

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

MONEY-LAUNDERING ORDER, 2000

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SCHEDULE

No. S 44

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

MONEY-LAUNDERING ORDER, 2000

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

Citation, commencement and long title.

1. (1) This Order may be cited as the Money-Laundering Order, 2000 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.

(2) The long title of this Order is "An Order to prevent the use of the financial system for money-laundering".

Interpretation.

2. (1) In this Order —

"applicant for business" means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Brunei Darussalam;

"business relationship" has the meaning given by subsection (2) of section 3;

"Case 1", "Case 2", "Case 3" and "Case 4" have the meanings respectively given by section 7;

"Minister" means the Minister of Finance;

"money-laundering" has the meaning given by subsection (2);

"one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;

"relevant financial business" has the meaning given by subsection (1) of section 4;

"supervisory authority" has the meaning given by section 15.

(2) In this Order, except in so far as the context otherwise requires, "money-laundering" means doing any act which constitutes an offence under —

- (a) sections 20 or 22 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96); or
- (b) sections 21 to 24 of the Criminal Conduct (Recovery of Proceeds) Order, 2000.

(3) For the purpose of this section, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has obtained, under procedures maintained by him in accordance with section 7, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

Business relationships.

3. (1) Any reference in this section to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a business.

(2) For the purposes of this Order, "business relationship" means any arrangement between two or more persons where —

- (a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and
- (b) the total amount of any payment to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

Relevant financial business.

4. (1) For the purposes of this Order, "relevant financial business" means, subject to subsection (2), the business of engaging in one or more of the following —

- (a) the business of receiving money on deposit account transacted by a company in possession of a licence granted by the Minister authorising it to do so in accordance with the provisions of the Banking Act (Chapter 95), the Finance Companies Act (Chapter 89) or of any other law relating to domestic banking;
- (b) any activity carried on by a company in possession of a licence authorising it to do so under the International Banking Order, 2000;
- (c) any of the activities referred to in the Schedule, other than an activity falling within paragraphs (a) or (b);

(d) long-term insurance business carried on by a person who has been authorised to do so by or in pursuance of any written law.

(2) Business is not relevant financial business in so far as it consists of activities carried on by any person designated by the Minister by order in the *Gazette*.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend the Schedule by order in the *Gazette*.

Systems and training to prevent money-laundering.

5. (1) No person shall, in the course of relevant financial business carried on by him in Brunei Darussalam, form a business relationship, or carry out a one-off transaction, with or for another, unless that person —

(a) maintains the following procedures established in relation to that business —

(i) identification procedures in accordance with sections 7 and 9;

(ii) record-keeping procedures in accordance with section 12;

(iii) except where the person concerned is an individual who in the course of relevant financial business does not employ or act in association with any other person, internal reporting procedures in accordance with section 14; and

(iv) such other procedures of internal control and communication as may be appropriate for the purpose of forestalling and preventing money-laundering;

(b) takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant financial business aware of —

(i) the procedures under paragraph (a) which are maintained by him and which relate to the relevant financial business; and

(ii) the provisions of this Order and of all other written laws relating to money-laundering; and

(c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money-laundering.

(2) Any person who contravenes this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine or both.

(3) In determining whether a person has complied with the requirements of subsection (1), a court may take account of —

- (a) any relevant supervisory or regulatory guidance which applied to that person;
- (b) in a case where no guidance falling within paragraph (a) applied, any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(4) In proceedings against any person for an offence under this section, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) In this section, "supervisory or regulatory guidance" means guidance issued, adopted or approved by a supervisory authority.

Offences under section 5 committed by bodies corporate, partnerships and unincorporated associations.

6. (1) Where an offence under section 5 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of that body corporate.

(3) Where a partnership or other unincorporated association is guilty of an offence under section 5, every partner in the partnership or (as the case may be) every person concerned in the management or control of the association, other than a partner or (as the case may be) person who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

Identification procedures; business relationships and transactions.

