“independent director” means a director who —

(a) is independent from any management and business relationship with the public company or of any related corporation; and

(b) is independent from any substantial shareholder of the public company or of any related corporation;

“substantial shareholder” has the meaning given to it by section 63A.

**Application**

3. These Rules apply to every public company incorporated and registered in Brunei Darussalam, irrespective of the place or places where the business of such company may be carried on.

**Independence from management and business relationships**

4. (1) In these Rules, a director shall be considered to be independent from management and business relationships with a public company if —

(a) the director has no management relationship with the company or any of its subsidiaries; and

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*(b)* the director has no business relationship with the company or any of its subsidiaries, or with any officer of the company,

that could interfere, or be reasonably regarded as interfering, with the exercise of the independent business judgment of the director with regard to the interests of the company.

(2) Without prejudice to subrule (1)/*(a)*, a director shall not be considered to be independent from management relationships with a public company or any of its subsidiaries if —

*(a)* he is employed by the company or any of its subsidiaries, or has been so employed at any time during the current financial year or any of the preceding 3 financial years of the company or any of its subsidiaries;

*(b)* any member of his immediate family —

(i) is employed by the company or any of its subsidiaries as an executive officer whose compensation is determined by the company or any of its subsidiaries; or

(ii) has been so employed at any time during the current financial year or any of the preceding 3 financial years of the company or any of its subsidiaries; or

*(c)* he is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the management of the company or any of its subsidiaries.

(3) Without prejudice to subrule (1)/*(b)*, a director shall not be considered to be independent from business relationships with a public company or any of its subsidiaries if —

*(a)* he is a director, a substantial shareholder or an executive officer of any corporation, or a partner of a firm or a limited liability partnership or a sole proprietor, where such corporation, firm, limited liability partnership or sole proprietor carries on business for purposes of profit to which the company or any of its subsidiaries has made, or from which the company or any of its subsidiaries has received, payments in the current or immediately preceding financial year; or

*(b)* he is receiving or has received any compensation from the company or from any of the subsidiaries of the company, other than compensation received for his services as a director or as an employee, at any time during the current or immediately preceding financial year of the company.

**Independence from substantial shareholder**

5. (1) In these Rules, a director of a public company shall be considered to be independent from a substantial shareholder of the company or of any related corporation if he is not that substantial shareholder and is not connected to that substantial shareholder.

(2) Notwithstanding subrule (1), a director of a public company which is the immediate subsidiary of another public company (referred to in this subrule as the parent company) shall, if he is not a substantial shareholder of the public company or the parent company and is not connected to —

(a) a substantial shareholder of the public company (other than the parent company); or

(b) a substantial shareholder of the parent company,

be treated as if he were independent from the substantial shareholder of the public company for the purposes of rules 6(1) and 7.

(3) For the purposes of subrule (1), a person is connected to a substantial shareholder if he is —

(a) in the case where the substantial shareholder is an individual —

(i) a member of the immediate family of the substantial shareholder;

(ii) employed by the substantial shareholder;

(iii) employed by an affiliate of the substantial shareholder;

(iv) an executive director of an affiliate of the substantial shareholder;

(v) a non-executive director of an affiliate of the substantial shareholder;

(vi) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or

(vii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder; or

(b) in the case where the substantial shareholder is a corporation —

- (i) employed by the substantial shareholder;
- (ii) employed by an affiliate of the substantial shareholder;
- (iii) a director of the substantial shareholder;
- (iv) an executive director of an affiliate of the substantial shareholder;
- (v) a non-executive director of an affiliate of the substantial shareholder;
- (vi) a partner of a firm or a limited liability partnership of which the substantial shareholder is also a partner; or
- (vii) accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder.

**Board of directors**

6. (1) A public company shall have a board of directors comprising at least a majority of directors who are independent directors.

(2) Any public company which contravenes subrule (1) is guilty of an offence and liable on conviction to a fine not exceeding \$25,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

**Executive Committee**

7. Where the board of directors of a public company has delegated any of its powers for the oversight of the company to an executive committee or any other committee by whatever name described (referred to in this rule as an Executive Committee), consisting of such directors as the board of directors thinks fit, rule 6 shall apply, with the necessary modifications, to the company in respect of the Executive Committee as if the Executive Committee were a board of directors.

**Exemption**

8. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, on the application of any public company, by notice in writing exempt the public company from all or any of the provisions of these Rules, subject to such conditions as the Minister may determine, if the Minister considers it appropriate to do so in the circumstances of the case.

{2} Any public company which fails to comply with any condition imposed by the Minister under subrule (1) is guilty of an offence and liable on conviction to a fine not exceeding \$25,000.

{3} An exemption granted under subrule (1) may be withdrawn by the Minister at any time.

Made this 23rd. day of Sya'ban, 1437 Hijriah corresponding to the 30th. day of May, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM  
Minister of Finance,  
Brunei Darussalam.