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

FINANCE COMPANIES ACT (AMENDMENT) ORDER, 2006

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

FINANCE COMPANIES ACT (AMENDMENT) ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 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 Finance Companies Act (Amendment) Order, 2006.

Amendment of section 2 of Chapter 89.

2. Section 2 of the Finance Companies Act, in this Order referred to as the Act, is amended —

(a) by deleting the definition of "deposit" and by substituting the following new definition therefor —

" "deposit" means a sum of money received or paid on terms —

(a) under which it will be repaid, with or without interest or at a premium or discount; or

(b) under which it is repayable, either wholly or in part, with any consideration in money or money's worth,

such repayment being either on demand or at a time or in such circumstances agreed by or on behalf of the person making the payment and the person receiving it, regardless whether the transaction is described as a loan, credit facility, advance, investment, saving, sale or sale and repurchase, but does not include money paid *bona fide* —

(i) by way of an advance or a part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired, or otherwise provided;

(ii) by way of security for the performance of a contract or by way of security in respect of any loss

which may result from the non-performance of a contract;

- (iii) without prejudice to sub-paragraph (ii), by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;"

(b) in the definition of "finance company", by inserting "or Islamic financing business" immediately after "financing business" in the second line;

(c) by inserting the following new definition immediately after the definition of "financing business" —

"Islamic financing business" means financing business the aims and operations of which do not involve any element which is not approved by Hukum Syara'";

Amendment of section 3.

3. Section 3 of the Act is amended, in subsection (1), by inserting "or Islamic financing business" immediately after "financing business" in the first and in the third lines.

Amendment of section 5.

4. Section 5 of the Act is amended, in subsection (1), by inserting "or Islamic financing business" immediately after "financing business" in the second line.

Amendment of section 6.

5. Section 6 of the Act is amended —

(a) in subsection (1), by inserting "or Islamic financing business" immediately after "financing business" in the second line;

(b) in subsection (2) —

(i) by deleting "and" from the end of paragraph (e);

(ii) by deleting the fullstop from paragraph (f) and by substituting "; and" therefor;

(iii) by adding the following new paragraph —

(g) in the case of an Islamic financing business, that the finance company will comply with the doctrines of Islamic Religion, and that proper provision will be made in the finance company's constituting documents for the appointment of, and the provision of advice by, the appropriate Syariah advisory body."

Amendment of section 7.

6. Section 7 of the Act is amended by deleting "\$1,000,000" from the last line and substituting "\$25,000,000" therefor.

Amendment of section 20.

7. Section 20 of the Act is amended —

(a) in subsection (1), by inserting "or Islamic financing business" immediately after "financing business" in the last line;

(b) in subsection (2), by inserting "or Islamic financing business" immediately after "financing business" in the last line.

Insertion of new sections 23A and 23B.

8. The Act is amended by inserting the following 2 new sections immediately after section 23 —

"Prohibition of credit facilities to director and officer.

23A. (1) Unless exempted by the Minister in writing with or without conditions, or except as provided under subsection (2) or (3), no finance company shall give any credit facility to —

(a) any of its directors or officers or any other person receiving remuneration from it (other than any accountant, advocate, architect, estate agent, doctor and any other person receiving remuneration from it in respect of his professional services);

(b) any body corporate or unincorporate, firm or sole proprietorship, in which any of its directors or officers is a director or manager, or for which any of its directors or officers is a guarantor or an agent;

(c) any company in which any of its directors or officers has any interest in the shares of that company; or

(d) any person for whom any of its directors or officers has given any guarantee or other undertaking whatsoever involving financial liability.

(2) A finance company may give to any of its officers or its executive director —

(a) any credit facility which is provided for under his scheme of service; or

(b) where there is no such provision and the finance company is satisfied that special or compassionate circumstances exist, a credit facility not exceeding at any one time —

(i) 6 months' remuneration of that officer or executive director; or

(ii) his remuneration for such longer period as may be approved by the Minister,

and subject to such other terms and conditions as the finance company thinks fit.

(3) The provisions of —

(a) paragraph (a) of subsection (1) shall not apply to the giving of any credit facility to the spouse, child or parent of an officer, including an executive director, of that finance company for the purchase of a residence; and

(b) paragraph (c) of subsection (1) shall not apply to the giving of any credit facility by a finance company to a company in which none of the directors or officers of that finance company has any material interest in the shares of that company.

(4) In this section —

(a) "director" or "officer" includes a spouse, child or parent of that director or officer; and

(b) the Minister shall specify what constitutes a material interest in the shares of a company.

Disclosure of interest by directors.

23B. (1) Every director of a finance company who has in any manner, whether directly or indirectly, any interest in an advance, loan or credit facility or proposed advance, loan or credit facility from that finance company shall as soon as practicable declare in writing the nature of that interest to the board of directors, and the secretary of that finance company or other officer appointed by it for that purpose shall cause a copy of such declaration to be circulated forthwith to all directors.

(2) The requirements of subsection (1) do not apply where —

(a) the interest of any director consists only of being a director, officer or member of a body corporate or unincorporate, or a director or officer of a sole proprietorship or a firm which is interested in an advance, loan or credit facility or proposed advance, loan or credit facility from that finance company; and

(b) the interest of the director may be regarded as trivial.

(3) For the purposes of subsection (1), a general notice given to the board of directors of a finance company by a director to the effect that he is a director, an officer or member of the body corporate or unincorporate, or a director or officer of the sole proprietorship or the firm to which the credit facility is given or proposed to be given shall be a sufficient declaration of interest in relation to such credit facility or proposed credit facility if —

(a) it specifies the nature and extent of his interest in the body corporate or unincorporated, sole proprietorship or firm;

(b) his interest is not different in nature or greater in extent than the nature and extent so specified in the notice at the time any advance, loan or credit facility is made; and

(c) it is given at the meeting of board of directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of board of directors after it has been served on each of the directors.

(4) Every director of a finance company who holds any office or possesses any property whereby, directly or indirectly, duties or interest might be created in conflict with his duties or interest as a director of that finance company, shall declare at a meeting of board of directors of that finance company the fact of his holding such office or possessing such property and the nature, character and extent of the conflict.

(5) The declaration referred to in subsection (4) shall be made at the first meeting of the directors held —

(a) after he became a director of the finance company; or

(b) if already a director, after he commenced to hold that office or to possess that property.

(6) The secretary of the finance company or its other officer referred to in subsection (1) shall record any declaration made under this section in the minutes of the meeting at which it was made or at which it was brought up and read.

(7) Any director who contravenes subsection (1) or (4) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both."

Amendment of section 24.

9. Section 24 of the Act is amended, in subsection (1) —

(a) in paragraph (a), by inserting "or profit" immediately after "interest" in the first line;

(b) in paragraph (d), by inserting ", profit" immediately after "interest" in the first and in the second lines.

Amendment of section 26.

10. Section 26 of the Act is amended, in subsection (2), by inserting "or it is not conducting its Islamic financing business according to the directions of the Syariah advisory body" immediately after "creditors" in the fourth line.

Amendment of section 27.

11. Section 27 of the Act is amended, in subsection (1), by inserting "or contrary to *Hukum Syara'* in relation to Islamic financing business" immediately after "finance company" in the 4 places where that latter expression appears.

Substitution of section 33.

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

"Disqualification of directors or officers of finance company.

33. (1) Without prejudice to anything contained in the Companies Act (Chapter 39), no person shall be appointed or elected, or accept appointment or election, as a director, manager, secretary or other officer concerned in the management of a finance company —

(a) if he becomes bankrupt, suspends payments, or compounds with his creditors, whether within or outside Brunei Darussalam;

(b) if a charge for a criminal offence relating to dishonesty, fraud or violence has been proved against him in any court within or outside Brunei Darussalam;

(c) if there has been made against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision by bond or otherwise, under any law relating to prevention of crime, or to preventive detention for prevention of crime or drug trafficking, or to restricted residence, or to banishment or immigration; or

(d) if he has been director of, or directly concerned in the management of, any corporation which is being or has been wound up by a court or other authority competent to do so within or outside Brunei Darussalam, or of any finance company, the licence of which has been revoked under this Act.

