

No. S 53

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

INTERNATIONAL BUSINESS COMPANIES (AMENDMENT) ORDER, 2017

ARRANGEMENT OF SECTIONS

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INTERNATIONAL BUSINESS COMPANIES (AMENDMENT) ORDER, 2017

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 International Business Companies (Amendment) Order, 2017.

Amendment of section 6 of S 56/2000

2. Section 6 of the International Business Companies Order, 2000, in this Order referred to as the principal Order, is amended, in subsection (1)(g), by deleting “Mutual Funds Order, 2001 (S 18/01) or the Securities Order, 2001 (S 31/01)” from the second and third lines and by substituting “Securities Markets Order, 2013 (S 59/2013)” therefor.

Amendment of section 134

3. Section 134 of the principal Order is amended, in subsection (2)(h), by deleting “section 47” and by substituting “sections 46 and 47 respectively” therefor.

Insertion of new Part XIII A

4. The principal Order is amended by inserting the following new Part immediately after Part XIII —

“PART XIII A
MIGRATION OF IBC TO COMPANY INCORPORATED UNDER COMPANIES ACT

Interpretation of this Part

155A. For the purposes of this Part, “Registrar” means the Registrar of Companies appointed under section 288 of the Companies Act, and includes any Deputy Registrar or Assistant Registrar of Companies.

Migration of IBC to company incorporated under Chapter 39

155B. (1) Subject to subsection (2), an IBC may migrate to become a company incorporated under the Companies Act.

(2) An IBC may not migrate under this Part if —

(a) the IBC is being wound up, is in liquidation or has been declared insolvent;

(b) a receiver or administrator has been appointed, whether by the Court or otherwise, in relation to any property of the IBC;

(c) the IBC has entered into a compromise or arrangement with a creditor and the compromise or arrangement is in force; or

(d) an application, which has not been disposed of, has been made to the Court —

(i) to put the IBC into liquidation, to wind it up or to have it declared insolvent;

(ii) for the approval of a compromise or arrangement between the IBC and a creditor; or

(iii) for the appointment of a receiver or administrator in relation to any property of the IBC.

(3) An application by an IBC to migrate under this Part shall be made to the Registrar within 6 months from the date of commencement of this Order or such longer period as approved by the Authority, on payment of a fee of \$750 and accompanied by the following —

(a) a certified copy of its certificate of incorporation issued under section 11(3);

(b) a copy of the Memorandum and Articles complying with subsections (4) and (5);

(c) evidence satisfactory to the Registrar that the application to be so migrated and the Memorandum and Articles have been approved —

(i) by a majority of the directors or the other persons who are charged with exercising the powers of the IBC; or

(ii) in such other manner as may be established by the IBC for exercising the powers of the IBC; and

(d) evidence satisfactory to the Registrar that the IBC is not disqualified from migration under subsection (2).

(4) Subject to subsection (5), the Memorandum of an IBC to migrate under this Part shall include the following —

(a) the name of the IBC;

(b) whether the IBC is —

- (i) a company limited by shares;
- (ii) a company limited by guarantee that is not authorised to issue shares;
- (iii) a company limited by guarantee that is authorised to issue shares;
- (iv) an unlimited company that is not authorised to issue shares; or
- (v) an unlimited company that is authorised to issue shares;

(c) the address of the first registered office of the IBC;

(d) in the case of a company limited by shares or otherwise authorised to issue shares —

- (i) the maximum number of shares that the IBC is authorised to issue or that it is authorised to issue an unlimited number of shares; and
- (ii) the classes of shares that the IBC is authorised to issue and, if it is authorised to issue two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares;

(e) in the case of a company limited by guarantee, whether or not it is authorised to issue shares, the amount which each guarantee member of the IBC is liable to contribute to its assets in the event that a liquidator is appointed under the Insolvency Order, 2016 (S 1/2016), whilst he is a member; and

(f) such other information and documents, if any, as the Registrar may require, either generally or in relation to a particular application.

(5) The Memorandum of an IBC applying to migrate under this Part shall, in addition to the matters required to be stated under subsection (4) —

(a) state the names and addresses of the directors of the IBC and of persons (if different) who are to be its directors after the migration under this Part; and

(b) be accompanied by a statement signed by each of the persons who is to be a director of the IBC after such migration consenting to being such a director.

(6) The Memorandum of an IBC applying to migrate under this Part shall be signed by, or on behalf of, the persons who have approved the Memorandum and Articles under subsection (3)/c).

Registration of IBC as company incorporated under Chapter 39

155C.(1) If the Registrar is satisfied that the requirements of this Part in respect of the migration have been complied with by an IBC, on receipt of the documents specified in section 155B(3) and (5)/b), the Registrar shall —

(a) register the documents; and

(b) issue a certificate of incorporation.

(2) A certificate issued by the Registrar to an IBC under subsection (1) is conclusive evidence that —

(a) all the requirements of this Part as to migration have been complied with by the IBC; and

(b) the IBC is a company incorporated under the Companies Act under the name designated in its memorandum on the date specified in the certificate.

(3) Notwithstanding the provisions of section 155B and this section, the Registrar may refuse to accept an application by an IBC to migrate under this Part if he is of the opinion that it would be contrary to the public interest to do so.

Effect of migration

155D.(1) When an IBC has migrated under this Part —

(a) the Companies Act applies to the IBC as if it had been incorporated under section 16 of that Act on the approved date for migration;

(b) the IBC is capable of exercising all the powers of a company incorporated under the Companies Act;

(c) the Memorandum and Articles approved under section 155B(3)/c) become the Memorandum and Articles of the IBC; and

(d) the IBC is forthwith removed from the register maintained under this Order.

(2) The migration of an IBC under this Part shall not affect its property or liabilities in any way nor shall the migration affect the continuation of any proceedings which are pending by or against the IBC.

(3) Without limiting subsection (2) —

(a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the IBC or against any member, director, officer or agent thereof, is released or impaired by its migration as a company under this Part; and

(b) no proceedings, whether civil or criminal, pending immediately before 25th December, 2017 or such other date as determined by the Authority by or against the IBC, or against any member, director, officer or agent thereof, are abated or discontinued by its migration as a company under this Part, but the proceedings may be enforced, prosecuted, settled or compromised by or against the IBC or against the member, director, officer or agent thereof, as the case may be.

(4) All shares in an IBC migrated under this Part that were outstanding before migration is deemed to have been issued in conformity with the Companies Act.”.

Amendment of section 156

5. Section 156 of the principal Order is amended —

(a) in subsection (2) —

(i) in paragraph (a), by deleting “75 per cent resolution” and by substituting “majority” therefor;

(ii) by deleting paragraph (b);

(b) in subsection (4), by deleting “, together with the prescribed fee,” from the second line.

Repeal of section 157

6. Section 157 of the principal Order is repealed.

Insertion of new section 157A

7. The principal Order is amended by inserting the following new section immediately after section 157 —

“Power to issue directions

157A.(1) The Authority may issue such directions to an IBC as it may consider desirable for the purposes of carrying this Order into effect.

(2) An IBC that fails to comply with any direction issued under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.”.

Made this 25th. day of Ramadhan, 1438 Hijriah corresponding to the 20th. day of June, 2017 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM