

No. S 61

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

CO-OPERATIVE SOCIETIES ACT (AMENDMENT) ORDER, 2012

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CONSTITUTION OF BRUNEI DARUSSALAM

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CO-OPERATIVE SOCIETIES ACT (AMENDMENT) ORDER, 2012

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 Co-operative Societies Act (Amendment) Order, 2012.

Substitution of section 2 of Chapter 84.

2. Section 2 of the Co-operative Societies Act, in this Order referred to as the Act, is repealed and the following new section substituted therefor —

“Interpretation.

2. In this Act, unless the context otherwise requires —

“Board” has the same meaning as “committee members”;

“bonus” means a share of the profits of a registered society divided among its members in proportion to the share business done with the society by them from which profits of the society were derived;

“bonus shares” means the additional value of the shares as a result of the re-assessment of the society’s property;

“by-laws” means the registered by-laws made by a society in the exercise of any power conferred by this Act, and includes a registered amendment of the by-laws;

“committee members” means the governing body of a registered society, to whom the management of its affairs is entrusted;

“co-operative principles” includes —

(a) voluntary and open membership;

(b) member control;

(c) member economic participations;

- (d) autonomy and independence;
- (e) education, training and information;
- (f) co-operation among co-operatives; and
- (g) concern for community;

“delegate” means —

(a) a representative of the individual members elected at a district meeting of members of a primary society in which the general meeting of members is replaced by a general meeting of delegates; or

(b) a representative of a registered society which is itself a member of another registered society, the meetings of which such representative has been elected or appointed to attend;

“dividend” means a share of the profits of a registered society divided among its members in proportion to the volume of capital held by them;

“inaugural general meeting” means the general meeting at which persons desirous of forming a co-operative society resolve to form a society, to adopt the by-laws proposed for the society and to apply for the registration of the society;

“member” includes a person or registered society joining in the application for the registration of a society, and a person or registered society admitted to membership after registration in accordance with the by-laws;

“Minister” means Minister responsible for co-operative societies’ matters;

“officer” includes a chairman, secretary, treasurer, member, or other person empowered under the rules or by-laws to give directions in regard to the business of a registered society;

“primary society” means a society registered under section 4;

“registered society” means a co-operative society registered under this Act;

“Registrar” means the Registrar of Co-operative Societies appointed under section 3 and includes any person when exercising such powers of the Registrar as may be conferred upon him under that section;

“rules” means rules made under this Act;

“secondary society” means a society registered under section 4;

“subsidiary” of a registered society means a company incorporated under the Companies Act [Chapter 39];

“tertiary society” means a society registered under section 4.”.

Substitution of section 4.

3. Section 4 of the Act is repealed and the following new section substituted therefor —

“Societies which may be registered.

4. (1) A society which consists only of persons and which has as its object the promotion of the economic interest of its members in accordance with co-operative principles may be registered under this Act as a primary society.

(2) A society which consists only of primary societies and which has as its object the facilitation of the operations of such societies may be registered under this Act as a secondary society.

(3) A society which consists only of secondary societies, or of secondary and primary societies, and which has as its object the facilitation of the operations of such societies may be registered under this Act as a tertiary society.”.

Substitution of section 5.

4. Section 5 of the Act is repealed and the following new section substituted therefor —

“Conditions for registration.

5. (1) No society shall be registered as a primary society unless —

(a) it consists of at least 30 persons; and

(b) every such person is qualified for membership under section 21.

(2) No society shall be registered as a secondary society unless it consists of at least 2 primary societies.

(3) No society shall be registered as a tertiary society unless it consists of at least 2 secondary societies and one primary society.”.

Substitution of section 6.

5. Section 6 of the Act is repealed and the following new section substituted therefor —

“Application for registration.

6. (1) Every application for registration shall be submitted to the Registrar in the prescribed form and shall be signed —

(a) in the case of a primary society, by at least 10 persons all of whom are qualified for membership;

(b) in the case of a secondary society or tertiary society, by a duly authorised person on behalf of each primary society or secondary society, as the case may be.

(2) The application for registration shall be accompanied by —

(a) copies of the proposed by-laws, signed by the applicants;

(b) minutes of the inaugural general meeting, signed by the applicants;

(c) one activity report in progress; and

(d) the prescribed registration fees.”.

Insertion of new section 6A.

6. The Act is amended by inserting the following new section immediately after section 6 —

“Requirements before registration.

6A. The Registrar may require an applicant to furnish such additional information regarding the proposed society including —

(a) the economic or other needs for the formation of the proposed society;

(b) a statement regarding the viability of the activities of the proposed society;

(c) the availability of sufficient capital for the commencement of operations; and

(d) the availability of officers capable of directing and managing the affairs of the proposed society and of keeping such records and accounts of the society as he may require.”.

Substitution of section 7.

7. Section 7 of the Act is repealed and the following new section substituted therefor —

“Registration.

7. (1) If the Registrar is satisfied that a society has complied with any provision of this Act, that its proposed by-laws are not contrary to this Act and that the proposed undertaking of the society is likely to be viable, he shall register the society and its by-laws.

(2) The word “Co-operative” or its vernacular equivalent shall form part of the name of every society registered under this Act.

(3) The word “limited” or its vernacular equivalent shall be the last word in the name of every society with limited liability registered under this Act.

(4) In every case in which the Registrar refuses to register a society, he shall communicate his decision to the applicants without assigning any reason whatsoever.

(5) An appeal against the refusal of the Registrar to register a proposed society shall lie to the Minister within one month from the date of such refusal, and the decision of the Minister shall be final.

(6) On application for registration, the society shall pay such fees as may be prescribed by the rules.”.

Insertion of new section 10A.

8. The Act is amended by inserting the following new section immediately after section 10 —

“Formation of subsidiaries.

10A. (1) No registered society shall form, own, acquire or hold a subsidiary without the approval of the Registrar.

(2) The Registrar may approve a society to form a subsidiary if —

- (a) the by-laws of the society make provision for such formation;
- (b) the activity of such subsidiary is related to the society;
- (c) the activity of the subsidiary is such that it can only be performed by the subsidiary;
- (d) the formation of such subsidiary benefits all members of the society and is not prejudicial to the interests of the members of the society;
- (e) the formation of such subsidiary does not pose a threat to the society;
- (f) such subsidiary is approved by the general meeting;
- (g) the society has been operating profitably for at least 2 years continuously and has a healthy cash balance;
- (h) such subsidiary has a long term objective.

(3) For the purpose of subsection (1), the society must submit the following to the Registrar —

- (a) current audited accounts;
- (b) minutes of the last annual general meeting;
- (c) current list of management personnel.”.

Substitution of section 17.

9. Section 17 of the Act is repealed and the following new section substituted therefor —

“Power to deal with property and interest of deceased members.

17. (1) On the death of a member, a registered society may transfer the share or interest of such member —

- (a) in the case of a deceased member who was a Muslim, to the legal representative of such member or to such person as may appear to the committee members to be a person entitled to such share or interest pursuant to any distribution made under any law relating to the distribution of estates;

(b) in the case of a deceased member who was not a Muslim, to the person nominated in accordance with the rules on his behalf or, if there is no such person so nominated, to such person as may appear to the committee members to be the successor or legal representative of such member,

or may pay to such person, successor or legal representative, as the case may be, a sum representing the value of the deceased member's share or interest, as ascertained in accordance with the rules or its by-laws.

(2) If the deceased member was not a Muslim, and the successor or legal representative is not qualified for membership in accordance with this Act, the rules or the by-laws, the registered society may, on the application of such successor or legal representative within 6 months of the death of such member, transfer his share or interest to any person specified in the application who is so qualified.

(3) Notwithstanding subsection (1), if 6 months have elapsed since the death of a member who was a Muslim and the registered society is unable to ascertain who is the legal representative of such member or, if no legal representative has been appointed or the estate of such member has not been distributed or the estate of such member has been distributed but the registered society is unable to ascertain who is the person entitled to such share or interest pursuant to such distribution, the registered society may pay to the Probate Officer a sum representing the value of the share or interest of such member, as ascertained in accordance with the rules or its by-laws.

(4) A registered society may pay all other moneys due to a deceased member from the registered society to the legal representative, Probate Officer, successor or other person, as the case may be, referred to in subsection (1) or (3).”.

Amendment of section 18.

10. Section 18 of the Act is amended by inserting the following new subsection immediately after subsection (1) —

“(1A) Any deposit made by or for the benefit of the minor may, together with the bonus, be paid to the minor or to the guardian of that minor for the use of that minor.”.

Substitution of section 21.

11. Section 21 of the Act is repealed and the following new section substituted therefor —

“Qualifications for membership.

21. In order to be qualified for membership of a co-operative society, a person, other than a registered society, must —

(a) be a citizen of Brunei Darussalam or a permanent resident;

(b) have attained the age of 18 years or, if he is a member of a school co-operative society, have attained the age of 12 years and be a registered student of that school; and

(c) meet such other requirements regarding residence, employment and occupation, as may be prescribed by the by-laws, except that no person shall be admitted to membership who is legally or mentally disabled or who is a bankrupt or against whom a conviction stands for an offence punishable with imprisonment.”.

Amendment of section 24.

12. Section 24 of the Act is amended —

(a) by inserting “(1)” immediately before “Each” in the first line;

(b) by inserting “or delegate of members” immediately after “member” in the first line;

(c) in the proviso, by deleting the last sentence therefor;

(d) by adding the following 2 new subsections —

“(2) Notwithstanding subsection (1), a member of a secondary or a tertiary society may have such voting powers as are provided by the by-laws of such secondary or tertiary society.

(3) Subject to sections 24A and 28A, no member shall vote through another member and no delegate shall vote through another delegate.”.

Insertion of new section 24A.

13. The Act is amended by inserting the following new section immediately after section 24 —

“Representation by proxy.

24A. A member of a secondary or a tertiary society may appoint any one of its delegates, who must be a member of its Board, as its proxy for the purpose of voting in the conduct of the affairs of such secondary or tertiary society.”.

Insertion of new sections 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H and 28I.

14. The Act is amended by inserting the following 9 new sections immediately after section 28 —

“General meetings.

28A. Subject to this Act, the rules and the by-laws, the ultimate authority of a registered society shall vest in the general meeting of its members, at which every member by himself or by delegate, or, in the case of a secondary society as tertiary society, by proxy, has a right to attend and vote.

First general meeting.

28B. (1) Every registered society shall, within 6 months after receipt of the certificate of registration, hold a first general meeting of members or delegates.

(2) The business of the first general meeting shall include the election of office bearers who shall serve until the first annual general meeting and who shall be eligible for re-election.

Annual general meeting.

28C. Every registered society shall hold an annual general meeting of members or delegates not later than 6 months after the close of each financial year.

Board of registered society.

28D. Subject to the rules, order or guidelines, a registered society shall have a Board, which shall consist of not less than 7 and not more than 15 members duly appointed at the annual general meeting.

Establishment of Internal Audit Committee.

28E. (1) The Board shall establish an Internal Audit Committee consisting of not less than 2 members appointed by the Board.

(2) The duties of the Committee shall be provided in the by-laws.

Eligibility for appointment to Board.

28F. (1) No person shall be appointed to the Board or remain as a member of the Board of a registered society if he has been —

(a) convicted for an offence under this Act;

(b) dismissed as an officer of a registered society.

(2) Notwithstanding subsection (1), a registered society shall, prior to the appointment of any person as a member of the Board, seek verification from the Registrar on whether such person satisfies the fit and proper criteria as may be specified by the Registrar.

(3) Upon verification that such person has satisfied the fit and proper criteria under subsection (2), the registered society may appoint or re-appoint such person as member of the Board.

(4) From the third year of registration of a society, no person shall be appointed to be a member of the Board of such registered society unless he has been a member of such registered society for a minimum period of 2 years.

Duties and powers of Board.

28G. The Board of a registered society shall represent the registered society before all competent public authorities and in all dealings and transactions with third party, shall have power to institute or defend suits brought in the name of the registered society and, in general, shall direct, manage and

supervise the business, the funds and the property of the registered society, and shall exercise all the necessary powers to ensure the full and proper administration and management of the affairs, business or activities of the registered society including business or activities of the registered society as required under the rules, except these powers reserved for the general meeting of members or delegates.

Disclosure of conflict of interest by member of Board.

28H. (1) A member of the Board of a registered society, who holds an office or possesses property by which, whether directly or indirectly a duty or interest may arise, in conflict with his duty or interest as member of the Board, shall declare the fact, nature and extent of the conflict which may arise at the first meeting of the Board held —

(a) after he becomes a member of the Board of a registered society; or

(b) if he is already a member of the Board of a registered society, after he commences to hold office or to possess the property by which the conflict may arise.

(2) Any member of the Board of a registered society who fails to comply with subsection (1) commits an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

Liability of members of Board.

28I. In the conduct of the affairs of a registered society, the members of the Board of such registered society shall exercise the prudence and diligence of ordinary men of business and shall be jointly and severally liable for any loss sustained through failure to exercise such prudence and diligence or through any act which is contrary to the Act, the rules or the by-laws of such registered society or the direction of its general meeting.”.

Insertion of new Part IV A.

15. The Act is amended by inserting the following new Part immediately after Part IV —

“PART IV A

AMALGAMATION AND TRANSFERS

Amalgamation of societies.

28J. (1) Any 2 or more societies may, at general meetings specially called for that purpose, resolve to amalgamate into one society.

(2) The resolution to amalgamate into one society shall be passed at those meetings by not less than three-quarters of the members present and voting.

(3) Whenever an amalgamation involves the transfer of liabilities by one society to another society, 3 months' notice of the amalgamation shall be given to all creditors of the amalgamating societies.

(4) Creditors of any of the amalgamating societies shall be entitled to a refund of any sum due to them if they make a written demand to this effect at least one month before the date fixed for the amalgamation, but if the amalgamating societies obtain the prior agreement in writing of not less than three-quarters in value of the creditors not to make a demand for such a refund, then, in that event, the agreement shall be binding on all the creditors.

(5) A member of the amalgamating societies may, notwithstanding any by-law to the contrary, by notice in writing given to his society at least one month before the date specified as the date of amalgamation declare his intention not to become a member of the amalgamated society.

(6) Where the Registrar is satisfied that —

(a) the proposed amalgamation is not against the interests of the members of the societies proposing the amalgamation;

(b) the proposed by-laws of the proposed amalgamated society are in accordance with this Act; and

(c) all the requirements laid down in subsections (1), (2) and (3) have been complied with,

he shall register the amalgamated society and its by-laws and thereupon —

- (i) the registration of all the amalgamating societies shall be cancelled, and the amalgamating societies shall be dissolved;
- (ii) the registration of the amalgamated society shall be a sufficient conveyance without further assurance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;
- (iii) the remaining members of the amalgamating societies shall become members of the amalgamated society subject to its by-laws; and
- (iv) the creditors of the amalgamating societies and any other persons who have claims against the amalgamating societies and whose claims were not satisfied before the registration of the amalgamated society may pursue their claims or causes of action against the amalgamated society.

Transfer of societies.

28K. (1) A society may at a general meeting specially called for that purpose, resolve to transfer its assets and liabilities to another society which is prepared to accept them (which latter society is in this section referred to as the receiving society).

(2) The resolution to transfer the assets and liabilities to a receiving society has to be passed at the general meeting of the transferring society by not less than three-quarters of the members present and voting.

(3) Wherever the transfer of assets and liabilities involves the transfer of liabilities by the transferring society to the receiving society, 3 months' notice of the transfer shall be given to all creditors of the transferring society.

(4) Creditors of the transferring society shall be entitled to a refund of any sum due to them if they make a written demand to this effect at least one month before the date fixed for the transfer.

(5) A member of the transferring society may, notwithstanding any by-law to the contrary, by notice in writing given to his society at least one month before the date specified as the date of transfer declare his intention not to become a member of the receiving society.

(6) Where the Registrar is satisfied that —

(a) the proposed transfer is not against the interests of the members of the transferring society; and

(b) all the requirements laid down in subsections (1), (2) and (3) have been complied with,

he may approve the transfer and thereupon —

(i) the registration of the transferring society shall be cancelled, and the transferring society shall be dissolved;

(ii) the approved resolution in accordance with subsection (2) shall be a sufficient conveyance without further assurance to vest the assets and liabilities of the transferring society in the receiving society;

(iii) the remaining members of the transferring society shall become members of the receiving society, subject to its by-laws; and

(iv) the creditors of the transferring society and any other person who have claims against the transferring society and whose claims were not satisfied before the approval of transfer by the Registrar may pursue their claims or causes of action against the receiving society.”.

Amendment of section 29.

16. Section 29 of the Act is amended by repealing subsection (1) and by substituting the following new subsection therefor —

“(1) No registered society shall grant any loan to any person except to —

(a) its members;

(b) its employees;

(c) its subsidiary or subsidiaries; or

(d) another registered society,

and such loan shall be subject to —

(i) the rules and by-laws of the society; and

(ii) in the case of its subsidiary or subsidiaries or another registered society, the approval of the Registrar.”.

Substitution of section 32.

17. Section 32 of the Act is repealed and the following new section substituted therefor —

“Investment of funds.

32. (1) Subject to the rules and its by-laws, a registered society may invest or deposit its surplus funds in —

(a) any financial institution licensed under the Banking Order, 2006 (S 45/06) or the Islamic Banking Order, 2008 (S 96/08) approved for this purpose by the Registrar;

(b) any financial institution established by the Government;

(c) any registered society approved for this purpose by the Registrar;

(d) any bonds or securities issued in Brunei Darussalam under any written law;

(e) such other investments and securities as are authorised under any written law for the investment of trust funds.

(2) No registered society shall invest its surplus funds in any other mode, except, with the approval of the Registrar in —

(a) the shares or securities of any other registered society;

(b) the share capital or convertible or redeemable debenture stocks of any company or any body corporate registered in Brunei Darussalam, other than those specified in subsection (1);

(c) any joint venture company; or

(d) its subsidiaries.

(3) No registered society shall invest its funds exceeding a limit which shall be determined by its general meeting.”.

Insertion of new section 32A.

18. The Act is amended by inserting the following new section immediately after section 32 —

“Capital gains.

32A. (1) A registered society shall credit to its Capital Reserve Account all capital gains arising from —

- (a) the sale of land or buildings or both, as fixed assets;
- (b) the re-valuation of land or buildings or both, as fixed assets, with the approval of the Registrar.

(2) The capital gains referred to in subsection (1)/a) may be utilised by the registered society for all or any of the following purposes —

- (a) the issue of bonus shares;
- (b) the writing off of accumulated losses; and
- (c) the creation of a Bonus Share Redemption Fund.

(3) No registered society shall utilise the capital gains referred to in subsection (1)/a) for the purpose of issuing bonus shares unless and until all its accumulated and current losses, if any, have been completely written off.

(4) The capital gains referred to in subsection (1)/b) may be utilised by the registered society for the issue to its members of bonus shares which shall not be withdrawn but which may, with the approval of the committee members or members of the directorate, be transferred to another member of that society or, in the case of a member who dies after the issue of bonus shares, be paid out of the Bonus Share Redemption Fund of that registered society.

(5) The bonus shares redeemed by a registered society may be re-issued as bonus shares to its members in accordance with its by-laws.

(6) A register of bonus shares shall be maintained by the registered society.

(7) This section shall not apply to a registered society that is required by the provisions of any other written law to deal with its capital gains in the manner provided in that law.”.

Substitution of section 33.

19. Section 33 of the Act is repealed and the following new section substituted therefor —

“Disposal of profits.

33. (1) At least one-fifth of the net profits of every registered society, ascertained by the audit required by section 34, shall be carried to a fund called the reserve fund, which shall be employed as stipulated by the rules —

Provided that the Registrar may in his discretion lower the percentage of contribution or exempt a society from the obligation to maintain a reserve fund.

(2) Every registered society shall out of its audited net profits pay into its development fund 5 *per centum* for the preceding year to —

(a) any co-operative educational institution; or

(b) any secondary or tertiary society which the Minister has declared to be a body representing the co-operative movement at national and international level,

established under the rules for the furtherance of co-operative principles.

(3) No secondary or tertiary society shall be declared under subsection (2)(b) to be a body representing the co-operative movement at national and international level unless —

(a) the objects of such society include the promotion of co-operative principles and the facilitation of the operations of registered societies; and

(b) the by-laws of such society provide for the affiliation of all registered societies without any restrictions or the payment of any fee except entrance fees.

(4) After deductions have been made under subsections (1) and (2), the remainder of such profits and any profits of past years available for distribution may be divided among members by way of dividend or bonus, or allocated to any funds constituted by the society to such extent or under conditions as may be prescribed by the rules or by-laws —

Provided that, in the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Minister.

(5) Any registered society may, with the approval of the Registrar, after one-fifth of the net profits in any year has been carried to a reserve fund and 5 *per centum* out of its audited profits to a development fund, contribute an amount not exceeding 10 *per centum* of the remaining net profits to any charitable purposes or to a common-good fund.”.

Insertion of new sections 34A, 34B and 34C.

20. The Act is amended by inserting the following 3 new sections immediately after section 34 —

“Approval of auditor of registered societies.

34A. (1) For the purposes of section 34(1), the Registrar may upon the payment of such fees as may be prescribed, approve any competent person to audit the accounts of a registered society or societies, as the case may be, under this Act if —

(a) such person applies in writing to the Registrar to be so approved; and

(b) the Registrar is satisfied that such person is fit and competent to be so approved.

(2) No person shall be approved to audit nor shall he audit the accounts of the same registered society for any continuous period exceeding 6 years, but such person may be approved to audit and may resume auditing the accounts of a registered society 2 years after he has ceased to audit the accounts of that registered society.

(3) For the purposes of subsection (2), the approval for a further period of an auditor, which immediately follows his ceasing to act as the auditor of the same registered society, shall be construed as making the period continuous.

Annual reports, accounts and financial statements.

34B. (1) A society shall, as soon as practicable but not later than 6 months after the close of each financial year, submit to the Registrar an annual report on its activities during the year together with 2 certified true copies of the audited financial statements of the society and the audit report for that year.

(2) The society shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in custody of, the society and over the expenditure incurred by the society.

(3) The society shall, as soon as practicable but not later than 6 months after the close of the financial year, prepare and submit the financial statements in respect of that year to the auditor who shall audit and report on them.

(4) Notwithstanding subsection (3), the Registrar may, on application by a society, extend the period of 6 months referred to in that subsection, if for any special reason he thinks fit to do so.

(5) The financial statements, accounts and other relevant reports of a registered society and its subsidiary or subsidiaries, if any, duly audited shall be submitted to its members not less than 15 days and to the Registrar not less than 30 days before the annual general meeting, and the Registrar may make such observations as he deems fit on the financial statements, accounts and the reports.

Duties of auditor.

34C. (1) The auditor shall inspect and audit the accounts and other relevant records of the society and shall forthwith draw the attention of the Registrar and the society to any irregularity disclosed by the inspection and audit that is, in the opinion of the auditor, of sufficient importance to justify his so doing. The financial statements submitted by the society after the close of the financial year shall be audited and reported on by the auditor.

(2) The auditor shall report —

(a) whether the financial statements give a true and fair view of the financial transactions and the state of affairs of the society; and

(b) such other matters arising from the audit as he considers should be reported.

(3) The auditor shall state in his report whether —

(a) proper accounting and other records have been kept; and

(b) the receipt, expenditure and investment of moneys and the acquisition and disposal of assets by the society during the year have been in accordance with the by-laws and the provisions of this Act and the Rules.

(4) The auditor may at any other time report to the Registrar and the society upon any matters arising out of the performance of the audit.

(5) The audit of the accounts of a registered society shall include an examination of and report on overdue debts, if any, and an examination of and report on the valuation of the assets and liabilities of the society.”.

Amendment of section 35.

21. Section 35 of the Act is amended —

(a) by deleting “and securities” from the third line and by substituting “securities, device, apparatus, material, computer program or the computer software” therefor;

(b) by inserting “and its subsidiary or subsidiaries” immediately after “society” in the fourth line;

(c) by inserting “and its subsidiary or subsidiaries” immediately after “society” in the fifth line.

Insertion of new section 35A.

22. The Act is amended by inserting the following new section immediately after section 35 —

“Power to seize and detain books, accounts and computers etc.

35A. If, in the course of or consequent upon an inspection under section 35, it appears that an offence under this Act has been committed, the Registrar or any public officer authorised by him in writing to make such inspection may enter any premises belonging to or occupied by the registered society and may seize and detain any books, accounts, papers, securities, device, apparatus, material, computer program or the computer software of the registered society which may furnish evidence of an offence under this Act.”.

Amendment of section 36.

23. Section 36 of the Act is amended —

(a) in subsection (1), by inserting “or audit under section 34” immediately after “inquiry” in the fourth line;

(b) by inserting the following 3 new subsections immediately after subsection (1) —

“(1A) For the purpose of an inquiry under subsection (1), the Registrar or the authorised person referred to in subsection (1) may summon any person who he has reason to believe has knowledge of any of the affairs of the registered society and may examine such person on oath and may require any person to produce or surrender any books, accounts, papers, securities, device, apparatus, material, computer program or the computer software in his custody belonging to the registered society and its subsidiary or subsidiaries, if any, if the Registrar or such authorised person has reason to believe that such books, accounts, papers, securities, device, apparatus, material, computer program or the computer software may furnish evidence of an offence under this Act or under the rules.

(1B) Every person authorised under subsection (1) shall, upon the completion of an inquiry under subsection (1), report his findings to the Registrar.

(1C) If an inspection is carried out under section 35 or an inquiry is held under section 36, the Registrar may communicate the result of the inspection or the inquiry to the registered society and may, by order in writing, direct any officer of the registered society to take such actions as may be determined in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inspection or the inquiry.”.

Substitution of section 37.

24. Section 37 of the Act is repealed and the following new section substituted therefor —

“Dissolution of societies.

37. (1) If the Registrar, after holding an inquiry and inspection under section 36 or on receipt of an application made by three-quarters of the members of a society present and voting at a general meeting convened for

the purpose, is of the opinion that the society ought to be wound up, he may issue an order directing it to be wound up.

(2) The Registrar may, of his own motion, make a winding-up order in respect of a society which has not commenced business operations without reasonable explanation for 2 years after receipt of the certificate of registration or the membership of which is reduced to less than the minimum membership prescribed in section 5.

(3) No society shall be wound up save by an order of the Registrar.

(4) A member of a society may, within 2 months from the date of a winding-up order under subsection (1) or (2), appeal in writing against the order to the Minister and the decision of the Minister shall be final.

(5) When making a winding-up order under subsections (1) or (2), the Registrar may appoint a liquidator for this purpose and fix his remuneration.

(6) A liquidator shall not wind up a society until any appeal instituted under subsection (4) has been determined or until 2 months have elapsed from the date of the winding-up order, as the case may be.”.

Amendment of section 38.

25. Section 38 of the Act is amended by deleting “10” from the last line and by substituting “30” therefor.

Amendment of section 48.

26. Section 48 of the Act is amended, in subsection (2) —

(a) in paragraph (b), by deleting the fullstop and by substituting “or” therefor;

(b) by adding the following new paragraph —

“(c) require the parties to the dispute to refer the dispute to a court.”.

Insertion of new section 48A.

27. The Act is amended by inserting the following new section immediately after section 48 —

“Tribunal.

48A. (1) The Minister may, on the recommendation of the Registrar, establish a tribunal to perform the functions specified in subsection (2).

(2) A tribunal established under subsection (1) shall hear and determine any dispute within the meaning of section 48(1) which is referred to it under this section.

(3) The Minister may make such rules, not inconsistent with the provisions of this Act, as may be necessary or expedient for the purpose of enabling the tribunal to carry out its functions, and in particular, without prejudice to the generality of the foregoing power, such rules may provide for the constitution, officers and proceedings of the tribunal.

(4) Upon establishment of a tribunal under subsection (1), all disputes within the meaning of section 48(1) —

(a) arising after such establishment; or

(b) which before such establishment, had been referred to the Registrar under section 48(1) but in respect of which —

(i) no step has been taken or no proceedings have been commenced by the Registrar for their disposal under section 48(2)(a); or

(ii) no decision has been made by the Registrar to refer them to an arbitrator or arbitrators for disposal under section 48(2)(b) or to require the parties concerned to refer them to a court under section 48(2)(c),

shall be referred to such tribunal.

(5) A tribunal established under subsection (1) may —

(a) procure and receive all such evidence, whether written or oral, and examine all such persons as witnesses as the tribunal may think it necessary to procure or examine;

(b) require the evidence of any witness to be made on oath (and may for those purposes administer any oath) or by statutory declaration;

(c) summon any person to attend any meeting of the tribunal to give evidence or procure any document or other thing in his possession and examine him as a witness or require him to produce any document or other thing in his possession;

(d) hear and determine the dispute referred to it, notwithstanding the absence of any party to the dispute who has been served with a summons or notice to appear;

(e) notwithstanding any written law relating to evidence, admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings; and

(f) conduct its proceedings or any part thereof in private.

(6) The award of a tribunal shall be binding upon the parties and shall be enforceable by an Intermediate Court in the same manner as if the award had been a judgment of that Court.

(7) Any party aggrieved by the award of a tribunal may appeal therefrom to the High Court in accordance with the rules of court applicable thereto.

(8) Notwithstanding the establishment of a tribunal under subsection (1), the Registrar before whom a dispute is pending under section 48(2)(a) or any arbitrator or arbitrators to whom a dispute has been referred under section 48(2)(b) shall continue to deal with such dispute under those paragraphs, and sections 48(3) and (5) shall continue to apply to the decision of the Registrar or the award of such arbitrator or arbitrators, as the case may be.

(9) Sections 48(2), (3), (4) and (5) shall not apply to any dispute referred to a tribunal under this section.

(10) Any reference in this Act to a decision of the Registrar or an award of an arbitrator or arbitrators shall, in respect of disputes determined by a tribunal under this section, be construed as a reference to an award of such tribunal.”.

Amendment of section 50.

28. Section 50 of the Act is amended, in subsection (2) —

(a) by inserting the following new paragraph immediately after paragraph (b) —

“(ba) provide for the establishment of subsidiary or subsidiaries of registered societies and matters relating to it;”;

(b) by inserting the following new paragraph immediately after paragraph (m) —

“(ma) prescribe all matters relating to the amalgamation and division of registered societies and the transfer of assets and liabilities of registered societies, including the vesting of assets and liabilities of —

- (i) amalgamating societies in the amalgamated society;
- (ii) a registered society in the new societies created pursuant to a division;
- (iii) a registered society in another society pursuant to a transfer,

the registration of the amalgamated society, the new societies and the transfer, and the revocation of the registration of, in the case of an amalgamation, the amalgamating societies, in the case of a division, the existing society and, in the case of a transfer, the receiving society;”.

Insertion of new section 52A.

29. The Act is amended by inserting the following new section immediately after section 52 —

“Power to issue guidelines, directives etc.

52A. The Registrar may issue guidelines, directives, circulars or notices in respect of this Act as are necessary or expedient to give full effect to or for the carrying out the provisions of this Act.”.

Amendment of section 56.

30. Section 56 of the Act is amended by deleting “Societies Act” from the first two lines and by substituting “Societies Act (Chapter 203)” therefor.

Further amendment of Act.

31. The Act is amended by deleting “committee” wherever it appears and by substituting “committee members” therefor.

Made this 24th. day of Rejab, 1433 Hijriah corresponding to the 14th. day of June, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM