

No. S 5

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

CRIMINAL ASSET RECOVERY (AMENDMENT) ORDER, 2023

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

CRIMINAL ASSET RECOVERY (AMENDMENT) ORDER, 2023

___ 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 Criminal Asset Recovery (Amendment) Order, 2023.

Amendment of section 2 of S 47/2012

2. Section 2 of the Criminal Asset Recovery Order, 2012, in this Order referred to as the principal Order, is amended —

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

" "Authority" means the Brunei Darussalam Central Bank established by section 3(1) of the Brunei Darussalam Central Bank Order, 2010 (S 103/2010);";

(b) in the definition of "beneficial owner" —

(i) in paragraph *(a)*, by deleting "the rights to and/or benefits from property" and by substituting "a customer" therefor;

(ii) in paragraph *(c)*, by deleting "rights to or benefit from property within the meaning of subsection" and by substituting "a customer within the meaning of paragraph" therefor;

(c) in the definition of "designated non-financial businesses and professions", in paragraph *(b)*, by inserting "involved in transactions for a client concerning the buying and selling of real estate" immediately after "agents";

(d) by inserting the following new definition immediately before the definition of "FATF" —

" "enhanced due diligence" includes —

(a) to obtain any additional information on the customers and beneficial owners other than those set out in section 6;

(b) to inquire on the source of wealth or source of funds;

(c) to obtain approval from the senior management of the financial institution or designated non-financial business and profession before it establishes or continues its business relations with its customers;

(d) to increase ongoing monitoring of the activities of its customer or the beneficial owner and its business relations and transactions with the customer or the beneficial owner to prevent money laundering and financing of terrorism or the commission of any other serious offences;"

(e) in the definition of "financial institution", in paragraph (a) —

(i) in sub-paragraph (v), by deleting "the Mutual Funds Order, 2001 (S 18/2001), the Securities Order, 2001 (S 31/2001)" and by substituting "the Securities Markets Order, 2013 (S 59/2013)" therefor;

(ii) in sub-paragraph (vi), by deleting "or" from the last line;

(iii) by inserting the following three new sub-paragraphs immediately after sub-paragraph (vi) —

"(via) any person who conducts business of one or more of the following activities or operations for on behalf of another person —

(A) exchange between virtual assets and fiat currency;

(B) exchange between one or more forms of virtual assets;

(C) transfer of virtual assets;

(D) safekeeping or administration of virtual assets or instruments enabling control over virtual assets; and

(E) participation in and provision of financial services related to an issuer's offer or sale of a virtual asset;

(vib) any bank established by the Government;

(vic) such other person as may be determined by the Minister under section 29A; or";

(iv) in sub-paragraph (vii), by inserting ", registered" immediately before "or regulated";

(f) by deleting the definition of "Minister" and by substituting the following new definition therefor —

" "Minister" means the Minister charged with the responsibility of finance matters;";

(g) in the definition of "politically-exposed person" —

(i) in sub-paragraph (iii), by deleting "political party official, and" and by substituting "or important political party official;";

(ii) in sub-paragraph (iv), by deleting the comma and by substituting "; and" therefor;

(iii) by inserting the following two new sub-paragraphs immediately after sub-paragraph (iv) —

"(v) a family member or close associate of such persons referred to in sub-paragraphs (i), (ii), (iii) and (iv);";

(vi) for the purposes of this paragraph —

"close associate" means any individual closely connected to a politically-exposed person either socially or professionally and includes —

(A) extended family members such as relatives (biological and non-biological relationships);

(B) financially dependent individuals and persons salaried by the politically-exposed person such as drivers, bodyguards and secretaries;

(C) business partners or associates of the politically-exposed person;

(D) prominent members of the same organisation as the politically-exposed person;

(E) work colleagues or individuals working closely with the politically-exposed person; or

(F) close friends;

"family member" means any individual who is related to a politically-exposed person either directly (consanguinity) or through marriage and includes –

- (A) the parent;
- (B) a sibling;
- (C) a spouse;
- (D) a child; or
- (E) the spouse's parent,

for both biological or non-biological relationships;"

- (iv) by deleting "and shall include any immediate family member or close associate of such persons;" from the last two lines;

(h) in the definition of "serious offence", in paragraph (b), by inserting "and includes a foreign serious tax offence" immediately after "character" in the last line;

(i) in the definition of "tainted property", in paragraph (c), by deleting "crimes" and by substituting "crime" therefor;

(j) in the definition of "wire transfer", by deleting "money" from the last line and by substituting "funds" therefor;

(k) by inserting the following seven new definitions in the appropriate alphabetical order –

"Core Principles" means the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision, the Objectives and Principles for Securities Regulation issued by the International Organisation of Securities Commissions and the Insurance Supervisory Principles issued by the International Association of Insurance Supervisors;

"financial group" means a group that consists of a parent company or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches or subsidiaries that are subject to anti-money laundering and combating the financing of terrorism policies and procedures at the group level;

"foreign benefit recovery order" means an order made by a court in a foreign country, on or after the appointed date for that country, for the recovery of —

(a) any payment or other reward received in connection with an offence against the law of that country or the value of any such payment or reward; or

(b) any property derived or realised, directly or indirectly, from any payment or other reward mentioned in paragraph (a) or the value of any such property;

and includes an instrumentality forfeiture order;

"foreign confiscation order" means an order made by a court in a foreign country, on or after the appointed date for that country, for the forfeiture or confiscation of —

(a) any payment or other reward received in connection with an offence against the law of that country or the value of any such payment or reward; or

(b) any property derived or realised, directly or indirectly, from any payment or other reward mentioned in paragraph (a), or the value of any such property,

and includes —

(i) an instrumentality forfeiture order; and

(ii) for the avoidance of doubt, such order made by a court in a foreign country which is not based on a conviction;

"foreign restraining order" means an order made by a court in a foreign country, on or after the appointed date for that country, prohibiting any person from disposing of, or dealing with, the property specified in the order;

"foreign serious tax offence" means an offence against the national law of a foreign country that consists of the doing of any of the following (however described) wilfully with intent to evade, or to assist any other person to evade, any tax of that country —

(a) omitting from, or understating or overstating in, a return made for the purposes of that tax any information which should be included in the return;

(b) making any false statement or entry in any return, claim or application made, or any document or information required to be given, for the purposes of that tax;

(c) giving any false answer, whether verbally or in writing, to any question or request for information asked or made for the purposes of that tax;

(d) failing to inform the authority responsible for the collection of that tax, in the required manner, of any incorrect information appearing in any assessment made by that authority, when required to do so;

(e) preparing or maintaining, or authorising the preparation or maintenance, of any false book of accounts or other records, or falsifying or authorising the falsification of any book of accounts or records;

(f) making use of any fraud, art or contrivance or authorising the use of any such fraud, art or contrivance;

"virtual asset" means a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes but does not include digital representations of physical currencies, securities and other financial assets."

Amendment of section 4

3. Section 4 of the principal Order is amended, in subsection (3), by deleting "supervisory authority" from the second last line and from the last line and by substituting "the Authority" therefor.

Amendment of section 5

4. Section 5 of the principal Order is amended –

(a) in subsection (1) –

(i) in paragraph *(c)*, by deleting "of \$1,500 (or its equivalent in a foreign currency) or above";

(ii) in paragraph *(d)*, by inserting "regardless of any exemption or threshold" immediately after "financing";

(b) in subsection (2), by deleting ", such as the ownership of publicly-held corporations," from the third and fourth lines;

(c) in subsection (3) —

(i) in paragraph (b), by deleting "and" from the last line;

(ii) in paragraph (c)(ii), by deleting the full stop and by substituting a semicolon therefor;

(iii) by inserting the following three new paragraphs immediately after paragraph (c) —

"(d) the financial institutions or designated non-financial businesses and professions have in place internal policies and procedures to mitigate risks of money laundering and financing of terrorism pursuant to section 28;

(e) there is a written arrangement governing the relationship between the financial institution or designated non-financial business and profession and the third party on which reliance is placed specifying the rights, responsibilities and expectations of both parties; and

(f) where the intermediary or other third party is part of the same financial group —

(i) the due diligence and record keeping requirements and programmes for the prevention of money laundering and financing of terrorism implemented by the financial group are consistent with the requirements of section 6 and its implementation is supervised by a competent authority;

(ii) any higher risk country is adequately mitigated by the financial group's prevention of money laundering and financing of terrorism policies and procedures.";

(d) by inserting the following new subsection immediately after subsection (3) —

"(3A) Financial institutions or designated non-financial businesses and professions shall keep a record of the basis of reliance on intermediaries or other third parties to perform identification procedures."

Substitution of section 6

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

“Information on customers and beneficial owners

6. (1) Financial institutions or designated non-financial businesses and professions shall, with respect to each customer, obtain and verify —

(a) in the case of an individual —

- (i) his full name and address;
- (ii) his identity card number or details of any official document of identity;
- (iii) his date and place of birth;
- (iv) his occupation status;
- (v) the name of his employer or nature of self-employment or business;
- (vi) his contact number; and
- (vii) sufficient information to understand the purpose and intended nature of the business relationship, the nature of the customer's business and its ownership and control structure;

(b) in the case of a legal person —

- (i) the corporate name;
- (ii) a certified copy of the charter, articles of incorporation or other official document issued by a competent authority confirming that the legal person is in existence;
- (iii) the registered office address or principal place of business;
- (iv) the laws that regulate and bind the legal person;
- (v) sufficient information to understand the purpose and intended nature of the business relationship, the nature

of the customer's business and its ownership and control structure;

- (vi) the names of natural persons who are directors of the legal person;
- (vii) the names of natural persons who hold senior management positions in the legal person, indicating the position held;
- (viii) the identity of all natural persons, if any, who ultimately has a controlling ownership interest in a legal person;
- (ix) where there is doubt under sub-paragraph (viii) whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person or arrangement through other means; and
- (x) in the absence of the natural persons stated in sub-paragraphs (viii) and (ix), the identity of the natural person who holds an equivalent position of senior managing official of the legal person;

(c) in the case of a legal arrangement –

- (i) the name of the arrangement;
- (ii) the identity of the settlor, trustee or protector, if any, the beneficiaries and any other natural persons having effective control over the trust;
- (iii) a certified copy of the declaration of trust or other official document confirming the continued existence of the arrangement;
- (iv) where appropriate, the registered office address or principal place of business;
- (v) the laws that regulate and bind the legal arrangement if not set out in sub-paragraph (iii); and
- (vi) sufficient information to understand the purpose and intended nature of the business relationship, the nature of the customer's business and its ownership and control structure,

and the identification and verification of any person acting on behalf of a customer, including evidence that such person is properly authorised to act in that capacity.

(2) In addition to the information requirements under subsection (1), a financial institution that issues life insurance policies or family takaful business shall conduct the following measures on the beneficiary of a life insurance policy or family takaful business and other related insurance policies, when the beneficiary is designated —

(a) obtain the name of the beneficiary and whether the beneficiary is a natural person, legal person or legal arrangement;

(b) obtain sufficient information about the beneficiary to ensure that the financial institution will be able to establish the identity of the beneficiary at the time of payout;

(c) when the proceeds of a life insurance policy or family takaful business are paid to the beneficiary of such policy, the financial institution shall, prior to making the payment, identify and verify the identity of the beneficiary in accordance with the requirements set out in subsection (1).

(3) In the event a financial institution or designated non-financial business and profession has reasonable grounds to believe, after forming a suspicion of money laundering or financing of terrorism that performing further measures as required by sections 5 to 10 will tip-off a customer, a person appointed to act on behalf of the customer, a beneficial owner of the customer or a connected party of the customer, the financial institution or designated non-financial business and profession —

(a) may refrain from performing or cease to perform such measures; and

(b) shall keep a record of the measures that it refrained from performing or ceased to perform and file a suspicious transaction report.

(4) Financial institutions or designated non-financial businesses and professions may adopt simplified measures for due diligence, provided that the simplified measures are made in writing and the Authority has given prior approval for its implementation."

Insertion of new section 6A

6. The principal Order is amended by inserting the following new section immediately after section 6 –

“Wire transfer

6A. (1) All wire transfers shall be accompanied with the following information –

(a) the full name of the originator;

(b) the account number of the originator where such an account is used to process the transaction or, in the absence of an account number, a unique transaction reference number which permits traceability of the transaction;

(c) the originator’s address or national identity number or customer identification number or date and place of birth;

(d) the name of the beneficiary; and

(e) the beneficiary account number where such an account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction,

and the financial institution shall be required to verify the accuracy of these information and ensure that such information remains with the wire transfer or related message throughout the payment chain.

(2) The Authority may issue directions to modify the requirements in subsection (1) with respect to –

(a) domestic wire transfers, as long as the directions provide for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means; and

(b) cross-border transfers, where individual transfers from a single originator are bundled in a batch file, as long as the direction provide for the account number of the originator or unique reference number to be included, and provided the batch file contains full originator information that is fully traceable in the recipient jurisdiction.

(3) Subsections (1) and (2) do not apply to transfers executed as a result of credit card or debit card transactions, provided that the credit card

or debit card number accompanies the transfer resulting from the transaction, nor do they apply to transfers between financial institutions acting on their own behalf.

(4) A financial institution generating a wire transfer shall ensure that —

(a) the transfer contains required and accurate originator and beneficiary information as set out in subsection (1) or (2);

(b) all originators and beneficiary information are kept in accordance with section 14; and

(c) no wire transfer is executed that does not comply with the requirements under this section.

(5) A financial institution processing an intermediary element of a wire transfer shall —

(a) ensure that all originators and beneficiary information that accompany a wire transfer is retained with it;

(b) where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, keep a record in accordance with section 14 from the day of the transaction of all the information received from the ordering or other intermediary financial institution;

(c) take reasonable measures which are consistent with straight-through processing to identify cross-border wire transfers that lack full and accurate originator and beneficiary information as required under subsection (1) or (2)/*(b)* and apply risk-based policies and procedures to determine whether to execute, reject or suspend such a cross-border wire transfer and appropriate follow-up action.

(6) A financial institution receiving a wire transfer shall —

(a) be required to take reasonable measures which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator information or required beneficiary information;

(b) verify the identity of the beneficiary of a wire transfer and keep this information in line with the requirements under section 14, and

(c) apply risk-based policies and procedures to determine whether to execute, reject or suspend such cross-border wire transfer and appropriate follow-up action.”.

Amendment of section 7

7. Section 7 of the principal Order is amended —

(a) in subsection (1), by deleting “take reasonable measures to” from the second line;

(b) by repealing subsection (5).

Amendment of section 8

8. Section 8 of the principal Order is amended —

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

(b) by inserting “or carrying out transactions for occasional customers” immediately after “relationship” in the third line;

(c) by adding the following new subsection (2) —

“(2) Financial institutions shall adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.”.

Substitution of section 9

9. Section 9 of the principal Order is repealed and the following new section is substituted therefor —

“High risk customers, beneficial owners and politically exposed-persons

9. (1) Financial institutions or designated non-financial businesses and professions shall put in place risk management systems to determine whether a customer or the beneficial owner is a politically-exposed person.

(2) Financial institutions or designated non-financial businesses and professions shall conduct enhanced due diligence in the following circumstances —

(a) on identification of customers or beneficial owners, including a beneficiary of a life insurance policy or family takaful business or other related insurance policy, whose activities may pose a high risk of money laundering and financing of terrorism;

(b) on determining if a customer or a beneficial owner of a beneficiary or a beneficiary of a life insurance policy or family takaful business or other related insurance policy is –

- (i) a domestic politically-exposed person whose activities may pose a high risk of money laundering and financing of terrorism;
- (ii) a foreign politically-exposed person;

(c) where a beneficiary of a life insurance policy or family takaful business or other related insurance policy is assessed as higher risk, inform the senior management before the payout of the policy proceeds and to consider filing a suspicious transaction report.”.

Insertion of new section 9A

10. The principal Order is amended by inserting the following new section immediately after section 9 –

“Higher risk countries

9A. (1) Financial institutions and designated non-financial businesses and professions shall conduct enhanced due diligence proportionate to the risks on its business relations and transactions with persons or organisations from countries identified by the FATF or the Government as having strategic anti-money laundering and combating the financing of terrorism deficiencies that pose high risks of money laundering and financing of terrorism to the international financial system.

(2) Financial institutions and designated non-financial businesses and professions shall apply countermeasures proportionate to the risks, whenever required by the FATF or the Government.”.

Amendment of section 10

11. Section 10 of the principal Order is amended –

(a) by deleting “cross-border” from the first line;

(b) by inserting “including cross-border relationships,” immediately before “financial” in the second line;

(c) in paragraph (b), by inserting “to enable it to fully understand” immediately after “information”;

(d) in paragraph (c), by inserting "including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action" immediately after "subject";

(e) by deleting paragraph (g) and by substituting the following new paragraph therefor —

"(g) in the case of a payable-through account, ensure that the respondent institution has carried out customer due diligence on its customers that have direct access to the accounts of the correspondent, has implemented mechanisms for ongoing monitoring with respect to its customers and is capable of providing relevant customer due diligence information on request;" .

Amendment of section 11

12. Section 11 of the principal Order is amended —

(a) in the section heading, by deleting "identification" and by substituting "due diligence" therefor;

(b) by inserting "or carry out an occasional transaction" immediately after "relationship" in the third line.

Amendment of section 12

13. Section 12 of the principal Order is amended, in paragraph (c), by deleting "as specified in section 16" from the third line and by substituting "in accordance with section 14" therefor.

Amendment of section 13

14. Section 13 of the principal Order is amended —

(a) in subsection (1) —

(i) by deleting paragraph (a) and by substituting the following new paragraph therefor —

"(a) maintaining up-to-date and relevant information and records relating to the customer and beneficial owner, by undertaking reviews of existing customer due diligence records particularly for higher risk categories of customers;" .

(ii) in paragraph (b), by inserting "including where necessary the source of funds" immediately after "profile" in the third line;

(b) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) A financial institution or designated non-financial business and profession shall apply the customer due diligence requirements of this Part, to customers and beneficial owners with which it had a business relationship at the time of the coming into force of this Order on the basis of materiality and risk, and at appropriate times, taking into account whether and when customer due diligence measures have previously been undertaken and the adequacy of data obtained, or as may otherwise be prescribed by the Authority, as the case may be, by regulations."

Amendment of section 14

15. Section 14 of the principal Order is amended —

(a) in subsection (1)(a), by deleting "or more or the equivalent in foreign cash carried out by it, in accordance with the requirements of subsection (3)";

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (f) —

"(fa) account files and business correspondence and results of any analysis undertaken;"

(c) by inserting the following new subsection immediately after subsection (4) —

"(4A) A financial institution or designated non-financial business and profession shall ensure it can satisfy, within a reasonable time or such period as may be specified by the requesting authority, any request for information, enquiry or order from the competent authority in Brunei Darussalam."

Amendment of section 15

16. Section 15 of the principal Order is amended —

(a) in subsection (1), by deleting "to" where it appears the second time from the fifth line;

(b) by repealing subsection (3).

Substitution of section 18

17. Section 18 of the principal Order is repealed and the following new section is substituted therefor —

"Exemption from liability for good faith reporting of suspicious transactions

18. No criminal, civil, disciplinary or administrative proceedings for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative proceedings shall lie against financial institutions or designated non-financial businesses and professions or their respective directors, principals, officers, partners, professionals or employees who in good faith submit reports or provide information in accordance with this Order:

Provided that this applies where the underlying criminal activity is not precisely known and regardless whether illegal activity actually occurred."

Substitution of section 19

18. Section 19 of the principal Order is repealed and the following new section is substituted therefor —

"Failure in reporting suspicious transactions or cash transactions

19. Any person who fails to submit a report to the Financial Intelligence Unit as required by sections 15 and 16 is guilty of an offence and liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$500,000, imprisonment for a term not exceeding 5 years or both; and

(b) in any other case, to a fine not exceeding \$1,000,000."

Amendment of section 20

19. Section 20 of the principal Order is amended, in subsection (1), by deleting "suspected money laundering or financing of terrorism" from the fourth line and by substituting "a serious offence or a money laundering offence" therefor.

Amendment of section 22

20. Section 22 of the principal Order is amended, in subsection (1) —

(a) by inserting ", which have regard to the money laundering and financing of terrorism risks and the size of the business" immediately after "terrorism" in the third line;

(b) by deleting paragraph (d) and by substituting the following new paragraph therefor —

"(d) policies and procedures to identify and assess the risks of money laundering and financing of terrorism resulting from the development of new products and business practices, including new delivery mechanisms and the use of new or developing technologies for new and pre-existing products by —

- (i) conducting risk assessment prior to the launch and usage of such products, business practices and technologies; and
- (ii) taking appropriate measures to manage and mitigate such risks;"

(c) by inserting the following new paragraph immediately after paragraph (d) —

"(da) policies and procedures to identify, assess and understand the risks of money laundering and financing of terrorism posed by its customers and beneficial owners, including if they are politically-exposed persons, the countries where they are from or the countries where they have operations, and their products and services —

- (i) documenting the risk assessments;
- (ii) considering all the relevant risk factors before determining the level of overall risk and the appropriate type and extent of mitigation measures to be applied;
- (iii) keeping the risk assessments up-to-date; and
- (iv) having mechanisms to provide the risk assessment information to the Authority; and".

Amendment of section 25

21. Section 25 of the principal Order is amended, in paragraph (c), by deleting "currency" and by substituting "cash" therefor.

Insertion of new section 25A

22. The principal Order is amended by inserting the following new section immediately after section 25 —

"Functions and powers of Authority

25A. The Authority shall have the following functions and powers —

(a) monitor the financial institutions and designated non-financial businesses and professions and ensure compliance with anti-money laundering and combating the financing of terrorism requirements under this Order;

(b) conduct inspections on the financial institutions and designated non-financial businesses and professions;

(c) impose measures and sanctions for breach of the obligations established under this Order;

(d) compel production of information which may be relevant to discharging its obligations in monitoring compliance; and

(e) transmit information spontaneously or on request to a corresponding authority that performs similar functions described in this section."

Substitution of section 26

23. Section 26 of the principal Order is repealed and the following new section is substituted therefor —

"Measures and sanctions

26. Where the Authority discovers a breach of the obligations established under this Order by a financial institution or designated non-financial business and profession, the Authority may impose one or more of the following measures and sanctions —

(a) written warnings;

(b) order to comply with specific instructions;

(c) order reports on a regular basis from the financial institution or designated non-financial business and profession on the measures it is taking;

(d) barring individuals from employment within the sector;

(e) replacing or restricting the powers of managers, directors, principals, partners or controlling owners, including the appointing of *ad hoc* administrators;

(f) a temporary administration of the financial institution or designated non-financial business and profession;

(g) suspending, restricting or withdrawing the licence of the financial institution or designated non-financial business and profession; or

(h) impose financial penalties of such amount as it may determine on such financial institutions or designated non-financial business and professions.”.

Substitution of section 28

24. Section 28 of the principal Order is repealed and the following new section is substituted therefor —

“Compliance with obligations by foreign branches and subsidiaries

28. (1) *(a)* Financial institutions shall require their foreign branches and majority-owned subsidiaries to implement the requirements and obligations under this Part to the extent that domestic applicable laws and regulations of the host country so permit.

(b) If the minimum requirements of the host country are less stringent than those of Brunei Darussalam, the latter shall be applied to the extent that domestic applicable laws and regulations of the host country so permit.

(2) If the law of the host country prevents compliance with the requirements and obligations under this Part for any reason, the financial institution shall —

(a) implement appropriate additional measures to mitigate the risks of money laundering and financing of terrorism; and

(b) notify the Authority of the measures that cannot be implemented in the host country and the measures which are implemented as a result of such inability to mitigate such risks.

(3) Financial groups shall implement group-wide programmes against money laundering and financing of terrorism and apply to all branches and majority-owned subsidiaries of the financial group regarding —

(a) information sharing for purposes of customer due diligence and risk management against money laundering and terrorism financing;

(b) provisions on compliance, audit and anti-money laundering and combating the financing of terrorism measures of customer, account and transaction information from branches and subsidiaries for anti-money laundering and financing of terrorism purposes;

(c) information and analysis of transactions or activities which appear unusual, and shared the branches and subsidiaries from group-level functions as determined by risk management; and

(d) adequate safeguards to protect the confidentiality of any information that is shared including safeguards to prevent tipping-off.

(4) Where —

(a) there is a branch or majority-owned subsidiary in a host country that has been identified by the FATF as having strategic anti-money laundering and combating the financing of terrorism deficiencies that pose risks of money laundering and financing of terrorism to the international financial system; or

(b) the FATF has called on its members to apply countermeasures to such host country,

the financial institutions shall apply the measures set out in section 9A to such branch or majority-owned subsidiary.

(5) In this section, "host country" means the country where the branch or majority-owned subsidiary is situated."

Insertion of new section 29A

25. The principal Order is amended by inserting the following new section immediately after section 29 —

"Prescription of additional financial institutions

29A. The Minister may, on the recommendation of the Authority, determine a person that is carrying on a financial business that is regulated or supervised by, or is subject to the oversight of the Authority under or pursuant to any other written law enforced by the Authority to be a financial institution for the purposes of the definition of "financial institution" under section 2."

Amendment of section 30

26. Section 30 of the principal Order is amended —

(a) by deleting paragraph (b) and by substituting the following new paragraph therefor —

"(b) analyse, assess and disseminate all reports and information both spontaneously and on request, including —

- (i) operational analysis, which focuses on individual cases and specific targets, activities or transactions or on appropriate selected information, depending on the type and volume of the disclosures received and expected use after dissemination; and
- (ii) strategic analysis addressing money laundering and terrorism financing trends and patterns;"

(b) in paragraph (g), by inserting "that performs similar functions and is subject to similar secrecy obligations" immediately after "organisation".

Amendment of section 31

27. Section 31 of the principal Order is amended —

(a) in subsection (1), by deleting ", subject to the reporting obligations required by sections 15 and 16," from the third line;

(b) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) The Financial Intelligence Unit is authorised to access and review information which is necessary to the fulfillment of the functions of the Financial Intelligence Unit, including but not limited to —

(a) enter the premises of any financial institution or designated non-financial businesses and professions or any person designated in accordance with section 16(2) during ordinary business hours to inspect any records, ask any question of any employee relating to such records, and make notes and take copies of the records;

(b) collect any information that the Financial Intelligence Unit considers relevant to money laundering activities, serious offences, the financing of terrorism or any contravention of this Order whether or not publicly available, including commercially available databases, or information that is collected or maintained, including information that

is stored in databases maintained by Government agencies and institutions;

(c) obtain from any government any record of a person under investigation for committing, or attempting to commit, a money laundering offence, a serious offence, a terrorism financing offence or an offence under this Order including from —

- (i) a law enforcement agency;
- (ii) any authority responsible for the supervision of the entities and persons subject to this Order;
- (iii) tax authorities;
- (iv) customs;
- (v) immigration;
- (vi) national registration; and
- (vii) any other public agency."

Amendment of section 32

28. Section 32 of the principal Order is amended by inserting the following two new subsections immediately after subsection (1) —

"(1A) Any information exchanged relating to money laundering and countering the financing of terrorism may only be used for the purpose for, and by the authorities for, which the information was sought or provided, unless prior authorisation has been given by the requested authority or the agency providing the information.

(1B) For the purposes of this section, authorities refer to the Financial Intelligence Unit, law enforcement agencies and anti-money laundering and combating the financing of terrorism supervisors."

Amendment of section 33

29. Section 33 of the principal Order is amended —

(a) in subsection (1), by inserting "both spontaneously and on request" immediately after "may" in the first line;

(b) in subsection (2), in paragraph *(c)*, by inserting "business" immediately after "5".

Amendment of section 34

30. Section 34 of the principal Order is amended by adding the following new subsection —

"(5) The Financial Intelligence Unit may exchange feedback with a foreign counterpart agency on the use and usefulness of the information that was exchanged."

Amendment of section 36

31. Section 36 of the principal Order is amended, in subsection (1), in the definition of "business day", by deleting "a Saturday, Sunday or public holiday" and by substituting "Friday, Sunday or public holiday" therefor.

Amendment of section 37

32. Section 37 of the principal Order is amended —

(a) by repealing subsection (2) and by substituting the following new subsection therefor —

"(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to —

(a) if the person is a natural person, to a fine of not less than 20 *per cent* of the whole amount which is the subject matter of the offence or \$5,000 whichever is higher but not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both; or

(b) if the person is a legal person, to a fine of not less than 40 *per cent* of the whole amount which is the subject matter of the offence or \$10,000 whichever is higher but not exceeding \$100,000.";

(b) in subsection (5), by deleting "subsections (5)" from the third line and by substituting "subsection (4)" therefor.

Insertion of new section 137A

33. The principal Order is amended by inserting the following new section immediately after section 137 —

"Powers to issue notices

137A. (1) The Authority may issue such notices concerning any financial institution or designated non-financial business and profession, or

any person or any class of persons, as the Authority considers necessary for the prevention of money laundering and other matters related thereto.

(2) Any person or any member of a class of person who fails or refuses to comply with any notice issued under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.”.

Amendment of section 139

34. Section 139 of the principal Order is amended, in paragraph (b), by deleting “\$250,000” from the last line and by substituting “\$1,000,000” therefor.

Substitution of section 139A

35. Section 139A of the principal Order is repealed and the following new section is substituted therefor —

“Composition of offences

139A. (1) The Authority may compound any offence under this Order or any regulations made thereunder by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding one half of the amount of the maximum fine prescribed for that offence.

(2) On payment of such sum of money referred to in subsection (1), no further proceedings shall be taken against that person in respect of the offence.

(3) All sums collected by the Authority under subsection (1) shall be paid to the Authority.”.

Made this 9th. day of Rejab, 1444 Hijriah corresponding to the 31st. day of January, 2023 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.**

