

No. S 27

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

COMPANIES ACT (AMENDMENT) ORDER, 2019

ARRANGEMENT OF SECTIONS

Section

1. Citation
2. Amendment of section 2 of Chapter 39
3. Amendment of section 20
4. Amendment of section 21
5. Amendment of section 22
6. Amendment of section 93
7. Amendment of section 100
8. Insertion of new sections 100A, 100B, 100C and 100D
9. Amendment of section 103
10. Amendment of section 108
11. Insertion of new section 120A
12. Amendment of section 121
13. Amendment of section 131
14. Amendment of section 135A
15. Amendment of section 141A
16. Insertion of new section 141BA
17. Amendment of section 151
18. Amendment of section 289

19. Amendment of section 290
 20. Insertion of new section 302A
 21. Amendment of section 309
 22. Amendment of Act
 23. Substitution of section 312
 24. Insertion of new section 312A
 25. Amendment of Act
 26. Insertion of new section 316A
 27. Substitution of section 319A
 28. Insertion of new sections 319B, 319C, 319D and 319E
 29. Amendment of Act
 30. Amendment of section 323
 31. Repeal of section 324
 32. Repeal of Ninth Schedule
 33. Amendment of Eleventh Schedule
 34. Amendment of Act
-

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

COMPANIES ACT (AMENDMENT) ORDER, 2019

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

Citation

1. This Order may be cited as the Companies Act (Amendment) Order, 2019.

Amendment of section 2 of Chapter 39

2. Section 2 of the Companies Act, in this Order referred to as the Act, is amended, in subsection (1) —

(a) by inserting the following new definitions in the appropriate alphabetical order —

““accounting corporation” means a company approved or deemed to be approved as an accounting corporation under the Accountants Order, 2010 (S 115/2010);

“accounting entity” means a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership;

“accounting firm” means a firm approved or deemed to be approved as an accounting firm under the Accountants Order, 2010 (S 115/2010);

“accounting limited liability partnership” means a limited liability partnership approved as an accounting limited liability partnership under the Accountants Order, 2010 (S 115/2010);

“accounting records”, in relation to a corporation, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the corporation are made up;

“accounts” means profit and loss accounts, or income and expenditure accounts, and balance sheets referred to in section 122 and includes notes (other than auditors’ reports or directors’ reports) attached or intended to be read with any of those profit and loss accounts, income and expenditure accounts or balance sheets;”;

(b) by deleting the definition of “Clerk of Council”;

(c) by deleting the definition of “general rules”;

(d) in the definition of “Minister”, by inserting “and Economy” immediately after “Finance”;

(e) by deleting the definition of “resolution for voluntarily winding up”.

Amendment of section 20

3. Section 20 of the Act is amended —

(a) in subsection (2), by deleting “Except with the consent of His Majesty the Sultan and Yang Di-Pertuan” from the first two lines and by substituting “Unless with the approval of the Registrar” therefor;

(b) by repealing subsection (6);

(c) by repealing subsection (7);

(d) by repealing subsection (8);

(e) by repealing subsection (9);

(f) by repealing subsection (10).

Amendment of section 21

4. Section 21 of the Act is amended —

(a) in subsection (1), by deleting “His Majesty the Sultan and Yang Di-Pertuan” from the first two lines and from the fourth last line and by substituting “the Registrar” therefor;”;

(b) in subsection (2) —

(i) by deleting “His Majesty the Sultan and Yang Di-Pertuan” from the first line and by substituting “the Registrar” therefor;

(ii) by deleting “His Majesty the Sultan and Yang Di-Pertuan so direct” from the second and third last lines and by substituting “the Registrar so directs” therefor;

(c) in subsection (4) —

- (i) by deleting “His Majesty the Sultan and Yang Di-Pertuan” from the first two lines and by substituting “the Registrar” therefor;
- (ii) in the proviso, by deleting “His Majesty the Sultan Yang Di-Pertuan” from the first two lines and by substituting “the Registrar” therefor.

Amendment of section 22

5. Section 22 of the Act is amended —

(a) in subsection (1), by deleting “His Majesty the Sultan and Yang Di-Pertuan” and by substituting “the Registrar” therefor;

(b) in subsection (3), by deleting “His Majesty the Sultan and Yang Di-Pertuan” from the fourth and fifth lines and by substituting “the Registrar” therefor.