(2) Except with the approval of the Minister, no person who is subject to the disqualification under paragraph (d) of subsection (1), may —

(a) be appointed or elected, or accept appointment or election;
or

(b) notwithstanding anything in subsection (3), continue in his office,

as a director, manager, secretary, or other officer concerned in the management of any finance company.

(3) Where a person who is a director, manager, secretary, or the officer concerned in the management of a finance company, becomes subject to any of the disqualifications mentioned in subsection (1), he shall immediately cease to hold office, and the finance company shall immediately terminate his appointment in such capacity.

(4) Whilst criminal proceedings are pending in any court for any offence as is referred to in paragraph (b) of subsection (1) against any person

who is a director, manager, secretary, or other officer concerned in the management of a finance company, such person shall not act in such capacity, or hold any other office, or act in any other capacity, in that finance company, or in any manner, whether directly or indirectly be concerned with, or take part or engage in, any activity, affairs or business whatsoever of or in relation to that finance company, except as maybe authorised by the Minister, subject to such conditions as he may impose.

(5) For the purpose of subsection (4), criminal proceedings referred to therein shall be deemed to be pending from the date that the accused person was first charged in court for the offence until the date of the final conclusion of the proceedings, whether in the court of original jurisdiction or, in the event of any appeal by any party, in the court of final appellate jurisdiction.

(6) Any person who contravenes subsections (1) to (4) is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 5 years or both."

Insertion of new section 33A.

13. The Act is amended by inserting the following section immediately after section 33 —

"Approval of director etc. of finance company.

33A. (1) No finance company shall appoint a person as its director unless —

(a) the finance company has served on the Minister a notice in writing stating that it proposes to appoint that person to a specified position and containing such particulars as may be prescribed; and

(b) the Minister has, before the expiration of 3 months from the date of service of the notice, notified the finance company in writing that there is no objection to that person being appointed to the specified position or such period lapses without the Minister having served on the finance company a notice of objection in writing.

(2) A notice under paragraph *(a)* of subsection (1) shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.

(3) The Minister may object to the person proposed to be appointed and serve notice thereof under paragraph *(b)* of subsection (1) on the ground that it appears to him that such person is not a fit and proper person to be so

appointed, but before serving such notice the Minister shall serve on the finance company and on the person a preliminary notice in writing stating —

(a) that the Minister is considering the service on the finance company of a notice of objection on that ground; and

(b) that the finance company and that person may, within one month from the date of service of the preliminary notice, make representations in writing to the Minister.

(4) The Minister shall not be obliged to disclose any particulars of the grounds on which he is considering the service of the notice of objection or on which he serves the notice of objection.

(5) Where representations are made in accordance with this section the Minister shall take them into consideration in deciding whether to serve the notice of objection."

Amendment of section 39.

14. Section 39 of the Act is amended —

(a) in sub-paragraph (ii) of paragraph (b) of subsection (1), by inserting "or Islamic financing business" immediately after "financing business" in the first line;

(b) in subsection (2), by inserting "or Islamic financing business" immediately after "financing business" in the second line.

Amendment of section 40.

15. Section 40 of the Act is amended, in subsection (1), by inserting "or credit facility" immediately after "loan" in the fifth line.

Addition of new section 44.

16. The Act is amended by adding the following new section —

"Memorandum and articles of association for Islamic financing business.

43. (1) No licence shall be granted by the Minister to a finance company to carry on Islamic financing business under this Act unless that finance company has included in its memorandum of association and articles of association the restrictions, limitations and prohibitions contained in sections 18, 19, 20 and 22.

(2) Every company that had been carrying on Islamic financing business before the commencement of the Finance Companies Act (Amendment) Order, 2006 is deemed to have included in its memorandum of association and articles of association the restrictions, limitations and prohibitions contained in sections 18, 19, 20 and 22.

(3) To the extent that any such restriction, limitation or prohibition so deemed to have been included in memorandum of association and articles of association under subsection (2), is inconsistent with any provision already included in the memorandum of association and articles of association, that restriction, limitation or prohibition shall prevail over any such provision."

Made this 4th. day of Safar, 1427 Hijriah corresponding to the 4th. day of March, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM