

No. S 37

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

COMPANIES ACT (AMENDMENT) ORDER, 2020

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

COMPANIES ACT (AMENDMENT) ORDER, 2020

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

Citation

1. This Order may be cited as the Companies Act (Amendment) Order, 2020.

Amendment of section 2 of Chapter 39

2. Section 2 of the Companies Act, in this Order referred to as the Act, is amended, in subsection (1), by inserting the following new definitions in the appropriate alphabetical order —

““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;

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

Amendment of section 98

3. Section 98 of the Act is amended, in subsection (3) —

*(a)* by deleting “this section” from the first line and by substituting “subsection (1)” therefor;

*(b)* by deleting “this section” for the second line and by substituting “subsection (2)” therefor.

Amendment of section 287A

4. Section 287A of the Act is amended, in subsection (10)(a)(ii), by deleting “Fund” and by substituting “Board” therefor.

Amendment of section 287B

5. Section 287B of the Act is amended, in subsection (8)(a)(ii), by deleting “Fund” and by substituting “Board” therefor.

Amendment of section 299

6. Section 299 of the Act is amended, in subsection (1) —

(a) in paragraph (e), by deleting “and” from the last line;

(b) in paragraph (f), by deleting the comma from the last line and by substituting a semi colon therefor;

(c) by inserting the following new paragraph immediately after paragraph (f) —

“(g) a notice in such form as the Registrar may determine containing the following particulars —

(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.”.

Amendment of section 301

7. Section 301 of the Act is amended, in subsection (1) —

*(a)* in paragraph *(f)*, by deleting “or”;

*(b)* in paragraph *(g)*, by deleting the comma and by substituting a semi colon therefor;

*(c)* by inserting the following two new paragraphs immediately after paragraph *(g)* —

*(h)* the description of the business carried on by the foreign company; or

*(i)* the type of legal form or legal entity of the foreign company.”.

Insertion of new sections 304C, 304D, 304E, 304F and 304G

8. The Act is amended by inserting the following five new sections immediately after section 304B —

“Register of members of foreign companies

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.

**Contents of register and index of members of foreign companies**

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 50 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**

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**

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**

304G. Rules made under section 324A may —

(a) provide for —

- (i) the application of any provision of Part II relating to the transfer of shares in a company to the transfer of shares in a foreign company; and
- (ii) the application of Part IV 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.”.

Insertion of new Part XA

9. The Act is amended by inserting the following new Part immediately after Part X —

**“PART XA  
REGISTER OF CONTROLLERS AND NOMINEE  
DIRECTORS OF COMPANIES**

**Application of this Part**

310A. (1) This Part applies to —

*(a)* all companies other than a company that is set out in the Fifteenth Schedule; and

*(b)* all foreign companies registered under Part IX other than a foreign company that is set out in the Sixteenth Schedule.

(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**

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 the Seventeenth Schedule;

“significant interest”, in relation to a company or a foreign company, has the meaning given to it in the Seventeenth Schedule.

#### Meaning of “registrable”

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 the Fifteenth Schedule;

(iii) a foreign company that is set out in the Sixteenth Schedule;

(iv) a corporation which shares are listed for quotation on a securities exchange.



State of mind of corporation, unincorporated association etc.

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"

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

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 IX 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 IX 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.

**Duty of company and foreign company to investigate and obtain information**

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**

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**

310I. (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

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**

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**

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.

**Power to enforce**

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.

(2) 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.

(3) 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**

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.

3100. (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**

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.”.

### **Addition of new Fifteenth, Sixteenth and Seventeenth Schedules**

10. The Act is amended by adding the following three new Schedules —

“FIFTEENTH SCHEDULE

(sections 310A(1), section 310C and Sixteenth Schedule)

COMPANIES TO WHICH PART XA DOES NOT APPLY

1. Part XA 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 Autoriti Monetari of Brunei Darussalam 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 Autoriti Monetari Brunei Darussalam under any written law administered by the Autoriti Monetari Brunei Darussalam, including a private trust company exempted from licensing under any written law for the time being in force relating to trust companies; or

*(b)* any person exempted under section 159(1)(f) of the Securities Markets Order, 2013 [S 59/2013].

SIXTEENTH SCHEDULE  
{sections 310A(1) and 310C}

FOREIGN COMPANIES TO WHICH PART XA  
DOES NOT APPLY

1. Part XA 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 the Fifteenth Schedule.

SEVENTEENTH SCHEDULE  
{section 310B}

MEANINGS OF “SIGNIFICANT CONTROL” AND “SIGNIFICANT INTEREST”

Definition of “significant control”

1. For the purposes of Part XA, 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% 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 XA, 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% 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% 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 XA, 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% of the capital, or more than 25% of the profits, of the company or foreign company.

**Supplementary provisions**

4. (1) Subject to sub-paragraphs (2), (3) and (5), subsections (1A) 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 persons 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).”.

Made this 14th. day of Rabiulawal, 1442 Hijriah corresponding to the 31st. day of October, 2020 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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