

PART I

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.

[S 118/2010]

(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.

[S 118/2010]

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.

[S 118/2010]

(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 [S 118/2010]

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 [S 118/2010]

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 of Finance to wind up the company.

(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 [S 118/2010]

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 shall be 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 shall be 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 the First Schedule, 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.

[S 62/2014]

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 *[S 62/2014]*

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 [S 118/2010]

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;
[S 118/2010]

(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 IX 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
[S 118/2010]

(h) is a name of a kind that the Minister of Finance has directed the Registrar not to accept for registration.
[S 118/2010]

(2) Except with the consent of His Majesty the Sultan and Yang Di-Pertuan*, no company shall be registered by a name which —

(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*”;

* 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]

(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.

[S 118/2010]

(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.

[S 118/2010]

(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.

[S 118/2010]

(6) Prior to the registration of—

(a) an intended company or a foreign company; or

(b) the change of name of a company or a foreign company,

the applicant for registration shall apply to the Registrar for a search as to the availability of the proposed name of the intended company, company or foreign company and for reservation of that name, if available.

[S 118/2010]

(7) If the Registrar is satisfied that the application is *bona fide* and that the proposed name is a name by which the intended company, company or a foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of one month from the date of the lodging of the application.

[S 118/2010]

(8) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied that the application is *bona fide*, he may extend that period for a further period of 3 months.

[S 118/2010]

(9) During a period for which a name is reserved, no company or a foreign company (other than the intended company, company or a foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

[S 118/2010]

(10) The reservation of name under this section in respect of an intended company, company or a foreign company does not in itself entitle the intended company, or a foreign company to be registered by that name, either originally or on change of name.

[S 118/2010]

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

21. (1) Where it is proved to the satisfaction of His Majesty the Sultan and Yang Di-Pertuan* 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, His Majesty the Sultan and Yang Di-Pertuan* 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.

* 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) A licence by His Majesty the Sultan and Yang Di-Pertuan* 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 His Majesty the Sultan and Yang Di-Pertuan* so direct, be inserted in the memorandum and articles, or in one of those documents.

(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 His Majesty the Sultan and Yang Di-Pertuan* 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:

Provided that, before a licence is so revoked, His Majesty the Sultan Yang Di-Pertuan* 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.

(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 His Majesty the Sultan and Yang Di-Pertuan* signified in writing, change its name.

(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.

[S 118/2010]

* 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) 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.

[S 118/2010]

(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 His Majesty the Sultan and Yang Di-Pertuan* 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 shall be guilty of an offence: Penalty, a fine of \$250 for every day during which the default continues.

(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.

[S 118/2010]

(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.

[S 118/2010]

(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.

[S 118/2010]

* 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]

(7) The change of name pursuant to this Act shall 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.

[S 118/2010]

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 shall 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 shall be 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.