

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

REGISTERED AGENTS AND TRUSTEES LICENSING ORDER, 2000

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No. S 54

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

REGISTERED AGENTS AND TRUSTEES LICENSING ORDER, 2000

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

PART I

PRELIMINARY

Citation, commencement and long title.

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

(2) The long title of this Order is "An Order to provide for the licensing, regulation and control of the business of providing representative, trust, fiduciary and management services for international companies, international partnerships and international trusts, and for matters connected therewith and incidental thereto".

Interpretation.

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

"approved auditor" has the same meaning as that defined in section 2 of the International Business Companies Order, 2000;

"the Authority" means such person or body as is appointed by His Majesty the Sultan and Yang Di-Pertuan to be the Authority for the purposes of this Order;

"certificate of compliance" means a certificate issued under section 24(1)(c) (iii);

"client property" means any property which is not in the absolute beneficial ownership of its holder, and "the holding of client property" means the holding of such property; and for these purposes a person holds property if it is held by or vested in that person, or if that person has power (whether or not with the consent of any other person) to employ the property, or to effect, control or direct the disposal of the property including without limitation the right to call for possession or title to the property;

"company" includes any legal entity incorporated with or without limited liability, whether in Brunei Darussalam or elsewhere;

"controller" has the meaning given to it by Part I of the First Schedule;

"Court" means the High Court or a Judge of that Court;

"DCC" means a Dedicated Cell Company as defined in the International Business Companies Act 2000;

"director" includes any person occupying the position of a director by whatever name so called, and includes an alternate and a substitute director;

"dollar" shall mean Brunei dollar except where otherwise states in this Order or regulations thereunder;

"domestic company" means a company incorporated under the Companies Act (Chapter 39);

"exempt activity" means an activity exempted under section 46;

"exempt person" means a person exempted under section 46;

"financial fiduciary" includes a person whose business is or includes the holding of client property where that person is expected to exercise the standards of care of a fiduciary, and includes asset and fund management activities and custodianship;

"financial year" means —

- (a) the period not exceeding fifty-three weeks at the end of which the balance of a person's account is struck; or
- (b) if no such balance is struck, or if a period in excess of fifty-three weeks is used, then a calendar year;

"foreign international company" means a company incorporated outside Brunei Darussalam and registered under Part XI of the International Business Companies Order, 2000;

"general partner" has the meaning given to it by section 2 of the International Limited Partnerships Order, 2000;

"group", in relation to a company, means that company, any other company which is its holding company, affiliate or subsidiary undertaking and any other company which is a subsidiary undertaking of that holding company, or of an affiliate thereof;

"interested person", in relation to the business or proposed business of a licensee or an applicant for a licence, means any present or future investor or creditor, client or customer of the business, or any beneficiary of a trust in any way connected with business;

"international business advertisement" means any advertisement, by whatever means conveyed —

- (a) inviting or attracting any person to enter, or to offer to enter, into any arrangement relating to the supplying or conduct of international business services; or
- (b) containing information which is intended or which might reasonably be presumed to be intended to lead directly or indirectly to the transaction of any such business;

"international business company" and "IBC" include a company incorporated or converted under Parts III or XII respectively of the International Business Companies Order, 2000;

"international business services" includes —

- (a) international companies management business;
- (b) international partnerships management business; and
- (c) international trust business;

"international companies management business" means the provision of any one or more of the following services by way of a business —

- (a) acting as a registered agent for —
 - (i) the incorporation or registration of any companies under Parts III and XI of the International Business Companies Order, 2000;
 - (ii) the conversion of overseas companies and domestic companies into international business companies under Part XII of the International Business Companies Order, 2000;
 - (iii) the merger, consolidation, continuation, renewal, extension of the duration of, or migration of international business companies;
 - (iv) the incorporation or re-constitution of an IBC as a DCC;
- (b) providing —
 - (i) registered offices;

(ii) share transfer offices; or

(iii) administration offices for the receipt of post or other articles,

for international business companies or foreign international companies; and

(c) providing or appointing persons to perform the function of —

(i) a director;

(ii) a company secretary; or

(iii) an officer or other person responsible for preparing, keeping or filing books, accounts, registers, records, minutes and returns,

for international business companies or foreign international companies;

(d) providing or appointing nominee shareholders for international business companies or foreign international companies;

(e) providing management, book-keeping and administrative services to international business companies or foreign international companies;

(f) acting or appointing a person to act as a financial fiduciary for international business companies or foreign international companies;

(g) performing any (or any other) function of a registered agent, or providing any (or any other) service or facility for or in connection with the registered offices of international business companies or foreign international companies;

"international limited partnership" has the meaning given to it by section 4(1) of the International Limited Partnership Order, 2000;

"international partnerships management business" means the provision of any one or more of the following services by way of a business —

(a) acting as a partner for the registration of international limited partnerships under the International Limited Partnerships Order, 2000;

(b) providing registered offices for international limited partnership;

(c) providing or appointing persons to perform any other services as general of international limited partnerships;

(d) acting as a financial fiduciary for international limited partnerships;

(e) providing management, book-keeping and administrative services to international limited partnerships;

"international trust" has the meaning given to it by section 3(2) of the International Trusts Order, 2000;

"international trust business" includes the provision of one or more of the following services —

- (a) establishing qualifying trusts;
- (b) acting as, or appointing financial fiduciaries, trustees, protectors, administrators, executors, or enforces of qualifying trusts;
- (c) providing book-keeping services for qualifying trusts;
- (d) managing or administering qualifying trusts;
- (e) custodianship;

"licence" means a licence granted under section 9(1);

"licensee" means a person who holds a licence and, where the context permits, includes a wholly-owned subsidiary authorised under section 3(3);

"Minister" means the Minister of Finance;

"officer", in relation to a company, includes —

- (a) a director, company secretary or manager of the company;
- (b) a receiver or manager of any part of the undertaking of the company appointed under a power contained in a debenture or similar instrument; and
- (c) the liquidator of the company appointed in a voluntary winding-up;

"person" includes a natural person, any company or association or body of persons, corporate or unincorporated, including a partnership whether a limited or unlimited partnership or an international limited partnership;

"prescribed" means prescribed by regulations made under section 49;

"parent", "subsidiary" and "holding", in relation to companies, have the meanings given to them respectively in Part II of the First Schedule;

"property" includes —

- (a) money, goods, choses in action, land and every description of property, whether movable or immovable; and

- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to any property as defined in paragraph (a);

"qualifying trust" means —

- (a) an international trust; and
- (b) any trust the governing law of which is not the law of Brunei Darussalam.

"securities" includes stock, funds and shares and, so far as relates to payments into Court, has the same meaning as in the law relating to funds in the Court; and "securities payable to the bearer" include securities transferable by delivery or by delivery and endorsement;

"stock" includes fully-paid up shares and, so far as relates to vesting orders made by the Court under this Order, includes any fund, annuity or security transferable in books kept by any company or society or by instruments of transfer either alone or accompanied by other formalities and any share or interest therein;

"valid licence" means a licence which has not been surrendered under section 29, suspended under section 30 or revoked under section 31.

"written law" includes all Acts, Enactments and Proclamations, and subsidiary legislation, or any part thereof, but does not include any Act of Parliament nor any Order of Her Britannic Majesty in Council, Royal Charter or Royal Letters Patent nor any law which no authority in Brunei Darussalam is empowered to amend.

PART II

LICENSING OF INTERNATIONAL BUSINESS

International business services restricted to licensees.

3. (1) No person shall provide, carry on, or purport to carry on, in from or within Brunei Darussalam, international business services, whether or not such business is carried on or purports to be carried on, within or outside Brunei Darussalam unless —

- (a) he holds a valid licence granted by the Authority under this Order authorising him to carry on such business;
- (b) he is an exempt person under section 46; or
- (c) the business is an exempt activity under section 46.

(2) Without prejudice to the generality of subsection (1) and in addition to the prohibition set out there, no person other than a licensee shall, without the written consent of the Authority —

- (a) use any word, either in English or in any other language, in the name, description or title under which such person carries on business in or from within Brunei Darussalam or otherwise that, in the opinion of the Authority, connotes the business of international business services as described in this Order; or
 - (b) make or continue to make any representation in any billhead, circular, letter, letterhead, paper, notice, advertisement or in any other manner that is likely to suggest that he is licensed to carry on the business of international business services as described in this Order.
- (3) (a) With the written approval of the Authority and notwithstanding subsection 3(1), a licensee may for the purpose of or in connection with the undertaking of its own business as a licensee incorporate and nominate any wholly owned subsidiary company of that licensee to act as a trustee, nominee, secretary or director in respect of international business services.
- (b) Any wholly owned subsidiary company nominated in accordance with subsection (3)(a) —
- (i) may be incorporated under the Companies Act (Chapter 39) or as an IBC;
 - (ii) shall not be required to be licensed under this Order provided that it remains wholly managed, controlled and owned by a licensee.
- (c) When pursuant to this section any wholly owned subsidiary company of a licensee acts as a trustee, nominee, secretary or director, the licensee and the subsidiary company shall be jointly and severally liable and responsible for the performance of all the subsidiary company's duties and obligations, which duties and obligations shall be deemed to include all such statutory duties and obligations as are imposed upon licensees.

Offences for contravention of sections 3(1) and (2).

4. Subject to section 3(3), any person who wilfully contravenes section 3(1) or (2) is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred thousand dollars or both and, in the case of a continuing offence, to a further fine not exceeding one hundred dollars for everyday on which the contravention continues after conviction.

Requirement of licence.

5. Any person who intends to provide international business services in or from within Brunei Darussalam shall first obtain a licence under section 9. Failure to comply with this section may be a ground for the subsequent refusal of a licence.

Application for licence.

6. (1) An application for licence —

(a) shall be made in writing by the applicant company to the Authority;

(b) shall be accompanied by —

(i) the application fee specified in Part II of the Second Schedule, which fee shall not be refunded;

(ii) the particulars specified in Part I of the Second Schedule; and

(iii) the issue fee specified in Part II of the Second Schedule, which fee shall be refunded if the application is refused.

(2) The Authority may by written notice require the applicant or any controller of the applicant to provide additional information or documents (whether relating to the applicant, his business or any controller of the applicant or otherwise) as the Authority may reasonably require for the purpose of determining the application, verified in such manner as the Authority may specify.

(3) Requirements imposed under subsection (1) or subsection (2) may differ between different applications or different classes of applicant.

(4) The Authority may refuse to grant a licence to an applicant who carries on business under a name, or may require as a condition of the grant of a licence to change any such name, which is —

(a) identical to that of any other person, whether within or outside Brunei Darussalam, or which so nearly resembles that name as to be likely or calculated to deceive or create confusion as to the source of services rendered;

(b) such as to suggest falsely the patronage of or connection with some person whether within or outside Brunei Darussalam;

(c) calculated to suggest falsely that he has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials; or

(d) unacceptable to the Registrar of Companies or the Registrar of International Business Companies.

Eligibility to apply for licence.

7. Only applications made by a company, including an IBC, a domestic company or a foreign international company shall be accepted by the Authority.

International bank and international insurer not to hold trust licence.

8. Without prejudice to the generality of the provisions of the International Banking Order, 2000 or any written law relating to the conduct in, from or within Brunei Darussalam of international insurance business, no person holding such a licence in either case shall be granted a licence under this Order.

Grant or refusal of licence.

9. (1) On receipt of an application made in accordance with section 6 for a licence and after being furnished with all such information and documents as he may require under that section, the Authority may either grant a licence on such terms and subject to such conditions (including conditions imposed under section 12) as he think fit or he may refuse the application.

(2) In deciding whether to grant a licence or refuse the application, the Authority may take into account whether granting a licence may be prejudicial to —

- (a) the interests of any interested person;
- (b) the protection of the reputation and integrity of Brunei Darussalam in financial or commercial matters;
- (c) the best economic interests of Brunei Darussalam; or
- (d) the peace and security of Brunei Darussalam.

