

No. S 43

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

SECURITIES (AMENDMENT) ORDER, 2005

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(Order under Article 83(3))

SECURITIES (AMENDMENT) ORDER, 2005

In exercise of the power conferred by Clause (3) of Article 83 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 Securities (Amendment) Order, 2005.

Amendment of section 2 of S 31/01.

2. Section 2 of the Securities Order, 2001, in this Order referred to as the principal Order, is amended in subsection (1) —

(a) by adding to the definition of "exchange", "including any person conducting any clearing, settlement or other activities whether licensed hereunder or not which may form part of the operations of an exchange and includes any delegated function of an exchange";

(b) by adding the following new paragraph to the definition of "investment adviser" —

"/h) a person licensed under the Mutual Funds Order, 2001 (S 18/01), so far as the fund or funds in respect of which he is so licensed are respectively concerned;"

(c) by deleting the definition of "licence" and by substituting the following new definition therefor —

"licence" means —

(a) a dealer's licence under Part III;

(b) an investment adviser's licence under Part III;

(c) a representative's licence under part III; and

(d) where the context so admits, a licence issued under section 6;"

(d) by deleting "public" from the first line of the definition of "securities".

Amendment of section 7.

3. Section 7 of the principal Order is amended by deleting the sub-heading and by substituting "Code of Conduct." therefor.

Amendment of section 11.

4. Section 11 of the principal Order is amended —

(a) in subsection (1), by inserting "of an exchange" immediately after "secretary" in the first line;

(b) in subsection (3), by deleting "such fee as may be prescribed" and by substituting "a fee of B\$5" therefor.

Amendment of section 13.

5. Section 13 of the principal Order is amended —

(a) in subsection (1), by adding ", and without limitation shall report any event or irregularity which causes an exchange to commence an enquiry in relation to any matter arising in the course of the conduct of any licensed business";

(b) by repealing subsection (2) and by substituting the following new subsection therefor —

"[2] Where an exchange takes action which may lead to a reprimand, fine, suspension, expulsion or other disciplinary action against a member, it shall within 24 hours of taking such action inform the Authority in writing of the name of the member, the reasons for and the nature of the action taken."

Amendment of section 14.

6. Section 14 of the principal Order is amended, in subsection (1), by adding "or otherwise".

Amendment of section 17.

7. Section 17 of the principal Order is amended —

(a) by inserting "(1)" immediately before "A person" in the first line;

(b) by adding the following 2 new subsections —

"(2) Subsection (1) does not apply to a dealer's representative who is not resident in Brunei Darussalam.

(3) Notwithstanding subsection (2), where a dealer's representative is not resident in Brunei Darussalam, no less than 2 directors or principals of the dealer concerned or such greater number as the Authority at his discretion may require, shall be licensed as dealer's representatives and any such dealer shall undertake in writing to the satisfaction of the Authority to ensure that all the dealer's representatives comply with all applicable written laws and submit to the jurisdiction of the courts of Brunei Darussalam."

Substitution of section 21.

8. Section 21 of the principal Order is repealed and substituted by the following new section —

"Authority to grant and renew dealer's licence in certain circumstances.

21. The Authority shall only grant or renew a dealer's licence if —

(a) after consideration —

- (i) where the applicant is an individual, of the character and financial position of the applicant; or
- (ii) where the applicant is a body corporate, of the character of the directors and the secretary and of the financial position of the body corporate; and

(b) after consideration of the interests of Brunei Darussalam,

the Authority is of the opinion that the applicant is a fit and proper person to hold the licence applied for."

Amendment of section 29.

9. Section 29 of the principal Order is amended —

(a) in paragraph (c), by deleting "18(3)" from the last line and by substituting "23(3)" therefor; and

(b) in paragraph (d), by deleting "25" from the second line and by substituting "30" therefor.

Substitution of section 33.

10. Section 33 of the principal Order is repealed and substituted by the following new section —

"Application of this Part.

33. (1) This Part applies to a person who is —

- (a) a dealer;
- (b) a dealer's representative;
- (c) an investment adviser;
- (d) an investment representative; or
- (e) a financial journalist.

(2) In paragraph (e) of subsection (1), "financial journalist" means a person who contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a newspaper or periodical, or by other medium including without limitation broadcasting and electronic media."

Amendment of section 43.

11. Section 43 of the principal Order is amended, in subsection (1), by deleting "with whom" from the third line.

Substitution of section 45.

12. Section 45 of the principal Order is repealed and substituted by the following new section —

"Application of this Part.

45. Where the context so admits, this Part applies to and in relation to the business of the holder of a licence within the meaning of this Order, whether or not that business is carried on in or from within Brunei Darussalam."

Amendment of section 46.

13. Section 46 of the principal Order is amended —

(a) in the sub-heading, by deleting "dealers" and by substituting "licensees" therefor;

(b) in subsection (1), by deleting "dealer" from the first line and by substituting "licensee" therefor;

(c) in subsection (2), by deleting "dealer" from the first line and by substituting "licensee" therefor;

(d) in subsection (2), by deleting "dealer" from the second line and by substituting "holder" therefor.

Amendment of section 47.

14. Section 47 of the principal Order is amended, in subsection (1), by deleting "in Brunei Darussalam" from the first and second lines and by substituting "approved by the Exchange" therefor.

Substitution of section 49.

15. Section 49 of the principal Order is repealed and the following new section substituted therefor —

"Monies in trust accounts not available for payment of debts etc.

49. Save as otherwise pursuant to this Order, monies held in a trust account shall not be available for payment of the debts of any licensee or be liable to be paid or taken in execution under an order or process of any court."

Amendment of section 51.

16. Section 51 of the principal Order is amended —

(a) by deleting "Dealer" from the sub-heading and by substituting "Licensee" therefor;

(b) by deleting "dealer" from the first and from the second lines and by substituting "licensee" therefor.

Amendment of section 52.

17. Section 52 of the principal Order is amended —

(a) by deleting "Dealer" from the sub-heading and by substituting "Licensee" therefor;

(b) by repealing subsection (1) and by substituting the following new subsection therefor —

"(1) A licensee shall within 3 months of the end of his financial year lodge with the Authority and, in the case of a dealer, with the exchange an auditor's report containing such information as the Authority may reasonably require.";

(c) in subsection (2), by inserting "which apply to a dealer" immediately before "the exchange";

(d) by repealing subsection (3) and by substituting the following new subsection therefor —

"(3) Notwithstanding subsection (1), the Authority may, on application by a licensee for any special reason, extend the period referred to in that subsection."

Amendment of section 53.

18. Section 53 of the principal Order is amended —

(a) in the sub-heading, by inserting ", Authority and Registrar" immediately after "exchange";

(b) by repealing subsection (1) and by substituting the following new subsection therefor —

"(1) Where in the performance of his duties as auditor for a licensee, an auditor becomes aware of any matter which in his opinion may adversely affect the financial position of the licensee to a material extent or which constitutes a breach of section 46, or in the case of a dealer, of section 47 or 48, he shall within 7 days thereof, send a report in writing on such matter to the Authority, and in the case of a dealer to the exchange, and a copy thereof to the licensee or dealer."

Amendment of section 54.

19. Section 54 of the principal Order is amended, in the sub-heading, by inserting "and Authority" immediately after "exchange".

Amendment of section 56.

20. Section 56 of the principal Order is amended by deleting "dealer" wherever it appears and by substituting "licensee" therefor.

Amendment of section 57.

21. Section 57 of the principal Order is amended by deleting "50 or 51" from the second line and by substituting "51 or 55" therefor.

Amendment of section 58.

22. Section 58 of the principal Order is amended —

(a) by deleting "50 or 51" from the second line and by substituting "51 or 55" therefor;

(b) by deleting "dealer" from the third line and by substituting "licensee" therefor;

(c) in paragraph (a) —

(i) by deleting "dealer" from the second line and by substituting "licensee" therefor;

(ii) by deleting "dealer's" from the second line and by substituting "licensee's" therefor.

Amendment of section 59.

23. Section 59 of the principal Order is amended by deleting "50 or 51" from the fourth line and by substituting "51 or 55" therefor.

Amendment of section 60.

24. Section 60 of the principal Order is amended —

(a) in subsection (1) —

(i) in paragraph (a), by deleting "dealer" from the first and third lines and by substituting "licensee" therefor;

(ii) in paragraph (b), by deleting "dealer" from the first and last lines and by substituting "licensee" therefor;

(b) in subsection (2), by deleting "dealer" from the first and the second lines and by substituting "licensee" therefor.

Amendment of section 62.

25. Section 62 of the principal Order is amended, in the sub-heading, by deleting "committee" and substituting "exchange" therefor.

Amendment of section 64.

26. Section 64 of the principal Order is amended, in subsection (1), by deleting "stock" from the third line.

Amendment of section 72.

27. Section 72 of the principal Order is amended, in subsection (4), by deleting "preceeding" from the second line of the definition of "agent" and by substituting "preceding" therefor.

Insertion of new section 82A.

28. The principal Order is amended by inserting the following new section immediately after section 82 —

"Authority to keep information confidential.

82A. (1) Save as otherwise provided in this Order, any information, material or document furnished or filed with the Authority which under this Order is confidential shall not be disclosed to any person except as permitted pursuant to this Order or as may be required by the High Court.

(2) The Authority may, on the application of any person and subject to the general intent and the proper administration of this Order direct that any specified information, material or document furnished to or filed with the Authority under this Order shall not be held in confidence and shall be disclosed to the applicant. For the purposes of this section, "Authority" includes any person acting for or on behalf of the Authority and any person formerly so acting provided that except as mentioned in subsection (1) no information provided to the Authority on a reciprocal basis pursuant to section 83(4) shall be made available under this subsection except with the consent of the designated authority concerned or pursuant to an order of the High Court.

(3) Nothing in this section shall be construed as prohibiting the publication by the Authority of general information and statistics relating to registrations, consents and licences granted under this Order."

Amendment of section 83.

29. (1) Section 83 of the principal Order is amended —

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

"(1) Where the Authority has reason to suspect that a person has committed an offence under any provision of this Order or has been found guilty of fraud or of any offence against any other written law relating to the dealing in securities or has committed a breach of any condition of any licence granted under this Order, the Authority may make such investigation as it considers expedient for the due administration of this Order."

(b) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) The Authority may exercise any of the powers conferred by this Part and may disclose to a designated supervisory authority information obtained pursuant to the exercise of such powers for the purpose of assisting such an authority in the performance of any of its material supervisory functions."

(c) in subsection (3) —

(i) by deleting "is" where it first appears in the first line and by substituting "to" therefor;

(ii) by inserting "in writing" immediately after "designated" in the second line;

(d) by repealing subsection (4) and by substituting the following new subsection therefor —

"(4) The Minister shall not designate any country or territory for the purposes of this Order unless he is satisfied that the supervisory authority there is subject to provisions of confidentiality which are similar to those which apply to the Authority, whether under this Order or otherwise and that such supervisory authority has agreed to provide information to the Authority on a reciprocal basis and on similar terms."

Made this 12th. day of Rabiulakhir, 1426 Hijriah corresponding to the 21st. day of May, 2005 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM