

LAWS OF BRUNEI

CHAPTER 39

COMPANIES ACT

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LAWS OF BRUNEI

REVISED EDITION 2021

CHAPTER 39

COMPANIES

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COMPANIES ACT

An Act to provide for the incorporation and registration of companies in Brunei Darussalam, to control and regulate the relation between the company and its members and between the company and its creditors and the public, to provide for the conditions under which companies incorporated outside Brunei Darussalam may carry on business in Brunei Darussalam and generally to control the functioning within Brunei Darussalam of companies registered locally or carrying on business within Brunei Darussalam

Commencement: 1st January 1957
[S 3/1957]

PRELIMINARY

Citation

1. This Act may be cited as the Companies Act.

Interpretation

2. (1) In this Act —

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

[S 27/2019]

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

[S 27/2019]

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

[S 27/2019]

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

[S 27/2019]

“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 corporations are made up;

[S 27/2019]

“accounting standards” means the accounting standards made or formulated by the Accounting Standards Council under Part III of the Accounting Standards Order, 2010 (S 116/2010) and applicable to companies and to companies to which Part 9 applies in respect of their operations in Brunei Darussalam for the purposes of this Act;

“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;

[S 27/2019]

“annual general meeting”, in relation to a company, means a meeting of the company required to be held by section 111(1);

“annual return” means the return required to be made, in the case of a company having a share capital, under section 107, and in the case of a company not having a share capital, under section 108;

“articles” means the articles of association of a company, as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in Schedule 1;

“book and paper” and “book or paper” include accounts, deeds, writings and documents;

“certified”, in relation to a copy of a document, means certified in the prescribed manner to be a true copy of that document and, in relation to a translation of a document, means certified in the

prescribed manner to be a correct translation of that document into the English language;

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

(deleted by S 27/2019);

“company” means a company incorporated or registered under this Act;

[S 1/2016]

“company limited by guarantee” means a company referred to in section 4(2)(b);

“company limited by shares” means a company referred to in section 4(2)(a);

“corporation” means any body corporate formed, incorporated or existing in Brunei Darussalam or outside Brunei Darussalam and includes any company to which Part 9 applies and any limited liability partnership but does not include —

(a) any body corporate incorporated in Brunei Darussalam which is by notification published in the *Gazette* declared to be a public body or agency of the Government or a body corporate which is not incorporated for commercial purposes;

(b) any corporation sole;

(c) any co-operative society;

(d) any registered trade union;

“Court” used in relation to a company means the Court having jurisdiction to wind up the company;

“debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

“default fine” means a default fine within the meaning of section 314;

“director” includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a

corporation are accustomed to act and an alternate or substitute director;

“document” includes summons, notice, order, and other legal process, and registers;

“executive director” means a director who is concurrently an executive officer and “non-executive director” shall be construed accordingly;

[S 33/2016]

“executive officer” means any person, by whatever name described, who —

(a) is in the direct employment of, or acting for or by arrangement with, the company; and

(b) is concerned with or takes part in the management of the company on a day-to-day basis;

[S 33/2016]

“financial year”, in relation to any corporation, means the period in respect of which any profit and loss account of the corporation laid before it in general meeting is made up, whether that period is a year or not;

“foreign company” means any company incorporated outside Brunei Darussalam which has established a place of business in Brunei Darussalam under Part 9;

[S 33/2016]

“limited company” means a company limited by shares or by guarantee;

[S 33/2016]

“limited liability partnership” has the meaning given to it by section 5(1) of the Limited Liability Partnerships Order, 2010 (S 117/2010);

[S 33/2016]

“manager”, in relation to a company, means the principal executive officer of the company for the time being by whatever name called and whether or not he is a director;

“memorandum” means the memorandum of association of a company, as originally framed or as altered in pursuance of any written law;

“Minister” means the Minister of Finance and Economy;
[S 27/2019]

“officer”, in relation to a corporation, includes —

(a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) any liquidator of a company appointed in a voluntary winding up,

but does not include —

(i) any receiver who is not also a manager;

(ii) any receiver and manager appointed by the Court;

(iii) any liquidator appointed by the Court or by the creditors; and

(iv) an Executive Manager appointed by the Minister under section 230(1) of the Insolvency Order, 2016 (S 1/2016);

[S 1/2016]

“Permanent Secretary” means the Permanent Secretary, Ministry of Finance and Economy;

(deleted by S 1/2016);

“private company” means —

(a) any company which immediately prior to 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), was a private company;

(b) any company incorporated as a private company by virtue of section 29; or

(c) any company converted into a private company pursuant to section 30,

being a company which has not ceased to be a private company under section 30;

“prospectus” means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase of any shares or debentures of a company;

“public agency” includes –

(a) the Government, including any ministry, department or agency;

(b) any board, commission, committee or similar body, whether corporate or unincorporated, established by or under any written law for a public functions;

(c) any other board, commission, committee or similar body appointed by the Government or by statutory body, for a public purpose;

[S 37/2020]

“public company” means a company other than a private company;

“Registrar” means the Registrar of Companies appointed under section 288, and includes any Deputy Registrar or Assistant Registrar;

“related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation by virtue of section 129A;

[S 33/2016]

“resident in Brunei Darussalam” has the same meaning as in section 2 of the Income Tax Act (Chapter 35);

(deleted by S 27/2019);

“securities exchange” means securities exchange as defined in section 2(1) of the Securities Markets Order, 2013 (S 59/2013);

[S 37/2020]

“share” means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

“statutory report” means the report referred to in section 112(2);

“Table A” means Table A in Schedule 1;

“unlimited company” means a company formed on the principle of having no limit placed on the liability of its members;

“voting share”, in relation to a body corporate, means an issued share in the body corporate, not being —

(a) a share to which, in no circumstances, is there attached a right to vote; or

(b) a share to which there is attached a right to vote only in one or more of the following circumstances —

- (i) during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;
- (ii) on a proposal to reduce the share capital of the body corporate;
- (iii) on a proposal that affects rights attached to the share;
- (iv) on a proposal to wind up the body corporate;
- (v) on a proposal for the disposal of the whole of the property, business and undertakings of the body corporate;
- (vi) during the winding up of the body corporate.

[S 33/2016]

(2) A person is not deemed, within the meaning of any provision in this Act, to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

Application

3. This Act applies to every company registered in Brunei Darussalam irrespective of the place or places where the business of such company may be carried on.

Interest in shares [S 44/2017]

3A. (1) This section has effect for the purposes of sections 63A, 63B, 63C, 63D, 63E, 63F, 145A and 147A.

(2) Subject to the provisions of this section, a person has an interest in shares if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares.

(3) For the purposes of subsection (2), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction.

(4) Where any property held in trust consists of or includes shares and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he is deemed to have an interest in those shares.

(5) A unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013) —

(a) that is issued or offered to the public for subscription or purchase, or for which the public is invited to subscribe for or purchase, and that has been so subscribed or purchased; or

(b) that is issued for the purpose of an offer to the public by and is held by the manager concerned within the meaning of section 207 of the Securities Markets Order, 2013 (S 59/2013),

does not constitute an interest in a share.

(6) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

(a) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or

(b) a person has a controlling interest in the body corporate, that person is deemed to have an interest in that share.

(7) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

(a) a person is;

(b) the associates of a person are; or

(c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20 *per cent* of the voting power in the body corporate, that person is deemed to have an interest in that share.

(8) For the purposes of subsection (7), a person is an associate of another person if the first-mentioned person is —

(a) a subsidiary of that other person;

(b) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in subsection (7); or

(c) a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in subsection (7).

(9) Where a person —

(a) has entered into a contract to purchase a share;

(b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order,

whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;

(c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or

(d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder,

that person is deemed to have an interest in that share.

(10) A person is not deemed not to have an interest in a share by reason only that he has the interest in the share jointly with another person.

(11) It is immaterial, for the purposes of determining whether a person has an interest in a share, that the interest cannot be related to a particular share.

(12) There shall be disregarded —

(a) an interest in a share, if the interest is that of a person who holds the share as bare trustee;

(b) an interest in a share, if the interest is that of a person whose ordinary business includes the lending of money if he holds the interest only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(c) an interest of a person in a share, if that interest is an interest held by him by reason of his holding a prescribed office; and

(d) a prescribed interest in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.

(13) An interest in a share shall not be disregarded by reason only of —

(a) its remoteness;

(b) the manner in which it arose; or

(c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

PART 1

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

MEMORANDUM OF ASSOCIATION

Mode of forming incorporated company

4. (1) Any seven or more persons or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either —

(a) a company having the liability of its members limited by the memorandum of the amount, if any, unpaid on the shares respectively held by them;

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up; or

(c) a company not having any limit on the liability of its members (in this Act referred to as an unlimited company).

(3) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of any other written law in Brunei Darussalam or letters patent.

(4) So much of subsection (3) as prohibits the formation of an association or partnership consisting of more than twenty persons shall not apply to an association or a partnership formed solely or mainly for the purpose of carrying on any profession or calling which under the provisions of any written law may be exercised only by persons who possess the qualifications laid down in such written law for the purpose of carrying on that profession or calling.

Requirements with respect to memorandum

5. (1) The memorandum of every company incorporated after 1st January 1957, being the date of commencement of this Act, must state —

(a) the name of the company with “Berhad” or the abbreviation “Bhd” as the last word of the name in the case of a company limited by shares or by guarantee;

(b) in the case of a private limited company, with the word “Sendirian” or the abbreviation “Sdn” as part of its name inserted immediately before the word “Berhad” or before the abbreviation “Bhd” or, in the case of a private unlimited company, at the end of its name.

(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital —

(a) the memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share;

(c) each subscriber must write opposite to his name the number of shares he takes.

Capacity and powers of company

5A. (1) Subject to the provisions of this Act and any other written law and its memorandum or articles, a company has —

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers and privileges.

(2) A company may have the objects of the company included in its memorandum.

(3) The memorandum or articles of a company may contain a provision restricting its capacity, rights, powers or privileges.

Ultra vires transactions

5B. (1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether expressed or implied, of the company) and no conveyance or transfer of property, whether removable or immovable, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Any such lack of capacity or power may be asserted or relied upon only in —

(a) any proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures or the trustee for the holders of those debentures to restrain the doing of any act or acts or the conveyance or transfer of any property to or by the company;

(b) any proceedings by the company or by any member of the company against the present or former officers of the company; or

(c) any application by the Minister to wind up the company.
[S 27/2019]

(3) If the unauthorised act, conveyance or transfer sought to be restrained in any proceedings under subsection (2)(a) is being or is to be performed or made pursuant to any contract to which the company is a party, the Court may, if all the parties to the contract are parties to the proceedings and if the Court considers it to be just and equitable, set aside and restrain the performance of the contract and may allow to the company or to the other parties to the contract, as the case requires, compensation for the loss or damage sustained by either of them which may result from the action of the Court in setting aside and restraining the performance of the contract but anticipated profits to be derived from the performance of the contract shall not be awarded by the Court as a loss or damage sustained.

No constructive notice

5C. Notwithstanding anything in the memorandum or articles of a company, a person is not affected by, or deemed to have notice or knowledge of the contents of, the memorandum or articles of, or any other document relating to, the company merely because —

(a) the memorandum, articles or document is registered by the Registrar; or

(b) the memorandum, articles or document is available for inspection at the registered office of the company.

Stamp and signature of memorandum

6. The memorandum must bear the same stamp as if it were a deed and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

Restriction on alteration of memorandum

7. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

Mode in which and extent to which objects of company may be altered

8. (1) Subject to the provisions of this section, a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company so far as may be required to enable it —

(a) to carry on its business more economically or more efficiently;

(b) to attain its main purpose by new or improved means;

(c) to enlarge or change the local area of its operations;

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;

(e) to restrict or abandon any of the objects specified in the memorandum;

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the Court.

(3) Before confirming the alteration, the Court must be satisfied that —

(a) sufficient notice has been given to every holder of debentures of the company, and to any person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b) with respect to every creditor who in the opinion of the Court is entitled to object and who signifies his objection in a manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within 15 days from the date of the order, be delivered by the company to the Registrar and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the delivery of documents to the Registrar under this section for such period as the Court may think proper.

(7) If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company is liable to a fine of \$50 for every day during which the default continues.

ARTICLES OF ASSOCIATION

Articles prescribing regulations for companies

9. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

Regulations required in case of unlimited company or company limited by guarantee

10. (1) In the case of an unlimited company, if the company has a share capital, the articles must state the amount of share capital with which the company proposes to be registered.

(2) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles must state the number of members with which the company proposes to be registered.

(3) Where a company not having a share capital has increased the number of its members beyond the registered number, it shall, within 15 days after the increase was resolved on or took place, give to the Registrar notice

of the increase, and the Registrar shall record the increase. If default is made in complying with this subsection, the company and every officer of the company who is in default are liable to a default fine.

Adoption and application of Table A

11. (1) Articles of association may adopt all or any of the regulations contained in Table A.

(2) In the case of a company limited by shares and registered after 1st January 1957, being the date of commencement of this Act, if articles are not registered or, if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamp and signature of articles

12. Articles must —

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in a deed;
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution

13. (1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

FORM OF MEMORANDUM AND ARTICLES

Statutory forms of memorandum and articles

14. The form of —

(a) the memorandum of association of a company limited by shares;

(b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;

(c) the memorandum and articles of association of a company limited by guarantee and having a share capital;

(d) the memorandum and articles of association of an unlimited company having a share capital,

shall respectively be in accordance with the forms set out in Tables B, C, D and E in Schedule 1, or as near thereto as circumstances admit.

REGISTRATION

Registration of memorandum and articles

15. The memorandum and the articles, if any, shall be delivered to the Registrar and the Registrar shall retain and register them.

Certificate of incorporation

16. On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.

Effect of registration

17. From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession but with such liability on the part of the

members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation

18. A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

Declaration to Registrar

19. A declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company to the Registrar that —

(a) all the requirements of the Act relating to the formation of the company have been complied with; and

(b) he has verified the identities of the subscribers to the memorandum, and of the persons named in the memorandum or articles as officers of the proposed company,

and the Registrar may accept such declaration as evidence of compliance.

Power to refuse registration

19A. Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register the memorandum and the articles of a proposed company where he is satisfied that —

(a) the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam; or

(b) it would be contrary to national security or interests for the proposed company to be registered.

GENERAL PROVISIONS WITH RESPECT TO
NAMES OF COMPANIES

Restriction on registration of companies by certain names

20. (1) No company shall be registered by a name which —

(a) is identical with that by which a company in existence is already registered under any of the provisions of this Act or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

(aa) is identical to that of any limited liability partnership;

(b) is identical with the name of any company incorporated outside Brunei Darussalam and carrying on business within Brunei Darussalam which has duly complied with the requirements of Part 9 or, in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive, except where the said company is about to cease carrying on business in Brunei Darussalam and signifies its consent in such manner as the Registrar requires;

(c) is identical with any name registered under any written law providing for the registration of business names, or in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive;

Provided that if the Registrar is satisfied that a company is being registered for the purpose of taking over any business which is carried on under a registered business name, and will be entitled as against the proprietor of that name to use that name, he may register the company by that name;

(d) in the opinion of the Registrar is likely to mislead the public as to the nature or the objects of the company;

(e) contains the words “*Chamber of Commerce*”, unless the company is a company which is to be registered under a licence

granted in pursuance of section 21 without the addition of the word “*Berhad*” to its name;

(f) contains the words “*Building Society*”;

(g) in the opinion of the Registrar is undersirable; or

(h) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

[S 27/2019]

(2) Unless with the approval of the Registrar, no company shall be registered by a name which —

[S 27/2019]

(a) contains the words “*Royal*” or “*Di-Raja*” or, in the opinion of the Registrar suggests or is calculated to suggest the patronage of His Majesty the Sultan and Yang Di-Pertuan or connection with the Government of Brunei Darussalam or any department thereof;

(b) in the opinion of the Registrar suggests or is calculated to suggest, connection with any municipality or other local authority;

(c) contains the words “*Co-operative*”;

(d) contains the word “*Brunei Darussalam*”;

(e) contains the word “*Savings*”;

(f) contains the word “*Trust*” or “*Trustee*”.

(3) Notwithstanding anything in this section and section 22, where the Registrar is satisfied that the company has been registered (whether through inadvertence or otherwise and whether before, on or after 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), by a name which is referred to in subsections (1) and (2), the Registrar may direct the first-mentioned company to change its name, and the company shall comply with the

direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow.

(4) Any person may apply, in writing, to the Registrar to give a direction to a company under subsection (3) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in subsections (1) and (2) unless the Registrar receives the application within 12 months from the date of incorporation of the company.

(5) If the company fails to comply with subsection (1), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and a default fine.

(6) *(Repealed by S 27/2019).*

(7) *(Repealed by S 27/2019).*

(8) *(Repealed by S 27/2019).*

(9) *(Repealed by S 27/2019).*

(10) *(Repealed by S 27/2019).*

Power to dispense with “*Berhad*” in name of charitable and other companies

21. (1) Where it is proved to the satisfaction of the Registrar that an association about to be formed as a religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of limited company is to be formed for promoting commerce, art, science, any dividend to its members, the Registrar may by licence direct that the association may be registered as a company with limited liability, without the addition of the word “*Berhad*” to its name, and the association may be registered accordingly.

[S 27/2019]

(2) A licence by the Registrar under this section may be granted on such conditions and subject to such regulations as he may think fit, and those conditions and regulations shall be binding on the association and shall, if the Registrar so directs, be inserted in the memorandum and articles, or in one of those documents.

[S 27/2019]

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word “*Berhad*” as any part of its name, and of publishing its name, and of sending lists of members to the Registrar.

(4) A licence under this section may at any time be revoked by the Registrar and upon revocation, the Registrar shall enter the word “*Berhad*” at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this section:

[S 27/2019]

Provided that, before a licence is so revoked, the Registrar shall give to the association notice in writing of his intention and shall afford the association an opportunity of being heard in opposition to the revocation.

[S 27/2019]

(5) Where the name of the association contains the words “*Chamber of Commerce*”, the notice to be given as aforesaid shall include a statement of the effect of the provisions of section 22(3).

Change of name

22. (1) A company may, by special resolution and with the prior approval of the Registrar signified in writing, change its name.

[S 27/2019]

(1A) If the Registrar approves the name which the company has resolved should be its new name, he shall register the company under the new name and issue to the company a notice of incorporation of the company under the new name and, upon the issue of such notice, the change of name shall become effective.

(2) If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name by which the company could not be registered without contravention of section 20(1) and (2), the company may by special resolution change its name to a name by which the company could be registered without contravention of that subsection and, if the Registrar directs, shall so change it within 6 weeks after the date of the direction or such longer period as the Registrar allows.

(3) Where a licence granted in pursuance of section 21 to a company the name of which contains the words “*Chamber of Commerce*” is revoked, the company shall, within a period of 6 weeks from the date of the revocation or such longer period as the Registrar may think fit to allow, change its name to a name which does not contain those words. If a company makes default in complying with the requirements of this subsection, it is guilty of an offence and liable on conviction to a fine of \$250 for every day during which the default continues.

[S 27/2019]

(4) Any person may apply in writing to the Registrar to give a direction to a company under section 20(1) and (2) on a ground referred to in that subsection, but the Registrar shall not consider any application to give a direction to a company on the ground referred to in section 20(1) and (2) unless the Registrar receives the application within 12 months from the date of change of name of the company.

(5) If the company fails to comply with subsection (2), the company and every officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and a default fine.

(6) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the incorporation of the company under the new name.

(7) The change of name pursuant to this Act does not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

GENERAL PROVISIONS WITH RESPECT TO MEMORANDUM AND ARTICLES

Effect of memorandum and articles

23. Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each

member and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

Moneys payable to be speciality debt

24. All money payable by any member of the company under the memorandum or articles shall be a debt due from him to the company and be of the nature of a speciality debt.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent

25. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section does not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Copies of memorandum and articles to be given to members

26. (1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, and a copy of any written law which alters the memorandum, subject to payment, in the case of a copy of the memorandum and of the articles, of 50 cents or such sum as the company may with the prior approval of the Registrar prescribe, and in the case of a copy of a written law, of such sum not exceeding the published price thereof as the company may require.

(2) If a company makes default in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$100.

Issued copies of memorandum to embody alterations

27. (1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine of \$15 for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

MEMBERSHIP OF COMPANY

Definition of member

28. (1) The subscribers of the memorandum of a company are deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

PRIVATE COMPANIES

Meaning of private company

29. (1) For the purposes of this Act, “private company” means a company which by its articles —

(a) restricts the right to transfer its shares;

(b) limits the number of its members to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be such members after the determination of that employment; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

Circumstances in which company ceases to be, or to enjoy privileges of, private company

30. (1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section 29, are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, within a period of 14 days after the said date, deliver to the Registrar for registration a prospectus or a statement *in lieu* of prospectus in the form and containing the particulars set out in Schedule 2.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine of \$500.

(3) Where the articles of a company include the provisions aforesaid but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies under the provisions contained in sections 31, 109(3) and 129(1), and thereupon those provisions apply to the company as if it were not a private company:

[S 1/2016]

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

**REDUCTION OF NUMBER OF MEMBERS
BELOW LEGAL MINIMUM****Prohibition of carrying on business with fewer than seven or, in case of private company, two members**

31. If at any time the number of members of a company is reduced, in the case of a private company, below two or, in the case of any other company, below seven, and it carries on business for more than 6 months while the number is so reduced, every person who is a member of the

company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time and may be severally sued therefor.

CONTRACTS ETC.

Ratification by company of contracts made before incorporation

31A. (1) Any contract or other transaction purporting to be entered into by a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the persons or persons who purported to act in the name or on behalf of the company shall, in the absence of any express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

Form of contracts

32. (1) Contracts on behalf of a company may be made as follows —

(a) a contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company;

(b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied;

(c) a contract which if made between private persons would be by law be valid although made by parole only, and not reduced into writing, may be made by parole on behalf of the company by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

Bills of exchange and promissory notes

33. A bill of exchange or promissory note is deemed to have been made, accepted or indorsed on behalf of a company if made, accepted or indorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

Execution of deeds abroad

34. (1) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute deeds on its behalf in any place not situate in Brunei Darussalam.

(2) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal.

Power for company to have official seal for use abroad

35. (1) A company whose objects require or comprise the transaction of business outside Brunei Darussalam may, if authorised by its articles, have for use in any territory, district or place not situate in Brunei Darussalam, an official seal, which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

(2) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

(3) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place, to

affix the official seal to any deed or other document to which the company is party in that territory, district or place.

(4) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(5) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other instrument, to which the seal is affixed, the date on which and the place at which it is affixed.

AUTHENTICATION OF DOCUMENTS

Authentication of documents

36. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company and need not be under its common seal.

PART 2

SHARE CAPITAL AND DEBENTURES

PROSPECTUS

Date and registration of prospectus

37. (1) A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be delivered to the Registrar for registration on or before the date of its publication and no such prospectus shall be issued until a copy thereof has been so delivered for registration.

(3) The Registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered, the company and every person who is knowingly a party to the issue of the prospectus is guilty of an offence and liable on conviction to a fine of \$25 for every day from the date of the issue of the prospectus until a copy thereof is so delivered.

Specific requirements as to particulars in prospectus

38. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state the matters specified in Part 1 of Schedule 3 and set out the reports specified in Part 2 of that Schedule, and the said Parts 1 and 2 shall have effect subject to the provisions contained in Part 3 of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection does not apply if it is shown that the form of application was issued either —

(a) in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this subsection, he is guilty of an offence and liable on conviction to a fine of \$5,000.

(4) In the event of a contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the contravention if —

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof;

(b) he proves that the contravention arose from an honest mistake of fact on his part; or

(c) the contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of Part 1 of Schedule 3, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(5) This section does not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject as aforesaid, this section applies to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on alteration of terms in prospectus or statement *in lieu* of prospectus

39. (1) A company limited by shares or a company limited by guarantee and having a share capital shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement *in lieu* of prospectus, except subject to the approval of the statutory meeting.

(2) This section does not apply to a private company.

Liability for statement in prospectus

40. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company —

(a) every person who is a director of the company at the time of the issue of the prospectus;

(b) every person who has authorised himself to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(c) every person being a promoter of the company; and

(d) every person who has authorised the issue of the prospectus,

are liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved —

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public

notice that it was issued without his knowledge or consent;

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor; or

(iv) that —

(A) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true;

(B) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement or it was a correct and fair copy of or extract from the report or valuation; and

(C) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that a person is liable to pay the compensation if it is proved that he had no reasonable ground to believe that the person making any such statement, report or valuation as is mentioned in paragraph (iv)(B) was competent to make it.

(2) Where the prospectus contains the name of a person as a director of the company or as having agreed to become a director thereof,

and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any director without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who, by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section —

“expert” includes an engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;

“promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

Document containing offer of shares or debentures for sale deemed to be prospectus

41. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all written laws and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect

of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall be evidence that, unless the contrary is proved, an allotment of or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown that —

(a) an offer of the shares or debentures or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or

(b) at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) Section 37 as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 38 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus —

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document aforesaid is signed on behalf of the company or firm by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his agent authorised in writing.

ALLOTMENT

Prohibition of allotment unless minimum subscription received

42. (1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors must be raised by the issue of share capital in order to provide for the matters specified in paragraph 5 in Part 1 of Schedule 3, has been subscribed and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection, a sum is deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than *5 per cent* of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of 40 days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest and, if any such money is not so repaid within 48 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of *5 per cent per annum* from the expiration of the 48th day:

Provided that a director is not liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except subsection (3), does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Prohibition of allotment in certain cases unless statement *in lieu* of prospectus delivered to Registrar

43. (1) A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least 3 days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement *in lieu* of prospectus, signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Schedule 4.

(2) This section does not apply to a private company.

(3) If a company acts in contravention of this section, the company and every director of the company who knowingly authorises or permits the contravention is guilty of an offence and liable on conviction to a fine of \$5,000.

Effect of irregular allotment

44. (1) An allotment made by a company to an applicant in contravention of the provisions of sections 42 and 43 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later or, in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment and not later, and shall be so voidable notwithstanding that the company is in the course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of, any of the provisions of the said sections with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of 2 years from the date of allotment.

Return as to allotments by private companies [S 43/2017]

45. (1) A private company may allot new shares, other than a deemed allotment, by lodging with the Registrar —

(a) a return of the allotment in such form as the Registrar may determine, which shall include the following particulars —

- (i) the number and nominal amount of the shares comprised in the allotment;
- (ii) the amount (if any) paid or deemed to be paid on the allotment of each share;
- (iii) the amount (if any) unpaid on each share referred to in sub-paragraph (ii);
- (iv) the full name, identification, nationality (if such identification or nationality, as the case may be, is required by the Registrar) and address of, and the number and class of shares held by each of its members; and

(b) in the case of shares allotted as fully or partly paid-up otherwise than in cash, a contract in writing constituting the title of allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped; and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted.

(2) In this section and section 45A, “deemed allotment” means an issue of shares without formal allotment to subscribers to the memorandum and articles of association.

Return as to allotments by public companies [S 43/2017]

45A. (1) Where a public company makes any allotment of its shares, other than a deemed allotment, the company shall within 14 days thereafter lodge with the Registrar a return of the allotments stating —

- (a) the number of the shares comprised in the allotment;

(b) the amount (if any) paid or deemed to be paid on the allotment of each share;

(c) the amount (if any) unpaid on each share referred to in paragraph (b);

(d) where the capital of the company is divided into shares of different classes, the class of shares to which each share comprised in the allotment belongs; and

(e) the full name, identification, nationality (if such identification or nationality, as the case may be, is required by the Registrar) and address of, and the number and class of shares held by each of the fifty members who, following the allotment, hold the most number of shares in the company.

(2) If default is made in complying with this section, every officer of the public company who is in default is guilty of an offence and liable on conviction to a default fine.

COMMISSIONS AND DISCOUNTS

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts etc.

46. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if —

(a) the payment of the commission is authorised by the articles;

(b) the commission paid or agreed to be paid does not exceed 10 *per cent* of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less;

(c) the amount or rate *per cent* of the commission paid or agreed to be paid —

- (i) in the case of shares offered to the public for subscription, is disclosed in the prospectus; or
- (ii) in the case of shares not offered to the public for subscription, is disclosed in the statement *in lieu* of prospectus or in a statement in the prescribed form signed in like manner as a statement *in lieu* of prospectus, and delivered to the Registrar for registration before the payment of the commission, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, is also disclosed in that circular or notice; and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has up to now been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and is deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the

prescribed form, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

Statement in balance sheet as to commissions and discounts

47. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much, thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Prohibition of provision of financial assistance by company for purchase of own shares

48. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Provided that nothing in this section shall be taken to prohibit —

(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;

(c) the making by a company of loans to persons, other than directors, genuinely in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2) The aggregate amount of any outstanding loans made under the authority of provisos (b) and (c) to subsection (1) shall be shown as a separate item in every balance sheet of the company.

(3) If a company acts in contravention of this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

Acquisition of shares of holding company [S 44/2017]

48A. (1) A company shall not, whether directly or indirectly, in any way acquire or purport to acquire shares or units of shares in a holding company of the company.

(2) A contract or transaction by which a company acquires or purports to acquire shares or units of shares in its holding company in contravention of subsection (1) shall be void.

**ISSUE OF REDEEMABLE PREFERENCE SHARES
AND SHARES AT DISCOUNT**

Power to issue redeemable preference shares

49. (1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that —

(a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(b) no such shares shall be redeemed unless they are fully paid;

(c) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the capital redemption reserve fund,

a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company;

(d) where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

(2) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares and the date on or before which those shares are, or are to be liable, to be redeemed.

If a company fails to comply with the provisions of this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

(3) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any written law relating to stamp duty be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where new shares have been issued in pursuance of subsection (4), the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of

the company to be issued to members of the company as fully paid bonus shares.

Power to issue shares at discount

50. (1) Subject as provided in this section, it shall be lawful for a company to issue, at a discount, shares in the company of a class already issued:

Provided that —

(a) the issue of the shares at a discount must be authorised by resolution passed in general meeting of the company, and must be sanctioned by the Court;

(b) the resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) at the date of the issue, not less than one year must have elapsed since the date on which the company was entitled to commence business; and

(d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue and on any such application the Court, if having regard to all the circumstances of the case, it thinks proper to do so, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question. If default is made in complying with this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

Power of company to arrange for different amounts paid on shares

51. A company, if so authorised by its articles, may do any one or more of the following things —

(a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;

(b) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up;

(c) pay dividend in proportion to the amount paid-up on each share where a larger amount is paid-up on some shares than on others.

Reserve liability of limited company

52. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Power of company limited by shares to alter share capital

53. (1) A company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles, may alter the conditions of its memorandum as follows —

(a) increase its share capital by new shares of such amount as it thinks expedient;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its paid-up shares into stock, and re-convert that stock into paid-up shares of any denomination;

(d) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section must be exercised by the company in general meeting.

(3) A cancellation of shares in pursuance of this section is not deemed to be a reduction of share capital within the meaning of this Act.

Notice to Registrar of consolidation of share capital, conversion of shares into stock etc.

54. (1) If a company having a share capital has —

(a) consolidated and divided its share capital into shares of larger amount than its existing shares;

(b) converted any shares into stock;

(c) re-converted stock into shares;

(d) subdivided its shares or any of them;

(e) redeemed any redeemable preference shares; or

(f) cancelled any shares, otherwise than in connection with a reduction of share capital under section 58,

it shall within one month after doing so give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled, or the stock re-converted.

(2) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Notice of increase of share capital

55. (1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, it shall within 15 days after the passing of the resolution authorising the increase, give to the Registrar notice of the increase, and the Registrar shall record the increase.

(2) The notice to be given as aforesaid shall include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and there shall be forwarded to the Registrar together with the notice a printed copy of the resolution authorising the increase.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Power of unlimited company to provide for reserve share capital on re-registration

56. An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things —

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(b) provide that a special portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Power of company to pay interest out of capital in certain cases

57. (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid-up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that —

(a) no such payment shall be made unless it is authorised by the articles or by special resolution;

(b) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Court;

(c) before sanctioning any such payment the Court may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may before making the appointment, require the company to give security for the payment of the costs of the inquiry;

(d) the payment shall be made only for such period as may be determined by the Court, and that period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided;

(e) the rate of interest shall in no case exceed 4 *per cent per annum* or such other rate as may for the time being be prescribed by the Court;

(f) the payment of the interest shall not operate as a reduction of the amount paid-up on the shares in respect of which it is paid;

(g) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

(2) If default is made in complying with proviso (g) to subsection (1), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$5,000.

REDUCTION OF SHARE CAPITAL

Special resolution for reduction of share capital

58. (1) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may —

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;

(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is referred to in this Act as a resolution for reducing share capital.

Application to Court for confirming order, objections by creditors and settlement of list of objecting creditors

59. (1) Where a company has passed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to subsection (3) —

(a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount —

- (i) if the company admits the full amount of the debt or claim, or, though not admitting it is willing to provide for it, then the full amount of the debt or claim;
- (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if

having regard to any special circumstances of the case it thinks proper to do so, direct that subsection (2) does not apply as regards any class or any classes of creditors.

Order confirming reduction and powers of Court on making order

60. (1) The Court, if satisfied, with respect to every creditor of the company who under section 59 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the Court makes any such order, it may —

(a) if for any special reason it thinks proper to do so, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order as is specified in the order, add to its name as the last words thereof the words “and reduced”; and

(b) make an order requiring the company to publish, as the Court directs, the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words “and reduced”, those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Registration of order and minute of reduction

61. (1) The Registrar, on production to him of an order of the Court confirming the reduction of the share capital of a company and the delivery to him of a copy of the order and of a minute approved by the Court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amount, if any, at the date of the registration deemed to be paid-up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered is deemed to be substituted for the corresponding part of the memorandum and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company is deemed to be an alteration of the memorandum within the meaning of section 27.

Liability of members in respect of reduced shares

62. (1) In the case of a reduction of share capital, a member of the company, past or present, is not liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim, then —

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute, is liable to contribute for the payment of that debt or claim an

amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor

63. If any director, manager, secretary or other officer of the company —

(a) wilfully conceals the name of any creditor entitled to object to the reduction;

(b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

he is guilty of an offence and liable on conviction to a fine and imprisonment for one year.

SUBSTANTIAL SHAREHOLDINGS

[S 33/2016]

Substantial shareholdings and substantial shareholders

63A. (1) For the purposes of this Act, a person has a substantial shareholding in a company if —

(a) he has an interest or interests in one or more voting shares in the company; and

(b) the total votes attached to that share, or those shares, is not less than 5 *per cent* of the total votes attached to all the voting shares in the company.

(2) For the purposes of this Act, a person has a substantial shareholding in a company, being a company the share capital of which is divided into two or more classes of shares, if —

(a) he has an interest or interests in one or more voting shares included in one of those classes; and

(b) the total votes attached to that share, or those shares, is not less than 5 *per cent* of the total votes attached to all the voting shares included in that class.

(3) For the purposes of this Act, a person who has a substantial shareholding in a company is a substantial shareholder in that company.

(4) In this section “voting shares” exclude treasury shares.

Substantial shareholder to notify company of his interests [S 44/2017]

63B. (1) A person who is a substantial shareholder in a public company shall give notice in writing to the company stating —

(a) his name and address; and

(b) full particulars (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder) of —

(i) the voting shares in the company in which he has an interest or interests; and

(ii) each such interest and the circumstances by reason of which he has that interest.

(2) The notice shall be given —

(a) if the person was a substantial shareholder on 31st March 2017, within 6 months after that date; or

(b) if the person became a substantial shareholder after that date, within 7 business days after becoming a substantial shareholder.

(3) The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the expiration of whichever period referred to in subsection (2) is applicable.

Substantial shareholder to notify company of change in interests
[S 44/2017]

63C. (1) Where there is a change in the percentage level of the interest or interests of a substantial shareholder in a public company in voting shares in the company, the substantial shareholder shall give notice in writing to the company stating the information specified in subsection (2) within 2 business days after he becomes aware of such a change.

(2) The information referred to in subsection (1) shall be —

(a) the name and address of the substantial shareholder;

(b) the date of the change and the circumstances leading to that change; and

(c) such other particulars as the Registrar may determine.

(3) In subsection (1), “percentage level”, in relation to a substantial shareholder, means the percentage figure ascertained by expressing the total votes attached to all the voting shares in which the substantial shareholder has an interest or interests immediately before or immediately after, as the case may be, the relevant time as a percentage of the total votes attached to —

(a) all the voting shares in the company; or

(b) where the share capital of the company is divided into two or more classes of shares, all the voting shares included in the class concerned,

and, if it is not a whole number, rounding that figure down to the next whole number.

Person who ceases to be substantial shareholder to notify company
[S 44/2017]

63D. (1) A person who ceases to be a substantial shareholder in a public company shall give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he ceased to be a substantial shareholder.

(2) The notice shall be given within 2 business days after the person ceased to be a substantial shareholder.

References to operation of section 3A *[S 44/2017]*

63E. (1) The circumstances required to be stated in the notice under section 63B, 63C or 63D include circumstances by reason of which, having regard to section 3A —

- (a) a person has an interest in voting shares;
- (b) a change has occurred in an interest in voting shares; or
- (c) a person has ceased to be a substantial shareholder in a company, respectively.

Company to keep register of substantial shareholders *[S 44/2017]*

63F. (1) A public company shall keep a register in which it shall immediately enter —

- (a) in alphabetical order, the names of persons from whom it has received a notice under section 63B; and
- (b) against each name so entered, the information given in the notice and, where it receives a notice under section 63C or 63D, the information given in that notice.

(2) The register shall be kept —

- (a) at the registered office of the public company; or

(b) if the company does not have a registered office, at the principal place of business of the company in Brunei Darussalam,

and shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$2 or such lesser sum as the company requires.

(3) A person may request the company to furnish him with a copy of the register or any part of the register on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person, within 14 days or such longer period as the Registrar thinks fit, after the day on which the request is received by the company.

(4) The Registrar may at any time in writing require the company to furnish him with a copy of the register or any part of the register and the company shall furnish the copy within 7 days after the day on which the requirement is received by the company.

(5) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and in the case of a continuing offence to a further fine of \$500 for every day during which the offence continues after conviction.

(6) A company is not, by reason of anything done under this Part —

(a) to be taken for any purpose to have notice of; or

(b) to be put on inquiry as to,

a right of a person to or in relation to a share in the company.

VARIATION OF SHAREHOLDERS' RIGHTS

Rights of holders of special classes of shares

64. (1) If in the case of a company, the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to

any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15 *per cent* of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within 7 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application is final.

(5) The company shall, within 15 days after the making of an order by the Court on any such application, forward a copy of the order to the Registrar and, if default is made in complying with this provision, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(6) In this section, “variation” includes abrogation and “varied” shall be construed accordingly.

TRANSFER OF SHARES AND DEBENTURES, EVIDENCE OF TITLE

Nature of shares

65. (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company and shall not be of the nature of immovable property.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

(3) Where shares in a company are held by a nominee, such nominee shall disclose the identity of each person on whose behalf those shares are held.

(4) The disclosure as required in subsection (3) shall be made in writing to the company within one month of the acquisition of nominee shares.

(5) The company is required to maintain a register of disclosure of nominee shareholdings.

(6) Notwithstanding subsections (3), (4) and (5), all companies that know or have reasonable cause to believe that any of their shares are held by a nominee, shall require such nominee to disclose the identity of each person for whom the shares are held. The nominee shall provide this information within 10 days of the receipt of notice to this effect.

(7) A nominee shareholder who fraudulently provides information to the company which he knows or has reason to believe to be false or misleading is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 2 years or both.

Transfer not to be registered except on production of instrument of transfer

66. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

Transfer by personal representative

67. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.

Registration of transfer at request of transferor

68. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

Notice of refusal to register transfer

69. (1) If a company refuses to register a transfer of any shares or debentures, the company shall, within 2 months after the date on which the transfer was lodged with the company, send to the transferee notice of the refusal.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

Duties of company with respect to issue of certificates

70. (1) Every company shall, within 2 months after the allotment of any of its shares, debentures or debenture stock, and within 2 months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

For the purposes of this subsection, “transfer” means a transfer duly stamped and otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues.

(3) If any company on whom a notice has been served requiring the company to make good any default in complying with the provisions of subsection (1) fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificate or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order, and any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company responsible for the default.

Certificate to be evidence of title

71. A certificate, under the common seal of the company, specifying any shares held by any member, shall be evidence until the contrary be proved of the title of the member to the shares.

Evidence of grant of probate

72. The production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, or confirmation as executor, of a deceased person having been granted to some person, shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of the grant.

Share warrants

73. A company shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares specified therein and which enables the shares to be transferred by delivery of the warrant.

Penalty for personation of shareholder

74. If any person falsely and deceitfully personates any owner of any share or interest in any company, or of any share warrant or coupon, issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if the offender were the true

and lawful owner, he is guilty of a seizable offence and liable on conviction to imprisonment for 15 years.

SPECIAL PROVISIONS AS TO DEBENTURES

Right of debenture holders and shareholders to inspect register of debenture holders and to have copies of trust deed

75. (1) Every register of holders of debentures of a company shall, except when duly closed, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that not less than 2 hours in each day shall be allowed for inspection. For the purposes of this subsection, a register is deemed to be duly closed if closed in accordance with provisions contained in the articles or in the debentures or, in the case of debenture stock, in the stock certificates, or in the trust deed or other document securing the debentures or debenture stock, during such period or periods, not exceeding in the whole 30 days in any year, as may be therein specified.

(2) Every registered holder of debentures and every holder of shares in a company may require a copy of the register of the holders of debentures of the company or any part thereof on payment of 50 cents for every 100 words required to be copied.

(3) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request, in the case of a printed trust deed, on payment of the sum of \$1 or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of 50 cents for every one hundred words required to be copied.

(4) If inspection is refused, or a copy is refused or not forwarded, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$500 and a default fine of \$20.

(5) Where a company is in default as aforesaid, the Court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the person requiring them.

Perpetual debentures

76. A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to re-issue redeemed debentures in certain cases

77. (1) Where after 1st January 1957, being the date of commencement of this Act, a company has redeemed any debentures previously issued, then —

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,

the company shall have, and is deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and is deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has power to re-issue debentures which have been redeemed, particulars with respect to the debentures which can be so re-issued shall be included in every balance sheet of the company.

(4) Where a company has after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or other rent account or otherwise, the debentures are not deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been

possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company is liable to pay the proper stamp duty and penalty.

Specific performance of contracts to subscribe for debentures

78. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

79. *(Repealed by S 10/2016).*

PART 3

(Repealed by S 10/2016)

80. — 91. *(Repealed by S 10/2016).*

PART 4

MANAGEMENT AND ADMINISTRATION

REGISTERED OFFICE AND NAME

Registered office of company

92. (1) A company shall, as from the date of its incorporation, have a registered office within Brunei Darussalam —

(a) to which all communications and notices may be addressed; and

(b) which shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each business day.

[S 43/2017]

(2) Notice of the situation of the registered office, and of any change therein shall be given within 28 days after the date of the change to the Registrar, who shall record the same. The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by this subsection.

[S 43/2017]

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Publication of name and registration number

[S 27/2019]

93. (1) Every company shall —

(a) paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) have its name engraven in legible characters on its seal; and

(c) have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(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.

[S 27/2019]

(2) If a company does not paint or affix its name in manner directed by this Act, the company and every officer of the company who is in

default is guilty of an offence and liable on conviction to a fine of \$250, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(3) If a company fails to comply with any of the provisions of subsections (1) and (2), the company is guilty of an offence and liable on conviction to a fine of \$500.

(4) If a director, manager, or officer of a company or any person on its behalf —

(a) uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid;

(b) issues or authorises the issue of any notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorises the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

he is guilty of an offence and liable on conviction to a fine of \$500 and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

RESTRICTIONS ON COMMENCEMENT OF BUSINESS

Restrictions on commencement of business

94. (1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless —

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been delivered to the Registrar for registration a declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless —

(a) there has been delivered to the Registrar for registration a statement *in lieu* of prospectus;

(b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the Registrar for registration a declaration by a person entitled to practise as an advocate, who is engaged in the formation of the company, or the secretary or one of the directors in the prescribed form that paragraph (b) has been complied with.

(3) The Registrar shall, on the delivery to him of the said declaration and, in the case of a company which is required by this section to deliver a statement *in lieu* of prospectus, of such a statement certifying that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(6) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention is, without prejudice to any other liability, guilty of an offence and liable on conviction to a fine of \$250 for every day during which the contravention continues.

(7) If a company fails to obtain a certificate to commence business within one year of the date of its incorporation, the Registrar shall send by registered post to the company at its registered office a letter calling upon the company to apply for such certificate.

(8) If the company fails to obtain such certificate within one month of the posting of such letter, the Registrar shall publish in the *Gazette* a notice to the effect that the company will be struck off the register if it fails to obtain such certificate within 2 months after the publication of such notice.

(9) If the company fails to obtain such certificate within 2 months of the publication of such notice, the Registrar shall strike the company off the register and shall publish in the *Gazette* a notification to the effect that the company has been struck off the register.

(10) Upon the publication in the *Gazette* of such notification, the company is deemed to be dissolved.

(11) If any company is struck off the register or dissolved under the provisions of this section, the Court, on the application of the company or of any member or creditor thereof may, on any ground which may seem fit to the Court, order that the company be restored to the register, either permanently or temporarily, and may make such restoration subject to any condition which may seem fit to the Court.

(12) Upon the making of any such order, the company shall be restored to the register and shall, subject to any order which the Court may make, be deemed to have continued in existence as if it had not been struck off the register, and the Court may give any directions which may seem necessary in the circumstances.

(13) If no office of the company has been registered, copies of the letter referred to in subsection (7) shall be sent by the Registrar by registered post to each of the persons who subscribed the memorandum of the company at the respective addresses given therein.

(14) Nothing in this section applies to a private company.

REGISTER OF MEMBERS

Register of members

95. (1) Every company shall keep in one or more books, a register of its members, and enter therein the following particulars —

(a) the names and addresses, and the occupations, if any, of the members, and in the case of a company having a share capital a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(2) If default is made in complying with this section, the company and every officer of the company who is in default are liable to a default fine.

Index of members of company

96. (1) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(2) The index, which may be in the form of a card index, shall in respect of each member contain sufficient indication to enable the account of that member in the register to be readily found.

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Provisions as to entries in register in relation to share warrants

97. (1) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member and shall enter in the register the following particulars —

- (a) the fact of the issue of the warrant;
- (aa) name and particulars of the holder of the warrant;
- (b) a statement of the shares included in the warrant, distinguishing each share by its number; and
- (c) the date of the issue of the warrant.

(2) The holder of a share warrant is required to surrender the warrants for cancellation by 31st December 2015 and have his name entered as a member in the register of members.

(3) The company shall be responsible for any loss incurred by any person by reason of the company entering in the register the name of a holder of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) Until the warrant is surrendered, the particulars specified in subsection (1) are deemed to be the particulars required by this Act to be entered in the register of members, and on the surrender, the date of the surrender must be entered.

(5) Subject to the provisions of this Act, the holder of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company, either to the full extent or for any purposes defined in the articles.

Inspection of register of members

98. (1) The register of members, commencing from the date of the registration of the company, and the index of the names of members, shall be kept at the registered office of the company, and except when the register is closed under the provisions of this Act, shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge and of any other person on payment of \$5 or such less sum as the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register or of any part thereof, on payment of 50 cents or such less sum as the company may prescribe, for every one hundred words or fractional part thereof required to be copied. The company shall cause any copy so required by any person to be sent to that person within a period of 10 days commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under subsection (1) is refused or if any copy required under subsection (2) is not sent within the proper period, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$200 and a default fine of \$20.

[S 37/2020]

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the register and index or direct that the copies required shall be sent to the persons requiring them.

Power to close register

99. A company may, on giving notice by advertisement in some newspaper in Brunei Darussalam, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Power of Court to rectify register in respect of member of company*[S 27/2019]*

100. (1) If —

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(2) Where an application is made under this section, the Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section, the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) In the case of a company required by this Act to send a list of its members to the Registrar, the Court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

Power of Court to rectify register in respect of company [S 27/2019]

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 [S 27/2019]

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 [S 27/2019]

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 [S 27/2019]

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.

Trusts not to be entered on register

101. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in Brunei Darussalam.

Register to be evidence

102. The register of members shall, unless and until the contrary be proved, be evidence of any matters by this Act directed or authorised to be inserted therein.

LOCAL OR BRANCH REGISTERS

Power for company to keep local or branch register

103. (1) The Registrar may, subject to instruction from the Minister issue an annual licence, available for the period of one year, to any company whose objects comprise the transaction of business outside Brunei Darussalam, empowering such company, if it is authorised so to do by its regulations as originally framed or as altered by special resolution, to keep in any place in which it transacts business a register or registers of members:

[S 27/2019]

Provided that a company applying for such licence must satisfy the Registrar, by a statutory declaration to be filed with him or otherwise, that a substantial part of the business of the company is carried on, at or near the place where it desires to keep such register.

Every such licence shall be valid only until the 31st day of December next following the date on which it is issued:

Provided always that where the period between the date of the issue of the first annual licence to a company and the 31st day of December next

following is less than a year, a proportionate part only of the fee mentioned in subsection (2) shall be charged.

(2) An annual fee at the rate of 2 cents for every \$100 of the paid-up capital of the company to which the licence is issued shall be paid by such company in respect of such licence. Such fees shall be paid to the Registrar within 4 months of the date of the licence.

(3) When the Registrar has reasonable cause to believe that a company is keeping, in any place where it transacts business outside Brunei Darussalam, a register of members without having a valid licence under this Act, he shall publish in the *Gazette* and send to the company a notice that at the expiration of 2 months from the date of such notice the name of the company mentioned therein will, unless cause to the contrary is shown, be struck off the register and the company will be dissolved.

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the register and shall publish notice thereof in the *Gazette*, and on such publication the company whose name is so struck off shall be dissolved:

Provided that the liability, if any, of every director, managing officer and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the Court, and the Court, if it is satisfied that it is just to do so, may order the name of the company to be restored to the register and thereupon the company is deemed to have continued in existence as if the name had never been struck off, and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of the company had never been struck off.

(6) A letter or notice under this section may be addressed to the company as its registered office, or if no office has been registered, to the care of some director or officer of the company, or if there is no director or officer of the company whose name and address are known to the Registrar,

may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(7) If default is made in complying with subsection (2), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Regulations as to branch register

104. (1) A local or branch register is deemed to be part of the company's register of members (in this section and in section 105 referred to as the principal register).

(2) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in Brunei Darussalam.

(3) The company shall transmit to its registered office a copy of every entry in its local or branch register as soon as practicable after the entry is made, and shall cause to be kept at its registered office, duly entered up from time to time, a duplicate of its local or branch register. Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in a local or branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a local or branch register shall, during the continuance of that registration, be registered in any other register.

(5) A company may discontinue to keep a local or branch register, and thereupon all entries in that register shall be transferred to some other local or branch register kept by the company or to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such provisions as it may think fit respecting the keeping of local or branch registers.

(7) If default is made in complying with subsection (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Exemption from certain duties in case of shares registered in local branch registers

105. (1) An instrument of transfer of a share registered in a local or branch register, is deemed to be a transfer of property situate out of Brunei Darussalam, and unless executed in any part of Brunei Darussalam, shall be exempt from stamp duty chargeable in Brunei Darussalam.

(2) No estate duty shall be payable in respect of the share or other interest of a deceased member registered in a local or branch register kept out of Brunei Darussalam under this Act.

Provisions as to or branch registers of companies kept in Brunei Darussalam

106. If by virtue of the law in force in any foreign country, companies incorporated under the law of that foreign country and registered in Brunei Darussalam under Part 9 of the Act, have power to keep in the Brunei Darussalam local or branch registers of their members resident in Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan in Council* may by order direct that sections 98 and 100 shall, subject to any modifications and adaptations specified in the order, apply to and in relation to any such local or branch registers kept in Brunei Darussalam as they apply to and in relation to the registers of companies within the meaning of this Act.

ANNUAL RETURN

Annual return to be made by company having share capital

107. (1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

* Transferred to the Minister of Law** with effect from 31st December 1988 — [S 31/1988]

**Transferred further to the Registrar of Companies with effect from 16th September 1998 — [S 32/1998]

(2) The list must state the names, addresses and occupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares herein before required.

(3) The return must also state the address of the registered office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid-up otherwise than in cash, and specifying the following particulars —

(a) the amount of the share capital of the company, and the number of the shares into which it is divided;

(b) the number of shares taken from the commencement of the company up to the date of the return;

(c) the amount called up on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of the sums, if any, paid by way of commission in respect of any shares or debentures;

(g) particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made;

(h) the total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return;

(i) the total number of shares forfeited;

(j) the total amount of shares for which share warrants are outstanding at the date of the return;

(k) the total amount of share warrants issued and surrendered respectively since the date of the last return;

(l) the number of shares comprised in each share warrant;

(m) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company;

(n) the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be, registered with the Registrar under this Act.

(4) The return shall be in accordance with the form set out in Schedule 5 or as near thereto as circumstances admit.

(5) In the case of a company keeping a branch register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are received at the registered office of the company.

Annual return to be made by company not having share capital

108. (1) Every company not having a share capital shall once at least in every year make a return stating —

(a) the address of the registered office of the company;

(b) all such particulars with respect to the persons who at the date of the return are the directors of the company as are by this

Act required to be contained with respect to directors in the register of directors of a company.

(2) *(Repealed by S 27/2019).*

General provisions as to annual returns

109. (1) The annual return must be contained in a separate part of the register of members and must be completed within 28 days after the first or only general meeting in the year, and the company shall forthwith forward to the Registrar a copy signed by a director or by the manager or by the secretary of the company.

(2) Section 98 applies to the annual return as it applies to the register of members.

(3) Except where the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in such language as may be prescribed by the Registrar, certified in the prescribed manner to be a correct translation:

Provided that, if such last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets, there shall be made such additions to and corrections in such copy as would have been required to be made in such balance sheet in order to make it comply with such requirements, and the fact that such copy has been so amended shall be stated thereon.

(4) If a company contravenes this section or, section 107 or 108, the company and every officer of the company who is in default are liable to a default fine.

(5) For the purposes of subsection (4) "officer", and for the purposes of sections 107 and 108 "director", shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

Certificates to be sent by private company with annual return

110. A private company shall send with the annual return required by section 107 a certificate signed by a director or the secretary of the company that the company has not issued, since the date of the last return, or in the case of a first return, since the date of the incorporation of the company, any invitation to the public to subscribe for any shares or debentures of the company, and where the annual return discloses the fact that the number of members of the company exceeds fifty, also a certificate so signed that the excess consists wholly of persons who, under section 29(1)(b), are not to be included in reckoning the number of fifty.

MEETINGS AND PROCEEDINGS**Annual general meetings**

111. (1) A general meeting of every company, to be called the annual general meeting, shall in addition to any other meeting be held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(2) Notwithstanding subsection (1), the Registrar, on the application of the company, may, if for any special reason he thinks fit to do so, extend the period of 15 months or 18 months referred to in that subsection, notwithstanding that such period is so extended beyond the calendar year.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or summoned to be held shall be the annual general meeting of the company.

(4) If default is made in holding an annual general meeting —

(a) the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and a default fine; and

(b) the Court may on the application of any member order a general meeting to be called.

Statutory meeting and statutory report

112. (1) Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than 3 months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2) The directors shall, at least 7 days before the day on which the meeting is held, forward a report to every member of the company.

(3) The statutory report shall be certified by not less than two directors of the company, or where there are less than two directors, by the sole director and manager, and shall state —

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid-up otherwise than in cash, and stating in the case of shares partly paid-up the extent to which they are so paid-up, and in either case the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within 7 days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be delivered to the Registrar for registration forthwith after the sending thereof to the members of the company.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(9) In the event of any default in complying with the provisions of this section, every director of the company who is guilty of or who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine of \$2,500.

(10) This section does not apply to a private company.

Convening of extraordinary general meeting on requisition

113. (1) The directors of a company, notwithstanding anything in its articles shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit, carries the right of voting at general meetings of the company, or in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at such date a right to vote at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months from such date.

(4) A meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

(6) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by section 116.

Calling of meetings [S 44/2017]

113A. A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 21 days or such longer period as provided in the articles.

Members' rights of meetings [S 44/2017]

113B. A member shall, notwithstanding any provision in the memorandum or articles of a company, have a right to attend any general meeting of the company and to speak on any resolution before the meeting.

Provisions as to meetings and votes

114. (1) Without prejudice to the provisions of sections 113A and 113B, the following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf —

[S 44/2017]

(a) *(deleted by S 44/2017)*;

(b) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A, and for the purpose of this paragraph the expression "Table A" means that table as for the time being in force;

(c) two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than 5 *per cent* in number of the members of the company may call a meeting;

(d) in the case of a private company two members, and in the case of any other company three members, personally present shall be a *quorum*;

(e) any member elected by the members present at a meeting may be chairman thereof;

(f) in the case of a company originally having a share capital, every member shall have one vote in respect of each share

or each \$100 of stock held by him, and in any other case every member shall have one vote.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made, may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

Representation of companies at meetings of other companies and of creditors

115. (1) A corporation, whether a company within the meaning of this Act or not, may —

(a) if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company, held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or holder of debentures, of that other company.

Provisions as to extraordinary and special resolutions

116. (1) A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(2) A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given.

(3) At any meeting at which an extraordinary resolution or a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) *(Repealed by S 44/2017).*

(5) *(Repealed by S 44/2017).*

(6) For the purposes of this section, notice of a meeting is deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by this Act or the articles.

Right to demand poll [S 44/2017]

116A. (1) Any provision in the memorandum or articles of a company shall be void in so far as it would have the effect —

(a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made —

- (i) by not less than five members having the right to vote at the meeting;
- (ii) by a member or members representing not less than 5 *per cent* of the total voting rights of all the members having the right to vote at the meeting; or
- (iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5 *per cent* of the total sum paid up on all the shares conferring that right.

(2) Notwithstanding subsection (1)(b), where any provision of the memorandum and articles of a company incorporated before 31st March 2017 is void under subsection (1)(b)(ii) or (iii), a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting may be made —

(a) by a member or members representing not less than 5 *per cent* of the total voting rights of all the members having the right to vote at the meeting; or

(b) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 5 *per cent* of the total sum paid up on all the shares conferring that right.

Registration and copies of certain resolutions and agreements

117. (1) A printed copy of every resolution or agreement to which this section applies shall, within 15 days after the passing or making thereof, be forwarded to the Registrar and recorded by him.

(2) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one dollar or such sum as the company with the approval of the Registrar direct.

(4) This section applies to —

(a) special resolutions;

(b) extraordinary resolutions;

(c) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

(d) resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(e) resolution requiring a company to be wound up voluntarily, passed under section 66(1)(a) of the Insolvency Order, 2016 (S 1/2016).

[S 1/2016]

(5) If a company fails to comply with subsection (1), the company and every officer of the company who is in default are liable to a default fine of \$50.

(6) If a company fails to comply with subsection (2) or (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$15 for each copy in respect of which default is made.

(7) For the purposes of subsections (5) and (6), a liquidator of the company is deemed to be an officer of the company.

Resolutions passed at adjourned meetings

118. Where a resolution is passed at an adjourned meeting of —

- (a) a company;
- (b) the holders of any class of shares in a company;
- (c) the directors of a company,

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and is not deemed to have been passed on any earlier date.

Resolution requiring special notice [S 44/2017]

118A. Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than 14 days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this subsection, is deemed to be properly given.

Minutes of proceedings of meetings and directors

119. (1) Every company shall cause minutes of all proceedings of general meetings, and where there are directors or managers, of all proceedings at meetings of its directors or of its managers, to be entered in books kept for that purpose.

(2) Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any general meeting of the company or meeting of directors or managers, then, until the contrary is proved, the meeting is deemed to have been duly held and convened, and all

proceedings had thereat to have been duly had, and all appointments of directors, managers or liquidators are deemed to be valid.

Inspection of minute books

120. (1) The books containing the minutes of proceedings of any general meeting of a company held after 1st January 1957, being the date of commencement of this Act, shall be kept at the registered office of the company, and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than 2 hours in each day be allowed for inspection) be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished with, within 7 days after he has made a request in that behalf to the company, a copy of any such minutes as aforesaid at a charge not exceeding 50 cents for every one hundred words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of each company who is in default is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$200 and a default fine of \$20.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

Interpretation [S 27/2019]

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.

ACCOUNTS AND AUDIT

Keeping of books of account

121. (1) Every company shall cause to be kept proper books of account with respect to —

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company,

[S 27/2019]

as will sufficiently explain the transactions and financial position of the company and for this purpose every company shall cause to be kept the following books —

[S 27/2019]

- (i) a cash book or books which shall contain a full and complete record of all sums of money paid to the company or to any agent of the company and of all sums of money expended by the company or by any agent of the company and of the matters in respect of which such receipt and expenditure take place:

Provided that, there shall also be kept a book which shall contain a daily summary of all the receipts and payments which are recorded in the cash book or books. There shall be set out in such summary under appropriate heads the daily totals of receipts and payments in such a manner as to show clearly their respective sources and the accounts in respect of which they are made, and full particulars shall be given in respect of all

receipts and payments on account of capital and of all payments made to directors of the company. The entries in such book shall in every case be made at a date not later than one month from the date under which the transactions of which they are a record are entered in the cash book or books;

- (ii) a journal or other book or books in which shall be recorded all financial transactions of the company other than cash transactions and all transactions which in any way affect the accretions and diminutions on capital and revenue accounts of the company with full explanations of such transactions; and
- (iii) a ledger or other book or books in which shall be entered each to its proper account the transactions recorded in the cash book and journal so as to show the financial relations of the company with every party with whom it has dealings and the financial position of the company itself.

(1A) The company shall retain the records referred to in subsection (1) for a period of not less than 7 years from the end of the financial year in which the transaction or operations to which those records relate, are completed.

(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.

[S 27/2019]

(2) The books of account shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$5,000 or imprisonment for 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

Profit and loss account and balance sheet

122. (1) The directors of every company shall, at some date not later than 18 months after the incorporation of the company and subsequently once at least in every calendar year, lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than 9 months or, in the case of a company carrying on business or having interests abroad, by more than 12 months:

Provided that the Court, if for any special reason they think fit so to do, may, in the case of any company, extend the period of 18 months and in the case of any company and with respect to any year extend the periods of 9 and 12 months.

(2) The directors shall cause to be made out in every calendar year and to be laid before the company in general meeting, a balance sheet as at the date to which the profit and loss account, or the income and expenditure account, as the case may be, is made-up, and there shall be attached to every such balance sheet a report by the directors with respect to the state of the company's affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to the reserve fund, general reserve or reserve account shown specifically on the balance sheet, or to a reserve fund, general reserve or reserve account to be shown specifically on a subsequent balance sheet.

(2A) The report to which subsection (2) relates shall state with appropriate details —

(a) the names of the directors in office during the period under report;

(b) whether during the financial year under report, the company was party, to any arrangements whose objects were, (or one of whose objects was), to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company. If so, the report shall contain —

(i) a statement explaining the effect of the arrangements;

(ii) the names of the persons who at any time during that year were —

(A) directors of the company; and

(B) had held (or whose nominees held) shares or debentures acquired in pursuance of the arrangements; and

(c) the following information —

(i) whether or not any director of the company was interested (at the end of the year under report) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so, the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested; and

(ii) whether or not, any director of the company was interested, at the beginning of the year under report (or if he was not then a director, when he became a director) in shares in (or debentures of) the company or any other body corporate (being the company's subsidiary, holding company or subsidiary of company's holding company). If so,

the number and amount of shares in (and debentures of) each body (specifying it) in which he was then interested.

(2B) The directors of a company shall state in the report whether since the end of the previous financial year a director of the company has received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts; if the company is a holding company, the consolidated accounts in accordance with the applicable accounting standards or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest and, if so, the general nature of the benefit.

(2C) The Minister may prescribe additional information to be provided in the report under this section. The additional information shall be such as considered necessary by the Minister to facilitate understanding of the business of the company (or group of companies of the holding company, as the case may be) by members of the company (or holding company, as the case may be).

(3) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he is guilty of an offence and liable on conviction to, in respect of each offence, a fine of \$5,000 or imprisonment for 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

Contents of balance sheet

123. (1) Every balance sheet of a company shall contain a summary of the authorised share capital and of the issued share capital of the company, its liabilities and its assets, together with such particulars as are necessary to disclose the general nature of the liabilities and the assets of the company and to distinguish between the amounts respectively of the fixed assets and of the floating assets, and shall state how the values of the fixed assets have been arrived at.

(2) There shall be stated under separate headings in the balance sheet, so far as they are not written off —

(a) the preliminary expenses of the company;

(b) any expenses incurred in connection with any issue of share capital or debentures; and

(c) if it is shown as a separate item in or is otherwise ascertainable from the books of the company, or from any contract for the sale or purchase of any property to be acquired by the company, or from any documents in the possession of the company relating to the stamp duty payable in respect of any such contract or the conveyance of any such property, the amount of the goodwill and of any patents and trade marks as so shown or ascertained.

(3) Where any liability of the company is secured otherwise than by operation of law on any assets of the company, the balance sheet shall include a statement that liability is so secured, but it shall not be necessary to specify in the balance sheet the assets on which the liability is secured.

(4) The provisions of this section are in addition to other provisions of this Act requiring other matters to be stated in balance sheets.

Assets consisting of shares in subsidiary companies to be set out separately in balance sheet

124. Where any of the assets of a company consist of shares in, or amounts owing (whether on account of a loan or otherwise) from a subsidiary company or subsidiary companies, the aggregate amount of those assets, distinguishing shares and indebtedness, shall be set out in the balance sheet of the first-mentioned company separately from all its other assets, and where a company is indebted, whether on account of a loan or otherwise, to a subsidiary company or subsidiary companies, the aggregate amount of that indebtedness shall be set out in the balance sheet of that company separately from all its other liabilities.

Balance sheet to include particulars as to subsidiary companies

125. (1) Where a company (in this section referred to as the holding company) holds shares either directly or through a nominee in a subsidiary

company or in two or more subsidiary companies, there shall be annexed to the balance sheet of the holding company a statement, signed by the persons by whom in pursuance of section 128 the balance sheet is signed, stating how the profits and losses of the subsidiary company or, where there are two or more subsidiary companies, the aggregate profits and losses of those companies have, so far as they concern the holding company, been dealt with, in or for the purposes of, the accounts of the holding company, and in particular how and to what extent —

(a) provision has been made for the losses of a subsidiary company either in the accounts of that company or of the holding company or of both; and

(b) losses of a subsidiary company have been taken into account by the directors of the holding company in arriving at the profits and losses of the holding company as disclosed in accounts:

Provided that it shall not be necessary to specify in any such statement the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(2) If in the case of a subsidiary company the auditors' report on the balance sheet of the company does not state without qualification that the auditors have obtained all the information and explanations they have required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company, the statement which is to be annexed as aforesaid to the balance sheet of the holding company shall contain particulars of the manner in which the report is qualified.

(3) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the holding company relate or if there are no such accounts of the subsidiary company available at the time when the accounts of the holding company are made up, the profits or losses shown in the last previous accounts of the subsidiary company which became available within that period.

(4) If for any reason the directors of the holding company are unable to obtain such information as is necessary for the preparation of the statement aforesaid, the directors who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet *in lieu* of the statement.

Meaning of subsidiary company

126. (1) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and —

(a) the amount of the shares so held is at the time when the accounts of the holding company are made up, more than 50 *per cent* of the issued share capital of that other company or such as to entitle the company to more than 50 *per cent* of the voting power in that other company; or

(b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company is deemed to be a subsidiary company within the meaning of this Act, and “subsidiary company” in this Act means a company in the case of which the conditions of this section are satisfied.

(2) Where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall for the purpose of determining under this section whether that other company is a subsidiary company be taken of the shares so held.

Accounts to contain particulars as to loans to, and remuneration of, directors etc.

127. (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing —

(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during such period;

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them, by or from the company or by or from any subsidiary company.

(2) The provisions of subsection (1) with respect to loans do not apply —

(a) in the case of a company the ordinary business of which includes the lending of money to a loan made by the company in the ordinary course of its business; or

(b) to a loan made by the company to any employee of the company if the loan does not exceed \$20,000 and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

(3) The provisions of subsection (1) with respect to the remuneration paid to directors do not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in that total amount any sums paid to him except sums paid by way of directors' fees.

(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) In this section, “emoluments” includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Signing of balance sheet

128. (1) Every balance sheet of a company shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditors’ report shall be attached to the balance sheet, and the report shall be read before the company in general meeting, and shall be open to inspection by any member.

(2) In the case of a banking company, the balance sheet must be signed by the secretary or manager, if any, and where there are more than three directors of the company, by at least three of those directors, and where there are not more than three directors, by all the directors.

(3) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated or published without having a copy of the auditors’ report attached thereto, the company and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, is guilty of an offence and liable on conviction to a fine of \$5,000.

Right to receive copies of balance sheets and auditors’ report

129. (1) In the case of a company not being a private company —

(a) a copy of every balance sheet including every document required by law to be annexed thereto which is to be laid before the company in general meeting, together with a copy of the auditors’ report shall, not less than 7 days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company;

(b) any member of the company, whether he is or is not entitled to have sent to him copies of the company’s balance sheets, and any holder of debentures of the company, shall be entitled to be furnished on demand without charge with a copy of the last balance sheet of the company, including every document

required by law to be annexed thereto, together with a copy of the auditors' report on the balance sheet.

If default is made in complying with paragraph (a), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$200, and if, where any person makes a demand for a document with which he is by virtue of paragraph (b) entitled to be furnished, default is made in complying with the demand within 7 days after the making thereof, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default is guilty of an offence and liable on conviction to a fine of \$25 for every day during which the default continues, unless it is proved that person has already made a demand for and been furnished with a copy of the document.

(2) In the case of a company being a private company, any member shall be entitled to be furnished with, within 7 days after he has made a request in that behalf to the company, a copy of the balance sheet and auditors' report at a charge not exceeding 50 cents for every one hundred words. If default is made in furnishing such a copy to any member who demands it and tenders to the company the amount of the proper charge therefor, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

When corporations deemed to be related to each other [S 33/2016]

129A. Where a corporation —

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation; or

(c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.

Audit committees [S 33/2016]

129B. (1) Every public company shall have an audit committee.

(2) An audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of three or more members of whom a majority shall not be —

(a) executive directors of the company or any related corporation;

(b) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or

(c) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

(3) The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.

(4) If a member of an audit committee resigns, dies or for any other reason ceases to be a member with the result that the number of members is reduced below three, the board of directors shall, within 3 months of that event, appoint such number of new members as may be required to make up the minimum number of three members.

(5) The functions of an audit committee shall be —

(a) to review —

(i) with the auditor, the audit plan;

(ii) with the auditor, his evaluation of the system of internal accounting controls;

(iii) with the auditor, his audit report;

(iv) the assistance given by the officers of the company to the auditor;

(v) the scope and results of the internal audit procedures; and

- (vi) the balance sheets of the company and of the parent company, submitted to it by the company or the parent company, and thereafter to submit them to the directors of the company or parent company; and

(b) to nominate a person or persons as auditor, notwithstanding anything contained in the memorandum and articles of association of the company or under section 131,

together with such other functions as may be agreed to by the audit committee and the board of directors.

(6) The auditor has the right to appear and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the audit committee.

(7) On the request of the auditor, the chairman of the audit committee shall convene a meeting of the audit committee to consider any matter the auditor believes should be brought to the attention of the directors or shareholders.

(8) Each audit committee may regulate its own procedure and in particular the calling of meetings, the notice to be given of such meetings, the voting and proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

(9) Any reference in this section to a director who is not an executive director of a company is a reference to a director who is not an employee of, and does not hold any other office of profit in, the company or in any related corporation of that company in conjunction with his office of director and his membership of any audit committee, and any reference to an executive director shall be read accordingly.

(10) If any person being a director of a company —

(a) fails to comply with any provision of this section;

(b) fails to take all reasonable steps to secure compliance by the company with any such provision; or

(c) has by his own wilful act been the cause of any default by the company of any such provision,

he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years:

Provided that a person shall not be sentenced to imprisonment for an offence under this section unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

130. *(Repealed).*

Appointment and remuneration of auditors

131. (1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Court may, on the application of any member of the company, appoint an auditor of the company for the current year.

(3) (a) The Permanent Secretary shall publish annually, by notification published in the *Gazette*, a list in two parts containing the names of all persons who are authorised by His Majesty the Sultan and Yang Di-Pertuan in Council* to perform the duties required by this Act to be performed by an auditor, and shall from time to time similarly publish the names of persons added to or removed from any part of the last published annual list by order of His Majesty the Sultan and Yang Di-Pertuan in Council*. The last published annual list as so amended is deemed the current authorised list.

[S 27/2019]

(b) The Minister shall not order the insertion of the name of any person in any part of any such list unless he deems him in all respects fit and suitable to be authorised.

[S 27/2019]

(c) (i) The Minister may in his absolute discretion by order remove the name of any authorised auditor who has ceased to practise in Brunei Darussalam.

[S 27/2019]

*Transferred to the Minister of Finance with effect from 31st December 1988 — [S 31/1988]

- (ii) The Minister may also on any ground which he may deem sufficient, remove the name of any person he may consider unfit or unsuitable to continue to be authorised. In such case, notice shall be given, if practicable, to the person whose name it is proposed to remove and he may, if so required, be heard by the Minister either in person or by advocate, before such removal is made.

[S 27/2019]

- (d)
 - (i) The first part of the current authorised list shall contain the names of persons authorised to audit accounts, kept in English and the second part shall contain the names of persons authorised to audit accounts kept in a language other than English.
 - (ii) Where the accounts of a company are kept in English, no person shall be appointed auditor unless his name appears in the first part of the current authorised list, and where the accounts of a company are kept in a language other than English, no person shall be appointed auditor unless his name appears in the second part of the current authorised list as a person authorised to audit accounts in such language.
 - (iii) Every company which keeps its accounts partly in English and partly in a language other than English shall have its accounts audited as to that part which is kept in English by a person whose name appears in the first part of the current authorised list and as to that part which is kept in a language other than English by a person whose name appears in the second part of the current authorised list as a person authorised to audit accounts in such language.
- (e) Nothing herein is deemed to prevent the Minister authorising the inclusion of a name in both parts of the current authorised list; and nothing herein is deemed to require a second

auditor for the daily summary in the English language referred to in the proviso in section 121(1)(i).

[S 27/2019]

(f) In this subsection, “person” shall include a firm.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member to the company not less than 14 days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor and shall give notice thereof to the members, either by advertisement or in any other mode allowed by articles, not less than 7 days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date 14 days or less after the notice has been given, the notice, though not given within the time required by this subsection, is deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this subsection, be sent or given at the same time as the notice of the annual general meeting.

(5) Subject as hereinafter provided, the first auditors of the company may be appointed by the directors at any time before the first annual general meeting, and auditors so appointed shall hold office until that meeting:

Provided that —

(a) the company may, at a general meeting of which notice has been served on the auditors in the same manner as on members of the company, remove any such auditors and appoint in their place any other persons being persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than 7 days before the date of the meeting; and

(b) if the directors fail to exercise their powers under this subsection, the company in general meeting may appoint the first auditors, and thereupon the powers of the directors shall cease.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of an auditor appointed before the first annual general meeting or of an auditor appointed to fill a casual vacancy, may be fixed by the directors, and that the remuneration of an auditor appointed by the Court may be fixed by the Court.

(8) The provisions of this section relating to the appointment of auditors do not apply to any company in relation to which the Government has the power to secure, by means of the holding of shares or the possession of voting power in or in relation to that company or by virtue of any powers conferred by the articles of that company, that the affairs of that company are conducted in accordance with its directions.

(9) The accounts of any company to which subsection (8) refers shall be audited annually by —

(a) the Auditor General; or

(b) any person who has been authorised to perform the duties required by this section to be performed by an auditor, who shall be appointed annually by the company:

Provided that where the accounts of such a company have been audited by a person appointed under paragraph (b), they may be verified by the Auditor General.

Disqualification for appointment as auditor

132. None of the following persons shall be qualified for appointment as auditor of a company —

(a) a director or officer of the company;

(b) except where the company is a private company, a person who is a partner of or in the employment of an officer of the company;

(c) a body corporate.

Auditors' report and auditors' right of access to books and right to attend general meetings

133. (1) The auditors shall make a report to the members on the accounts examined by them and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state —

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

(2) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors:

Provided that, in the case of a banking company which has branch banks beyond the limits of Brunei Darussalam, it shall be sufficient if the auditor is allowed access to such copies and extracts from such books and accounts of any such branch as have been transmitted to the head office of the company in Brunei Darussalam.

(3) The auditors of a company shall be entitled to attend any general meeting of the company at which any accounts which have been examined or reported on by them are to be laid before the company and to make any statement or explanation they desire with respect to the accounts.

Certain companies exempt from obligation to appoint auditors

133A. (1) Notwithstanding section 131, a company which is exempt from audit requirements under section 133B or 133C, and its directors, shall be exempt from section 131(1).

(2) Where a company ceases to be so exempt, the company shall appoint a person or persons to be auditor or auditors of the company at any time before the next annual general meeting and the auditors so appointed shall hold office until the conclusion of that meeting.

(3) If default is made in complying with subsection (2), the company and every director of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Dormant company exempt from audit requirements

133B. (1) A company shall be exempt from audit requirements if it has been dormant —

- (a) from the time of its formation; or
- (b) since the end of the previous financial year.

(2) A company is dormant during a period in which no accounting transaction occurs and the company ceases to be dormant on the occurrence of such a transaction.

(3) For the purposes of subsection (2), there shall be disregarded transactions of a company arising from any of the following —

- (a) the taking of shares in the company by a subscriber to the memorandum in pursuance of his undertaking in the memorandum;
- (b) the appointment of an auditor under section 131;
- (c) the maintenance of a registered office under sections 92 and 93;
- (d) the keeping of registers and books under sections 98, 120 and 143;
- (e) the payment of any fee specified in Schedule 8 or an amount of any fine or penalty paid to the Registrar under Part 11;
- (f) other matters as may be prescribed.

(4) Where a company is, at the end of a financial year, exempt from audit requirements under subsection (1) —

(a) a copy of balance sheet of the company, including every document required by law to be annexed thereto to be sent under section 129, need not be audited;

(b) section 129 has effect with the omission of any reference to the auditor's report or a copy of the report;

(c) a copy of an auditor's report need not be laid before the company in a general meeting; and

(d) the annual return of the company to be lodged with the Registrar shall be accompanied by a statement by the directors —

(i) that the company is a company referred to in subsection (1)(a) or (b) as at the end of the financial year;

(ii) that no notice has been received under subsection (6) in relation to that financial year; and

(iii) as to whether the books of account required by this Act to be kept by the company have been kept in accordance with section 121.

(5) Where a company which is exempt from audit requirements under subsection (1) ceases to be dormant, it shall thereupon cease to be so exempt; but it shall remain so exempt in relation to accounts for the financial year in which it was dormant throughout.

(6) Member or members holding in the aggregate —

(a) not less than 5 *per cent* in nominal value of a company's issued share capital or any class of it; or

(b) if the company does not have a share capital, not less than 5 *per cent* in number of the members of the company,

may, by notice in writing to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.

(7) Where a notice is given under subsection (6), the company is not entitled to the exemption under subsection (1) in respect of the financial year to which the notice relates.

(8) In this section, “accounting transaction” means a transaction the record of which is in the books of account required to be kept under section 121.

Private company exempt from audit requirements

133C. (1) A company, being a private company, shall be exempt from audit requirements in respect of a financial year if —

(a) its revenue in that year does not exceed \$1,000,000;

(b) the beneficial interest in its shares is not held, directly or indirectly, by any corporation; and

(c) it consists of not more than twenty members.

(2) For a period which is an exempt private company’s financial year but is less than 12 months, the amount of revenue under subsection (1) shall be proportionately adjusted.

(3) Section 133B(4), (6) and (7) apply, with the necessary modifications, to an exempt private company so exempt.

Registrar may require company exempt from audit requirements to lodge audited accounts

133D. Notwithstanding sections 133B and 133C, the Registrar may, if he is satisfied that there has been a breach of any provision of section 121 or 122 or that it is otherwise in the public interest to do so, by notice in writing to a company exempt under section 133B or 133C, require that company to lodge with him, within such time as may be specified in that notice —

(a) its accounts, duly audited by the auditor or auditors of the company or, where none has been appointed, an auditor or

auditors to be appointed by the directors of the company for this purpose; and

(b) an auditor's report referred to in section 133 in relation to those accounts prepared by the auditor or auditors of the company.

INSPECTION

Investigation of affairs of company by inspectors

134. (1) The Court may appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Court may direct —

(a) in the case of a banking company having a share capital, on the application of members holding not less than one-third of the shares issued;

(b) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(c) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members.

(2) The application shall be supported by such evidence as the Court may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation, and the Court may, before appointing an inspector, require the applicants to give security to an amount not exceeding \$10,000 for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hands to the Court, and the Court may thereupon inquire into the case, and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.

(6) On the conclusion of the investigation, the inspectors shall report their opinion to the Court which shall direct that a copy of the report be forwarded to the registered office of the company. A further copy shall, at the request of the applicants for the investigation, be delivered to them. The report shall be written or printed, as the court may direct.

Proceedings on report by inspectors

135. (1) If from any report made under section 134 it appears to the Court that any person has been guilty of any offence in relation to the company for which he is criminally liable, the Court may direct that the matter shall be referred to the Public Prosecutor.

(2) If, where any matter is referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and, further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly, and it shall be the duty of all officers and agents of the company, past and present (other than the defendant in the proceedings), to give to him all assistance in connection with the prosecution which they are reasonably able to give.

For the purposes of this subsection, “agents” in relation to a company are deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

(3) The expenses of and incidental to an investigation under section 134 (in this subsection referred to as the expenses) shall be defrayed as follows —

(a) where as a result of the investigation a prosecution is instituted by the Public Prosecutor, the expenses shall be defrayed by the revenues of Brunei Darussalam;

(b) in any other case, the expenses shall be defrayed by the company unless the Court thinks proper to direct, as the Court is hereby authorised to do, that they shall either be paid by the applicants or in part by the company and in part by the applicants:

Provided that —

- (i) if the company fails to pay the whole or any part of the sum which it is liable to pay under this subsection, the applicants shall make good the deficiency up to the amount by which the security given by them under section 134 exceeds the amount, if any, which they have under this subsection been directed by the Court to pay; and
- (ii) any balance of the expenses not defrayed either by the company or the applicants shall be defrayed by the revenues of Brunei Darussalam.

Definitions

135A. For the purposes of sections 135A to 135N —

“body corporate” includes a company incorporated elsewhere than in Brunei Darussalam;

“company” includes any company liable to be wound up under this Act or the Insolvency Order, 2016 (S 1/2016), any body corporate and any partnership or association wheresoever established.

[S 27/2019]

Appointment of inspectors

135B. (1) The Minister may, if he considers it expedient in the public interest, appoint one or more inspectors to investigate the affairs of a company and to report on them in such manner as he may direct.

[S 27/2019]

(2) Inspectors may be appointed under subsection (1) on terms that any report (or any part of it) they may make is not for publication.

Inspectors' powers during investigation

135C. (1) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of another company or the Minister so directs, they have power to do so; and they shall report on the affairs of the other company so far as they think that the results of their investigation of its affairs are relevant to the investigation of the affairs of the company mentioned in section 135B.

[S 27/2019]

(2) If inspectors appointed under section 135B think it necessary for the purposes of their investigation to investigate also the affairs of any other person who the inspectors consider has had dealings with any company mentioned in section 135B or 135C, or is or has been connected with any such company in such a manner as the inspectors consider warrants investigation, or if the Minister directs, they have power to do so; and they shall report on the affairs of that person so far as they think that the results of their investigation of his affairs are relevant to the investigation of the affairs of the company mentioned in section 135B or 135C.

[S 27/2019]

Production of documents and evidence to inspector

135D. (1) Where inspectors are appointed under section 135B, it is the duty of each person mentioned in subsection (4) —

(a) to produce to the inspectors all documents of, or relating to, the company referred to in section 135B or 135C(1) or the person referred to in section 135C(2), which are in his possession, custody or power;

(b) to attend before the inspectors when required to do so;

(c) otherwise to give the inspectors all assistance in connection with the investigation which he is reasonably able to give.

(2) If the inspectors consider that any of the persons mentioned in subsection (4) is or may be in possession of information relating to a

matter which they believe to be relevant to the investigation, they may require him —

(a) to produce to them any documents in his custody or power relating to that matter;

(b) to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give,

and it is the duty of that person to comply with the requirement.

(3) An inspector may, for the purposes of the investigation, examine any person on oath and may administer an oath accordingly.

(4) The persons referred to in subsections (1) and (2) are —

(a) any person who is or was a director, controller, manager, employee, agent, banker, auditor, legal adviser or shareholder of the company;

(b) any other person who the inspectors consider is or may be in possession of information relating to a matter which the inspectors believe to be relevant to the investigation.

(5) Any answer given by a person to a question put to him in exercise of powers conferred by this section may be used in evidence against him.

(6) In this section and section 135K, “documents” include —

(a) anything in which information of any description is recorded in any form, whether in a manner intelligible to the senses or capable of being made intelligible by the use of equipment;

(b) any database or electronic information,

and in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

Obstruction of inspectors

135E. If any person —

(a) fails to comply with his duty under section 135D(1)(a) or (c);

(b) refuses to comply with a requirement under section 135D(1)(b) or (2); or

(c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the Court, and the Court may thereupon inquire into the case, and may punish the offender in like manner as if he had been guilty of contempt of court.

Report of inspectors

135F. (1) The inspectors shall report to the Minister as the Minister may direct.

[S 27/2019]

(2) Any such report shall be written or printed as the Minister may direct.

[S 27/2019]

Power to bring civil proceedings on behalf of company

135G. (1) If from any report made or information obtained under section 135D or 135F, it appears to the Minister that any civil proceedings ought, in the public interest, to be brought by any company, he may himself bring such proceedings in the name of and on behalf of the company.

[S 1/2016; S 27/2019]

(2) The Minister shall have the power to indemnify the company against any costs or expenses incurred by it in connection with the proceedings brought under this section.

[S 27/2019]

Expenses of investigating affairs of company

135H. (1) The expenses of an investigation under any of the powers conferred by sections 135B to 135F shall be defrayed in the first instance by the Minister, but he may recover those expenses from the persons liable in accordance with this section. There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister may determine in respect of general staff costs and overheads.

[S 27/2019]

(2) A person who is convicted on a prosecution instituted as a result of the investigation, or is ordered to pay the whole or any part of the costs of the proceedings brought under section 135G, may in the same proceedings, be ordered to pay those expenses to such extent as may be specified in the order.

(3) A company in whose name proceedings are brought under section 135G is liable in respect of any costs or expenses incurred in connection with those proceedings to the amount or value of any sums or property recovered by it as a result of those proceeding; any amount for which a company is liable under this subsection is a first charge on the sums or property recovered.

For the purposes of this section, any costs or expenses incurred by the Minister in or in connection with proceedings brought under section 135G are to be treated as expenses of the investigation giving rise to the proceedings.

[S 27/2019]

Power to investigate company ownership

135I. Where the Minister appoints inspectors under section 135B, the inspectors may, if directed by the Minister, investigate and report on the membership of any company, and otherwise with respect to the company, for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

[S 27/2019]

Provisions applicable on investigation under section 135I

135J. For the purposes of an investigation under section 135I, sections 135C to 135F apply with the necessary modifications of references to the affairs of the company or to those of any other company or person.

Entry and search of premises

135K. (1) The Court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister or by a person appointed or authorised to exercise powers under sections 135B and 135C, that there are reasonable grounds for believing that there are, on any premises, documents whose production has been required and which have not been produced in compliance with that requirement.

[S 27/2019]

(2) The Court may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Minister or by a person appointed or authorised to exercise powers under sections 135B and 135C that —

[S 27/2019]

(a) there are reasonable grounds for believing that an offence has been committed and that there are, on any premises, documents relating to whether the offence has been committed;

(b) the Minister or the person so appointed or authorised, has power to require the production of the documents under section 135D; and

[S 27/2019]

(c) there are reasonable grounds for believing that, if production was so required, the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.

(3) A warrant under the section shall authorise a police officer —

(a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsections (1) and (2), or take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;

(c) to take copies of any such documents; and

(d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.

(4) If in the case where a warrant is issued under subsection (2), the Court is satisfied on information on oath that there are reasonable grounds for believing that there are also, on the premises, other documents relevant to the investigation, the warrant shall also authorise actions mentioned in subsection (3) to be taken in relation to such documents.

(5) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of contempt of court.

Punishment for furnishing false information

135L. A person who, in purported compliance with a requirement imposed under section 135D to provide an explanation or make a statement, provides or makes an explanation which he knows to be false in a material particular or recklessly provides or makes an explanation or statement which is also false, is guilty of contempt of court.

Disclosure of information by Minister [S 27/2019]

135M. The Minister may, if he thinks fit, authorise or require an inspector appointed under section 135B to disclose any information to any person for such purpose as the Minister may direct.

[S 27/2019]

Reference to Public Prosecutor

135N. (1) If, from any report made under section 135F, it appears to the inspectors that any person has been guilty of any offence in relation to the

company for which he is criminally liable, the inspectors shall refer the matter to the Public Prosecutor.

(2) If, where any matter is referred to the Public Prosecutor under this section, he considers that the case is one in which a prosecution ought to be instituted and further, that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him, he shall institute proceedings accordingly.

Power of company to appoint inspectors

136. (1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Court except that, instead of reporting to the Court, they shall report in such manner and to such persons as the company in general meeting may direct.

(3) If any officer or agent of the company refuses to produce to the inspectors any book or document which it is his duty under this section so to produce or refuses to answer any question which is put to him by the inspectors with respect to the affairs of the company, he is liable to be proceeded against in the same manner as if the inspectors had been inspectors appointed by the Court.

Report of inspectors to be evidence

137. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

DIRECTORS AND MANAGERS

Number of directors

138. (1) Every company registered after 1st January 1957, being the date of commencement of this Act, shall have at least two directors.

(2) One of the two directors or, where there are more than two directors, at least two of them shall be ordinarily resident in Brunei Darussalam.

(2A) No person other than an individual who has attained the age of 18 years and who is otherwise of full legal capacity shall be a director of a company.

(2B) A company shall comply with the requirements of subsection (2) within 6 months of 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010).

(3) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

Restrictions on appointment or advertisement of director

139. (1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement *in lieu* of prospectus delivered to the Registrar by or on behalf of a company, unless, before the registration of the articles or the publication of the prospectus, or the delivery of the statement *in lieu* of prospectus, as the case may be, he has by himself or by his agent authorised in writing —

(a) signed and delivered to the Registrar for registration a consent in writing to act as such director; and

(b) either —

- (i) signed the memorandum for a number of shares not less than his qualification, if any;
- (ii) taken from the company and paid or agreed to pay for his qualification share, if any;
- (iii) signed and delivered to the Registrar for registration an undertaking in writing to take from

the company and pay for his qualification shares, if any; or

- (iv) made and delivered to the Registrar for registration a statutory declaration to the effect that a number of shares, not less than his qualification, if any, are registered in his name.

(2) Where a person has signed and delivered as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for that number of shares.

(3) On the application for registration of the memorandum and articles of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company and, if this list contains the name of any person who has not so consented, the applicant is liable to a fine of \$2,000.

(4) This section does not apply to —

(a) a company not having a share capital;

(b) a private company;

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date on which the company was entitled to commence business.

Qualification of director or manager

140. (1) Without prejudice to the restrictions imposed by section 139, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within 2 months after his appointment or such shorter time as may be fixed by the articles.

(2) For the purposes of any provision in the articles requiring a director or manager to hold a specified share qualification, the bearer of a

share warrant is not deemed to be the holder of the shares specified in the warrant.

(3) The office of director of a company shall be vacated if the director does not within 2 months from the date of his appointment or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of the said period or shorter time he ceases at any time to hold his qualification.

(4) A person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(5) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, he is liable to a fine of \$50 for every day between the expiration of the said period or shorter time or the day on which he ceased to be qualified, as the case may be, and the last day on which it is proved that he acted as a director.

Provisions as to undischarged bankrupts acting as directors

141. (1) If any person being an undischarged bankrupt act as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court by which he was adjudged bankrupt, he is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for one year:

Provided that a person is not guilty of an offence under this section by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if at the commencement of this Act he was acting as director of, or taking part or being concerned in the management of, that company and has continuously so acted, taken part or been concerned since that date and the bankruptcy was prior to that date.

(2) The leave of the Court for the purpose of this section shall not be given unless notice of intention to apply therefor has been served on the Official Receiver and it shall be the duty of the Official Receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.

(3) In this section —

“company” includes an unregistered company and a company incorporated outside Brunei Darussalam which has an established place of business within Brunei Darussalam;

“Official Receiver” means the Official Receiver in bankruptcy.

Disqualification of unfit directors of insolvent companies

141A. (1) The Court may —

(a) on the application of the Minister or the Official Receiver as provided for in subsection (9)(a); and

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(b) on being satisfied as to the matters referred to in subsection (2),

make an order disqualifying a person specified in the order from being a director or in any way, whether directly or indirectly, being concerned in, or take part in, the management of a company during such period not exceeding 5 years after the date of the order as is specified in the order (referred to in this section as a disqualification order).

(2) The Court shall make a disqualification order under subsection (1) if it is satisfied that —

(a) the person against whom the order is sought has been given not less than 14 days’ notice of the application; and

(b) (i) that person is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or within 3 years of his ceasing to be a director) and was insolvent at that time; and

(ii) his conduct as director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of or in any way, whether

directly or indirectly, be concerned in, or take part in, the management of a company.

(3) If in the case of a person who is or has been a director of a company which is —

(a) being wound up by the Court, it appears to the Official Receiver or to the liquidator (if he is not the Official Receiver); or

(b) being wound up otherwise than as mentioned in paragraph (a), it appears to the liquidator,

that the conditions mentioned in subsection (2)(b) are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister.

[S 27/2019]

(4) The Minister may require the Official Receiver or the liquidator or the former liquidator of a company —

[S 27/2019]

(a) to furnish him with such information with respect to any person's conduct as a director of the company; and

(b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Minister may reasonably require for the purpose of determining whether to exercise, or of exercising, any of his functions under this section; and if default is made in complying with that requirement, the Court may, on the application of the Minister, make an order requiring that person to make good the default within such time as is specified in the order.

[S 27/2019]

(5) For the purposes of this section —

(a) a company has gone into liquidation —

(i) if it is wound up by the Court, on the date of the filing of the winding up application;

- (ii) in any other case, on the date of the passing of the resolution for the voluntary winding up; and

(b) a company was insolvent at the time it has gone into liquidation if it was unable to pay its debts within the meaning of that expression in section 100 of the Insolvency Order, 2016 (S 1/2016),

[S 1/2016]

and references in this section to a person's conduct as a director of any company or companies include, where any of those companies have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(6) In deciding whether a person's conduct as a director of any particular company or companies make him unfit to be concerned in, or take part in, the management of a company as is mentioned in subsection (2)(b), the Court shall in relation to his conduct as a director of that company or, as the case may be, each of those companies have regard, generally to the matters referred to in paragraph (a), and, in particular, to the matters referred to in paragraph (b), notwithstanding that the director has not been convicted or may be criminally liable in respect of any of these matters —

- (a)
 - (i) as to whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the company;
 - (ii) as to whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the company;
 - (iii) as to the extent of the director's responsibility for any failure by the company to comply with sections 95, 96, 98, 107, 121 and 122; and
- (b)
 - (i) as to the extent of the director's responsibility for the causes of the company becoming insolvent;
 - (ii) as to the extent of the director's responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

- (iii) as to the extent of the director's responsibility for the company entering into any transaction liable to be set aside under section 167;
- (iv) as to whether the causes of the company becoming insolvent are attributable to its carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(7) The Minister may, by notification published in the *Gazette*, amend any of the matters referred to in subsection (6) and that notification may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

[S 27/2019]

(8) In this section, “company” includes a corporation and a company incorporated outside Brunei Darussalam but does not include a partnership or association to which Part VIII of the Insolvency Order, 2016 (S 1/2016) applies.

[S 27/2019]

(9) (a) In the case of a person who is or has been a director of a company which has gone into liquidation and is being wound up by the Court, an application under this section shall be made by the Official Receiver, but in any other case an application shall be made by the Minister.

[S 27/2019]

(b) On a hearing of an application under this section —

- (i) the Minister or the Official Receiver, as the case may be, shall appear and call the attention of the Court to any matter which appears to him to be relevant (and for this purpose the Minister may be represented) and may give evidence or call witnesses; and

[S 27/2019]

- (ii) the person against whom an order is sought may appear and himself give evidence or call witnesses.

(10) This section does not apply unless the company mentioned in subsection (2)(b) has gone into insolvent liquidation on or after 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) and the conduct to which the Court shall have regard shall not include conduct as a director of a company that has gone into liquidation before that date.

(11) A person who acts as Judicial Manager, Executive Manager, receiver or receiver manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as Judicial Manager, Executive Manager, receiver or receiver manager, as the case may be.

(12) Any person who acts in contravention of a disqualification order made under this section 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.

(13) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the Court to be concerned in or take part in the management of a company.

(14) On the hearing of an application made under subsection (13) or (15), the Minister or the Official Receiver shall appear (and for this purpose the Minister may be represented) and call attention of the Court to any matter which appears to him to be relevant to the application and may himself give evidence or call witnesses.

[S 27/2019]

(15) Any right to apply for leave of the Court to be concerned or take part in the management of a company that was subsisting immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) shall, after that date, be treated as subsisting by virtue of the corresponding provision made under this section.

Disqualification of directors of companies wound up on grounds of national security or interest

141B. (1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court on the ground that it is being used for

purposes against national security or interest, the Court may, on the application of the Minister, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or company incorporated outside Brunei Darussalam for a period of 3 years from the date of the making of the winding up order.

[S 27/2019]

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister application for the order.

[S 27/2019]

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that —

(a) the company had been used for purposes against national security or interest without his consent or connivance; and

(b) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

(4) Any person who acts in contravention of a disqualification order made under subsection (1) 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.

(5) In this section, “company incorporated outside Brunei Darussalam” means a company incorporated outside Brunei Darussalam to which Part 9 applies.

Disqualification for persistent default in relation to delivery of documents to Registrar [S 27/2019]

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 (S 27/2019).

(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 of the Insolvency Order, 2016 (S 1/2016).

Disqualification to act as director on conviction of certain offences

141C. (1) Where a person is convicted (whether in Brunei Darussalam or elsewhere) of any offence involving fraud or dishonesty punishable with

imprisonment for 3 months or more, he shall be subject to the disqualifications provided in subsection (3).

(2) Where a person is convicted in Brunei Darussalam of —

(a) any offence in connection with the formation or management of a corporation; or

(b) any offence under section 259,

the Court may make a disqualification order in addition to any other sentence imposed.

(3) A person who is disqualified under subsection (1) or who has had a disqualification order made against him under subsection (2) shall not act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part 9 applies nor shall he take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam.

(4) (a) Where a disqualified person has not been sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years or for such shorter period as the Court may order under subsection (2).

(b) Where a disqualified person is sentenced to imprisonment, the disqualifications in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years after his release from prison.

(5) A person who acts in contravention of a disqualification under this section 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.

(6) An application for leave to act as a director of a company or of a company incorporated outside Brunei Darussalam to which Part 9 applies or to take part, whether directly or indirectly, in the management of such a company or company incorporated outside Brunei Darussalam may be made by a person against whom a disqualification order has been made

upon that person giving the Minister not less than 14 days' notice of his intention to apply for such leave.

[S 27/2019]

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

[S 27/2019]

(8) The High Court may make a disqualification order under this section.

(9) Any right to apply for leave of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010) shall on or after that date be treated as subsisting by virtue of the corresponding provision made under this section.

Disqualification under S 117/2010

141D. Any person who is subject to a disqualification or disqualification order under section 34, 35 or 36 of the Limited Liability Partnerships Order, 2010 (S 117/2010) shall not act as director of, or in any way, whether directly or indirectly, take part in or be concerned in the management of, a corporation during the period of the disqualification or disqualification order.

Duty and liability of officers

141E. (1) A director shall act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

(3) An officer or agent who commits a breach of any of the provisions of this section —

(a) is liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding one year.

(4) This section is in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company.

(5) In this section —

“agent” includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company;

“officer” includes a person who at any time has been an officer of the company.

Powers of directors

141F. (1) The business of a company shall be managed by or under the direction of the directors.

(2) The directors may exercise all the powers of a company except any power that this Act or the memorandum and articles of the company require the company to exercise in general meeting.

Use of information and advice

141G. (1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given by —

(a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within such person's professional or expert competence; or

(c) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.

(2) Subsection (1) applies to a director only if the director —

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.

Approval of company required for disposal by directors of company's undertaking or property [S 44/2017]

141H. (1) Notwithstanding anything in the memorandum or articles of a company, the directors shall not carry into effect any proposals for disposing of more than half of the company's undertaking or property unless those proposals have been approved by the company in general meeting.

(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).

(3) A transaction entered into in contravention of subsection (1) shall, in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention, be as valid as if that subsection had been complied with.

(4) This section does not apply to proposals for disposing of more than half of the company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the company

appointed under a power contained in any instrument or a liquidator of a company appointed in a voluntary winding up under the Insolvency Order, 2016 (S 1/2016).

Approval of company required for issue of shares by directors [S 44/2017]

141I. (1) Notwithstanding anything in the memorandum or articles of a company, the directors shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.

(2) Approval for the purposes of this section may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.

(3) Any approval for the purposes of this section shall continue in force until —

(a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or

(b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

(4) The directors may issue shares notwithstanding that an approval for the purposes of this section has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.

(5) Section 117 applies to any resolution whereby an approval is given for the purposes of this section.

(6) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.

(7) Any director who knowingly contravenes, or permits or authorises the contravention of, this section with respect to any issue of shares is liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs shall be commenced after the expiration of 2 years from the date of the issue.

Validity of acts of directors

142. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Register of directors

143. (1) Every company shall keep at its registered office a register of its directors or managers containing with respect to each of them the following particulars —

(a) in the case of an individual, his present name and surname, any former name or surname, his usual residential address, his nationality and, if that nationality is not the nationality of origin, his nationality of origin and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(b) in the case of a corporation, its corporate name and registered or principal office.

(2) The company shall send to the Registrar a return in such form as the Registrar may determine —

(a) forthwith from the date of appointment of the first directors of the company, the particulars specified in the register;

(b) one month from the date of any change among its directors or in any of the particular contained in the register, a notification of such change.

(3) The register to be kept under this section shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of \$1 or such less sum as the company may prescribe, for each inspection.

(4) If any inspection required under this section is refused or if default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(5) In the case of any such refusal, the Court may by order compel an immediate inspection of the register.

(6) For the purposes of this section, a person in accordance with whose directions or instructions the directors of a company are accustomed to act is deemed to be a director and officer of the company.

Removal of directors [S 44/2017]

143A. (1) A public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between the company and the director; but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove him shall not take effect until his successor has been appointed.

(2) (a) Special notice shall be required of any resolution to remove a director of a public company under subsection (1) or to appoint some person in place of a director so removed at the meeting at which he is removed.

(b) On receipt of notice of an intended resolution to remove a director under subsection (1), the company shall immediately send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

(3) Where notice is given pursuant to subsection (2) and the director concerned makes with respect thereto representations in writing to the public company, not exceeding a reasonable length, and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so —

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representations by the company,

and if a copy of the representations is not so sent because they were received too late or because of the company's default, the director may, without prejudice to his right to be heard orally, require that the representations shall be read out at the meeting.

(4) Notwithstanding subsections (1), (2) and (3), copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the public company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

(5) A vacancy created by the removal of a director of a public company under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(6) A person appointed director of a public company in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed as a director of a public company thereunder of compensation or damages payable to him in respect of the termination of his

appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.

(8) A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the memorandum or articles or any agreement.

(9) Subject to any provision to the contrary in the memorandum or articles, a private company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in any agreement between the private company and the director.

Limited company may have directors with unlimited liability

144. (1) In a limited company the liability of the directors or managers, or of the managing director, may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director or manager is unlimited, the directors or managers of the company, if any, and the members who proposes a person for election or appointment to the office of director or manager shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers and secretary, if any, of the company or one of them shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director, manager or proposer makes default in adding such a statement, or if any promoter, director, manager or secretary makes default in giving such a notice, he is guilty of an offence and liable on conviction to a fine of \$1,000, and is also liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

Special resolution of limited company making liability of directors unlimited

145. (1) A limited company, if so authorised by its articles, may by special resolution, alter its memorandum so as to render unlimited the liability of its directors, managers or of any managing director.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum.

Register of directors' shareholdings

145A. (1) A company shall keep a register showing with respect to each director of the company particulars of —

(a) shares in that company or in a related corporation, being shares of which the director is a registered holder or in which he has an interest and the nature and extent of that interest;

(b) debentures of or participatory interests made available by the company or a related corporation which are held by the director or in which he has an interest and the nature and extent of that interest;

(c) rights or options of the director, or of the director and another person, or other persons, in respect of the acquisition or disposal of shares in the company or a related corporation; and

(d) contracts to which the director is a party or under which he is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.

(2) A company need not show, in its register with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the company or of another corporation.

(3) A company that is a wholly-owned subsidiary of another company is deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

(4) For the purposes of subsections (2) and (3), a company is a wholly-owned subsidiary of another company if none of the members of the first-mentioned company is a person other than —

- (a) the second-mentioned company;
- (b) a nominee of the second-mentioned company;
- (c) a subsidiary of the second-mentioned company being a subsidiary none of the members of which is a person other than the second-mentioned company or a nominee of the second-mentioned company; or
- (d) a nominee of such a subsidiary.

(5) A company shall, within 3 days after receiving notice from a director under section 147A(1)(a), enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates and in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director —

(a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and

(b) the date of —

- (i) the agreement for the transaction or, if it is later, the completion of the transaction; or
- (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(6) A company shall, within 3 days after receiving a notice from a director under section 147A(1)(b), enter in its register the particulars of the change referred to in the notice.

(7) A company is not, by reason of anything done under this section, to be taken for any purpose to have notice of or to be put upon inquiry as to the right of a person or in relation to a share in debenture of a participatory interest made available by the company.

(8) A company shall, subject to this section, keep its register at the registered office of the company and the register shall be open for inspection by a member of the company without charge and by any other person on payment for each inspection of a sum of \$3 or such lesser sum as the company requires.

(9) A person may request a company to furnish him with a copy of its register or any part thereof on payment in advance of a sum of \$1 or such lesser sum as the company requires for every page or part thereof required to be copied and the company shall send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day on which the request is received by the company.

(10) The Registrar may by notice in writing require a company to send to him within such time as may be specified in the notice a copy of its register or any part thereof.

(11) A company shall produce its register at the commencement of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 147 with respect to those particulars.

(13) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who, under an option, holds or acquires a right to acquire or dispose of a share, debenture or participatory interest or an interest in a share, debenture or participatory interest.

(13A) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 3A, except subsections (1) and (5) thereof, have effect and, in

applying those provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.

[S 44/2017]

(14) For the purposes of this section —

(a) a director of a company is deemed to hold or have an interest or a right in or over any shares or debentures if a spouse of the director (not being a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director (not being himself or herself a director) holds or has an interest in shares or debentures; and

(b) any contract, assignment or right of subscription exercised or made by, or grant made to, the wife or husband of a director of a company (not being herself or himself a director thereof) is deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director; and so shall a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, an infant son or infant daughter of a director of a company (not being himself or herself a director thereof).

(15) In subsection (14), “son” includes step-son and adopted son and “daughter” includes step-daughter and adopted daughter.

(16) If default is made in complying with this section, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

Statement as to remuneration of directors to be furnished to shareholders

146. (1) Subject as hereinafter provided, the directors of a company shall, on a demand in that behalf made to them in writing by members of the company entitled to not less than one-fourth of the aggregate number of votes to which all the members of the company are together entitled, furnish to all the members of the company within a period of one month from the receipt of the demand a statement, certified as correct, or which such

qualifications as may be necessary, by the auditors of the company, showing as respects each of the last 3 preceding years in respect of which the accounts of the company have been made up the aggregate amount received in that year by way of remuneration or other emoluments by persons being directors of the company, whether as such directors or otherwise in connection with the management of the affairs of the company, and there shall, in respect of any such director who is —

(a) a director of any other company which is, in relation to the first-mentioned company, a subsidiary company; or

(b) by virtue of the nomination, whether direct or indirect, of the company, a director of any other company,

be included in that aggregate amount any remuneration or other emoluments received by him for his own use whether as a director of, or otherwise in connection with the management of the affairs of, that other company:

Provided that —

- (i) a demand for a statement under this section shall be of no effect if the company within one month after the date on which the demand is made resolve that the statement shall not be furnished; and
- (ii) it shall be sufficient to state the total aggregate of all sums paid to or other emoluments received by all the directors in each year without specifying the amount received by any individual.

(2) If any director fails to comply with the requirements of this section, he is guilty of an offence and liable on conviction to a fine of \$1,000.

(3) In this section, “emoluments” includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.

Disclosure of interests in transactions, property, offices etc. [S 44/2017]

147. (1) Subject to this section, every director or executive officer of a company who is in any way, whether directly or indirectly, interested in a

transaction or proposed transaction with the company shall as soon as is practicable after the relevant facts have come to his knowledge —

(a) declare the nature of his interest at a meeting of the directors of the company; or

(b) send a written notice to the company containing details on the nature, character and extent of his interest in the transaction or proposed transaction with the company.

(2) A notice under subsection (1)(b) shall be given as soon as is practicable after —

(a) the date on which the director or executive officer became a director or executive officer, as the case may be; or

(b) (if already a director or executive officer, as the case may be) the date on which the director or executive officer became, directly or indirectly, interested in a transaction or proposed transaction with the company,

as the case requires.

(3) The requirements of subsection (1) do not apply in any case where the interest of the director or executive officer, as the case may be, consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the first-mentioned company if the interest of the director or executive officer, as the case may be, may properly be regarded as not being a material interest.

(4) A director or executive officer of a company is not deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

(a) in the case where the transaction or proposed transaction relates to any loan to the company, that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of

a corporation which by virtue of section 129A is deemed to be related to the company, that he is a director or executive officer, as the case may be, of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other written law, but shall not affect the operation of any provision in the memorandum and articles of the company.

(5) A declaration given by a director or executive officer under subsection (1)(a), or a written notice given by a director or executive officer under subsection (1)(b), shall be treated as a sufficient declaration or written notice under those provisions in relation to a transaction or proposed transaction if —

(a) in the case of a declaration, the declaration is given at a meeting of the directors, or the director or executive officer, as the case may be, takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given;

(b) the declaration or written notice is to the effect that —

- (i) he is an officer or a member of a specified corporation, a member of a specified firm, or a partner or officer of a specified limited liability partnership; and
- (ii) he is to be regarded as interested in any transaction which may, after the date of the declaration or written notice, be made with the specified corporation, firm or limited liability partnership;

(c) the declaration or written notice specifies the nature and extent of his interest in the specified corporation, firm or limited liability partnership; and

(d) at the time any transaction is made with the specified corporation, firm or limited liability partnership, his interest is not different in nature or greater in extent than the nature and extent specified in the declaration or written notice.

(6) Every director and executive officer of a company who holds any office or possess any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with their duties or interests as director or executive officer, as the case may be, shall —

(a) declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict; or

(b) send a written notice to the company setting out the fact and the nature, character and extent of the conflict.

(7) A declaration under subsection (6)(a) shall be made at the first meeting of the directors of the company held —

(a) after he becomes a director or executive officer, as the case may be;

(b) (if already a director or executive officer, as the case may be) after he commenced to hold the office or to possess the property,

as the case requires.

(8) A written notice under subsection (6)(b) shall be given as soon as is practicable after —

(a) the date on which the director or executive officer became a director or executive officer, as the case may be; or

(b) (if already a director or executive officer, as the case may be) after he commenced to hold the office or to possess the property,

as the case requires.

(9) The company shall, as soon as practicable after the receipt of the written notice referred to in subsection (1)(b) or (6)(b), send a copy of the notice to —

(a) in the case where the notice is given by an executive officer, all the directors; or

(b) in the case where the notice is given by a director, all the other directors.

(10) Where an executive officer or a director of the company declares an interest or conflict by a written notice referred to in subsection (1)(b) or (6)(b), respectively, in accordance with this section —

(a) the making of the declaration is deemed to form part of the proceedings at the next meeting of the directors after the notice is given; and

(b) the provisions of section 119 apply as if the declaration had been made at that meeting.

(11) The director or secretary of the company shall record every declaration under this section in the minutes of the meeting at which it was made and keep records of every written resolution duly signed and returned to the company under this section.

(12) The directors of a company shall permit an executive officer of the company who is not a director to attend a meeting of the board of directors where such attendance is necessary for the executive officer to make a declaration for the purpose of complying with this section.

(13) Subject to subsection (4), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the memorandum or articles restricting a director or executive officer from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director or executive officer, as the case may be.

(14) Any director or executive officer of a company who fails to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months.

(15) For the purposes of this section —

(a) an interest of a member of a director's family shall be treated as an interest of the director and the words "member of a

director's family" shall include his spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter; and

(b) an interest of a member of an executive officer's family shall be treated as an interest of the executive officer and the words "member of the executive officer's family" shall include his spouse, son, adopted son, stepson, daughter, adopted daughter and stepdaughter.

General duty to make disclosure

147A. (1) A director of a company shall give notice in writing to the company —

(a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance with section 145A by the wholly-owned subsidiary company referred to in section 145A(3);

(b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change; and

(c) of such events and matters affecting or relating to himself as are necessary for the purposes of compliance by the company with section 143 that are applicable in relation to him.

(2) A notice under subsection (1) shall be given —

(a) in the case of a notice under subsection (1)(a), within 2 business days after —

- (i) the date on which the director became a director; or
- (ii) the date on which the director became a registered holder of or acquired an interest in the shares, debentures, participatory interests, rights, options or contracts,

whichever last occurs;

(b) in the case of a notice under subsection (1)(b), within 2 business days after the occurrence of the event giving rise to the change referred to in that paragraph; and

(c) in the case of a notice under subsection (1)(c), within 2 business days after the date on which the director became a director.

(3) A company shall, within 7 days after it receives a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

(4) It is a defence to a prosecution for failing to comply with subsection (1)(a) or (b) or with subsection (2) if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that —

(a) he was not so aware on the date of the information or summons; or

(b) he became so aware less than 7 days before the date of the summons.

(5) For the purposes of subsection (4), a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence —

(a) of which he would, if he had acted with reasonable diligence in the conduct of his affairs, have been aware at that time; or

(b) of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his master's or principal's interest or interests in a share in or a debenture of or participatory interest issued by the company concerned, was aware or would, if he had acted with reasonable diligence in the conduct of his master's or principal's affairs, have been aware at that time.

(6) In this section —

(a) a reference to a participatory interest is a reference to a unit in a collective investment scheme referred to in Part IX of the Securities Markets Order, 2013 (S 59/2013); and

(b) a reference to a person who holds or acquires shares, debentures or participatory interests or an interest in shares, debentures or participatory interests includes a reference to a person who under an option holds or acquires a right to acquire a share, debenture, or participatory interest or an interest in a share, debenture or participatory interest.

(6A) In determining for the purposes of this section whether a person has an interest in a debenture or participatory interest, the provisions of section 3A, except subsections (1) and (5) thereof, have effect and, in applying those provisions, a reference to a share shall be read as a reference to a debenture or participatory interest.

[S 44/2017]

(7) Any director who fails to comply with subsection (1) or (2) or any company that fails to comply with subsection (3) is guilty of an offence and liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues after conviction.

Provisions as to payments received by directors for loss of office or on retirement

148. (1) It is hereby declared that it is not lawful in connection with the transfer of the whole or any part of the undertaking or property of a company for any payment to be made to any director of the company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company.

(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received is deemed to have been received by him in trust for the company.

(3) Where a payment is to be made as aforesaid to a director of a company in connection with the transfer to any persons, as a result of an offer made to the general body of shareholders, of all or any of the shares in the company, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(4) If any such director fails to take reasonable steps as aforesaid, or if any person who has been properly required by any such director to include such particulars in or send them with any such notice fails so to do, he is guilty of an offence and liable on conviction to a fine of \$1,000, and if the requirements of subsection (3) are not complied with in relation to any such payment as is mentioned in that subsection, any sum received by the director on account of the payment is deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made.

(5) If in connection with any such transfer, the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess of the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.

(6) Nothing in this section shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in this section or with respect to any other like payments made or to be made to the directors of a company.

Provision and improvement of director's emoluments [S 44/2017]

148A. (1) A company shall not at any meeting or otherwise provide emoluments or improve emoluments for a director of a company in respect of his office as such unless the provision is approved by a resolution that is not related to other matters and any resolution passed in breach of this section shall be void.

(2) In this section, “emoluments”, in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax in Brunei Darussalam, any contribution paid in respect of a director under any pension scheme and any benefits received by him otherwise than in cash in respect of his services as director.

Provisions as to assignment of office by directors

149. If in the case of any company provision is made by the articles or by any agreement entered into between any person and the company for empowering a director or manager of the company to assign his office as such to another person, any assignment or office made in pursuance of that provision shall, notwithstanding anything to the contrary contained in that provision, be of no effect unless and until it is approved by a special resolution of the company.

149A. — 149U. *(Repealed by S 1/2016).*

AVOIDANCE OF PROVISIONS IN ARTICLES OR CONTRACTS RELIEVING OFFICERS FROM LIABILITY

Provisions as to liability of officers and auditors

150. Subject as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer of the company, or any person (whether an officer of the company or not) employed by the company as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall be void:

Provided that —

(a) in relation to any such provision which is in force at the date of the commencement of this Act, this section shall have effect only on the expiration of a period of 6 months from that date;

(b) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

(c) notwithstanding anything in this section, a company may, in pursuance of any such provision, indemnify any such director, manager, officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 321 in which relief is granted to him by the Court.

ARRANGEMENTS AND RECONSTRUCTIONS

Power to compromise with creditors and members

151. (1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(3) An order made under subsection (2) shall have no effect until an office copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of the company issued after the order has been made or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(4) If a company makes default in complying with subsection (3), the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a fine of \$15 for each copy in respect of which default is made.

(5) In this section —

“arrangement” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods;

“company” means any company liable to be wound up under this Act or the Insolvency Order, 2016 (S 1/2016).

[S 27/2019]

Provisions for facilitating reconstruction and amalgamation of companies

152. (1) Where an application is made to the Court under section 151 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as the transferor company) is to be transferred to another company (in this section referred to as the transferee company), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters —

(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;

(b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(d) the dissolution, without winding up, of any transfer or company;

(e) the provision to be made for any persons, who within such time and in such manner as the Court may direct, dissent from the compromise or arrangement;

(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(3) Where an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be delivered to the Registrar for registration within 7 days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default is guilty of an offence and liable on conviction to a default fine.

(4) In this section —

“liabilities” includes duties;

“property” includes property, rights and powers of every description.

(5) Notwithstanding the provisions of section 151(5), “company” in this section does not include any company other than a company within the meaning of this Act.

Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

153. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as the transferor company) to another company, whether a company within the meaning of this Act or not (in this section referred to as the transferee company) has, within 4 months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, at any time within 2 months after the expiration of that 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be titled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon, register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Personal remedies in cases of oppression or injustice [S 33/2016]

153A. (1) Any member or holder of a debenture of a company may apply to the Court for an order under this section on the ground —

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of such grounds is established, the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in future;

(c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;

(d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(e) in the case of a purchase of shares by the company, provide for a reduction accordingly of the capital of the company; or

(f) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to subsection (2)(f), the provisions of the Insolvency Order, 2016 (S 1/2016) relating to the winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made on an application duly made to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any memorandum or articles of the company, then, notwithstanding anything in any other provisions of this Act, but subject to the provisions of the order, the company concerned shall not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) A copy of any order made under this section shall be lodged by the applicant with the Registrar within 14 days after the making of the order.

(6) Any person who fails to comply with subsection (5) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and also to a default fine.

(7) This section applies to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members shall be construed accordingly.

Powers of Minister [S 44/2017]

153B. The Minister may, if he considers it expedient in the public interest, remove, replace or appoint such directors or additional directors of any company in such numbers and on such terms as he considers expedient in the public interest.

Derivative or representative actions [S 44/2017]

153C. (1) In this section and section 153D, “complainant” means —

(a) any member of a company;

(b) the Minister; or

(c) any other person who, in the discretion of the Court, is a proper person to make an application under this section.

(2) Subject to subsection (3), a complainant may apply to the Court for leave to bring an action or arbitration in the name and on behalf of the company or intervene in an action or arbitration to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the company.

(3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —

(a) the complainant has given 14 days' notice to the directors of the company of his intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action or arbitration;

(b) the complainant is acting in good faith; and

(c) it appears to be *prima facie* in the interests of the company that the action or arbitration be brought, prosecuted, defended or discontinued.

(4) Where a complainant on an application can establish to the satisfaction of the Court that it is not expedient to give notice as required in subsection (3)(a), the Court may make such interim order as it thinks fit pending the complainant giving notice as required.

(5) In granting leave under this section, the Court may make such orders or interim orders as it thinks fit in the interests of justice, including (but not limited to) the following —

(a) an order authorising the complainant or any other person to control the conduct of the action or arbitration;

(b) an order giving directions for the conduct of the action or arbitration by the person so authorised; and

(c) an order requiring the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action or arbitration.

Evidence of shareholders' approval not decisive; Court approval to discontinue action under section 153C [S 44/2017]

153D. (1) An application made or an action brought or intervened in under section 153C shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the company has been or may be approved by the members of the company, but evidence of approval by the members may be taken into account by the Court in making an order under section 153C.

(2) An application made or an action brought or intervened in under section 153C shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on such terms as the Court this fit and, if the Court determines that the interest of any complainant may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) In an application made or an action brought or intervened in under section 153C, the Court may at any time order the company to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be accountable for such interim costs upon final disposition of the application or action.

PART 5

(Repealed by S 1/2016)

154. — 281. *(Repealed by S 1/2016).*

PART 6

(Repealed by S 1/2016)

282. — 287. (*Repealed by S 1/2016*).

PART 6A

[S 49/2018]

STRIKING OFF

Power of Registrar to strike defunct company off register [S 49/2018]

287A. (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter to that effect and stating that if an answer showing cause to the contrary is not received within 30 days from the date thereof, a notice shall be published in the *Gazette* with a view to striking the name of the company off the register.

(2) Without prejudice to the generality of subsection (1), in determining whether there is reasonable ground to believe that a company is not carrying on business, the Registrar may have regard to such conditions as may be prescribed.

(3) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, he may publish in the *Gazette* and send to the company by registered post, a notice that at the expiration of 3 months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If in any case where a company is being wound up and the Registrar has reasonable cause to believe that —

(a) no liquidator is acting;

(b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him; or

(c) the affairs of the company have been fully wound up by the Court under Chapter VI of Part V of the Insolvency Order, 2016 (S 1/2016) and there are no assets or the assets available are

not sufficient to pay the costs of obtaining an order of the Court dissolving the company,

he may publish in the *Gazette* and send to the company or the liquidator, if any, a notice to the same effect as that referred to in subsection (3).

(5) Where the Registrar is of the opinion that —

(a) the registered office of a company or the name and address of a liquidator or subscriber to the memorandum of association of a company cannot be ascertained; or

(b) letter or notice to be sent under subsection (1), (3) or (4) is unlikely to be received by the person to whom it would be directed,

it shall be sufficient compliance with the provisions of those subsections if the Registrar publishes in the *Gazette* a notice stating that at the expiration of 3 months from the date of the publication of such notice the name of the company mentioned therein shall, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(6) At the expiration of the time mentioned in the notice, the Registrar —

(a) may, unless cause to the contrary is previously shown, strike the name of the company off the register; and

(b) shall publish notice thereof in the *Gazette*,

and on the publication in the *Gazette* of the notice the company shall be dissolved; but —

- (i) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (ii) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(7) If any person feels aggrieved by the name of the company having been struck off the register, the Court may on an application made by the person at any time within 15 years after the name of the company has been so struck off, if satisfied —

(a) that the company was at the time of the striking off carrying on business or in operation; or

(b) otherwise that it is just that the name of the company be restored to the register,

order the name of the company to be restored to the register.

(8) On a copy of the order being lodged with the Registrar, the company is deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company may be addressed to the company at its registered office or, if no office has been registered, to the care of some officer of the company, or, if there is no officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed to the memorandum of the company addressed to him at the address mentioned in the memorandum.

(10) The Registrar shall ensure that —

(a) such particulars of the company referred to in subsection (1) and of his belief that the company is not carrying on business or is not in operation, as he may determine, is sent to —

(i) the Collector of Income Tax appointed under the Income Tax Act (Chapter 35); and

- (ii) the Tabung Amanah Pekerja Board established by the Tabung Amanah Pekerja Board Order, 2016 (S 2/2016); and

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(b) the substance of the notices to be published in the *Gazette* referred to in subsections (3), (4) and (5) is also published by the Registrar in such other manner as the Registrar thinks appropriate.

Striking off on application by company [S 49/2018]

287B. (1) The Registrar may, on the application by a company and on payment of the prescribed fee, strike the company's name off the register on such grounds and subject to such conditions as may be prescribed.

(2) An application under subsection (1) shall be made on the company's behalf by its directors or by a majority of them.

(3) On receipt of the application, the Registrar shall, if satisfied that the grounds and conditions (if any) referred to in subsection (1) have been satisfied, send to the company and its directors, secretaries and members a letter informing them of the application and stating that if an answer showing cause to the contrary is not received within 30 days after the date of the letter, a notice, details of which are set out in subsection (4), will be published in the *Gazette* with a view to striking the name of the company off the register.

(4) The Registrar may not strike a company's name off the register under this section until after the expiration of 60 days after the publication by the Registrar in the *Gazette* of a notice —

(a) stating that the Registrar intends to exercise the power under this section in relation to the company; and

(b) inviting any person to show cause why that should not be done within such period as the Registrar may prescribe.

(5) If no person shows cause or sufficient cause within the period referred to in subsection (4)(b) as to why the name of the company should not be struck off the register, the Registrar shall strike off the name of

the company from the register and publish a notice in the *Gazette* of the company's name having been so struck off.

(6) On the publication of the notice in the *Gazette* under subsection (5) the company is dissolved.

(7) Notwithstanding the dissolution of the company under subsection (6) —

(a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this section shall effect the power of the Court to wind up a company the name of which has been struck off the register.

(8) The Registrar shall ensure that —

(a) such particulars of the company and of the application referred to in subsection (1), as he may determine, is sent to —

(i) the Collector of Income Tax appointed under the Income Tax Act (Chapter 35); and

(ii) the Tabung Amanah Pekerja Board established by the Tabung Amanah Pekerja Board Order, 2016 (S 2/2016); and

(b) the substance of the notices to be published in the *Gazette* referred to in subsections (4) and (5) is also published by the Registrar in such other manner as he thinks appropriate.

(9) The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other manner as he thinks appropriate.

Withdrawal of application [S 49/2018]

287C. (1) The applicant or applicants may, by written notice to the Registrar and on payment of the prescribed fee, withdraw an application to

strike a company's name off the register under section 287B at any time before the name of the company has been struck off the register.

(2) On receipt of the notice referred to in subsection (1), the Registrar shall —

(a) send to the company by ordinary post a notice that the application to strike the company's name off the register has been withdrawn; and

(b) publish a notice, in such manner as the Registrar thinks appropriate, that the application to strike the company's name off the register has been withdrawn.

Objections to striking off [S 49/2018]

287D. (1) Where a notice is given or published by the Registrar under section 287A(3) or 287A(4) of the Registrar's intention to strike the company's name off the register, any person may deliver, not later than the date specified in the notice, an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be so struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 287A(1) or 287B(1).

(2) An objection to the striking the name of the company off the register referred to in subsection (1) shall be given to the Registrar by notice.

(3) On receipt of a notice of objection, which is made in such form and manner as the Registrar may determine, and on payment of the prescribed fee, within the time referred to in subsection (1), the Registrar shall —

(a) where applicable, give the applicant or applicants for striking the name of the company off the register, notice of the objection; and

(b) in deciding whether to allow the objection, take into account such considerations as may be prescribed.

Application for administrative restoration to register [S 49/2018]

287E. (1) Subject to such conditions as may be prescribed, an application may be made to the Registrar to restore to the register the name of a company whose name has been struck off the register by the Registrar under section 287A(6), if no application has been or is being made to the Court to restore the name of the company to the register under section 287A(7).

(2) An application under this section may be made whether or not the company has in consequence been dissolved.

(3) An application under this section may only be made by a former director or former member of the company.

(4) An application under this section is not valid unless the application is received by the Registrar within 15 years after the date on which the company is dissolved.

Registrar's decision on application for administrative restoration
[S 49/2018]

287F. (1) The Registrar shall give notice to the applicant of the decision on an application under section 287E.

(2) If the Registrar's decision is that the name of the company should be restored to the register —

(a) the restoration takes effect as from the date that notice is sent; and

(b) the Registrar shall —

- (i) enter in the register a note of the date on which the restoration takes effect; and
- (ii) cause notice of the restoration to be published in the *Gazette* or in such other manner as the Registrar thinks appropriate.

(3) The notice under subsection (2)(b)(ii) shall state —

(a) the name of the company or, if the company is restored to the register under a different name, that name and its former name;

(b) the company's registration number; and

(c) the date as on which the restoration of the name of the company to the register takes effect.

(4) If the Registrar's decision is that the name of the company should not be restored to the register, the person who made the application under section 287E or any other person aggrieved by the decision of the Registrar may appeal to the Court.

(5) On an appeal made under subsection (4), the Court may —

(a) confirm the Registrar's decision; or

(b) restore the name of the company to the register and give such directions and make such orders as the Court is empowered to give and make under section 287H(3).

Registrar may restore company deregistered by mistake [S 49/2018]

287G. (1) The Registrar may, on his own initiative, restore the name of a company to the register if he is satisfied that the name of the company has been struck off the register and the company is dissolved under section 287A or 287B as a result of a mistake of the Registrar.

(2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the company off the register under section 287B.

(3) The Registrar may restore the name of a company to the register by publishing in the *Gazette* or in such other manner as the Registrar thinks appropriate, a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

Effect of restoration [S 49/2018]

287H. (1) If the name of a company is restored to the register under section 287F(2) or 287G, or on appeal to the Court under section 287F(5) the company is to be regarded as having continued in existence as if its name had not been struck off the register.

(2) The company and its directors, or every authorised representatives of a foreign company, are not liable to a penalty under section 312 for a financial year in relation to which the period for filing its profit and loss accounts and balance sheet and other related documents ended —

(a) after the date of dissolution or striking off; and

(b) before the restoration of the name of the company to the register.

(3) On the application by any person, the Court may give such directions and make such orders as it seems just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or its name had not been struck off the register.

(4) An application to the Court for such directions or orders may be made any time within 3 years after the date of restoration of the name of the company to the register.

PART 7**GENERAL PROVISIONS AS TO REGISTRATION****Appointment of Registrar of Companies etc.**

288. His Majesty the Sultan and Yang Di-Pertuan shall appoint fit and proper persons to be the Registrar of Companies, Deputy Registrars and Assistant Registrars of Companies under and for the purposes of this Act.

Fees

289. (1) There shall be paid to the Registrar —

(a) the fees specified in Schedule 8;

(b) such other fees as may be prescribed.

(2) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan may add, vary or amend the fees specified in Schedule 8 or prescribed under this Act.

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(3) All fees paid to the Registrar shall be paid into the Treasury.

Inspection, production and evidence of documents kept by Registrar

290. (1) Any person may inspect the documents kept by the Registrar on payment of such fees as may be appointed by the Registrar, and person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar, on payment for the certificate, certified copy or extract, of such fees as the Registrar may appoint.

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(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the Court.

(3) A copy of or extract from any document kept and registered at the office for the registration of companies, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

Enforcement of duty of company to make returns to Registrar

291. (1) If a company, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within 14 days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

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

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART 8

(Repealed by S 1/2016)

292. — 297. *(Repealed by S 1/2016).*

PART 9

COMPANIES INCORPORATED OUTSIDE BRUNEI DARUSSALAM CARRYING ON BUSINESS WITHIN BRUNEI DARUSSALAM

Companies to which Part 9 applies

298. This Part applies to all companies incorporated outside Brunei Darussalam which, after 1st January 1957, being the date of commencement of this Act, establish a place of business in Brunei Darussalam, and to all companies incorporated outside Brunei Darussalam which have, before the commencement of this Act, established a place of business in Brunei Darussalam and continue to have an established place of business within Brunei Darussalam at the commencement of this Act.

Documents to be delivered to Registrar by companies carrying on business in Brunei Darussalam

299. (1) Every company incorporated outside Brunei Darussalam shall, before it establishes a place of business or commences to carry on business in Brunei Darussalam, lodge with the Registrar for registration —

(a) a certified copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

(b) a certified copy of its charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

(c) a list of its directors containing similar particulars with respect to its directors as are by this Act required to be contained in the register of the directors, managers and secretaries of a company incorporated under this Act;

(d) where the list includes directors resident in Brunei Darussalam who are members of the local board of directors, a memorandum duly executed by or on behalf of the company incorporated outside Brunei Darussalam stating the powers of the local directors;

(e) a memorandum of appointment or power of attorney under the seal of the company incorporated outside Brunei Darussalam or executed on its behalf in such manner as to be binding on the company and, in either case, verified in the prescribed manner, stating the names and addresses of two or more individuals resident in Brunei Darussalam authorised to accept on its behalf service of process and any notices required to be served on the company;

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(f) notice of the situation of its registered office in Brunei Darussalam and, unless the office is open and accessible to the public during ordinary business hours on each business day, the days and hours during which it is open and accessible to the public;

(g) a notice in such form as the Registrar may determine containing the following particulars —

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(i) in the case —

(A) where a certificate of the foreign company's incorporation or registration or a document of similar effect is issued in its place of incorporation or formation, the registration number indicated on the certificate of the

foreign company's incorporation or registration or a document of similar effect; or

- (B) where the document referred to in sub-subparagraph (A) is not available, the number issued to the foreign company upon its incorporation by or registration with an authority which is responsible for incorporating or registering companies;
- (ii) a description of the business carried on by the foreign company; and
- (iii) the type of legal form or legal entity of the foreign company,

and on payment of the appropriate fees and subject to this Act the Registrar shall register the company by registration of the documents.

(2) Where a memorandum of appointment or power of attorney lodged with the Registrar in pursuance of subsection (1)(e) is executed by a person on behalf of the company, a copy of the deed or document by which that person is authorised to execute the memorandum of appointment or power of attorney, verified by statutory declaration in the prescribed manner, shall be lodged with the Registrar and the copy shall for all purposes be regarded as an original.

(3) Subsection (1) applies to a company registered outside Brunei Darussalam which was not registered but which, immediately before 31st December 2010, being the date of commencement of the Companies Act (Amendment) Order, 2010 (S 118/2010), had a place of business or was carrying on business in Brunei Darussalam and, on that date, had a place of business or was carrying on business in Brunei Darussalam, as if it established that place of business or commenced to carry on that business on that date.

Power of companies incorporated outside Brunei Darussalam to hold immovable property

300. A company incorporated outside Brunei Darussalam which shall have filed with the Registrar the documents specified in section 299, shall have the same power to acquire, hold and dispose of immovable property in Brunei Darussalam as if it were a company incorporated under this Act.

Power to refuse registration of company incorporated outside Brunei Darussalam in certain circumstances

300A. Notwithstanding anything in this Act or any other written law, the Registrar shall refuse to register a company under this Part if he is satisfied that the company incorporated outside Brunei Darussalam is being used or is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or is acting or likely to act against the national security or interest.

Returns to be delivered to Registrar where documents etc. altered

301. (1) If in the case of any company to which this Part applies any alteration is made in —

(a) the charter, statutes or memorandum and articles of the company or any such instrument as aforesaid;

(b) the directors of the company or the particulars contained in the list of the directors;

(c) the names or addresses of the persons authorised to accept service on behalf of the company;

(d) the situation or address or designation of situation or address of the registered office of the company incorporated outside Brunei Darussalam or the days or hours during which it is open and accessible to the public;

(e) the address of the registered office of the company incorporated outside Brunei Darussalam in its place of incorporation or origin;

(f) the name of the company incorporated outside Brunei Darussalam;

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(g) the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of the company incorporated outside Brunei Darussalam;

[S 37/2020]

(h) the description of the business carried on by the foreign company; or

[S 37/2020]

(i) the type of legal form or legal entity of the foreign company,

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the company incorporated outside Brunei Darussalam shall, within one month or within such further period as the Registrar in special circumstances allow after the change or alteration, lodge with the Registrar particulars of the change or alteration and such documents as are required.

Balance sheet of company carrying on business in Brunei Darussalam

302. (1) Every company to which this Part applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of that balance sheet to the Registrar for registration.

(2) If any such balance sheet is not written in the English language, there shall be annexed to it a certified translation thereof.

(3) Subject to this section, a company incorporated outside Brunei Darussalam shall, within 2 months of its annual general meeting, lodge with the Registrar, a copy of its balance sheet made up to the end of its last financial year in such form and containing such particulars and accompanied by copies of such documents as the company is required to annex, attach or send with its balance sheet by the law for the time being applicable to that company in the place of its incorporation or origin, together with a statutory declaration in the prescribed form verifying that the copies are true copies of the documents so required.

(4) The Registrar may, if he is of the opinion that the balance sheet and other documents referred to in subsection (3) do not sufficiently disclose the company's financial position, require the company to lodge a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as the Registrar by notice in writing to the company requires but this subsection does not authorise the Registrar to require a balance sheet to contain any particulars or 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 company shall comply with the requirements set out in the notice.

(6) Where a company to which this Part applies, is not required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance sheet, the company shall prepare and lodge with the Registrar a balance sheet within such period, in such form and containing such particulars and to annex thereto such documents as the directors of the company would have been required to prepare or obtain if the company were a public company incorporated under this Act.

(7) In addition to the balance sheet and other documents required to be lodged with the Registrar by subsections (3) to (6), a company incorporated outside Brunei Darussalam shall lodge with the Registrar with such balance sheet and other documents 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 and a duly audited profit and loss account which, in so far as is practicable, complies with the requirements of the accounting standards 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:

Provided that —

(a) the 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 operation in Brunei Darussalam; and

(b) the Registrar may waive compliance with this subsection in relation to any company incorporated outside Brunei Darussalam if he is satisfied that —

- (i) it is impractical to comply with this subsection having regard to the nature of the company's operations in Brunei Darussalam;
- (ii) it would be of no real value having regard to the amount involved;
- (iii) it would involve expense unduly out of proportion to its value; or
- (iv) it would be misleading or harmful to the business of the company or to any company related to the company.

(8) A statement and profit and loss account are deemed to have been duly audited for the purposes of subsection (7) if it is accompanied by a report by an authorised auditor appointed to provide auditing services in respect of the company's operations in Brunei Darussalam.

(9) Without prejudice to the powers of the Registrar under paragraph (b) of the proviso to subsection (7), a company incorporated outside Brunei Darussalam may apply to the Registrar in writing for an order relieving the company incorporated outside Brunei Darussalam from any requirement of this section relating to the form and content of accounts or reports and the Registrar may make such an order either unconditionally or on condition that the company incorporated outside Brunei Darussalam complies with such other requirements relating to the form and content of the accounts or reports as the Registrar thinks fit to impose.

(10) The Registrar shall not make an order under subsection (9) unless he is of the opinion that compliance with the requirements of this section would render the accounts or reports misleading or inappropriate to the circumstances of the company incorporated outside Brunei Darussalam or would impose unreasonable burdens on the company incorporated outside Brunei Darussalam.

(11) The Registrar may make an order under subsection (9) which may be limited to a specific period and may from time to time revoke or suspend the operation of any such order.

(12) In this section, “authorised auditor” means a person authorised to perform the duties required by this Act to be performed by an auditor.

Financial statements [S 27/2019]

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.

Obligation to state name of company, whether limited and country where incorporated

303. Every company to which this Part applies shall —

(a) in every prospectus inviting subscriptions for its shares or debentures in Brunei Darussalam state the country in which the company is incorporated;

(b) conspicuously exhibit on every place where it carries on business in Brunei Darussalam the name of the company and the country in which the company is incorporated;

(c) cause the name of the company and of the country in which the company is incorporated to be stated in legible characters in all bill-heads and letter paper, and in all notices,

advertisements, and other official publications of the company;
and

(d) if the liability of the members of the company is limited, cause notice of that fact to be stated in legible characters in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company in Brunei Darussalam and to be affixed on every place where it carries on its business.

Service on company to which Part 9 applies

304. Any process or notice required to be served on a company to which this Part applies shall be sufficiently served if addressed to any person whose name has been delivered to the Registrar under this Part and left at or sent by post to the address which has been so delivered:

Provided that —

(a) where any such company makes default in delivering to the Registrar the name and address of a person resident in Brunei Darussalam who is authorised to accept on behalf of the company service of process or notices; or

(b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason cannot be served,

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Brunei Darussalam.

Cesser of business in Brunei Darussalam

304A. (1) If a Part 9 company ceases to have a place of business or to carry on business in Brunei Darussalam, it shall, within 7 days after so ceasing, lodge with the Registrar notice of that fact, and as from the day on which the notice is so lodged its obligation to lodge any document (not being a document that ought to have been lodged before that day) with the Registrar shall cease, and the Registrar shall upon the expiration

of 12 months after the lodging of such notice remove the name of that company incorporated outside Brunei Darussalam from the register.

(2) If a company incorporated outside Brunei Darussalam goes into liquidation or is dissolved in its place of incorporation or origin —

(a) each person who immediately prior to the commencement of the liquidation proceedings was an agent shall, within one month after the commencement of the liquidation or the dissolution or within such further time as the Registrar in special circumstances allows, lodge or cause to be lodged with the Registrar notice of that fact and, when a liquidator is appointed, notice of such appointment; and

(b) the liquidator shall, until a liquidator for Brunei Darussalam is duly appointed by the Court, have the powers and functions of a liquidator for Brunei Darussalam.

(3) A liquidator of a company incorporated outside Brunei Darussalam appointed for Brunei Darussalam by the Court or a person exercising the powers and functions of such a liquidator —

(a) shall, before any distribution of the company incorporated outside Brunei Darussalam's assets is made, by advertisement in a newspaper circulating generally in each country where the company incorporated outside Brunei Darussalam had been carrying on business prior to the liquidation if no liquidator has been appointed for that place, invite all creditors to make their claims against the company incorporated outside Brunei Darussalam within a reasonable time prior to the distribution;

(b) subject to subsection (7), shall not, without obtaining an order of the Court, pay out any creditor to the exclusion of any other creditor of the company incorporated outside Brunei Darussalam; and

(c) shall, unless otherwise ordered by the Court, only recover and realise the assets of the company incorporated outside Brunei Darussalam in Brunei Darussalam and shall, subject to paragraph (b) and subsection (7), pay the net amount so recovered

and realised to the liquidator of that company incorporated outside Brunei Darussalam for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Brunei Darussalam by the company incorporated outside Brunei Darussalam.

(4) Where a company incorporated outside Brunei Darussalam has been wound up so far as its assets in Brunei Darussalam are concerned and there is no liquidator for the place of its incorporation or origin, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered in pursuance of subsection (3).

(5) On receipt of a notice from an agent that the company has been dissolved, the Registrar shall remove the name of the company from the register.

(6) Where the Registrar has reasonable cause to believe that a company incorporated outside Brunei Darussalam has ceased to carry on business or to have a place of business in Brunei Darussalam, the provisions of this Act relating to the striking off the register of the names of defunct companies shall with such adaptations as are necessary extend and apply accordingly.

[S 1/2016; S 49/2018]

(7) Section 147 of the Insolvency Order, 2016 (S 1/2016) applies to a company incorporated outside Brunei Darussalam wound up or dissolved pursuant to this section as if for references to a company there were substituted references to a company incorporated outside Brunei Darussalam.

[S 1/2016]

(8) Where the Registrar is satisfied that a company incorporated outside Brunei Darussalam is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or against the national security or interest, he shall strike the name of the company incorporated outside Brunei Darussalam off the register and it shall thereupon cease to be registered as a company incorporated outside Brunei Darussalam under this Part.

(9) Any person aggrieved by the decision of the Registrar under subsection (8), may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

[S 27/2019]

Restriction on use of certain names

304B. (1) No company incorporated outside Brunei Darussalam shall be registered by a name that, in the opinion of the Registrar, is undesirable, or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

[S 27/2019]

(2) Any change in the name of a company incorporated outside Brunei Darussalam shall not be registered if in the opinion of the Registrar the new name of the company is undesirable notwithstanding that particulars of the change have been lodged in accordance with section 301.

(3) No company incorporated outside Brunei Darussalam to which this Part applies shall use in Brunei Darussalam any name other than that under which it is registered under this Part.

(4) If default is made in complying with subsection (3), the company incorporated outside Brunei Darussalam, every officer of the company who is in default and every agent of the company who knowingly and wilfully authorises or permits the default is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and a default fine.

Register of members of foreign companies [S 37/2020]

304C. (1) A foreign company registered under this Part on or after the appointed day shall, within 30 days after it is registered —

(a) keep a register of its members at its registered office in Brunei Darussalam or at some other place in Brunei Darussalam; and

(b) lodge a notice with the Registrar specifying the address at which the register of members is kept.

(2) A foreign company registered under this Part before the appointed day shall, within 60 days after the appointed day —

(a) keep a register of its members at its registered office in Brunei Darussalam or at some other place in Brunei Darussalam; and

(b) lodge a notice with the Registrar specifying the address at which the register of members is kept.

(3) If there is any change in the address at which the register of members mentioned in subsection (1) or (2) is kept, the foreign company shall, within 30 days after the change, lodge a notice of the change with the Registrar.

(4) In this section, “appointed day” means the date of commencement of the Companies Act (Amendment) Order, 2020 (S 37/2020).

Contents of register and index of members of foreign companies

[S 37/2020]

304D. (1) The register of members of a foreign company required to be kept under section 304C shall contain the following particulars —

(a) the names and addresses of the members of the foreign company;

(b) the date on which the name of each person was entered in the register as a member;

(c) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member;

(d) in the case of a foreign company having a share capital —

(i) a statement of the shares held by each member, distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member’s holding and of the amount paid or

agreed to be considered as paid on the shares of each member; and

- (ii) such particulars of the shares held by each member, including the date of every allotment of shares to members and the number of shares comprised in each allotment;

(e) such other particulars as may be prescribed.

(2) Every foreign company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index –

(a) keep an index in convenient form of the names of the members;

(b) within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index; and

(c) keep the index at the same place as the register of members.

(3) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

Register to be *prima facie* evidence [S 37/2020]

304E. Any register of members of a foreign company kept under section 304C is *prima facie* evidence of any matter which the register is required under this Part to contain.

Certificate as to shareholding [S 37/2020]

304F. A certificate made under the seal of a foreign company (or in any manner permitted for certificates of such type by the laws of the country or territory in which the foreign company is incorporated or established) specifying any shares held by any member of that company and registered in the register of members of the foreign company kept under section 304C is *prima facie* evidence of the title of the member to the shares and the registration of the shares in that register.

Application of provisions of Act [S 37/2020]

304G. Rules made under section 324A may —

(a) provide for —

- (i) the application of any provision of Part 2 relating to the transfer of shares in a company to the transfer of shares in a foreign company; and
- (ii) the application of Part 4 relating to the register of members to the register of members of a foreign company,

subject to such adaptations, modifications or additions as may be prescribed; and

(b) exempt any foreign company or class of foreign companies from all or any provision of this Part.

Office where documents to be filed

305. (1) Any document, which any company to which this Part applies is required to deliver to the Registrar shall be delivered to the Registrar at the registration office.

(2) If any company to which this Part applies ceases to have a place of business in Brunei Darussalam, it shall forthwith give notice of the fact to the Registrar and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease.

Penalties

306. If any company to which this Part applies fails to comply with any of the foregoing provisions of this Part, the company and every officer or agent of the company is guilty of an offence and liable on conviction to a fine of \$1,000 or, in the case of a continuing offence, \$25 for every day during which the default continues.

Interpretation of Part 9

307. For the purposes of this Part —

“certified” means certified in the prescribed manner to be a true copy or a correct translation;

“director”, in relation to a company, includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

“place of business” includes a share transfer or share registration office;

“prospectus” has the same meaning as when used in relation to a company incorporated under this Act.

PART 10**RESTRICTIONS ON SALE OF SHARES AND
OFFERS OF SHARES FOR SALE****Provisions with respect to prospectuses of foreign companies inviting
subscriptions for shares or offering shares for sale**

308. (1) It shall not be lawful for any person to —

(a) issue, circulate or distribute in Brunei Darussalam any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside Brunei Darussalam, whether the company has or has not established, or when formed will or will not establish, a place of business in Brunei Darussalam, unless —

- (i) before the issue, circulation or distribution of the prospectus in Brunei Darussalam a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;
- (ii) the prospectus states on the face of it that the copy has been so delivered;

- (iii) the prospectus is dated;
- (iv) the prospectus otherwise complies with this Part; or

(b) issue to any person in Brunei Darussalam a form of application for shares in or debentures of such a company or intended company as aforesaid, unless the form is issued with a prospectus which complies with this Part:

Provided that this provision does not apply if it is shown that the form of application was issued in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section does not apply to the issue to existing members of debenture holders of a company of a prospectus or form of application relating to share in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section applies to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Brunei Darussalam are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 41 to be a prospectus issued by the company, that document is deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, is not deemed an offer to the public for the purposes of this section.

(5) Section 40 shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section is guilty of an offence and liable on conviction to a fine of \$5,000 and imprisonment for 2 years.

(7) In this section and section 309, “prospectus”, “shares” and “debentures” have the same meanings as when used in relation to a company incorporated under this Act.

Requirements as to prospectus

309. (1) In order to comply with this Part, a prospectus in addition to complying with the provisions of section 308(1)(a)(ii) and (iii) shall —

(a) contain particulars with respect to the following matters —

- (i) the objects of the company;
- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in Brunei Darussalam where such instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in Brunei Darussalam, and, if so, the address of its principal office in Brunei Darussalam:

Provided that the provisions of sub-paragraphs (i), (ii), (iii) and (iv) do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

(b) subject to the provisions of this section, state the matters specified in Part 1 of Schedule 3 (other than those specified in paragraph 1 of that Part 1) and set out the reports specified in Part 2 of that Schedule subject always to the provisions contained in Part 3 of that Schedule:

Provided that —

(a) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus must specify the objects of the company if the advertisement specifies the primary object with which the company was formed;

(b) in paragraph 3 of Part 1 of Schedule 3, a reference to the memorandum and articles of the company shall be substituted for the reference to the articles; and

[S 27/2019]

(c) paragraph 1 of Part 3 of Schedule 3 shall have effect as if the reference to the memorandum were omitted therefrom.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention if —

(a) as regards any matter not disclosed, he proves that he was not cognisant thereof;

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of Part 1 of Schedule 3,

no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

Restriction on offering of shares for subscription or sale

310. (1) It shall not be lawful for any person to go from house to house offering shares for subscription or purchase to the public or any member of the public.

In this subsection, “house” shall not include an office used for business purposes.

(2) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside Brunei Darussalam, either by such a statement as aforesaid, or by such a prospectus as complies with this Part:

Provided that the provisions of this subsection do not apply —

(a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in Brunei Darussalam and the offer so states and specifies the stock exchange;

(b) where the shares to which the offer relates are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters —

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Brunei Darussalam where that principal can be served with process;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Brunei Darussalam;

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) the dividends, if any, paid by the company on each class of shares during each of the 3 financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid-up, and, if not, to what extent they are paid-up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognised stock exchange in Brunei Darussalam or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Brunei Darussalam where that document or a copy thereof can be inspected.

In this subsection, “company” means the company by which the shares to which the statement relates were or are to be issued.

(5) If any person acts, incites, or causes or procures any person to act, in contravention of this section, he is guilty of an offence and liable on conviction to a fine of \$2,000 and imprisonment for 6 months, and in the case of a second or subsequent offence a fine of \$5,000 and imprisonment for one year.

(6) Where a person convicted of an offence against this section is a company (whether a company within the meaning of this Act or not) every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(7) In this section, unless the context otherwise requires —

“shares” means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units; and

“unit” means any right or interest (by whatever name called) in a share,

and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(8) (a) Where any person is convicted of having made an offer in contravention of the provisions of this section, the Court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

(b) Where the Court makes an order under this subsection (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Court of Appeal.

PART 10A

[S 37/2020]

REGISTER OF CONTROLLERS AND NOMINEE
DIRECTORS OF COMPANIES**Application of this Part** [S 37/2020]

310A. (1) This Part applies to —

(a) all companies other than a company that is set out in Schedule 15; and

(b) all foreign companies registered under Part 9 other than a foreign company that is set out in Schedule 16.

(2) The obligation to comply with this Part extends to all natural persons, whether resident in Brunei Darussalam or not and whether citizens of Brunei Darussalam or not, and to all entities, whether formed, constituted or carrying on business in Brunei Darussalam or not.

(3) This Part extends to acts done or omitted to be done outside Brunei Darussalam.

Interpretation of this Part [S 37/2020]

310B. In this Part, unless the context otherwise requires —

“controller” means an individual controller;

“individual controller”, in relation to a company or a foreign company, means an individual who has significant interest in, or significant control over, the company or the foreign company, as the case may be;

“legal entity” means any body corporate formed or incorporated or existing in Brunei Darussalam or outside Brunei Darussalam and includes a foreign company;

“limited liability partnership” has the same meaning given to it by section 5(1) of the Limited Liability Partnerships Order, 2010 (S 117/2010);

“member of the public” includes —

(a) in the case of a company, any member of the company acting in the member’s capacity as such; and

(b) in the case of a foreign company, any member of the foreign company acting in the member’s capacity as such;

“register of controllers” or “register” —

(a) in relation to a company to which this Part applies, means the register that the company is required to keep of its registrable controllers under section 310F(1), (2) or (3); and

(b) in relation to a foreign company to which this Part applies, means the register that the foreign company is required to keep of its registrable controllers under section 310F(4), (5) or (6);

“significant control”, in relation to a company or a foreign company, has the meaning given to it in Schedule 17;

“significant interest”, in relation to a company or a foreign company, has the meaning given to it in Schedule 17.

Meaning of “registrable” [S 37/2020]

310C. For the purposes of this Part, in relation to a company (*X*), or a foreign company (*X*), a controller (*A*) is registrable unless —

(a) *A*’s significant interest in or significant control over *X* is only through one or more controllers (*B*) of *X*;

- (b) *A* is a controller of *B* (or each *B* if more than one); and
- (c) *B* (or each *B* if more than one) is either —
 - (i) a company, or foreign company to which this Part applies, that is required to keep a register of controllers under section 310F;
 - (ii) a company that is set out in Schedule 15;
 - (iii) a foreign company that is set out in Schedule 16;
 - (iv) a corporation which shares are listed for quotation on a securities exchange.

State of mind of corporation, unincorporated association etc. [S 37/2020]

310D. (1) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of the officer's, employee's or agent's actual or apparent authority; and

(b) the officer, employee or agent had that state of mind,

is evidence that the corporation had that state of mind.

(2) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of the employee's or agent's actual or apparent authority; and

(b) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

Meaning of “legal privilege” [S 37/2020]

310E. (1) For the purposes of this Part, information or a document is subject to legal privilege if —

(a) it is communication made between a lawyer and a client, or advocate or solicitor acting as such and the advocate or solicitor’s employer, in connection with the lawyer giving legal advice to the client or the advocate or solicitor giving legal advice to the employer, as the case may be;

(b) it is a communication made between two or more lawyers acting for a client, or two or more advocates or solicitors acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of the advocates or solicitors giving legal advice to the employer, as the case may be;

(c) it is a communication made —

- (i) between a client, or an employer of an advocate or solicitor, and another person;
- (ii) between a lawyer acting for a client and either the client or another person; or
- (iii) between advocate or solicitor acting as such for the advocate or solicitor’s employer and either the employer or another person,

in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer, as the case may be, is or may be, or was or might have been, a party;

(d) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (a) or (b) and that is made or prepared by any person in connection with a lawyer or advocate or solicitor, or one or more of the lawyers or advocates or solicitors, in either paragraph giving legal advice to the client or the employer of the advocate or solicitor, as the case may be; or

(e) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (c) and that is made or prepared by any person in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the advocate or solicitor, as the case may be, is or may be, or was or might have been, a party,

but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose.

(2) In subsection (1) —

“client” in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client;

“employer” in relation to an advocate or solicitor includes —

(a) if the employer is one of a number of corporations that are related to each other under section 129A, every corporation so related as if the advocate or solicitor is also employed by each of the related corporations;

(b) if the employer is a public agency and the advocate or solicitor is required as part of the advocate’s or solicitor’s duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the advocate or solicitor is also employed by the other public agency or each of the other public agencies; and

(c) an employee or officer of the employer;

“lawyer” means a solicitor or a professional legal adviser, and includes an interpreter or other person who works under the supervision of a solicitor or a professional legal adviser.

Register of controllers [S 37/2020]

310F. (1) A company incorporated on or after the appointed day shall keep a register of its registrable controllers not later than 30 days after the date of the company's incorporation.

(2) A company incorporated before the appointed day shall keep a register of its registrable controllers not later than 60 days after the appointed day.

(3) If a company that is not a company to which this Part applies subsequently becomes a company to which this Part applies, the company shall keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the company.

(4) A foreign company registered under Part 9 shall keep a register of its registrable controllers not later than 30 days after the date of the foreign company's registration.

(5) A foreign company registered under Part 9 before the appointed day shall keep a register of its registrable controllers not later than 60 days after the appointed day.

(6) If a foreign company that is not a foreign company to which this Part applies subsequently becomes a foreign company to which this Part applies, the foreign company shall keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the foreign company.

(7) A company or foreign company shall ensure that its register —

(a) is in such form as the Registrar may determine;

(b) contains such particulars of the company's or foreign company's registrable controllers as may be prescribed;

(c) is updated if any change to the prescribed particulars occurs; and

(d) is kept at such place as may be prescribed.

(8) A company or foreign company shall enter the particulars in its register and update the register within the prescribed time and in the prescribed manner.

(9) A company or foreign company shall —

(a) enter the particulars of any controller in its register, or update the particulars of that controller in the register, after the particulars of that controller are confirmed by the controller; or

(b) if the company or foreign company does not receive the controller's confirmation, enter or update the particulars with a note indicating that the particulars have not been confirmed by the controller.

(10) For the purposes of subsection (9)(a), the particulars of the controller to be entered, or updated, in a register shall be confirmed by the controller in the prescribed manner.

(11) Subject to section 310M, a company or foreign company shall not disclose, or make available for inspection, a register or any particulars contained in the register to any member of the public.

(12) If a company fails to comply with —

(a) subsection (1), (2) or (3), whichever is applicable; or

(b) subsection (7), (8), (9) or (11),

the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(13) If a foreign company fails to comply with —

(a) subsection (4), (5) or (6), whichever is applicable; or

(b) subsection (7), (8), (9) or (11),

the foreign company, and every officer of the foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(14) In this section, “appointed day” means the date of commencement of the Companies Act (Amendment) Order, 2020 (S 37/2020).

Duty of company and foreign company to investigate and obtain information [S 37/2020]

310G. (1) A company or foreign company shall take reasonable steps to find out and identify the registrable controllers of the company or foreign company.

(2) A company (*A*) or foreign company (*A*) shall —

(*a*) give a notice to any person (*B*) whom *A* knows or has reasonable grounds to believe is a registrable controller in relation to *A*, requiring *B* —

- (i) to state whether *B* is or not a registrable controller of *A*;
- (ii) to state whether *B* knows or has reasonable grounds to believe that any other person (*C*) is a registrable controller of *A* or is likely to have that knowledge and to give such particulars of *C* that are within *B*’s knowledge; and
- (iii) to provide such other information as the Registrar may determine; and

(*b*) give a notice to any person (*D*) whom *A* knows, or has reasonable grounds to believe knows, the identity of a person who is a registrable controller of *A* or is likely to have that knowledge, requiring *D* —

- (i) to state whether *D* knows or has reasonable grounds to believe that any other person (*E*) is a registrable controller of *A* or is likely to have that knowledge

and to give such particulars of *E* that are within *D*'s knowledge; and

- (ii) to provide such other information as the Registrar may determine.

(3) A notice mentioned in subsection (2) shall —

(a) state that the addressee must comply with the notice not later than the time prescribed for compliance;

(b) be in such form, contain such particulars and be sent in such manner, as the Registrar may determine; and

(c) be given within such period as may be prescribed after the company or foreign company first knows the existence of, or first has reasonable grounds to believe that there exists, a person to whom a notice must be given under that subsection.

(4) Subsection (2) does not require a company or foreign company to give notice to any person in respect of any information that is required to be stated or provided pursuant to the notice if the information was previously provided by that person or by his agent authorised in writing.

(5) If a company or foreign company fails to comply with subsection (2) or (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(6) An addressee of a notice under subsection (2) shall comply with the notice within the time specified in the notice for compliance except that an addressee is not required to provide any information that is subject to legal privilege.

(7) An addressee of a notice under subsection (2) who fails to comply with subsection (6) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Duty of company and foreign company to keep information up-to-date*[S 37/2020]*

310H. (1) If a company or foreign company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a registrable controller that are stated in the company's or foreign company's register of controllers, the company or foreign company shall give notice to the registrable controller —

- (a) to confirm whether or not the change has occurred; and
- (b) if the change has occurred —
 - (i) to state the date of the change; and
 - (ii) to provide the particulars of the change.

(2) A company or foreign company shall give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows of the change or first has reasonable grounds to believe that the change has occurred.

(3) Section 310G(3)(a) and (b) applies to a notice under this section as it applies to a notice under that section.

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was previously provided by that person or by his agent authorised in writing.

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 310G(3)(a) and (b) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(7) For the purposes of this section, a relevant change occurs if—

(a) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or

(b) any other change occurs as a result of which the particulars of the registrable controller in the company's or foreign company's register of controllers are incorrect or incomplete.

Duty of company and foreign company to correct information [S 37/2020]

310L. (1) If a company or foreign company knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the company's or foreign company's register is incorrect, the company or foreign company shall give notice to the registrable controller to confirm whether the particulars are correct and, if not, to provide the correct particulars.

(2) A company or foreign company shall give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows or first has reasonable grounds to believe that the information is incorrect.

(3) Section 310G(3)(a) and (b) applies to a notice under this section as it applies to a notice under that section.

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was previously provided by that person or by his agent authorised in writing.

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 310G(3)(a) and (b) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Duty of Controller to provide information [S 37/2020]

310J. (1) A person who knows or ought reasonably to know that the person is a registrable controller in relation to a company or foreign company shall —

(a) notify the company or foreign company, as the case may be, that the person is a registrable controller in relation to the company or foreign company;

(b) state the date, to the best of the person's knowledge, on which the person became a registrable controller in relation to the company or foreign company; and

(c) provide such other information as the Registrar may determine.

(2) The person mentioned in subsection (1) shall comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first know or ought reasonably to have known that the person was a registrable controller.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 310G(2) and has complied with the requirements of the notice within the time specified in the notice for compliance.

(4) If a person fails to comply with subsection (1) or (2), the person is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Duty of Controller to provide change of information [S 37/2020]

310K. (1) A person who is a registrable controller in relation to a company or foreign company who knows, or ought reasonably to know that a relevant change has occurred in the prescribed particulars of the registrable controller shall notify the company or foreign company of the relevant change —

(a) stating the date that the change occurred; and

(b) providing the particulars of the change.

(2) The person mentioned in subsection (1) shall comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known of the relevant change.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 310H(1) and has complied with the requirements of the notice within the time specified in the notice for compliance.

(4) Any person who fails to comply with subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(5) For the purposes of this section, a relevant change occurs if —

(a) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or

(b) there is a change in the person's contact details or such other particulars as may be prescribed.

Nominee directors [S 37/2020]

310L. (1) A director of a company incorporated on or after the appointed day —

(a) who is a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the date of incorporation; and

(b) who becomes a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

(2) A director of a company incorporated before the appointed day —

(a) who is a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 60 days after the appointed day; and

(b) who becomes a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

(3) A director of a company mentioned in subsection (1) or (2) shall inform the company —

(a) that he ceases to be a nominee within 30 days after the cessation; and

(b) of any change to the particulars provided to the company under that subsection within 30 days after the change.

(4) A company shall keep a register of its directors who are nominees (in this Part referred to as the register of nominee directors) in such form as the Registrar may determine and at such place as may be prescribed.

(5) Subject to section 310M, a company shall not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

(6) If a director fails to comply with subsection (1), (2) or (3), the director is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(7) If a company fails to comply with subsection (4) or (5), the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(8) In this section, a director is a nominee if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person.

(9) In this section, “appointed day” means the date of commencement of the Companies Act (Amendment) Order, 2020 (S 37/2020).

Power to enforce [S 37/2020]

310M. (1) The Registrar or any officer authorised by him in writing in that behalf may —

(a) require a company or foreign company to which this Part applies to produce its register, its register of nominee directors and any other document relating to those registers or the keeping of those registers;

(b) inspect, examine and make copies of the registers and any document so produced; and

(c) make such inquiry as may be necessary to ascertain whether the provisions of this Part are complied with.

(2) Where any register or documents as are mentioned in subsection (1) are kept in electronic form —

(a) the power of the Registrar or such authorised officer in subsection (1)(a) to require the register or any document to be produced includes the power to require a copy of the register or document to be made available in legible form and subsection (1)(b) is to accordingly apply in relation to any copy so made available; and

(b) the power of the Registrar or any such authorised officer in subsection (1)(b) to inspect the register or any document includes the power to require any person on the premises in question to give the Registrar or the authorised officer such assistance as the Registrar or the authorised officer may reasonably require to enable the Registrar or the authorised officer to inspect and make copies of the register or document in legible form, and to make records of the information contained in them.

(3) The powers conferred on the Registrar or such authorised officer under subsections (1) and (2) may be exercised by a public agency to enable the public agency to administer or enforce any written law.

(4) Any person who fails to comply with any requirement imposed under subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Central register of controllers [S 37/2020]

310N. (1) This section applies where the Minister, by notification published in the *Gazette*, directs the Registrar to maintain a central register of controllers of companies and foreign companies.

(2) Whether the Minister has directed the Registrar to maintain a central register of controllers of companies and foreign companies under subsection (1) —

(a) the Registrar shall keep a central register of controllers consisting of the particulars contained in the registers kept by companies and foreign companies to which this Part applies; and

(b) the Registrar shall require any company or foreign company to which this Part applies to lodge with the Registrar —

(i) all particulars contained in the company's or foreign company's register maintained under section 310F; and

(ii) all updates to the company's or foreign company's register that occur after the lodgment of the particulars under sub-paragraph (i).

(3) A lodgment mentioned in subsection (2)(b) shall be made in such form and manner as the Registrar may determine and within such time as may be prescribed.

(4) If a company or foreign company fails to comply with subsection (2)(b) or (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

(5) Except in such circumstances as may be prescribed, the Registrar shall not disclose, or make available for inspection, the central register of controllers of companies and foreign companies kept by the Registrar under this section to any member of the public.

Codes of practice etc. [S 37/2020]

310O. (1) The Registrar may issue one or more codes, guidance, guidelines, policy statements and practice directions for all or any of the following purposes —

(a) to provide guidance to companies or foreign companies, or to both, in relation to the operation or administration of any provision of this Part;

(b) generally for carrying out the purposes of this Part.

(2) The Registrar may publish any such code, guidance, guideline, policy statement or practice direction in such manner as the Registrar thinks fit.

(3) The Registrar may revoke, vary, revise or amend the whole or any part of any code, guidance, guideline, policy statement or practice direction issued under this section in such manner as the Registrar thinks fit.

(4) Where amendments are made under subsection (3) —

(a) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guidance, guideline, policy statement and practice direction; and

(b) any reference in this Act or any other written law to the code, guidance, guideline, policy statement or practice direction however expressed is to be treated, unless the context otherwise requires, as a reference to the code, guidance, guideline, policy statement or practice direction as so amended.

(5) The failure by any person to comply with any of the provisions of a code, guidance, guideline, policy statement or practice direction issued under this section that applies to that person does not of

itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) Any code, guidance, guideline, policy statement or practice direction issued under this section —

(a) may be of general or specific application; and

(b) may specify that different provisions apply to different circumstances or provide for different cases or classes of cases.

(7) It is not necessary to publish any code, guidance, guideline, policy statement or practice direction issued under this section in the *Gazette*.

Exemption [S 37/2020]

310P. The Minister may, by order published in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Part.

PART 11

**PROHIBITION OF PARTNERSHIPS WITH MORE THAN
TWENTY MEMBERS**

Prohibition of partnerships with more than twenty members

311. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act.

PART 12

[S 27/2019]

ENFORCEMENT AND GENERAL PROVISIONS

Court may compel compliance

311A. (1) If any person in contravention of this Act, refuses or fails to permit the inspection of any register, minute book or document, or to supply

a copy of any register, minute book or document, the Court may by order compel an immediate inspection of the register, minute book or document, or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member of the company, the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer 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.

(Deleted by S 27/2019)

False and misleading statement [S 27/2019]

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.

False statements or reports [S 27/2019]

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.

Penalty for improper use of word “Berhad”

313. Any person who uses any name or title, or trades or carries on business under any name or title, of which “Limited”, “Berhad”, or any abbreviation, imitation or translation of any of those words is the last word, or in any way holds out that the business is registered or incorporated that person is, unless at that time that business was duly incorporated, under this Act or registered under the Limited Liability Partnerships Order, 2010 (S 117/2010) or the Business Names Act (Chapter 92), 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.

(Deleted by S 27/2019)

Provision with respect to default fines and meaning of “officer in default”

314. (1) Where by any section of this Act it is provided that a company and every officer of the company who is in default are liable to a default fine, the company and every such officer shall, for every day during which the default, refusal or contravention continues, be liable to a fine of such amount as is specified in the said section or, if the amount of the fine is not so specified, to a fine of \$100.

(2) For the purposes of any section in this Act which provides that an officer of a company who is in default is liable to a fine or penalty, “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the section.

Applications of fines

315. The Court or Magistrate imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the fine is recovered, and subject to any such direction all fines under this Act shall, notwithstanding anything in any other Act, be paid into the Treasury.

Penalty for failure to pay fine

316. (1) If any company fails to pay the whole or any part of any fine or penalty imposed by a Court or Magistrate under this Act within one month of the day on which the said fine or penalty was imposed, the Registrar shall publish in the *Gazette* and send to the company by post a notice that at the expiration of 2 months from the date of such notice the name of the company mentioned therein will, unless the said fine or penalty be sooner paid, be struck off the register and the company will be dissolved.

(2) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on such publication the company shall be dissolved:

Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(3) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company is deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(4) A letter or notice under this section may be addressed to the company at its registered office or, if no office has been registered, to the care of some director or officer of the company or, if there is no director or officer of the company whose name and address are known to the Registrar of Companies, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum:

Provided that nothing in this section shall affect any other legal method of enforcing fines or penalties imposed by a magistrate.

Composition of offences [S 27/2019]

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.

Saving as to private prosecutors

317. Nothing in this Act relating to the institution of criminal proceedings by the Public Prosecutor shall be taken to preclude any person from instituting or carrying on any such proceedings.

Saving for privileged communications

318. Where proceedings are instituted under this Act against any person by the Public Prosecutor, nothing in this Act shall be taken to require any person who has acted as advocate for the defendant to disclose any privileged communication made to him in that capacity.

Service of documents on company

319. A document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Electronic transaction system [S 27/2019]

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.

Interpretation [S 27/2019]

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 [S 27/2019]

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 [S 27/2019]

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 [S 27/2019]

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 is 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.

320. *(Repealed by S 27/2019).*

Power of Court to grant relief in certain cases

321. (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the Court hearing the case that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(4) The persons to whom this section applies are the following —

(a) directors of a company;

(b) managers of a company;

(c) officers of a company;

(d) persons employed by a company as auditors, whether they are or are not officers of the company.

Power to enforce orders

322. Orders made by the Court under this Act may be enforced and shall be subject to appeal in the same manner as orders made in a civil proceeding pending therein.

(Deleted by S 27/2019)

Power to alter tables and forms

323. (1) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan may by order specified in the *Gazette* alter Table A, the form in Schedule 6 and the table of fees in Schedule 8, and may alter or add to Tables B, C, D and E in Schedule 1, and the forms in Schedules 5 and 11.

[S 27/2019]

(2) Any such order, when altered, shall be published in the *Gazette*, and thenceforth shall have the same force as if the alteration or addition authorised thereby had been included in one of the Schedules, but no alteration made in Table A shall affect any company registered before the alteration, or repeal, as respects that company, of any portion of that table.

324. *(Repealed by S 27/2019).*

Rules *[S 33/2016]*

324A. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such rules as may be necessary or expedient for carrying out the purposes and provisions of this Act and for prescribing anything that may be required or authorised to be prescribed by this Act.

(2) Without prejudice to the generality of subsection (1), rules may be made for or with respect to the corporate governance of companies incorporated in Brunei Darussalam or their related corporations.

(3) Rules made under this section may relate to all or any class, category or description of persons or companies, and may make different

provisions for different classes, categories or descriptions of persons or companies or to a particular person or company or of general or specifically limited application.

(4) Except as otherwise expressly provided in this Act, rules made under this section may provide that any contravention thereof shall be an offence punishable —

(a) in the case of an individual, with a fine not exceeding \$12,500, imprisonment for a term not exceeding 12 months or both and, in the case of a continuing offence, with a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction; or

(b) in any other case, with a fine not exceeding \$25,000 and, in the case of a continuing offence, with a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

SCHEDULE 1

TABLE A

(sections 11, 114, 307 and 323)

REGULATIONS FOR MANAGEMENT OF COMPANY
LIMITED BY SHARES

PRELIMINARY

1. In these Regulations —

“Act” means the Companies Act.

When any provision of the Act is referred to, the reference is to that provision as modified by any statute for the time being in force.

Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these Regulations become binding on the company, shall have the meaning so defined.

SHARES

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable, to be redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary *quorum* shall be two persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

SCHEDULE 1

TABLE A — (*continued*)

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate specifying the share or shares held by him and the amount paid-up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

[S 43/2017]

5. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding \$50, and on such terms, if any, as to evidence and indemnity, as the directors think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 48(1).

LIEN

7. The company shall have a *lien* on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a *lien* on all shares (other than fully paid shares) standing registered in the name of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's *lien*, if any, on a share extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a *lien*, but no sale shall be made unless some sum in respect of which the *lien* exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding, payment of such part of the amount in respect of which the *lien* exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

SCHEDULE 1

TABLE A — (continued)

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the *lien* exists as is presently payable, and the residue shall (subject to a like *lien* for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

CALLS ON SHARES

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one-fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least 14 days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of \$5 *per cent per annum* from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these Regulations as to the liability of joint holders and as to payment of interest apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 6 *per cent*) as may be agreed upon between the member paying the sum in advance and the directors.

SCHEDULE 1

TABLE A — (continued)

TRANSFER AND TRANSMISSION OF SHARES

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor is deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve —

I, A, B., of *, in consideration of the*
sum of \$ *paid to me by C.D.*
of *(hereinafter called the said transferee) do*
hereby transfer to the said transferee the share [or shares]
numbered *in the undertaking called the*
Company, Berhad, to hold unto the said
transferee, subject to the several conditions on which I hold the same: and
I, the said transferee, do hereby agree to take the said share [or shares]
subject to the conditions aforesaid. As witness our hands the
day of .

Witness to the signatures of, & c.

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a *lien*. The directors may also suspend the registration of transfers during the 14 days immediately preceding the ordinary general meeting in each year. The directors may decline to reorganise any instrument of transfer unless —

(a) a fee not exceeding \$1 is paid to the company in respect thereof; and

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within 2 months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

SCHEDULE 1

TABLE A — *(continued)*

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

FORFEITURE OF SHARES

23. If a member fails to pay any call or instalment or a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time there after, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

SCHEDULE 1

TABLE A — *(continued)*

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. The provisions of these Regulations as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

CONVERSION OF SHARES INTO STOCK

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

SCHEDULE 1

TABLE A — (*continued*)

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares apply to stock, and the words “share” and “shareholder” therein shall include “stock” and “stockholder”.

ALTERATION OF CAPITAL

34. The company may by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, is deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, in *lien*, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution —

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

SCHEDULE 1

TABLE A — *(continued)*

(b) sub-divide its existing shares, of any of them, into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 53(1)(d);

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorised, and consent required, by law.

GENERAL MEETINGS

39. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The above mentioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition, or, in default may be convened by such requisitionists, as provided by section 113. If at any time there are not within Brunei Darussalam sufficient directors capable of acting to form a *quorum*, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

SCHEDULE 1

TABLE A — (continued)

NOTICE OF GENERAL MEETINGS

42. Subject to the provisions of section 116(2) relating to special resolutions, 7 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but, with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

PROCEEDINGS AT GENERAL MEETINGS

44. All business are deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officer in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a *quorum* of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a *quorum*.

46. If within half an hour from the time appointed for the meeting a *quorum* is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a *quorum* is not present within half an hour from the time appointed for the meeting, the members present shall be a *quorum*.

47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

SCHEDULE 1

TABLE A — (*continued*)

48. If there is no such chairman, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose someone of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a *quorum* is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members present in person or by proxy entitled to vote or by one member or two members so present and entitled, if that member or those two members together hold not less than 15 *per cent* of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the results of the poll are deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

SCHEDULE 1

TABLE A — (continued)

VOTES OF MEMBERS

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation under the hand of an officer or attorney duly authorised. A proxy need not be a member of the company.

[S 43/2017]

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

SCHEDULE 1

TABLE A — (continued)

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve —

Company, Berhad,

"I, *, being a member*
of *Company, Berhad,*
of the *, of*
hereby appoint *as my proxy, to vote for me and on my*
behalf at the [ordinary or extraordinary, as the case may be] general
meeting of the company to be held on the
day of
and at any adjournment thereof."

Signed this *day of*

62. The instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

SCHEDULE 1

TABLE A — (*continued*)

POWERS AND DUTIES OF DIRECTORS

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the Act, or by these Articles, required to be exercised by the company in general meeting, subjects, nevertheless, to any regulation of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that this tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purposes of —

(a) all appointments of offices made by the directors;

(b) the names of the directors present at each meeting of the directors and of any committee of the directors;

(c) all resolution and proceedings at all meetings of the company; and the directors, and committees of directors,

SCHEDULE 1

TABLE A — *(continued)*

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

71. *(Deleted by S 43/2017).*

DISQUALIFICATION OF DIRECTORS

72. The office of director shall be vacated if the director —

- (a) ceases to be a director by virtue of section 140;
- (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager;
- (c) becomes bankrupt;
- (d) becomes prohibited from being a director by reason of any order made under section 208 or 260;
- (e) is found lunatic or becomes of unsound mind;
- (f) resigns his office by notice in writing to the company; or
- (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company:

ROTATION OF DIRECTORS

Provided, however, that a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 147, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

SCHEDULE 1

TABLE A — *(continued)*

74. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for re-election.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director is deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

PROCEEDINGS OF DIRECTORS

81. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

SCHEDULE 1

TABLE A — (*continued*)

82. The *quorum* necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number of directors exceeds three be three, and when the number of directors does not exceed three, be two.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary *quorum* of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

DIVIDENDS AND RESERVE

89. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.

SCHEDULE 1

TABLE A — *(continued)*

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid-up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto or in the case of joint holders to any one of such joint holders at his registered address or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96. No dividend shall bear interest against the company.

97. The directors shall cause proper books of account to be kept with respect to —

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

SCHEDULE 1

TABLE A — *(continued)*

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

98. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

100. The directors shall from time to time in accordance with section 122, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than 7 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

AUDIT

102. Auditors shall be appointed and their duties regulated in accordance with sections 131, 132 and 133.

NOTICES

103. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Brunei Darussalam) to the address, if any, within Brunei Darussalam supplied by him to the company for the giving of notices to him.

SCHEDULE 1

TABLE A — (continued)

Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within Brunei Darussalam and has not supplied to the company an address within Brunei Darussalam for the giving of notices to him, a notice addressed to him and advertised in the *Gazette*, is deemed to be duly given to him at noon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company of the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within Brunei Darussalam supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorised to —

(a) every member except those members who (having no registered address within Brunei Darussalam) have not supplied to the company an address within Brunei Darussalam for the giving of notices to them; and

(b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting.

No other persons shall be entitled to receive notices of general meetings.

SCHEDULE 1 — (continued)

TABLE B

(sections 14 and 323)

FORM OF MEMORANDUM OF ASSOCIATION OF
COMPANY LIMITED BY SHARES

- 1st. The name of the company is "*Syarikat Pelayaran Timor, Berhad*".
- 2nd. The registered office of the company will be situate in "*Bandar Seri Begawan*".
- 3rd. The objects for which the company is established are, "*the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object*".
- 4th. The liability of the members is limited.
- 5th. The share capital of the company is \$200,000 divided into 1,000 shares of \$200 each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>		<i>Number of shares taken by each Subscriber</i>
"1.	Ahmad bin Bakar merchant	200
2.	Mohammad bin Daud merchant	25
3.	Ali bin Yassin merchant	30
4.	Wong Ah Bee merchant	40
5.	Bakar bin Ali merchant	15
6.	Daud bin Ahmad merchant	5
7.	Yassin bin Mohammad merchant	10
Total shares taken		325"

SCHEDULE 1

TABLE B — *(continued)*

Dated the day of 20 ”

Witness to the above signatures,

.....
*A.B. No. 13 Jalan Sultan,
Bandar Seri Begawan*

SCHEDULE 1 — (continued)

TABLE C

(sections 14 and 323)

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF
COMPANY LIMITED BY GUARANTEE AND
NOT HAVING SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

1st. The name of the company is "*The Brunei School Association Berhad*".

2nd. The registered office of the company will be situate in "*Bandar Seri Begawan*".

3rd. The objects for which the company is established are the carrying on a school for boys in Brunei Darussalam and the doing all such other things as are incidental or conducive to the attainment of the above object.

4th. The liability of the members is limited.

5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and costs charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$100.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers

“1. Ahmad bin Bakar	schoolmaster
2. Mohammad bin Daud	schoolmaster
3. Ali bin Yassin	schoolmaster
4. Wong Ah Bee	schoolmaster
5. Bakar bin Ali	schoolmaster
6. Daud bin Ahmad	schoolmaster
7. Yassin bin Mohammad	schoolmaster

SCHEDULE 1

TABLE C — (*continued*)

5. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The abovementioned general meetings shall be called ordinary general meetings; all other general meetings shall be called extraordinary general meetings.

7. The directors may, whenever they think fit, convene an extraordinary general meeting and extraordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 113. If at any time there are not within Brunei Darussalam sufficient directors capable of acting to form a *quorum*, any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

NOTICE OF GENERAL MEETINGS

8. Subject to the provisions of section 116(2) relating to special resolutions, 7 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but, with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

10. All business are deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

SCHEDULE 1

TABLE C — (continued)

PROCEEDINGS AT GENERAL MEETINGS

11. No business shall be transacted at any general meeting unless a *quorum* of members is presented at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a *quorum*.

12. If within half an hour from the time appointed for the meeting a *quorum* is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a *quorum* is not present within half an hour from the time appointed for the meeting the members present shall be a *quorum*.

13. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

14. If there is no such chairman, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

15. The chairman may, with the consent of any meeting at which a *quorum* is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least two members present in person or by proxy entitled to vote and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

17. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.

SCHEDULE 1

TABLE C — (*continued*)

18. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting, at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

19. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

VOTES OF MEMBERS

20. Every member shall have one vote.

21. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in mental disorder, may vote, whether on a show of hands or on a poll, by his committee, *curator bonis*, or other person in the nature of a committee or *curator bonis* appointed by that Court, and any such committee, *curator bonis*, or other person may, on a poll, vote by proxy.

[S 25/2014]

22. No member shall be entitled to vote at any general meeting unless all moneys presently payable by him to the company have been paid.

23. On a poll votes may be given either personally or by proxy.

24. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation under the hand of an officer or attorney so authorised. A proxy need not be a member of the company.

[S 43/2017]

25. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

26. The instrument appointing a proxy may be in the following form, or any other form which the directors shall approve —

SCHEDULE 1

TABLE C — (continued)

Company, Berhad,

“I,
of
being a member of the
Berhad, hereby appoint *Company,*
of
as my proxy, to vote for me and on my behalf at
the [ordinary or extraordinary, as the case may be] general meeting of
the company to be held on the
day of *and at*
any adjournment thereof.”

Signed this *day of*

27. The instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

28. Any corporation which is a member of the company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

DIRECTORS

29. The number of directors and the names of the first directors shall be determined in writing by a majority of the subscribers to the memorandum.

30. The remuneration of the directors shall be determined by the company in general meeting.

SCHEDULE 1

TABLE C — *(continued)*

POWERS AND DUTIES OF DIRECTORS

31. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Act, or by these Articles required to be exercised by the company in general meeting, subject nevertheless to any regulation of these Articles, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

32. The directors shall cause minutes to be made in books provided for the purpose of —

(a) all appointments of officers made by the directors;

(b) the names of the directors present at each meeting of the directors and any committee of the directors;

(c) all resolutions and proceedings at all meetings of the company, and the directors, and committees of directors,

and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

(Deleted by S 43/2017)

33. *(Deleted by S 43/2017).*

DISQUALIFICATIONS OF DIRECTORS

34. The office of director shall be vacated if the director —

(a) without the consent of the company in general meeting holds any other office or profit under the company;

(b) becomes bankrupt;

SCHEDULE 1

TABLE C — *(continued)*

(c) becomes prohibited from being a director by reason of any order made under section 208 or 260;

(d) is found mentally disordered or becomes of unsound mind;
[S 25/2014]

(e) resigns his office by notice in writing to the company; or

(f) is directly or indirectly interested in any contract with the company and fails to declare the nature of his interest in manner required by section 147.

A director shall not vote in respect of any contract in which he is interested or any matter arising thereout, and if he does so vote his vote shall not be counted.

ROTATION OF DIRECTORS

35. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office.

36. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37. A retiring director shall be eligible for re-election.

38. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto and in default the retiring director is deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.

39. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

40. Any casual vacancy occurring in the board of directors may be filled up by the directors but the person so chosen shall be subject to retirement at the same time as if he

SCHEDULE 1

TABLE C — (*continued*)

had become a director on the day on which the director in whose place he is appointed was last elected a director.

41. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

42. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

PROCEEDINGS OF DIRECTORS

43. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

44. The *quorum* necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and shall, when the number of directors does not exceed three, be two.

45. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary *quorum* of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

46. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

SCHEDULE 1

TABLE C — *(continued)*

47. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

48. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

49. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality for votes the chairman shall have a second or casting vote.

50. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

ACCOUNTS

51. The directors shall cause proper books of account to be kept with respect to —

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company.

52. The books of account shall be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

SCHEDULE 1

TABLE C — (*continued*)

53. The directors shall determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

54. The directors shall, in accordance with section 122, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets and reports as are referred to in that section.

55. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting together with a copy of the auditors' report shall not less than 7 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings of the company.

AUDIT

56. Auditors shall be appointed and their duties regulated in accordance with sections 131, 132 and 133.

NOTICES

57. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Brunei Darussalam) to the address, if any, within Brunei Darussalam supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected at the expiration of 24 hours after the letter containing the same was posted.

58. If a member has no registered address within Brunei Darussalam and has not supplied to the company an address within Brunei Darussalam for the giving of notices to him, a notice addressed to him and advertised in the *Gazette*, is deemed to be duly given to him on the day on which the advertisement appears.

SCHEDULE 1

TABLE C — (continued)

59. Notice of every general meeting shall be given in some manner hereinbefore authorised to every member except those members who (having no registered address within Brunei Darussalam) have not supplied to the company an address within Brunei Darussalam for the giving of notices to them. No other persons shall be entitled to receive notices of general meetings.

Names, Addresses and Descriptions of Subscribers

“1. Ahmad bin Bakar	schoolmaster
2. Mohammad bin Daud	schoolmaster
3. Ali bin Yassin	schoolmaster
4. Wong Ah Bee	schoolmaster
5. Bakar bin Ali	schoolmaster
6. Daud bin Ahmad	schoolmaster
7. Yassin bin Mohammad	schoolmaster

Dated the day of 20 ”

Witness to the above signatures,

.....

*A.B. No. 13 Jalan Sultan,
Bandar Seri Begawan*

SCHEDULE 1 — (continued)

TABLE D

(sections 14 and 323)

MEMORANDUM OF ARTICLES OF ASSOCIATION OF
COMPANY LIMITED BY GUARANTEE AND HAVING SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

- 1st. The name of the company is "*Syarikat Hotel Moden, Berhad*".
- 2nd. The registered office of the company will be situate in "*Bandar Seri Begawan*".
- 3rd. The objects for which the company is established are "*the facilitating of travel in Brunei Darussalam by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object*".
- 4th. The liability of the members is limited.
- 5th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$200.
- 6th. The share capital of the company shall consist of \$500,000, divided into 5,000 shares of \$100 each.

SCHEDULE 1

TABLE D — (continued)

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of shares taken by each Subscriber</i>
“1. Ahmad bin Bakar merchant	200
2. Mohammad bin Daud merchant	25
3. Ali bin Yassin merchant	30
4. Wong Ah Bee merchant	40
5. Bakar bin Ali merchant	15
6. Daud bin Ahmad merchant	5
7. Yassin bin Mohammad merchant	10
Total shares taken	325”

Dated the day of 20 ”

Witness to the above signatures,

.....
*A.B. No. 13 Jalan Sultan,
Bandar Seri Begawan*

SCHEDULE 1

TABLE D — *(continued)*ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING
MEMORANDUM OF ASSOCIATION

1. The Articles of Table A set out in Schedule 1 to the Companies Act, Chapter 39, shall be the articles of association of the company and apply to the company.

Names, Addresses and Descriptions of Subscribers

“1. Ahmad bin Bakar	merchant
2. Mohammad bin Daud	merchant
3. Ali bin Yassin	merchant
4. Wong Ah Bee	merchant
5. Bakar bin Ali	merchant
6. Daud bin Ahmad	merchant
7. Yassin bin Mohammad	merchant

Dated the day of 20 ”

Witness to the above signatures,

.....
*A.B. No. 13 Jalan Sultan,
Bandar Seri Begawan*

SCHEDULE 1 — (continued)

TABLE E

(sections 14 and 323)

MEMORANDUM OF ARTICLES OF ASSOCIATION OF
UNLIMITED COMPANY HAVING SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

1st. The name of the company is “*The Patent Stereotype Company*”.

2nd. The registered office of the company will be situate in “*Bandar Seri Begawan*”.

3rd. The objects for which the company is established are “*the working of a patent method of founding and casting stereotype plates of which method Mohammad bin Daud of Bandar Seri Begawan, is the sole patentee, and the doing of all such things as are incidental or conducive to the attainment of the above object*”.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, Addresses and Descriptions of Subscribers</i>	<i>Number of shares taken by each Subscriber</i>
“1. Ahmad bin Bakar merchant	3
2. Mohammad bin Daud merchant	2
3. Ali bin Yassin merchant	1
4. Wong Ah Bee merchant	2
5. Bakar bin Ali merchant	2
6. Daud bin Ahmad merchant	1
7. Yassin bin Mohammad merchant	1
Total shares taken	12”

SCHEDULE 1

TABLE E — *(continued)*

Dated the day of 20 ”

Witness to the above signatures,

.....
*A.B. No. 13 Jalan Sultan
Bandar Seri Begawan*

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING
MEMORANDUM OF ASSOCIATION

1. The share capital of the company is \$2,000 divided into twenty shares of \$100 each.
2. The company may by special resolution —
 - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;
 - (b) consolidate its shares into shares of a larger amount than its existing shares;
 - (c) sub-divide its shares into shares of a smaller amount than its existing shares;
 - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;
 - (e) reduce its share capital in any way.
3. The Articles of Table A set out in Schedule 1 to the Companies Act, Chapter 39, (other than Articles 30, 31, 32, 33, 34, 37 and 38) are deemed to be incorporated with these Articles and apply to the company.

SCHEDULE 1

TABLE E — (continued)

Names, Addresses and Descriptions of Subscribers

“1.	Ahmad bin Bakar	merchant
2.	Mohammad bin Daud	merchant
3.	Ali bin Yassin	merchant
4.	Wong Ah Bee	merchant
5.	Bakar bin Ali	merchant
6.	Daud bin Ahmad	merchant
7.	Yassin bin Mohammad	merchant

Dated the day of 20 ”

Witness to the above signatures,

.....

*A.B. No. 13 Jalan Sultan,
Bandar Seri Begawan*

SCHEDULE 2

(section 30)

FORM OF STATEMENT *IN LIEU* OF PROSPECTUS TO BE DELIVERED TO
REGISTRAR BY PRIVATE COMPANY ON BECOMING PUBLIC COMPANY

COMPANIES ACT, CHAPTER 39

Statement *in lieu* of Prospectus delivered for registration by
(Insert the name of the company)

Pursuant to section 30 of the Companies Act. Delivered for registration by

The nominal share capital of the company.	\$	
Divided into	Shares of \$	each
	Shares of \$	each
	Shares of \$	each
	Shares of \$	each
Amount (if any) of above capital which consists of redeemable preference shares.		
The date on or before which these shares are, or are liable, to be redeemed.		
Names, descriptions and addresses of directors or proposed directors.		
Amount of shares issued	Shares	
Amount of commissions paid in connection therewith.		
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.		
Unless more than one year has elapsed since the date on which the company was entitled to commence business —		
Amount of preliminary expenses	\$	
Amount of paid to any promoter	Name of promoter	
	Amount \$	
Consideration for the payment	Consideration —	

SCHEDULE 2 — (continued)

If the share capital of the company is divided into different classes of shares the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issued with the 2 years preceding the date of this statement as fully or partly paid-up otherwise than for cash or agreed to be so issued at the date of this statement.

Consideration for the issue of those shares or debentures.

Names and addresses of Vendors of Property (1) purchased or acquired by the company within the 2 years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for any such property, specifying the amount paid or payable for goodwill.

Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business or entered into more than 2 years before the delivery of this statement).

Time and place at which the contracts or copies thereof may be inspected.

Names and addresses of the auditors of the company.

1. shares of
\$ fully paid
2. shares upon
which \$
per share credited
as paid
3. debenture
\$
4. Consideration —

Total purchase price

\$	
Cash	\$
Shares	\$
Debenture	\$
Goodwill	\$

SCHEDULE 2 — *(continued)*

Full particulars of the nature and extent of the interest of every director in any property purchased or acquired by the company within the 2 years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the 3 financial years immediately preceding the date of this statement or since the incorporation of the company whichever period is the shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

If any of the unissued shares or debentures are to be applied in the purchase of any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the 3 financial years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or one year the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on.

SCHEDULE 2 — *(continued)*

(Signatures of the person abovenamed as directors
or proposed directors or of their agents authorised
in writing).

Date

Note:— In this Form, the expression “vendor” includes a vendor as defined in Part 3 of Schedule 3 to this Act, and the expression “financial year” has the meaning assigned to it in that Part of the said Schedule.

SCHEDULE 3

(sections 38 and 309)

PART 1**MATTERS REQUIRED TO BE STATED IN PROSPECTUS**

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription particulars as to —

(a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided in respect of each of the following matters —

- (i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;
- (ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;
- (iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;
- (iv) working capital; and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

SCHEDULE 3 — *(continued)*

6. The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid-up otherwise than in cash, and in the latter case the extent to which they are so paid-up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the 2 preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

SCHEDULE 3 — *(continued)*

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART 2

REPORTS TO BE SET OUT IN PROSPECTUS

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said 3 years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus.

SCHEDULE 3 — *(continued)*

PART 3

PROVISIONS APPLYING TO PARTS 1 AND 2 OF SCHEDULE

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, do not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where —

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression “vendor” included the lessor, and the expression “purchase money” included the consideration for the lease, and the expression “sub-purchaser” included a sub-lessee.

4. For the purposes of paragraph 8 of Part 1 of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 3 years, the accounts of the company or business have only been made up in respect of 2 years or one year, Part 2 of this Schedule shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years.

6. The expression “financial year” in Part 2 of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

SCHEDULE 4

(section 43)

FORM OF STATEMENT *IN LIEU* OF PROSPECTUS TO BE
DELIVERED TO REGISTRAR BY PRIVATE COMPANY WHICH DOES
NOT ISSUE PROSPECTUS OR WHICH DOES NOT GO TO
ALLOTMENT ON PROSPECTUS ISSUED

COMPANIES ACT, CHAPTER 39

Statement *in lieu* of Prospectus delivered for registration by
(Insert the name of company)

Pursuant to section 43 of the Companies Act. Delivered for registration

Delivered for registration by	
The nominal share capital of the company.	\$
Divided into	Shares of \$ each
	Shares of \$ each
	Shares of \$ each
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of \$ each
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and dentures agreed to be issued as fully or partly paid-up otherwise than in cash.	1. shares of \$ fully paid
The consideration for the intended issue of those shares and debentures.	2. shares upon which \$ per share credited as paid
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.	3. debenture \$
Amount (in cash, shares or debentures) payable to each separate vendor.	4. Consideration —

SCHEDULE 4 — (continued)

Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price \$ Cash \$ Shares \$ Debentures \$ Goodwill \$
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid Amount payable
Rate of the commission	Rate per cent
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	\$
Amount paid or intended to be paid to any promoter.	Name of promoter Amount \$
Consideration for the payment.	Consideration —
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of business intended to be carried on by the Company or entered into more than 2 years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in any promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm, with a statement of all sums	

SCHEDULE 4 — *(continued)*

paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the 3 financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than 3 years and the accounts of which have only been made up in respect of 2 years or one year the above requirement shall have effect as if references to 2 years or one year, as the case may be, were substituted for references to 3 years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorised in writing).

Date

NOTE: — In this Schedule, the expression “vendor” includes a vendor as defined in Part 3 of Schedule 3 to this Act and the expression “financial year” has the meaning assigned to it in that Part of the said Schedule.

SCHEDULE 5

(sections 107 and 323)

FORM OF ANNUAL RETURN OF COMPANY
HAVING SHARE CAPITAL

Annual Return of the _____ Company, (including foreign
companies) made up to the _____ day of _____, 20____ (being the date of
the first or only ordinary general meeting in _____, 20____).

The address of the registered office of the company is as follows —

Summary of share capital and shares

Nominal Share Capital \$			shares of
divided into*	{	\$	each
		\$	shares of
			each

Total number of shares taken up* to the _____ day of _____
, 20____ being the date of the return (which
number must agree with the total shown in the list as held by
existing members).

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid-up otherwise than in cash.

Number of shares issued as partly paid-up to the extent of
per share otherwise than in cash.

†Number of _____ shares (if any) issued at a discount.

Total amount of discount on the issue of shares which has not been \$
written off at the date of this Return.

§There has been called up on each of shares \$

§There has been called up on each of shares \$

§There has been called up on each of shares \$

*Where there are shares of different kinds or amounts (e.g. Preference and Ordinary of \$100 and \$10)
state the number and nominal values separately.

†If the shares are of different kinds, state them separately.

§Where various amounts have been called, or there are shares of different kinds, state them separately.

SCHEDULE 5 — (continued)

††Total amount of calls received, including payments on application and allotment	\$
Total amount (if any) agreed to be considered as paid on shares which has been issued as fully paid-up otherwise than in cash.	\$
Total amount (if any) agreed to be considered as paid on shares which has been issued as partly paid-up to the extent of per shares otherwise than in cash.	\$
Total amount of calls unpaid	\$
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last Return.	\$
Total number of shares forfeited.	\$
Total amount paid (if any) on shares forfeited.	\$
Total amount of shares for which share warrants to holder, if outstanding.	\$
Total amount of share warrants to bearer issued and surrendered respectively since the date of the last Return.	Issued \$ Surrendered \$
Remaining number of shares comprised in each share warrant to holder.	
Total amount of the indebtedness of the company in respect of all mortgages and charges of the kind which are required to be registered with the Registrar of Companies under the Companies Act, Chapter 39.	\$

††Include what has been received on forfeited as well as on existing shares.

SCHEDULE 5 — (continued)

COPY OF LAST AUDITED BALANCE SHEET OF COMPANY

Note — Except where the Company is a “Private Company” within the meaning of section 29 of the Companies Act, this Return must include a written copy, certified by a Director or by the Manager or Secretary of the company to be a true copy, of the last balance sheet which have been audited by the company’s auditors (including every document required by law to be annexed thereto) together with a copy of the report of the auditors thereon (certified as aforesaid), and if any such balance sheet is in a foreign language there must also be annexed to it a translation thereof in such language as may be prescribed by the Registrar certified in the prescribed manner to be a correct translation. If the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there must be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon.

PRIVATE COMPANY

Certificates to be given by private company

A. “I certify that the Company has not since the date of the ¹last Annual Return issued any invitation to the public to subscribe for any shares or debentures of the Company”.

(Signature)

(State whether Director or Secretary)

B. Should the number of members of the company exceed 50 the following certificate is also required —

“I certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company were while in such employment, and have continued after the determination of such employment to be, members of the Company”.

(Signature)

(State whether Director or Secretary)

¹In the case of the first Annual Return, strike out the words “last Annual Return” and substitute therefor the words “Incorporation of the Company”.

SCHEDULE 5 — (continued)

The Return must be signed at the end by a Director or by the Manager or Secretary of the company.

Delivered for filing by

Particulars of the *Directors of the Company, Berhad, at the date of the Annual Return.

†The present name or names	Any former name or names	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	‡Other business occupation if any. If none state so

*"Director" includes any person who occupies the position of a Director by whatever name called and any person in accordance with whose directions or instructions the Directors of a company are accustomed to act.

†In the case of a corporation, its corporate name and registered or principal office should be shown.

‡In the case of an individual who has no business occupation but holds any other directorship or directorships particulars of that directorship or of some one of those directorships must be entered.

SCHEDULE 5 — (continued)

List of persons holding shares in the _____ Company, Berhad, on the _____ day of _____, 20_____, and of persons who have held shares therein at any time since the date of the last Return, or (in the case of the first Return) of the incorporation of the company, showing their names and address, and an account of the shares so held.

N.B. — If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

	Name, Addresses. and Occupations				Account of Shares					
Folio in Register Ledger, containing particulars		Name	Address	Occupation	*Number of Shares held by existing Members at date of Return	‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by person who are still Members		‡Particulars of Shares Transferred since the date of the last Return, or (in the case of the first Return) of the incorporation of the Company, by persons who have ceased to be Members		Remarks
						Number†	Date of Registration of Transfer	Number†	Date of Registration of Transfer	

(Signature)

(State whether Director or Manager or Secretary)

*The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

†When the shares are of different classes these columns may be subdivided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock the amount of stock held by each member must be shown.

‡The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee, but the name of transferee may be inserted in "Remarks" column immediately opposite the particulars of each transfer.

SCHEDULE 6

(section 130)

**FORM OF STATEMENT TO BE PUBLISHED BY INSURANCE COMPANIES
AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES**

*The share capital of the company is _____, divided into
shares of _____ each.

The number of shares issued is _____.

Calls to the amount of \$ _____ per share have been made, under which the sum of
\$ _____ has been received.

The liabilities of the company on the first day of January (*or* July) were —

Debts owing to sundry persons by the company.

On judgment, \$

On speciality, \$

On notes or bills, \$

On simple contracts, \$

On estimated liabilities, \$

The assets of the company on that day were —

Government securities [*stating them*]

Bills of exchange and promissory notes, \$

Cash at the bankers, \$

Other securities, \$

*If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

SCHEDULE 7*(Repealed by S 1/2016)***SCHEDULE 8**

(section 289)

*[S 43/2017]***TABLE OF FEES TO BE PAID TO REGISTRAR**

	\$	¢
By company having share capital		
1. For incorporation of a company	300.00	
2. For increase of share capital of a company whose nominal share capital exceeds \$25,000 with the following additional fees regulated according to the amount of nominal share capital —		
For every \$5,000 of nominal share capital, or part of \$5,000, after the first \$25,000 up to \$500,000	20.00	
For every \$5,000 of nominal share capital or part of \$5,000 after the first \$500,000 up to \$1,000,000	10.00	
For every \$15,000 of nominal share capital or part of \$15,000 after the first \$1,000,000 up to \$50,000,000	5.00	
For every \$20,000 of nominal share capital or part of \$20,000 after the first \$50,000,000	3.00	
3. On lodging notice of increase of share capital — an amount equal to the difference (if any) between the amount which would have been payable under the Act on first registration by reference to its capital as increased and the amount would have been payable under the Act by reference to its capital immediately before the increase:		

SCHEDULE 8 — (continued)

\$ ¢

Provided that no company is liable to pay in respect of nominal share capital on registration or thereafter any greater amount of fees than \$35,000 taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.

By company not having share capital

- | | | |
|----|--|--------|
| 4. | For registration of a company whose number of members as stated in the articles of association does not exceed twenty. | 150.00 |
| 5. | For registration of a company whose number of members as stated in the articles of association exceeds twenty but does not exceed one hundred the additional fee of \$150 (with an additional \$5 for every fifty members or less than fifty members after the first one hundred) but no company is liable to pay on the whole a greater fee than \$600 in respect of its number of members taking into account the fee paid on the first registration of the company. | |
| 6. | For registration of a company in which the number of members is stated in the articles of association to be unlimited
..... | 600.00 |

Other fees

- | | | |
|----|--|-------|
| 7. | For every application for consent of His Majesty the Sultan and Yang Di-Pertuan to use of a name by a company | 25.00 |
| 8. | For every command of His Majesty the Sultan and Yang Di-Pertuan granting consent to use of a name by a company
..... | 50.00 |
| 9. | For every approval of His Majesty the Sultan and Yang Di-Pertuan to the change of the name of a company (otherwise than a change of name with the Registrar's consent pursuant to the provisions of section 22(2)) | 50.00 |

SCHEDULE 8 — (continued)

	\$	¢
10. For perusing memorandum or articles of a company in connection with an application for a licence under section 21	100.00	
11. For every licence of His Majesty the Sultan and Yang Di-Pertuan to dispense with the word “Berhad” in the name of a company	100.00	
12. For an approval of High Court to alter the memorandum or articles of a company	100.00	
13. On the late lodging of any document under this Act after the period prescribed by law, in addition to any other fee	100.00	
The Registrar, if satisfied that just cause existed for the late lodgment may waive in whole or in part the additional fee.		
14. For the registration of a foreign company —		
(a) subject to paragraph (b), one-half of the appropriate fee prescribed in respect of a company registered or incorporated under Part 1 of the Act; and		
(b) where a fee prescribed in paragraph (a) is not applicable	600.00	
15. On lodging by a foreign company of notice of increase in share capital or in the case of a foreign company not having a share capital on the lodging of notice of increase in number of members beyond its registered number — one-half of the prescribed fee payable on the increase in share capital or on the increase in the number of members of a company incorporated or registered under Part 1 of the Act.		
16. For registering particulars of each series of debenture where more than issue in the series	10.00	
17. (Deleted by S 43/2017).		
18. (Deleted by S 43/2017).		
19. (Deleted by S 43/2017).		

SCHEDULE 8 — (continued)

	\$	¢
20. On lodging articles of association, charter, statute or other instrument of a foreign company	10.00	[S 43/2017]
21. On lodging a company of any special resolution altering the memorandum or articles of association of a company	10.00	
22. On lodging any prospectus or document required under section 308	25.00	
23. (Deleted by S 43/2017).		
24. (Deleted by S 43/2017).		
25. (Deleted by S 43/2017).		
26. (Deleted by S 43/2017).		
27. (Deleted by S 43/2017).		
28. (Deleted by S 43/2017).		
29. For every certificate issued by the Registrar under the Act or any other written law	25.00	
30. For supplying a photographic or microprint copy of, or extract from, any document	\$ 2.00	for each page or part thereof
31. For supplying and certifying a photographic or microprint copy of, or extract from, any document	\$ 4.00	for each page or part thereof
32. For each search for and inspection of a document filed by or in relation to company	5.00	
32A. For supplying an electronic copy of company extract	30.00	for each copy [S 43/2017]
32B. For supplying an electronic copy of electronic filing	5.00	for each filing [S 43/2017]

SCHEDULE 8 — (continued)

	S	¢
33. For any information concerning a company supplied by the Registrar in reply to a written application	10.00	
34. For every approval of an authorised auditor granted by His Majesty the Sultan and Yang Di-Pertuan in Council	100.00	
35. For every appointment of a company liquidator by the High Court	100.00	
36. On lodging any annual return of a company	50.00	
	[S 43/2017]	
37. On lodging, registering, depositing or filling any other document with or by the Registrar under any Act (where the fee is not specified in any relevant written law	10.00	
Fees payable with respect to companies formed or incorporated outside Brunei Darussalam shall where appropriate be calculated after the conversion of the share capital to Brunei Darussalam currency.		
38. For registering any document required to be filed in complying with the provisions of Part 7	10.00	
39. On lodging notice of appointment, cessation of appointment of change of particulars of a company's director, manager or secretary	30.00	
	[S 43/2017]	
40. On lodging a resolution for alteration of objects in memorandum or articles of a company	120.00	
	[S 43/2017]	
41. On lodging of return of allotment of shares	30.00	
	[S 43/2017]	
42. On lodging notice of change of resolution for change of company name	100.00	
	[S 43/2017]	
43. On lodging notice of change of situation of registered office	30.00	
	[S 43/2017]	

SCHEDULE 8 — *(continued)*

\$ ¢

44. On lodging notice of change of situation or address or designation of situation or address of registered office of a foreign company

30.00
[S 43/2017]

SCHEDULE 9

(Repealed by S 27/2019)

SCHEDULE 10

(Repealed by S 1/2016)

SCHEDULE 11

COMPANIES (FORMS) RULES

ARRANGEMENT OF RULES

Rule

1. Citation
2. Interpretation
3. Forms
4. Certified copy of Charter etc. under section 299
5. Time for delivering particulars of alterations under section 301
6. *Deleted*
7. Translations
8. Provision for particular cases

SCHEDULE — FORMS

SCHEDULE 11

(section 323) [S 27/2019]

COMPANIES (FORMS) RULES**Citation**

1. These Rules may be cited as the Companies (Forms) Rules.

Interpretation

2. In these Rules —

“Act” means the Companies Act.

Forms

3. The forms contained in the Schedule, with such variations and additions as the circumstances of the particular case may require, shall be used for the purposes of the Act and the particulars contained therein are hereby prescribed as the particulars required under the Act.

Certified copy of Charter etc. under section 299

4. (1) A certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company required to be delivered to the Registrar under section 299 in the case of a company incorporated outside Brunei Darussalam in any part of the Commonwealth or in any place where Her Britannic Majesty has jurisdiction, unless incorporated under the laws of a foreign country is deemed to be certified as a true copy if in such part of the Commonwealth or place it is —

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed;

(b) duly certified as a true copy by a notary public in such part of the Commonwealth or place; or

(c) duly certified as a true copy on oath by some officer of the company before a Brunei Darussalam Consul or some person having authority to administer an oath as provided by section 3 of the Commissioners for Oaths Act 1889 of the United Kingdom.

SCHEDULE 11 — *(continued)*

(2) A certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company required to be delivered to the Registrar under section 299 in the case of a company incorporated outside Brunei Darussalam under the laws of a foreign country is deemed to be certified as a true copy if in such foreign country it is —

(a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by a Brunei Darussalam Consul;

(b) duly certified as a true copy by a notary of such foreign country, the certificate of the notary being authenticated by a Brunei Darussalam Consul; or

(c) duly certified as a true copy on oath by some officer of the company before a Brunei Darussalam Consul.

Time for delivering particulars of alterations under section 301

5. The time within which a return containing the particulars of alterations is to be delivered to the Registrar under section 301 shall be 21 days after the date of making of such alterations or 21 days after the date on which notice thereof could in due course of post and if despatched with due diligence have been received in Bandar Seri Begawan.

6. *(Deleted by S 43/2017).*

Translations

7. A translation of a charter, statutes of memorandum and articles of association or other instrument constituting or defining the constitution of a company or any account or document required to be delivered to the Registrar of Companies under the Act shall be certified by the person making such translation to be a correct translation and is deemed to be certified in the prescribed manner if the person making such translation be certified by the appropriate person hereunder mentioned to be believed by him to be competent to translate it into the English language —

(a) if the translation be made in a foreign country —

a Brunei Darussalam Consul;

(b) if the translation be made outside Brunei Darussalam or in any part of the Commonwealth or in any place where Her Britannic Majesty had jurisdiction —

SCHEDULE 11 — *(continued)*

any person having authority to administer an oath as provided by section 3 of the Commissioner for Oaths Act 1889 of the United Kingdom;

- (c) if the translation be made in Northern Ireland —
 - (i) a notary public in Northern Ireland; or
 - (ii) a solicitor of the Supreme Court of Judicature of Northern Ireland;
- (d) if the translation be made in Scotland —
 - (i) a notary public in Scotland; or
 - (ii) an enrolled Law Agent;
- (e) if the translation be made in England —
 - (i) a notary public in England; or
 - (ii) a solicitor of the Supreme Court of Judicature in England; and
- (f) if the translation be made in Brunei Darussalam —
 - (i) a Magistrate; or
 - (ii) a Commissioner of Oaths of Brunei Darussalam.

Provision for particular cases

8. The Registrar may in any particular case, if he thinks fit to do so and upon such conditions as he thinks fit, permit certified copies of translations to be delivered to him though not certified in accordance with the above requirements.

List of forms in the Schedule

FORM NUMBER	RELEVANT SECTION	NATURE OF FORM
I	45(2)	Particulars of a contract relating to shares.
I(F)	80 and 91	Particulars of a mortgage or charge on property in Brunei Darussalam created on or after 1st January 1957, by a company incorporated outside Brunei Darussalam.
II	46(1)(c)(ii) and (d)	Statement of the amount or rate <i>per cent</i> of the commission payable in respect of shares and of the number of shares which persons have agreed for a commission to subscribe absolutely.
II(F)	82 and 91	Particulars of a mortgage or charge subject to which property in Brunei Darussalam has been acquired on or after the 1st January 1957, by a company incorporated outside Brunei Darussalam.
III	55	Notice of increase in nominal capital.
III(F)	301	Return of alteration in the charter, statutes, memorandum or articles of association or other instrument constituting or defining the constitution of a company incorporated outside Brunei Darussalam.
IV	80	Particulars of a mortgage or charge created by a company registered in Brunei Darussalam.
IV(F)	301	Return of alteration in the list of particulars of directors of a company incorporated outside Brunei Darussalam.
V	82	Particulars of a mortgage or charge subject to which property has been acquired on or after 1st January 1957, by a company registered in Brunei Darussalam.
V(F)	301	Return of alteration in the names or addresses of persons resident in Brunei Darussalam authorised to accept service on behalf of a company incorporated outside Brunei Darussalam.

List of forms in the Schedule — (continued)

FORM NUMBER	RELEVANT SECTION	NATURE OF FORM
VI	83(1)	Register of mortgages and charges, and of memoranda of satisfaction.
VII	83(4)	Chronological index of charges entered in the Register.
VIII	94(1)(c)	Declaration that the conditions of section 94(1)(a) and (b) have been complied with.
IX	94(2)(c)	Declaration that the provisions of section 94(2)(b) have been complied with.
X	143	Particulars of directors or managers and of any changes therein.
XI	153(1)	Notice to dissenting shareholders.
XII	286	Receiver or manager's abstract of receipts and payments.

SCHEDULE

(rule 3)

FORMS

FORM I

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Particulars of a contract relating to shares

PURSUANT TO SECTION 45(2)

NOTE — The particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing

Presented by

Particulars of contract relating to share allotted as fully or partly paid-up otherwise than in cash by

..... Berhad.

- | | |
|---|--|
| (1) The number of shares allotted as fully or partly paid-up otherwise than in cash | |
| (2) The nominal amount of each such share | \$ |
| (3) The amount to be considered as paid-up on each such share otherwise than in cash | \$ |
| (4) If the consideration for the allotment of such shares in services, or any consideration other than that mentioned below in part 5, state the nature of such consideration, and the number of shares so allotted | |
| (5) If the allotment is made in satisfaction or part satisfaction of the purchase price or property, give a brief description of such property, and full particulars of the manner in which the purchase price is to be satisfied | <p>(1) Brief description of property.</p> <p>(2) Purchase price. \$</p> <p>(a) Total amount of consideration \$ as paid on shares allotted otherwise than in cash.</p> |

SCHEDULE

FORM I — (continued)

(6) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads —	<p>(b) Cash.</p> <p>(c) Amount of debt released or liabilities assumed by the purchaser (including mortgages; on property acquired).</p> <p>Total purchase price</p>
Legal estates in freehold property and fixed plant and machinery and other fixtures thereon (a)	<p>..... \$</p> <p>=====</p>
Legal estates in leasehold property (a)	
Fixed plant and machinery on leasehold property (including tenant's, trade and other fixtures)	
Equitable interests in freehold or leasehold property (a)	
Loose plant and machinery, stock-in trade, and other chattels (b)	
Goodwill and benefit of contracts	
Patents, designs, trade marks, licences, copyrights etc.	
Book and other debts	
Cash in hand and at bank on current account, bills, notes etc.	
Cash on deposit at bank or elsewhere	
Shares, debentures and other investments	<p>.....</p> <p>=====</p>
Other property, viz.	
	<p>.....</p> <p>=====</p> <p>\$</p> <p>=====</p>

SCHEDULE

FORM I — *(continued)*

(Signature)

(State whether Director or Manager or Secretary)

Dated the day of, 20

(a) Where such properties are sold subject to mortgage, the gross value should be shown.

(b) No plant and machinery which was not in an actual state of severance on the date of the sale should be included under this head.

SCHEDULE — (continued)

FORM I(F)

Fee \$25.00

COMPANIES ACT, CHAPTER 39

Particulars of a mortgage or charge on property in Brunei Darussalam created on or after the 1st January 1957, by a company incorporated outside Brunei Darussalam

PURSUANT TO SECTIONS 80 AND 91

Presented by

Particulars of a mortgage or charge created by

a company incorporated in (a) and which

has established a place of business in Brunei Darussalam at

Date and description of the instrument creating or evidencing the mortgage or charge (b)	Amount secured by mortgage or charge	Short particulars of the property mortgaged or charged	Names, addresses and descriptions of the mortgagees or persons entitled to the charge	Amount or rate <i>per cent</i> of the commission, allowance or discount (if any) paid or made either directly or indirectly by the Company to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return (c)

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the Company.

.....

 }

Dated the day of, 20

(a) Country of origin.

(b) A description of the instrument, e.g. "trust deed", "mortgage", "debenture" etc. as the case may be, should be given.

(c) The rate of interest payable under the terms of the debentures should not be entered.

SCHEDULE — (continued)

FORM II

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Statement of the amount or rate per cent of the commission payable in respect of shares and of the number of shares which persons have agreed for a commission to subscribe absolutely

PURSUANT TO SECTION 46(1)(c)(ii) AND (d)

Presented by

.....

Name of company Berhad

Article of association authorising commission

..... No.

Particulars of amount payable as commission for
subscribing, or agreeing to subscribe, or for procuring or
agreeing to procure, subscriptions for any shares in the
company; or } \$

Rate of such commission Rate per cent

Date or circular or notice (if any), not being a
prospectus, inviting subscriptions for the shares and
disclosing the amount or rate of the commission } Date
.....

Number of shares which persons have agreed for a
commission to subscribe absolutely No.

(Signature of all directors or of their
agents authorised in writing)

[.....
.....
.....
.....
.....

Dated the day of, 20

SCHEDULE — (continued)

FORM II(F)

Fee \$25.00

COMPANIES ACT, CHAPTER 39

Particulars of a mortgage or charge subject to which property in Brunei Darussalam has been acquired on or after the 1st January 1957, by a company incorporated outside Brunei Darussalam

PURSUANT TO SECTIONS 82 AND 91

Presented by

Particulars of a mortgage or charge subject to which property in Brunei Darussalam has been acquired by

a company incorporated in (a) and which has established a place of business in Brunei Darussalam at

1	2	3	4	5
Date and description of the instrument creating or evidencing the mortgage or charge (b)	Date of the acquisition of the property	Amount secured by the mortgage or charge	Short particulars of the property mortgaged or charged	Names, addresses and descriptions of the mortgagees or persons entitled to the charge

SCHEDULE

FORM II(F) — *(continued)*

Signature of the persons authorised
under section 299(c) of the Companies
Act, or of some other person in Brunei
Darussalam duly authorised by the
Company

}
}
}

Dated the day of, 20

(a) Country of origin.

(b) A description of the instrument, e.g. "trust deed", "mortgage", "debenture", etc., as the case may be, should be given.

A copy of the instrument certified as prescribed in paragraph 5 of these Rules, must be delivered with these particulars.

SCHEDULE — (continued)

FORM III

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Notice of increase in nominal capital

PURSUANT TO SECTION 55

Presented by

.....

To the REGISTRAR OF COMPANIES

.....

..... Company

hereby gives you notice to pursuant to section 55 of the Companies Act, that by

(a) resolution of the Company dated day of

....., 20, the nominal capital of the Company has been increased by the

addition thereto of the sum of \$ beyond the registered capital of

\$

The additional capital is divided as follows —

Number of shares	Class of share	Nominal amount of each share

The conditions (e.g. voting rights, dividends, etc.) subject to which the new shares have been or are to be issued are as follows —

(If any of the new shares are preference shares state whether they are redeemable or not).

Signature

(State whether Director or Manager or Secretary)

Dated the day of, 20

(a) "ordinary", "extraordinary" or "special".

SCHEDULE — (continued)

FORM III(F)

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Return of alteration in the charter, statutes, memorandum or articles of association or other instrument constituting or defining the constitution of a company incorporated outside Brunei Darussalam

PURSUANT TO SECTION 301

Presented by

Return of alteration in the (a) constituting
or defining the constitution of

a company incorporated in (b)
and which has established a place of business in Brunei Darussalam at

(c) Certified copy of alteration or certified copy of new deed, if one has been
executed, and certified translation of alteration or deed must accompany this
return and be shortly referred to here.

Signature of the persons authorised under
section 299(c) of the Companies Act, or of
some other person in Brunei Darussalam duly
authorised by the Company.

.....
.....
.....

Dated the day of, 20

(a) "charter", "statutes", "memorandum or articles of association" or other instrument, as the case may be.

(b) Country of origin.

(c) The copy and translation (if any) must be certified in the manner prescribed in paragraphs 3 and 6 of these Rules.

SCHEDULE — (continued)

FORM IV

Fee \$25.00

COMPANIES ACT, CHAPTER 39

*Particulars of a mortgage or charge created by a company registered in
Brunei Darussalam*

PURSUANT TO SECTION 80

Presented by

Particulars of a mortgage or charge created by

..... Berhad.

1	2	3	4	5
Date and description of the instrument creating or evidencing the mortgage or charge (a)	Amount secured by the mortgage or charge	Short particulars of the property mortgaged or charged	Names, addresses and descriptions of the mortgagees or persons entitled to the charge	Amount or rate <i>per cent</i> of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to the person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures included in this return (b)

(Signature)

(Designation of position in relation to the company)

Dated the day of, 20

(a) A description of the instrument, e.g. "trust deed", "mortgage", "debenture", etc., as the case may be, should be given.

(b) The rate of interest payable under the terms of the debentures should not be entered.

SCHEDULE — (continued)

FORM IV(F)

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Return of alteration in the list or particulars of directors of the company incorporated outside Brunei Darussalam

PURSUANT TO SECTION 309

Presented by

Return of alteration in the list or particulars of directors (a)
 of
 a company incorporated in (b) and which has
 established a place of business in Brunei Darussalam at

The present name or names (c)	Any former name or names	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	Other business occupation or directorships if any if none, state so (d)	Remarks as to the alteration (e)

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the Company. }

Dated the day of, 20

(a) "director" includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

(b) Country of origin.

(c) In the case of a corporation its corporate name and registered or principal office should be shown.

(d) In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships must be entered.

(e) A complete list of the directors or managers shown as existing in the last return should always be given. A note of the changes since the last list was filed should be made in this column, e.g. by placing against a new director's name the words "in place of" and by writing against any former director's name the words "dead", "resigned" or, as the case may be.

SCHEDULE — (continued)

FORM V

Fee \$25.00

COMPANIES ACT, CHAPTER 39

Particulars of a mortgage or charge subject to which property has been acquired on or after 1st January 1957, by a Company registered in Brunei Darussalam

PURSUANT TO SECTION 82

Presented by

.....

Particulars of a mortgage or charge subject to which property has been acquired on or after 1st January, 1957, by

..... Berhad.

1	2	3	4	5
Date and description of the instrument creating or evidencing the mortgage or charge (a)	Date of the acquisition of the property	Amount owing on security of mortgage or charge	Short particulars of the property mortgaged or charged	Names, addresses and descriptions of the mortgagees or persons entitled to the charge

(Signature)

(Designation of position in relation to the company)

Dated the day of, 20

(a) A description of the instrument, e.g. "trust deed", "mortgage", "debenture" etc. as the case may be, should be given.

A copy of the instrument, certified as prescribed in paragraph 5 of these Rules, must be delivered with these particulars.

SCHEDULE — (continued)

FORM V(F)

Fee \$25.00

COMPANIES ACT, CHAPTER 39

Return of alteration in the list or particulars of directors of the company incorporated outside of Brunei Darussalam

PURSUANT TO SECTION 301

Presented by

.....

Return of alteration in the names or address of the persons resident in Brunei Darussalam authorised to accept on behalf of the company service of process and process and any notices required to be served on

.....

a company incorporated in (a)

and which has established a place of business in Brunei Darussalam at

.....

The following are the particulars of such alteration(s).

(State full name and address of any newly appointed authorised person)

.....

.....

.....

.....

Signature of the persons authorised under section 299(c) of the Companies Act, or of some other person in Brunei Darussalam duly authorised by the company.

.....

.....

.....

Dated the day of, 20

(a) Country of origin.

SCHEDULE — (continued)

FORM VI

(section 83(1))

Register of Mortgages and Charges and of Memoranda of Satisfaction of Berhad.

1	2	3	3A	4	5	6	7	8	9	10	11	12	13	14
Date of registration	Date of creation of each mortgage or charge and description thereof	Amount secured by the mortgage or charge	Existing charge. Date of the acquisition of the property	Short particulars of the property mortgaged or charged	Names of the mortgages or persons entitled to the charge	Total amount secured by a series of debentures	Particulars relating to the issues of debentures of the series				Names of the trustees for the debenture holders	Memoranda of Satisfaction Amount	Amount of rate <i>per cent</i> of the commission, allowance, or discount	REMARKS Name and date of appointment of receiver or manager and date of his ceasing to act
							Date and amount of each issue of the series	Dates of the resolutions authorising the issue of the series	Date of the covering deed	General description of the property charged				
							Date	Amount						

SCHEDULE — (continued)

FORM VII

Chronological index of charges entered in the Register
(section 83(4))

[illegible]

SCHEDULE — (continued)

FORM VIII

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Declaration that the conditions of section 94(1)(a) and (b) of the Companies Act,
have been complied with*

PURSUANT TO SECTION 94(1)(c)

To be used by a company which issued a prospectus on or with reference to its
formation.

Presented by

I

of

being (a)

of

..... Berhad,

do solemnly and sincerely declare —

That the amount of the share capital of the company offered to the public
for subscription is \$

That the amount stated in the prospectus as the minimum amount which in the
opinion of the directors must be raised by the issue of share capital in order to
provide for the matters specified in paragraph 5 Part 1 of Schedule 3 to the
Companies Act, is \$

That shares held subject to the payment of the whole amount thereof in cash have
been allotted to the amount of \$

That every director of the company has paid to the company on each of the shares
taken or contracted to be taken by him and for which he is liable to pay in cash,
a proportion equal to the proportion payable on application and allotment on the
shares offered for public subscription.

And I make this solemn declaration conscientiously believing the same to be true,
and by virtue of the provisions of the Statutory Declarations Act (Chapter 12).

SCHEDULE — *(continued)*

FORM VIII — *(continued)*

Declared at

.....	}
the day of
....., 20
before me		
A Magistrate <i>(b)</i>		

(a) "The secretary" or "a director".

(b) Or the Chief Registrar or a Deputy Registrar of the Supreme Court.

SCHEDULE — (continued)

FORM IX

Fee \$10.00

COMPANIES ACT, CHAPTER 39

*Declaration that the provisions of section 94(2)(b), of the Companies Act, have
been complied with*

PURSUANT TO SECTION 94(2)(c)

To be used by a company which has delivered to the Registrar of Companies a
statement *in lieu* of prospectus.

Presented by

I
of

being (a)
of

..... Berhad,
do solemnly and sincerely declare —

That every director of the company has paid to the company on each of the shares
taken or contracted to be taken by him and for which he is liable to pay in cash, a
proportion equal to the proportion payable on application and allotment on the
shares payable in cash.

And I make this solemn declaration conscientiously believing the same to be true,
and by virtue of the provisions of the Statutory Declarations Act.

Declared at
.....
the day of
....., 20
before me

A Magistrate (b)

(a) "The secretary" or "a director".

(b) Or the Chief Registrar or a Deputy Registrar of the Supreme Court.

SCHEDULE — (continued)

FORM X

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Particulars of directors or managers and of any changes therein

PURSUANT TO SECTION 143

Presented by

.....

Particulars of the directors or managers (a) of

.....

..... company, and of any changes therein.

The present name or names and identification number (b)	Any former name or names	Nationality	Nationality of origin (if other than the present nationality)	Usual residential address	Other business occupation or directorships if any. If none, state so (c)	Changes (d)

(Signature)

(State whether director or manager or secretary)

Dated the day of, 20.....

(a) "director" includes any person who occupies the position of a director by whatever name called, and any person in accordance with whose directions or instruction the directors of a company are accustomed to act.

SCHEDULE — *(continued)*

(b) In the case of a corporation in corporate name and registered or principal office should be shown. In the case of foreign directors, the Brunei National Registration number and passport number should be entered after the name of each director.

(c) In the case of an individual who has no business occupation but holds any other directorship or directorships, particulars of the directorship or of some one of those directorships must be entered.

(d) A complete list of the directors or managers shown as existing in the last particulars should always be given. A note of the changes since the last list was filed should be made in this column, e.g., by placing against a new director's name the words "in place of" and by writing against any former director's name the words "dead", "resigned" or, as the case may be.

SCHEDULE — (continued)

FORM XI

COMPANIES ACT, CHAPTER 39

Notice to dissenting shareholders

PURSUANT TO SECTION 153(1)

re (a) Berhad.

Notice by (b) Berhad.

To (c)

Whereas on the day of, 20 (b)
made an offer to all the holders of (d)
shares in (a) (state shortly the nature of
the offer) and whereas up to the
day of, 20, being a date within 4 months
of the date of the making thereof such offer was approved by the holders of not less
the nine-tenths in value of the (d)
..... shares in the said company.

Now therefore the said (b)
in pursuance of the provisions of section 153 of the Companies Act, hereby gives
you notice that the said (b) desires to acquire the (d)
..... shares in the said (a)
..... held by you.

And further take notice that unless upon an application made to the Court by you
the said (c)
on or before the day of, 20
being one month from the date of this notice, the Court thinks fit to order otherwise,
the said (b)
will be entitled and bound to acquire the (d)

SCHEDULE

FORM XI — (*continued*)

shares held by you in the said (a)
 on the terms of the abovementioned offer approved by the approving (d)
 shareholders in the said company.

(Signature)

for (b)

(State whether Director or Manager or Secretary)

Dated the day of, 20

(a) Name of transferor company.

(b) Name of transferee company.

(c) Name and address of dissenting shareholder.

(d) If the offer is limited to a certain class or classes of shareholders insert particulars of the shares.

SCHEDULE — (continued)

FORM XII

Fee \$10.00

COMPANIES ACT, CHAPTER 39

Receiver or manager's abstract of receipts and payments

PURSUANT TO SECTION 286

Name of company

Name and address of receiver or manager

Date and description of security
containing the powers under which
receiver or manager is appointed {

Period covered by the abstract { From
To

Presented by

ABSTRACT

RECEIPTS	PAYMENT
<i>Brought forward</i> \$	<i>Brought forward</i> \$ (The receipts and payments must severally be added up at the foot of each sheet and the totals carried forward from one abstracts to another without any intermediate balance so that the gross totals shall represent the total amounts received and paid by the receiver or manager since the date of appointment).
<i>Carried forward</i> \$	<i>Carried forward</i> \$

(Signature)

Dated the day of, 20

SCHEDULE 12*(Repealed by S 1/2016)***SCHEDULE 13***(Repealed by S 1/2016)***SCHEDULE 14***(Repealed by S 1/2016)***SCHEDULE 15***[S 37/2020]*

(sections 310A(1), 310C and Schedule 16)

COMPANIES TO WHICH PART 10A DOES NOT APPLY**1. Part 10A does not apply to any of the following companies —**

(a) a public company which shares are listed for quotation on a securities exchange in Brunei Darussalam;

(b) a company that is a Brunei Darussalam financial institution;

(c) a company that is wholly-owned by the Government;

(d) a company that is wholly-owned by a statutory body established by or under any written law for a public purpose;

(e) a company that is a wholly-owned subsidiary of a company mentioned in sub-paragraph *(a)*, *(b)*, *(c)* or *(d)*;

(f) a company which shares are listed on a securities exchange in a country or territory outside Brunei Darussalam and which is subject to —

(i) regulatory disclosure requirements; and

(ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through securities exchange rules, law or other enforceable means.

2. For the purposes of paragraph 1, a Brunei Darussalam financial institution is —

(a) any financial institution that is licensed, approved, registered or regulated by the Brunei Darussalam Central Bank but does not include a person (other than a person mentioned in sub-paragraph (b)) who is exempted from licensing, approval, registration or regulation by the Brunei Darussalam Central Bank under any written law administered by the Brunei Darussalam Central Bank, including a private trust company exempted from licensing under any written law for the time being in force relating to trust companies; or

[S 17/2021]

(b) any person exempted under section 159(1)(f) of the Securities Markets Order, 2013 (S 59/2013).

SCHEDULE 16

[S 37/2020]

(sections 310A(1) and 310C)

FOREIGN COMPANIES TO WHICH PART 10A DOES NOT APPLY

1. Part 10A does not apply to any of the following foreign companies —

(a) a foreign company that is a Brunei Darussalam financial institution;

(b) a foreign company that is a wholly-owned subsidiary of a foreign company that is a Brunei Darussalam financial institution;

(c) a foreign company which shares are listed on a securities exchange in a country or territory outside Brunei Darussalam and which is subject to —

(i) regulatory disclosure requirements; and

(ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through stock exchange rules, law or other enforceable means.

2. In paragraph 1, “Brunei Darussalam financial institution” has the meaning given to it in paragraph 2 of Schedule 15.

SCHEDULE 17

[S 37/2020]

(section 310B)

MEANINGS OF “SIGNIFICANT CONTROL” AND “SIGNIFICANT INTEREST”

Definition of “significant control”

1. For the purposes of Part 10A, an individual or a legal entity has significant control over a company or foreign company if the individual or legal entity —

(a) holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company or foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;

(b) holds, directly or indirectly, more than 25 *per cent* of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the company or foreign company; or

(c) has the right to exercise, or actually exercises, significant influence or control over the company or foreign company.

Definition of “significant interest”

2. (1) For the purposes of Part 10A, an individual or a legal entity has a significant interest in a company or foreign company having a share capital —

(a) if the individual or legal entity, as the case may be, has an interest in more than 25 *per cent* of the shares in the company or foreign company; or

(b) if —

(i) the individual or legal entity, as the case may be, has an interest in one or more voting shares in the company or foreign company; and

(ii) the total votes attached to that share, or those shares, is more than 25 *per cent* of the total voting power in the company or foreign company.

(2) In sub-paragraph (1)(b), “voting share” does not include share mentioned in section 2.

3. For the purposes of Part 10A, an individual or a legal entity has a significant interest in a company or foreign company that does not have a share capital if the

individual or legal entity holds, whether directly or indirectly, a right to share in more than 25 *per cent* of the capital, or more than 25 *per cent* of the profits, of the company or foreign company.

Supplementary provisions

4. (1) Subject to sub-paragraphs (2), (3) and (5), subsections (1) to (6), (11), (12) and (13) of section 3A apply in determining whether a person has an interest in a share.

(2) If two or more persons jointly have an interest in a share, or jointly hold a right, each of the person is considered for the purposes of this Schedule as having an interest in that share, or as holding that right, as the case may be.

(3) If shares in respect of which a person has an interest and the shares in respect of which another person has an interest are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as having an interest in the combined shares of both of them.

(4) If the rights held by a person and the rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined rights of both of them.

(5) A share or right held by a person as nominee for another is to be considered for the purposes of this Schedule as held by the other (and not by the nominee).

(6) In this paragraph —

(a) a “joint arrangement” is an arrangement between the persons having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement; and

(b) “arrangement” includes —

(i) any scheme, agreement or understanding, whether or not it is legally enforceable; and

(ii) any convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).