7. (1) Subject to sections 8 and 10, identification procedures maintained by a person are in accordance with this section if in Cases 1 to 4 they require, as soon as is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction —

- (a) the production by the applicant for business of satisfactory evidence of his identity; or

- (b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity,

and the procedures are, subject to subsection (6), in accordance with this section if they require that where that evidence is not obtained the business relationship or one-off transaction in question shall not proceed any further.

(2) Case 1 is any case where the parties form or resolve to form a business relationship between them.

(3) Case 2 is any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money-laundering, or that the transaction is carried out on behalf of another person engaged in money-laundering.

(4) Case 3 is any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of twenty thousand dollars or more.

(5) Case 4 is any case where, in respect of two or more one-off transactions —

(a) it appears at the outset to a person handling any of the transactions —

(i) that the transactions are linked; and

(ii) that the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is thirty thousand dollars or more; or

(b) at any later stage, it comes to the attention of such a person that sub-paragraphs (i) and (ii) of paragraph (a) have been satisfied.

(6) The procedures referred to in subsection (1) are in accordance with this section if, when a report is made in circumstances falling within Case 2 (whether in accordance with section 14 or directly to a police officer) they provided for steps to be taken in relation to the one-off transaction in accordance with any directions that may be given by a police officer.

(7) In this Order, a reference to satisfactory evidence of a person's identity shall be construed in accordance with subsection (1) of section 11.

Payment by post, etc.

8. (1) Where satisfactory evidence of the identity of an applicant for business would, apart from this subsection, be required under identification procedures in accordance with section 7 but —

- (a) the circumstances are such that a payment is to be made by the applicant for business; and
- (b) it is reasonable in all the circumstances —
 - (i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or
 - (ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means,

then, subject to subsection (2), the fact that the payment is debited from an account held in the applicant's name with a finance company (as defined in section 2 of the Finance Companies Act (Chapter 89) authorised by the Minister, whether the account is held by the applicant alone or jointly with one or more other persons, shall be capable of constituting the required evidence of identity.

(2) Subsection (1) shall not have effect to the extent that the circumstances of the payment fall within Case 2; or the payment is made by any person for the purpose of opening a relevant account with a finance company authorised by the Minister.

(3) For the purpose of paragraph (b) of subsection (1), it shall be immaterial whether the payment or its details are sent or given to a person who is bound by subsection (1) of section 5 or to some other person acting on his behalf.

(4) In this section, "relevant account" means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment —

- (a) may be made directly to such a person from the account by or on behalf of the applicant for business; or
- (b) may be made to such a person indirectly as a result of —
 - (i) a direct transfer of funds from an account from which no such direct payment may be made to another account; or
 - (ii) a change in any of the characteristics of the account.

Identification procedures; transactions on behalf of another.

9. (1) This section applies where, in relation to a person who is bound by subsection (1) of section 5, an applicant for business is or appears to be acting otherwise than as a principal.

(2) Subject to section 10, identification procedures maintained by a person are in accordance with this section if, in a case to which this section applies, they require reasonable

measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

(3) In determining, for the purpose of subsection (2), what constitutes reasonable measures in any particular case regard shall be had to all the circumstances of the case and, in particular, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.

(4) Without prejudice to the generality of subsection (3), if the condition mentioned in subsection (5) is fulfilled in relation to an applicant for business who is, or appears to be, acting as an agent for a principal (whether undisclosed or disclosed for reference purposes only) it shall be reasonable for a person bound by subsection (1) of section 5 to accept a written assurance from the applicant for business to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.

(5) The condition referred to in subsection (4) is that, in relation to the business relationship or transaction, there are reasonable grounds for believing that an applicant for business based, incorporated in or founded under the law of any country or territory outside Brunei Darussalam is subject, in respect of that transaction or business, to provisions in relation to money-laundering at least equivalent to those under this Order and is subject to supervision by an overseas regulatory authority.

(6) In subsection (5), "overseas regulatory authority" means any authority exercising regulatory functions relating to companies or financial services in any country or territory outside Brunei Darussalam, as the Minister may, for the purpose of that subsection, designate by order in the *Gazette*.

Identification procedures; exemptions.

10. (1) Subject to subsection (2), identification procedures under sections 7 and 9 shall not require any steps to be taken to obtain evidence of any person's identity —

- (a) where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of subsection (1) of section 5;
- (b) where any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under procedures maintained by him, where that person identifies the third party and where —
 - (i) that person falls within sub-paragraph (a); or

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- (ii) there are reasonable grounds for believing that the condition mentioned in subsection (5) of section 9 has been fulfilled in relation to him;
 - (c) where the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly re-invested on his behalf in another transaction —
 - (i) of which a record is kept; and
 - (ii) which can result only in another re-investment made on that person's behalf or in a payment made directly to that person;
 - (d) in relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy —
 - (i) contains no surrender clause; and
 - (ii) may not be used as collateral for a loan;
 - (e) in relation to long term insurance business in respect of which a premium is payable in one instalment of an amount not exceeding five thousand dollars; or
 - (f) in relation to long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand five hundred dollars.
- (2) Nothing in this section applies in circumstances falling within Case 2.
- (3) In subsection (1) of section 10, "calendar year" means a period of twelve months beginning on 31st. December.

Identification procedures; supplementary provisions.

- 11.** (1) For the purposes of this Order, evidence of identity is satisfactory if —
- (a) it is reasonably capable of establishing that the applicant is the person he claims to be; and
 - (b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained under this Order in relation to the relevant financial business concerned, that it does establish that fact.
- (2) In determining for the purpose of subsection (1) of section 7 the time-span in which satisfactory evidence of a person's identity has to be obtained in relation to any

particular business relationship or one-off transaction, all the circumstances shall be taken into account including —

- (a) the nature of the business relationship or one-off transaction concerned;
- (b) the geographical locations of the parties;
- (c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;
- (d) in relation to Cases 3 or 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is twenty thousand dollars or more.

Record-keeping procedures.

12. (1) Record-keeping procedures maintained by a person are in accordance with this section if they require the keeping, for the prescribed period, of the following records —

- (a) in any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures maintained in accordance with sections 7 or 9, a record that indicates the nature of the evidence and —
 - (i) comprises a copy of the evidence;
 - (ii) provides such information as would enable a copy of it to be obtained; or
 - (iii) in a case where it is not reasonably practicable to comply with paragraphs (i) or (ii), provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and
- (b) a record containing details relating to all transactions carried out by that person in the course of relevant financial business.

(2) For the purpose of subsection (1), the prescribed period is, subject to subsection (3), the period of at least five years commencing with —

- (a) in relation to such records as are described in paragraph (a) of subsection (1), the date on which the relevant business was completed within the meaning of subsection (4); and
- (b) in relation to such records as are described in paragraph (b) of that subsection, the date on which all activities taking place in the course of the transaction were completed.

- (3) Where a person who is bound by the provisions of sub-section (1) of section 5 —
- (a) forms a business relationship or carries out a one-off transaction with another person;
 - (b) has reasonable grounds for believing that that person has become insolvent; and
 - (c) after forming that belief, takes any step for the purpose of recovering all or part of the amount of any debt payable to him by that person which has fallen due,

the prescribed period for the purpose of subsection (1) is the period of at least five years commencing with the date on which the first such step is taken.

(4) For the purpose of paragraph (a) of subsection (2), the date on which relevant business was completed is —

- (a) in circumstances falling within Case 1, the date of the ending of the business relationship in respect of whose formation the record under paragraph (a) of subsection (1) was compiled;
- (b) in circumstances falling within Cases 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under paragraph (a) of subsection (1) was compiled;
- (c) in circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under paragraph (a) of subsection (1) was compiled,

and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.

Insolvency.

13. For the purpose of paragraph (b) of subsection (3) of section 12, a person shall be taken to be insolvent if, in Brunei Darussalam —

- (a) he has been adjudged bankrupt or has made a composition or scheme with his creditors;
- (b) he being dead, his estate is administered in accordance with an order under section 112 of the Bankruptcy Act (Chapter 67); or

- (c) where that person is a company, a winding up order has been made or a resolution for voluntary winding up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

Internal reporting procedures.

14. Internal reporting procedures maintained by a person are in accordance with this section if they include provision —

- (a) identifying a person (in this section called "the appropriate person") to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money-laundering;
- (b) requiring that any such report be considered in the light of all other relevant information by the appropriate person or any other designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
- (c) for any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and
- (d) for securing that the information or other matter contained in a report is disclosed to a police officer where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this section knows or suspects that another person is engaged in money-laundering.

Supervisory authorities.

15. (1) References in this Order to a supervisory authority shall be construed in accordance with subsection (2).

- (2) For the purposes of this Order, each of the following is a supervisory authority —
 - (a) the Minister;
 - (b) such person or department of Government as the Minister may, for the purpose of this section, designate by order in the *Gazette*.

Supervisors, etc., to report evidence of money-laundering.

16. (1) Subject to subsection (2), where a supervisory authority —

- (a) obtains any information; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money-laundering,

the authority shall, as soon as is reasonably practicable, disclose that information to a police officer.

(2) Where any person is a secondary recipient of information obtained by a supervisory authority, and that person forms the opinion mentioned in paragraph (b) of subsection (1), that person may disclose the information to a police officer.

(3) Where any person within subsection (6) —

- (a) obtains any information whilst acting in the course of any investigation, or discharging any functions, to which his appointment or authorisation relates; and
- (b) is of the opinion that the information indicates that any person has or may have been engaged in money-laundering,

that person shall, as soon as is reasonably practicable, either disclose that information to a police officer or disclose that information to the supervisory authority by whom he was appointed or authorised.

(4) Any disclosure made by virtue of subsections (1) to (3) shall not be treated as a breach of any restriction imposed by any written law or otherwise.

(5) Any information —

- (a) which has been disclosed to a police officer by virtue of subsections (1) to (4); and
- (b) which would, apart from subsection (4), be subject to such a restriction as is mentioned in that subsection,

may be disclosed by the police officer, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings, but not otherwise.

(6) Persons falling within this section are such persons as the Minister may, for the purpose of this section, designate by order in the *Gazette*.

(7) In this section, "secondary recipient", in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by that authority.

Transitional provisions.

17. (1) Nothing in this Order shall require a person who is bound by subsection (1) of section 5 to maintain procedures in accordance with sections 7 and 9 which require evidence to be obtained, in respect of any business relationship formed by him before the date on which this Order commenced, as to the identity of the person with whom that relationship has been formed.

(2) For the purpose of subsection (3) of section 2, any business relationship referred to in subsection (1) shall be treated as if it were an established business relationship.

(3) In paragraph (f) of subsection (1) of section 10, the reference to the total payable in respect of any calendar year not exceeding two thousand dollars shall, for the period commencing on the commencement of this Order and ending on the 31st. December, 2000, be construed as a reference to the total payable in respect of that period not exceeding one thousand dollars.

SCHEDULE

section 4(1)(c)

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (credit cards, travellers' cheques, bankers' drafts and the like).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in —
 - (a) money market instruments (cheques, bills, certificates of deposit and the like);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable securities.

8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Safe custody services.
14. International offshore financial services.
15. Bureau de change business.
16. Provision of cheque cash services.
17. Transmission or receipt of funds by wire or other electronic means.
18. Services for which a licence is required under the Registered Agents and Trustees Licensing Order, 2000.

Made this 21st. day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