Amendment of section 93

6. Section 93 of the Act is amended —

(a) in the section heading, by deleting “by company” and by substituting “and registration number” therefor;

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

“(1A) The registration number of a company shall appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.”.

Amendment of section 100

7. Section 100 of the Act is amended, in the section heading, by adding “in respect of member of company”.

Insertion of new sections 100A, 100B, 100C and 100D

8. The Act is amended by inserting the following four new sections immediately after section 100 —

“Power of Court to rectify register in respect of company

100A. (1) Where it appears to the Court, as a result of evidence adduced before it by an applicant company, that any particular recorded in a register is erroneous or defective, the Court may, by order, direct the Registrar to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the Registrar shall, on receipt of the order, rectify the register accordingly.

(2) An order of the Court made under subsection (1) may require that a fresh document, showing the rectification, shall be filed by the applicant company with the Registrar together with a copy of the Court order, and a copy of the Court application.

Rectification by Registrar on application

100B. (1) Notwithstanding section 100A, an officer of a company may notify the Registrar in the prescribed form of —

(a) any error contained in any document relating to the company filed or lodged with the Registrar; or

(b) any error in the filing or lodgment of any document relating to the company with the Registrar.

(2) The Registrar may, on receipt of any notification referred to in subsection (1) and if satisfied that —

(a) the error referred to in subsection (1)(a) is typographical or clerical in nature; or

(b) the error referred to in subsection (1)(b) is, in the Registrar's opinion, unintended and does not prejudice any person,

rectify the register accordingly.

(3) In rectifying the register under subsection (2), the Registrar shall not expunge any document from the register.

(4) The decision made by the Registrar on whether to rectify the register under subsection (2) is final.

Rectification or updating on Registrar's initiative

100C. (1) The Registrar may rectify or update any particulars or document in a register kept by him, if the Registrar is satisfied that —

(a) there is a defect or error in the particulars or document arising from any grammatical, typographical or similar mistake; or

(b) there is evidence of a conflict between the particulars of a company or person and —

(i) other information in the register relating to that company or person; or

(ii) other information relating to that company or person obtained from such department or Ministry of the Government, or statutory body or other body corporate as may be prescribed.

(2) Before the Registrar rectifies or updates the register under subsection (1), the Registrar shall, except under prescribed circumstances, give written notice to the company or person whose documents or particulars are to be rectified or updated of the Registrar's intention to do so, and state in the notice —

(a) the reasons for, and details for, the proposed rectification or updating to be made to the register; and

(b) the date by which any written objection to the proposed rectification or updating shall be delivered to the Registrar, being a date at least 30 days after the date of the notice.

(3) The company or person notified under subsection (2) may deliver to the Registrar, not later than the date specified in subsection (2)(b), a written objection to the proposed rectification or updating of the register.

(4) The Registrar shall not rectify or update the register if the Registrar receives a written objection under subsection (3) to the proposed rectification or updating by the date specified under subsection (2)(b), unless the Registrar is satisfied that the objection is frivolous or vexatious or has been withdrawn.

(5) The Registrar may rectify or update the register if the Registrar does not receive a written objection under subsection (3) by the date specified under subsection (2)(b).

(6) The Registrar may include such notation as the Registrar thinks fit on the register for the purposes of providing information relating to any error or defect in any particulars or document in the register, and may remove such notation if the Registrar is satisfied that it no longer serves any useful purpose.

(7) Notwithstanding anything in this section, the Registrar may, if the Registrar is satisfied that there is an error or a defect in any particulars or document in a register, by notice in writing, request that the company to which the particulars or document relate, or its officers, take such steps within such time as the Registrar may specify to ensure that the error or defect is rectified.

Enforcement of duty to make returns

100D. (1) If a corporation or person, having made default in complying with —

(a) any provision of this Act or of any other written law which requires the filing or lodging in any manner with the Registrar or the Official Receiver of any return, account or other document or the giving of notice to him of any matter;

(b) any request of the Registrar or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document; or

(c) any request of the Registrar under section 100C(7) to rectify any error or defect in any particulars or document in the register,

fails to make good the default within 14 days after the service on the corporation or person of a notice requiring it to be done, the Court may, on an application by any member or creditor of the corporation or by the Registrar or the Official Receiver, make an order directing the corporation and any officer thereof or such person to make good the default within such time as is specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the corporation or by any officer of the corporation responsible for the default or by such person.

(3) Nothing in this section shall limit the operation of any written law imposing penalties on a corporation or its officers or such person in respect of any such default.”.

Amendment of section 103

9. Section 103 of the Act is amended, in subsection (1), by deleting “His Majesty the Sultan and Yang Di-Pertuan” from the first two lines and by substituting “the Minister” therefor.

Amendment of section 108

10. Section 108 of the Act is amended by repealing subsection (2).

Insertion of new section 120A

11. The Act is amended by inserting the following new section immediately before section 121 —

“Interpretation

120A. For the purposes of sections 122 to 133D, unless the contrary intention appears —

“balance sheet”, in relation to a company, means the balance sheet, by whatever name called, prepared in accordance with the Accounting Standards;

“group” has the same meaning as in the Accounting Standards;

“parent company” means a company that is required under the Accounting Standards to prepare financial statements in relation to a group;

“subsidiary company” means a company that is a subsidiary as defined in the Accounting Standards.”.

Amendment of section 121

12. Section 121 of the Act is amended, in subsection (1) —

(a) in paragraph (c), by deleting the full stop and substituting a comma therefor;

(b) by deleting “And” from the eighth line and by substituting “as will sufficiently explain the transactions and financial position of the company and” therefor;

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

“(1B) Every public company and every subsidiary company of a public company shall devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

(a) assets are safeguarded against loss from unauthorised use or disposition; and

(b) transactions are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements and to maintain accountability of assets.”.

Amendment of section 131

13. Section 131 of the Act is amended, in subsection (3) —

(a) in paragraph *(a)*, by deleting “Clerk of Council” from the first line and by substituting “Permanent Secretary” therefor;

(b) in paragraph *(b)*, by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” from the first line and by substituting “The Minister” therefor;

(c) in paragraph *(c)* —

(i) in sub-paragraph *(i)*, by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” from the first two lines and by substituting “The Minister” therefor;

(ii) in sub-paragraph *(ii)* —

(A) by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” from the first two lines and by substituting “The Minister” therefor;

(B) by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” from the last third and fourth lines and by substituting “the Minister” therefor;

(d) in paragraph *(e)*, by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” from the first two lines and by substituting “the Minister” therefor.

Amendment of section 135A

14. Section 135A of the Act is amended, in the definition of “company”, by inserting “or the Insolvency Order, 2016 (S 1/2016)” immediately after “Act”.

Amendment of section 141A

15. Section 141A of the Act is amended, in subsection (8), by deleting “VIII” and by substituting “VI of the Insolvency Order, 2016 (S 1/2016)” therefor.

Insertion of new section 141BA

16. The Act is amended by inserting the following new section immediately after section 141B —

“Disqualification for persistent default in relation to delivery of documents to Registrar

141BA. (1) Where —

(a) a person has been persistently in default in relation to relevant requirements of this Act; and

(b) that person, within a period of 5 years after he has last been adjudged guilty of any offence or has had made against him an order under section 100D or 311A in relation to any such relevant requirements of this Act, without the leave of the Court, is a director or promoter of, or is in any way directly or indirectly concerned or takes part in the management of a company,

he is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Any provision of this Act which requires any return, account or other document to be filed with, delivered or sent, or notice of any matter to be given, to the Registrar is a relevant requirement of this Act for the purposes of this section.

(3) For the purposes of this section, the fact that a person has been persistently in default in relation to relevant requirements of this Act may, subject to subsection (8), be conclusively proved by showing that, within a period of 5 years, he has been adjudged guilty of three or more offences in relation to any such requirements or has had three or more orders made against him under section 100D or 311A in relation to those requirements.

(4) A person shall be treated as being adjudged guilty of three or more offences in relation to any such relevant requirement of this Act for the purpose of subsection (3) if he is convicted of any three or more offences by virtue of any contravention of, or failure to comply with, any such requirements (whether on his own part or on the part of any company).

(5) For the purposes of this section, a conviction for an offence under section 141C(2)(a) shall not be treated as an offence in relation to a relevant requirement for this Act.

(6) Where —

(a) a person has had a third or subsequent order made against him under section 100D or 311A; and

(b) by virtue of the operation of this section that person is disqualified from being a director or promoter of or from being in any way directly or indirectly concerned or taking part in the management of a company,

nothing in this section shall be construed as preventing that person from complying with the order of the Court and for this purpose he is deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

(7) For the purposes of this section, a certificate of the Registrar stating that a person has been adjudged guilty of three or more offences or has had made against him three or more orders under section 100D or 311A in relation to the requirements of this Act shall in all courts be received as *prima facie* evidence of the facts stated therein.

(8) No account shall be taken for the purposes of this section of any offence which was committed or, in the case of a continuing offence, began before the date of commencement of the Companies Act (Amendment) Order, 2019.

(9) A person intending to apply for leave of the Court under this section shall give to the Minister not less than 14 days' notice of his intention so to apply.

(10) On the hearing of any application under this section, the Minister may be represented and may oppose the granting of the application.

(11) In this section, "company" includes an unregistered company within the meaning of section 192(1) of the Insolvency Order, 2016 (S 1/2016).".

Amendment of section 151

17. Section 151 of the Act is amended, in subsection (5), in the definition of "company", by inserting "or the Insolvency Order, 2016 (S 1/2016)" immediately after "Act".

Amendment of section 289

18. Section 289 of the Act is amended, in subsection (2), by deleting "Registrar" and by substituting "Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan" therefor.

Amendment of section 290

19. Section 290 of the Act is amended, in subsection (1), by deleting “Minister” from the second line and from the last line and by substituting “Registrar” therefor.

Insertion of new section 302A

20. The Act is amended by inserting the following new section immediately after section 302 —

“Financial statements

302A. (1) Subject to this section, a foreign company shall lodge with the Registrar, within the time specified in subsection (2), financial statements made up to the end of its last financial year together with a declaration in such form as the Registrar may determine verifying that the copies are true copies of the documents so required and, in the case where the financial statements are audited, a statement of the name of the auditor.

(2) The financial statements referred to in subsection (1) shall be lodged —

(a) where the foreign company is required by the law of its place of incorporation or formation to table financial statements referred to in subsection (19)(a) at an annual general meeting, within 60 days after the date on which its annual general meeting is held; or

(b) in any other case, within such period as the directors of the foreign company would have been required to lodge its financial statements if the company were a public company incorporated under this Act which does not keep a branch register outside Brunei Darussalam.

(3) The Registrar may, if he is of the opinion that the financial statements referred to in subsection (19)(a) do not sufficiently disclose the foreign company’s financial position, require the company —

(a) to lodge financial statements within such period, in such form and containing such particulars; and

(b) to annex thereto such documents,

as the Registrar may by notice in writing to the company require.

(4) Subsection (3) does not authorise the Registrar to require —

(a) financial statements to contain any particulars; or

(b) the company to annex, attach or to send any documents,

that would not be required to be furnished if the company were a public company incorporated under this Act.

(5) The foreign company shall comply with the requirements set out in the notice under subsection (3).

(6) In addition to the financial statements required to be lodged with the Registrar under subsections (1), (2) and (3), a foreign company shall lodge with the Registrar within the time specified in subsection (2) —

(a) a duly audited statement showing its assets used in, and liabilities arising out of, its operations in Brunei Darussalam as at the date to which its balance sheet was made up;

(b) a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the Accounting Standards and which gives a true and fair view of the profit or loss arising out of the company's operation in Brunei Darussalam for the last preceding financial year of the company; and

(c) a statement of the name of the auditor who audited the documents referred to in paragraphs (a) and (b).

(7) For the purposes of subsection (6), the foreign company shall be entitled to make such apportionments of expenses incurred in connection with operations or administration affecting both Brunei Darussalam and elsewhere and to add such notes and explanations as in its opinion are necessary or desirable in order to give a true and fair view of the profit or loss of its operations in Brunei Darussalam.

(8) A foreign company which is dormant in Brunei Darussalam may, *in lieu* of satisfying the requirements of subsection (6), lodge with the Registrar —

(a) an unaudited statement showing its assets used in, and liabilities arising out of, its operations in Brunei Darussalam; and

(b) an unaudited profit and loss account with respect to the company's operations in Brunei Darussalam.

(9) The Registrar may, on application by a foreign company and payment of the prescribed application fee, extend the period referred to in

subsection (2) within which the company is required to comply with any or all of the requirements of subsections (2)(b) and (6).

(10) A statement and profit and loss account is deemed to have been duly audited for the purposes of subsection (6) if it is accompanied by a report by an accounting entity appointed to provide auditing services in respect of the foreign company's operations in Brunei Darussalam which complies, in so far as is practicable, with section 133(1).

(11) The Registrar may, on the written application of a foreign company, waive the requirement of a foreign company to lodge the documents referred to in subsection (6) if the Registrar is satisfied that —

(a) it is impractical for the foreign company to comply having regard to the nature of the foreign company's operations in Brunei Darussalam;

(b) it would be of no real value having regard to the amount involved;

(c) it would involve expense unduly out of proportion to its value; or

(d) it would be misleading or harmful to the business of the foreign company, or to any company which is deemed by virtue of section 129A to be related to the foreign company.

(12) The Registrar may, on the written application of a foreign company, by order relieve the foreign company from either or both of the following —

(a) any requirement relating to audit or the form and content of the documents referred to in subsection (6);

(b) any requirement relating to audit or the form and content of the documents referred to in subsection (19)(b).

(13) The Registrar may make the order referred to in subsection (12) unconditionally or subject to the condition that the foreign company comply with such other requirements relating to audit or the form and content of the documents as the Registrar may determine.

(14) The Registrar shall not make an order under subsection (12) unless he is of the opinion that compliance with the requirements of this section would render the documents misleading or inappropriate to the circumstances of the foreign company or would impose unreasonable burden on the company.

(15) The Registrar may make an order under subsection (12) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

(16) Without prejudice to subsections (11), (12) and (13), the Minister may, by order published in the *Gazette*, in respect of foreign companies of a specified class or description —

(a) substitute other Accounting Standards for the Accounting Standards, and the provisions of this section apply accordingly in respect of such foreign companies; or

(b) exempt foreign companies of a specified class or description from any or all of the requirements of subsection (6).

(17) If default is made by a foreign company in complying with this section —

(a) the company; and

(b) every director or equivalent person, and every authorised representative of the company, who knowingly and wilfully authorises or permits the default,

shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$50,000.

(18) For the purposes of this section, a foreign company is dormant in Brunei Darussalam during a period in which no accounting transaction arising out of its operations in Brunei Darussalam occurs; and the company ceases to be dormant on the occurrence of such a transaction.

(19) In this section —

“accounting transaction” means a transaction for which accounting or other records would be required to be kept so as to enable the documents referred to in subsection (6) to be prepared;

“financial statements” means —

(a) in the case where the foreign company is required by the law for the time being in force in the place of the company’s incorporation or formation to prepare financial statements in accordance with any applicable Accounting Standards which are similar to the Accounting Standards or which are acceptable to the Registrar, those financial statements; and

(b) in any other case, financial statements in such form and containing such particulars as the directors of the company would have been required to prepare or obtain if the foreign company were a public company incorporated under this Act.”.

Amendment of section 309

21. Section 309 of the Act is amended, in subsection (1), in the proviso to paragraph *(b)*, by deleting “constitution” and by substituting “memorandum and articles” therefor.

Amendment of Act

22. The Act is amended —

(a) by deleting the heading “ENFORCEMENT” appearing immediately after section 311 and by substituting the following new Part heading —

“PART XII
ENFORCEMENT AND GENERAL PROVISIONS”;

(b) by deleting the heading “MISCELLANEOUS OFFENCES” appearing immediately after section 311A.

Substitution of section 312

23. Section 312 of the Act is repealed and the following new section is substituted therefor —

“False and misleading statement

312. (1) Every corporation which advertises, circulates or publishes any statement of the amount of its capital which is misleading, or in which the amount of capital or subscribed capital is stated but the amount of paid-up capital or the amount of any charge on uncalled capital is not stated as prominently as the amount of subscribed capital is stated, and every officer of the corporation who knowingly authorises, directs or consents to such advertising, circulation or publication is guilty of an offence.

(2) Every person who in any return, report, certificate, balance sheet, financial statements or other document required by or for the purposes of this Act wilfully makes or authorises the making of a statement false or misleading in any material particular, knowing it to be false or misleading or wilfully omits or authorises the omission of any matter or thing without which the document is misleading in a material respect, is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 2 years or both.

(3) Any person who, for any purpose under this Act —

(a) lodges or files with, or submits to, the Registrar any document; or

(b) authorises another person to lodge or file with, or submit to, the Registrar any document,

knowing that document to be false or misleading in a material respect is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 2 years or both.

(4) For the purposes of subsection (2), where a person at a meeting votes in favour of the making of a statement referred to in that subsection, he is deemed to have authorised the making of that statement.”.

Insertion of new section 312A

24. The Act is amended by inserting the following new section immediately after section 312 —

“False statements or reports

312A. (1) An officer of a corporation who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to —

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or

(b) in the case of a corporation that is a subsidiary, an auditor of the holding company,

relating to the affairs of the corporation, is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) In subsection (1), “officer” includes a person who at any time has been an officer of the corporation.”.

Amendment of Act

25. The Act is amended by deleting the heading “GENERAL PROVISIONS AS TO OFFENCES” appearing immediately after section 313.

Insertion of new section 316A

26. The Act is amended by inserting the following new section immediately after section 316 —

“Composition of offences

316A. (1) The Registrar may, in his discretion, compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following —

(a) one half of the amount of the maximum fine that is prescribed for the offence;

(b) \$5,000.

(2) On payment of such sum of money referred to in subsection (1), no further proceedings shall be taken against that person in respect of the offence.”.

Substitution of section 319A

27. Section 319A of the Act is repealed and the following new section is substituted therefor —

“Electronic transaction system

319A. (1) The Registrar may —

(a) require or permit any person to carry out any transaction with the Registrar under this Act; and

(b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction referred to in paragraph (a),

using the electronic transaction system.

(2) If the Registrar is satisfied that a transaction should be treated as having been carried out at some earlier date and time, than the date and time which is reflected in the electronic transaction system, the Registrar may cause the electronic transaction system and the registers kept by Registrar to reflect such earlier date and time.

(3) The Registrar shall keep a record whenever the electronic transaction system or the registers are altered under subsection (2).

(4) In this section —

“document” includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to the Registrar;

“transaction”, in relation to the Registrar, means —

(a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;

(b) any making of any application, submission or request to the Registrar;

(c) any provision of any undertaking or declaration to the Registrar; and

(d) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.”.

Insertion of new sections 319B, 319C, 319D and 319E

28. The Act is amended by inserting the following four new sections immediately after section 319A —

“Interpretation

319B. In this section and sections 312, 319C, 319D and 319E, unless the contrary intention appears —

“consolidated financial statements” has the same meaning as in the Accounting Standards;

“constitution” means the memorandum of association of the company, the articles of association of the company or both which are registered with the Registrar under section 15, as may be amended from time to time;

“parent company” means a company that is required under the Accounting Standards to prepare financial statements in relation to a group;

“financial statements” means the financial statements of a company required to be prepared by the Accounting Standards and, in the case of a parent company, means the consolidated financial statements.

Electronic transmission of notices of meetings

319C. (1) Where any notice of a meeting is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to —

- (a) a member of the company; or
- (b) an officer or auditor for the company,

that notice may be given, sent or served using electronic communication to the current address of the person.

(2) For the purposes of this section, a notice of a meeting shall also be treated as given or sent to, or served on a person where —

(a) the company and that person have agreed in writing that notices of meetings required to be given to that person may instead be accessed by him on a website;

(b) the meeting is a meeting to which that agreement applies;

(c) the notice is published on the website such that it is or can be made legible;

(d) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of —

(i) the publication of the notice on that website;

(ii) the address of that website; and

(iii) the place on that website where the notice may be accessed, and how it may be accessed; and

(e) the notice continues to be published on and remains accessible to that person from that website throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

(3) For the purposes of this Act, a notice of a meeting treated in accordance with subsection (2) as given or sent to or served on any person shall be treated as so given, sent or served at the time of the notification mentioned in subsection (2)(d).

(4) A notice of a meeting given for the purposes of subsection (2)(d) shall specify such matters or information as may be required for a notice of

that type under any other provision of this Act or the constitution of that company.

(5) Nothing in subsection (2) shall invalidate the proceedings of a meeting where —

(a) any notice of a meeting that is required to be published and remain accessible as mentioned in paragraph (e) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish and make accessible that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(6) A company may, notwithstanding any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3), (4) or (5).

(7) For the purposes of this section and section 319D, the current address of a person of a company, in relation to any notice or document, is a number or address used for electronic communication which —

(a) has been notified by the person in writing to the company as one at which that notice or document may be sent to him; and

(b) the company has no reason to believe that that notice or document sent to the person at that address will not reach him.

Electronic transmission of documents

319D. (1) Where any accounts, balance sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to —

(a) a member of the company; or

(b) an officer or auditor of the company,

that document may be given, sent or served using electronic communications to the current address of that person.

(2) For the purposes of this section, a document shall also be treated as given or sent to, or served on a person where —

(a) the company and that person have agreed in writing to his having access to documents on a website (instead of their being sent to him);

(b) the document is a document to which that agreement applies;

(c) the document is published on the website such that it is or can be made legible; and

(d) that person is notified, in a manner for the time being agreed for that purpose between him and the company, of —

(i) the publication of the document on that website;

(ii) the address of that website; and

(iii) the place on that website where the document may be accessed, and how it may be accessed.

(3) Where any provision of this Act or of the constitution of the company requires any document to be given or sent to, or served on a person not less than a specified number of days before a meeting, that document, if treated in accordance with subsection (2) as given or sent to, or served on any person, shall be treated as given or sent to, or served on the person not less than the specified number of days before the date of a meeting if, and only if —

(a) the document is published on and remains accessible to that person from the website throughout a period beginning before the specified number of days before the date of the meeting and ending with the conclusion of the meeting; and

(b) the notification given for the purposes of subsection (2)(d) is given not less than the specified number of days before the date of the meeting.

(4) Nothing in subsection (3) shall invalidate the proceedings of a meeting where —

(a) any document that is required to be published and remain accessible as mentioned in paragraph (a) of that subsection is published and remains accessible for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish and make accessible that document throughout that period is wholly attributable to circumstances which

it would not be reasonable to have expected the company to prevent or avoid.

(5) A company may, notwithstanding any provision to the contrary in its constitution, take advantage of subsection (1), (2), (3) or (4).

Electronic transmission in accordance with constitution

319E. (1) Notwithstanding sections 319C and 319D, where a notice of meeting or any accounts, balance sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to a member of the company, that notice or document may be given, sent or served using electronic communications with the express, implied or deemed consent of the member in accordance with the constitution of the company.

(2) For the purposes of this section, a member has given implied consent if the constitution of the company —

(a) provides for the use of electronic communications;

(b) specifies the manner in which electronic communications is to be used; and

(c) provides that the member shall agree to receive such notice or document by way of such electronic communications and shall not have a right to elect to receive a physical copy of such notice or document.

(3) For the purposes of this section, a member shall be deemed to have consented if —

(a) the constitution of the company provides for the use of electronic communications;

(b) the constitution of the company specifies the manner in which electronic communications is to be used;

(c) the constitution of the company specifies that the member will be given an opportunity to elect within a specified period of time (the specified time), whether to receive such notice or document by way of electronic communications or as a physical copy; and

(d) the member was given an opportunity to elect whether to receive such notice or document by way of such electronic

communications or as a physical copy, and he failed to make an election within the specified time.

(4) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules under section 324A —

(a) to exclude any notice or document or any class of notices or documents from the application of this section;

(b) to provide for safeguards for the use of electronic communications under this section; and

(c) without prejudice to the generality of paragraph (b), to provide that a member who is deemed to have consented to receive notices or documents by way of electronic communications may make a fresh election to receive such notice or document as a physical copy and the manner in which the fresh election may be made.”.

Amendment of Act

29. The Act is amended by deleting the heading “GENERAL PROVISIONS AS TO ALTERATIONS OF TABLES, FORMS AND FEE ETC.” appearing immediately after section 322.

Amendment of section 323

30. Section 323 of the Act is amended, in subsection (1) —

(a) by deleting “His Majesty the Sultan and Yang Di-Pertuan in Council” from the first line and by substituting “The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan” therefor;

(b) by inserting “and the Eleventh Schedule” immediately after “Schedule” in the last line.

Repeal of section 324

31. Section 324 of the Act is repealed.

Repeal of Ninth Schedule

32. The Act is amended by repealing the Ninth Schedule.

Amendment of Eleventh Schedule

33. The Eleventh Schedule to the Act is amended, in the section reference, by deleting “324” and by substituting “323” therefor.

Amendment of Act

34. The Act is amended by deleting “Minister of Finance” wherever those words appear and by substituting “Minister” therefor.

Made this 2nd. day of Safar, 1441 Hijriah corresponding to the 1st. day of October, 2019 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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