(3) Without prejudice to the generality of subsection (2), the Authority may refuse an application for a licence if —

- (a) the Authority is not satisfied that the requirements specified in Part I of the Second Schedule are or will be satisfied;
- (b) the Authority is not satisfied that the applicant is a fit and proper person to be licensed to carry on the business for which a licence is sought;
- (c) if the applicant has at any time —
 - (i) failed to provide information required of the applicant by the Authority under any of the provisions of this Order; or
 - (ii) provided information which was untrue or misleading in any material respect; or

(4) In determining whether for the purposes of paragraph (b) of subsection (3)(b) the applicant is a fit and proper person, the Authority may have regard to —

- (a) the integrity, probity, competence, soundness of judgment, diligence, financial standing, structure and organisation of —
 - (i) the applicant; and
 - (ii) any person who is a controller or employee of the applicant, or any associate of the applicant for the purposes of his business;
- (b) the conviction of any person referred to in paragraph (a) for an offence under this Order or for any offence involving dishonesty;
- (c) the nature of the business which the applicant proposes to carry on; and
- (d) the previous conduct and activities of any person referred to in subparagraphs (a)(i) and (ii) in business or financial matters.

Procedure on grant or refusal of licence.

10. (1) Where the Authority grants a licence to a person, it shall —

- (a) give notice in writing to that person of his decision;
- (b) issue a licence to that person within ninety days.

(2) Where the Authority intends to refuse an application for a licence, he shall —

- (a) serve a notice in writing on the applicant stating —
 - (i) that his current intention to refuse the application;
 - (ii) that the applicant has twenty-eight days from the receipt of the notice in which to make written representations to the Authority as to why the application should not be refused;
- (b) consider any written representations made in response to a notice served under paragraph (a) and received by him within the period specified under paragraph (a)(ii), before making a final decision whether to grant or refuse the application.

(3) Not earlier than after the receipt of any representations made in response to a notice served under subsection (1), or the expiration of the period specified under subsection (2)(a)(ii) if no such representations have been made, the Authority shall either —

- (a) serve a notice in writing on the applicant stating —

- (i) that the application has been refused;
 - (ii) the grounds on which it has been refused;
 - (iii) a reference to the Authority's power under section 9 to refuse an application for a licence; and.
 - (iv) particulars of the right of appeal conferred by section 33; or
- (b) serve a notice in writing on the applicant in accordance with paragraph (a) of subsection (1) that the licence has been granted.

Display of licence.

11. A licence granted under this Order shall be prominently displayed at the principal place where the licensed business is carried on.

Conditions of licence.

12. (1) The Authority may —

- (a) impose any terms and conditions for the grant of any licence;
- (b) prescribe terms and conditions applying to all licensees or businesses;
- (c) vary from time to time any term or condition prescribed under paragraphs (a) or (b) or prescribe new conditions.

(2) Subject to subsection (3), it shall be a condition of every licence that the licensee

—

- (a) has a fully paid-up share capital of not less than one hundred and fifty thousand Brunei dollars or the equivalent in another currency acceptable to the Authority, or such greater sum as the Authority may prescribe; or
- (b) has an authorised capital of not less than one hundred and fifty thousand Brunei dollars or such greater sum as the Authority may prescribe, of which not less than seventy-five thousand dollars has been fully paid and provides a guarantee under seal given by a holding or parent or other company in a sum and on terms approved by the Authority (such guarantee expressly providing that its formal and essential validity, its interpretation, effects, and the rights and obligations of the parties to it are governed exclusively by the law of Brunei Darussalam and that only the High Court shall be the forum for those purposes);

- (c) maintains and notifies the Authority of an established office in Brunei Darussalam, provided that in the case of a managed licensee such office may be at the premises of a licensee having a full presence in Brunei Darussalam;
- (d) has at all times no less than two individual directors ordinarily resident in Brunei Darussalam to be authorised agents in Brunei Darussalam responsible for the business conducted in Brunei Darussalam, and to accept notices and service of process on behalf of the licensee and to act as an intermediary between the Authority and the licensee; and
- (e) shall before the appointment of a director, general manager, chief executive, financial controller, controller or other senior officer, exercising their functions in Brunei Darussalam apply to the Authority for written approval of the appointment;
- (f) maintains within Brunei Darussalam such books and accounts as shall accurately reflect the business of the licensee carried on in or from within Brunei Darussalam;
- (g) maintains within Brunei Darussalam adequate systems of control of its own and clients' business and records;
- (h) effects a policy of insurance with a reputable insurer approved by the Authority against —
 - (i) losses arising out of claims of negligence or breach of duty by the licensee or any employee;
 - (ii) the dishonesty of licensees or any employee;
 - (iii) loss of documents; and
 - (iv) such other risks as the Authority may from time to time prescribe,in such amount and of such a nature (including the identification of jurisdictions or territories covered) as is acceptable to the Authority.
- (i) forthwith notifies the Authority —
 - (i) of any proposed change in its place of business in Brunei Darussalam;
 - (ii) of any proposed change in a resident director required by subsection (2)(d) or of any officer mentioned in subsection (2)(e);
 - (iii) if any of the events specified in section 31(1)(a) to (e) occur; and
 - (iv) if its insurance is withdrawn, cancelled, varied or not renewed.

(3) The Authority may by notice in writing exempt any person wholly or in part from the requirements of subsection (2), upon such terms and conditions as the Authority considers appropriate.

(4) When the Authority exercises any of the powers conferred by this section, he shall give notice in writing to any licensee concerned within fourteen days of his decision.

Offences for non-compliance with licence.

13. If a licensee fails to comply with any term or any condition of his licence, he shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding two hundred thousand dollars or both.

Duration of licence.

14. (1) A licence is valid until the 31st. December of the year in which it was granted and is renewable on payment of the annual licence fee specified in Part II of the Second Schedule.

(2) When a licence is first granted for a period of less than six months prior to 31st. December, the annual fee shall abate *pro rata* on a monthly basis.

Licence fees.

15. (1) Every licensee to whom a licence is first granted shall on the date of such grant pay to the Authority the issue fee specified in Part II of the Second Schedule.

(2) Every licensee shall on or before 31st January in every year following the year in which the licence was granted pay the annual licence fee specified in Part II of the Second Schedule.

(3) Every licensee shall pay such periodical fees, levies or administrative charges to the Authority as it may prescribe.

(4) A licensee who fails to pay the annual licence fee by the date specified in subsection (2) or any periodical fees by any date prescribed shall, in addition thereto, pay a late payment penalty in an amount not exceeding one-sixth of that fee for every month that the annual licence fee remains unpaid.

Notification of changes in particulars of information supplied by applicant.

16. (1) Where, whether before or after a licence has been granted, any change occurs in the particulars set out in an application for a licence, or in the information or documents provided in connection with the application, the applicant or licensee, as the case may be, shall forthwith notify the Authority in writing of the fact, together with details of the change.

(2) A licensee which contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars and, in the case of continuing offence, to a further fine not exceeding one hundred dollars for every day on which the contravention continues after conviction.

PART III

SUPERVISION OF LICENSEES

Notification of change in control.

17. (1) Where the licensee is an international business company or is incorporated under the Companies Act (Chapter 39), no person shall become or cease to be a controller of the licensee unless he has served on the Authority a written notice that he intends to become or cease to be such a controller and the Authority has given his prior written approval.

Notification of acquisition or disposal of interest.

18. Where the licensee is a foreign international company or is registered under Part IX of the Companies Act (Chapter 39), a person who becomes, or ceases to be a controller of the licensee shall prior to, or within thirty-one days of acquiring or disposing of such an interest, notify the Authority in writing of such acquisition or disposal, giving in every case the percentage of shares (if any) retained by him.

Authority to consider whether criteria materially adversely affected.

19. In any case to which section 18 applies, the Authority may consider whether the criteria set forth in sections 9(2) and (3) have been materially adversely affected or whether relevant circumstances under section 26(1) have arisen. In the event that the Authority determines that such criteria have been so materially adversely affected, or such relevant circumstances have arisen, the Authority may revoke or suspend the licence or exercise his powers under section 26.

Offences for contravention of sections 17 and 18.

20. Subject to section 21, any person who contravenes sections 17 or 18 shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars and,

in the case of a continuing offence, to a further fine not exceeding one hundred dollars for every day on which the contravention continues after conviction.

Unwitting contravention excused.

21. A person shall not be guilty of an offence under section 20 if he shows that he did not know of the acts or circumstances whereby he became a controller or whereby the proposed change took place, as the case may be.

Codes of Practice for licensees.

22. (1) The Authority may —

- (a) prepare and issue Codes of Practice for the conduct of international business services;
- (b) revise from time to time any such Codes of Practice by revoking or amending their provisions; and
- (c) specify that any such Codes of Practice shall or shall not apply or that only certain provisions shall apply to any class of international business, or to any particular person or persons carrying on any such business or international business advertising.

(2) The Authority shall cause any Code of Practice issued under this section to be publicly available, at such price as the Authority considers reasonable.

Segregation of client and trust property and records.

23. (1) A licensee shall —

- (a) maintain a separate account in the licensee's records for each person for whom he is trustee or financial fiduciary and keep the property held for each such account separate from that held for other such accounts and from property that is not trust property or client property;
- (b) arrange proper protection of trust property and any other client property by way of segregation and identification of the property or otherwise, and in particular shall deposit trust money and other money that is client property in separate segregated bank accounts.

(2) A person who fails to comply with subsection (1) shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred thousand dollars or both.

Authority's powers to prescribe conditions in relation to accounting and auditing matters.

24. (1) Notwithstanding any provision of the International Business Companies Order, 2000 or the Companies Act (Chapter 39) to the contrary and in addition to any requirement thereunder, every licensee shall within four months of the end of the licensee's financial year —

- (a) prepare financial statements for the licensed business in accordance with accounting principles acceptable to the Authority;
- (b) have its annual accounts audited by an approved auditor in accordance with generally accepted auditing standards acceptable to the Authority; and
- (c) forward to the Authority —
 - (i) its audited accounts;
 - (ii) a written report from its approved auditor, which shall —
 - (A) confirm that the annual accounts comply with the requirements of paragraphs (a) and (b);
 - (B) whether the company is an international business company or otherwise, comply with the requirements of paragraphs (a) and (b) of section 133(1) of the Companies Act (Chapter 39) and state whether he has given an unqualified approval of the annual accounts, and if qualified, the nature of the qualification;
 - (iii) a certificate of compliance issued by its approved auditor confirming that the information supplied to the Authority in connection with the licensee's application for a licence (as set out in the particulars supplied with the application for the licence, or supplied in compliance with a requirement made by the Authority in connection with the application) as modified by any notification of change in accordance with section 16, remains correct and accurate as regards the licensee's business and that the licensee has complied with every condition and requirement of its licence, and that the licensee has complied with section 23.

(2) Where a licensee changes its approved auditor it shall give notice of such change to the Authority, and the Authority may require the former auditor to explain the circumstances that gave rise to the change.

(3) The Authority may by notice in writing exempt any person wholly or in part from the requirements of subsection (1) or (2) or both, subject to such terms and conditions as the Authority considers appropriate.

(4) No person shall perform the duties of an auditor of a licensee unless he is an approved auditor.

(5) An approved auditor shall have the powers, duties and functions of an auditor as provided for the Companies Act (Chapter 39), and in addition shall have such powers as are necessary to establish that a licensee is in compliance with this Order.

Control of electronic business.

25. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, prescribe regulations relating to the provision and conduct of international business services and international business advertising on, over or by means of the internet or other electronic medium or service.

Authority's power to issue directions.

26. (1) This section applies whenever it appears to the Authority that there exists any of the following circumstances, in this section referred to as "relevant circumstances" —

- (a) a requirement or undertaking in relation to the licence under which an international business is carried on is no longer satisfied;
- (b) the licensee under such a licence has contravened a requirement of the licence or has failed to comply with a condition of the licence;
- (c) an international business advertisement issued or proposed to be issued by or on behalf of the licensee or the business is misleading or otherwise undesirable;
- (d) the licensee is, or is likely to be, unable to meet his obligations as they fall due;
- (e) the licensee has contravened any position of this Order; or
- (f) a person is appointed as or otherwise becomes a director, officer or controller of a licensee and the Authority objects to or requires further information in respect of such appointment.

(2) Whenever this section applies the Authority may, by notice in writing, give such directions as he may consider appropriate for the purpose of protecting interested persons from being prejudiced in any manner.

(3) The power to give directions under this section shall include the power to vary or withdraw any direction, as well as the power to issue further directions.

(4) Any person aggrieved by a direction given under this section may apply to the Authority to have it withdrawn or varied and the Authority shall withdraw or vary the direction in whole or in part if he considers that there are no longer any grounds which justify the direction or part of the direction concerned.

(5) Any person who contravenes or fails to comply with any of the provisions of a direction given under this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred thousand dollars.

Injunctions.

27. (1) Where, on the application of the Authority, the Court is satisfied that it is likely that a person will contravene (or continue or repeat a contravention of) —

- (a) section 3;
- (b) any condition prescribed or imposed under section 12;
- (c) any provision of sections 37, 38 or 39;
- (d) any direction given under section 26(2); or
- (e) any matter prescribed,

the Court may issue an injunction restraining that person from committing or, as the case may be, continuing or repeating the contravention. Where the Court is further satisfied that there are steps which could be taken to remedy the contravention, the Court may make an order requiring that person, or any other person who appears to the Court to have been knowingly concerned, to take such steps as the Court may direct to remedy the contravention.

General power to require information and documents.

28. (1) The Authority may by notice in writing served on a licensee or former licensee, or a person who is or was a controller or officer in relation to the licensee or former licensee, or any associate or employee of such a controller, or any interested person require the person on whom the notice is served —

- (a) to provide to the Authority such information and documents at such time and place as may be specified in the notice; and
- (b) to attend at such place and time as may be specified in the notice and answer questions which the Authority or any duly authorised officer or agent of the Authority reasonably requires him to answer;

being information, documents or questions relating to the business of the licensee or former licensee concerned.

(2) Nothing in this section shall require the disclosure or production by a person to the Authority or to a person authorised by it of information or documents in circumstances which would cause a breach of section 35.

Surrender of licence.

29. (1) A licensee who has ceased to carry on the business to which his licence relates shall forthwith apply to the Authority to surrender his licence.

(2) On an application under subsection (1) the licensee shall produce such evidence as the Authority may require that he has transferred or otherwise disposed of all client property and any property vested in, held or controlled by him in the conduct of his international trust business according to the instructions of the person or persons who is or are authorised to give such instructions and in the case of a company or other corporate entity, it is being wound-up voluntarily and that it is solvent and is able on demand to repay all its creditors.

(3) On receipt of an application duly made under subsection (1) and after being furnished with all such evidence as he may require under subsection (2), the Authority may approve the surrender.

Suspension of licence.

30. (1) The authority may if he thinks fit suspend a licence, on any of the grounds set out in section 31(1) —

- (a) pending compliance with any directions given to the licensee by the Authority under subsection (2) and the receipt of such evidence as the Authority may require thereunder that the directions have been complied with; or
- (b) pending completion of any investigation carried out pursuant to the powers conferred by section 28.

(2) Where the Authority suspends a licence —

- (a) he shall give notice in writing of his decision;
- (b) the Authority, by notice in writing, may give such direction in respect of the matter giving rise to the suspension, as he thinks fit, to be complied with within such period and on provision of such evidence as to such compliance as the Authority specifies in the notice.

Revocation of licence.

31. (1) The Authority may revoke a licence —

- (a) if the licensee has not commenced the business to which the licence relates in or from within Brunei Darussalam within six months of the date of the grant of his licence;
- (b) if the licensee ceases to carry on business to which the licence relates in or from within Brunei Darussalam;
- (c) if the licensee has made any arrangement or composition with its creditor;
- (d) if it appears to the Authority that the licensee is, or is likely to be, unable to meet its obligations as they fall due;
- (e) if the licensee —
 - (i) is in liquidation;
 - (ii) is wound-up; or
 - (iii) is otherwise in the process of being dissolved;
- (f) if the Authority considers that the continued existence of the licence is prejudicial to —
 - (i) the interests of any interested person;
 - (ii) the reputation and integrity of Brunei Darussalam in financial or commercial matters;
 - (iii) the best economic interests of Brunei Darussalam; or
 - (iv) the peace and security of Brunei Darussalam,or if there exist in relation to the licence or the licensee any of the matters described in paragraphs (a) to (d) of section 9(3) the Authority may have regard to the matters described in section 9(4);
- (g) if the licensee fails to comply with any direction given to it by the Authority;
- (h) if the licensee fails to pay any licence fee due; or
- (i) if the licensee wilfully acts in contravention of any other provision of this Order or of any written law.

(2) Where the Authority intends to revoke a licence, he shall —

- (a) serve a notice in writing on the licensee stating —

- (i) his intention to revoke the licence;
 - (ii) the grounds on which he intends to revoke the licence (save in respect of any confidential information the disclosure of which, in the opinion of the Authority, would be prejudicial to a third party);
 - (iii) that the applicant has twenty-eight days (or such shorter period as the Authority considers appropriate in the interests of any interested person, not being less than two business days) from receipt of the notice in which to make written representations to the Authority as to why the licence should not be revoked; and
- (b) consider any written representations made in response to a notice served under paragraph (a) and received by him within the period specified under paragraph (a)(iii) before deciding whether or not to revoke the licence.

(3) Not earlier than after the receipt of any representations made in response to a notice served under subsection (2), or the expiration of the period specified under subsection (2)(a)(iii), if no such representations have been made, the Authority shall either —

- (a) serve a notice in writing on the licensee stating —
- (i) that the licence has been revoked;
 - (ii) the grounds on which it has been revoked (but subject to the same proviso in relation to confidentiality set out in paragraph (ii) of subsection (2);
 - (iii) a reference to the Authority's power under subsection (1) to revoke a licence; and
 - (iv) particulars of the right of appeal conferred by section 33; or
- (b) serve a notice in writing on the licensee stating that he no longer intends to revoke the licence.

(4) At any time after the Authority has served a notice under subsection (2), the Authority may apply to the Court for such order for the appointment of another person as a new trustee of a qualifying trust and such supplemental or incidental orders or directions as the Court considers necessary or expedient for giving effect to such appointment including, such order as it may make under Part VII of the International Trusts Order, 2000.

(5) Subject to a request from the licensee concerned that the revocations shall take effect earlier, a revocation of a licence shall take effect immediately or at a date fixed by the Authority but not later than three months after the service of the notice provided for in subsection (4) unless appealed against, in which case it shall not take effect until the date on which an appeal against the revocation is determined or withdrawn.

(6) Except where the person concerned has appealed against the decision to revoke its licence, the Authority shall cause notice of the revocation to be published in the *Gazette*.

Revoked licence; cessation of business.

32. Any person whose licence has been revoked shall forthwith cease to carry on the business to which the licence related, save insofar as (and to such extent and for such duration as) the Authority may by prior authorisation in writing specify for the purpose only of enabling the licensee to wind up the affairs of the business to which the revoked licence related.

Appeals.

33. (1) There shall be a right of appeal to the Court against any decision of the Authority —

- (a) refusing an application for a licence in exercise of his powers under section 9;
- (b) attaching, varying or adding any new condition to a licence, under sections 9, 12(1) or 12(2);
- (c) giving directions under section 26;
- (d) suspending a licence under section 30;
- (e) revoking a licence under section 31.

(2) An appeal under subsection (1) shall lie —

- (a) at the instance of any person aggrieved by the decision; and
- (b) on the ground that the Authority's decision was unreasonable in all the circumstances.

(3) An appeal must be made within one month from the date of receipt of notice in writing of the decision against which the appeal is made.

(4) On an appeal under this section, the Court may confirm, reverse, vary or modify the decision of the Authority or may direct the Authority to take any action which under this Order the Authority has power to take.

(5) An appeal under this section shall not operate as a suspension of the decision of the Authority appealed against save and insofar as the Court, in its discretion, grants a stay on an application by the appellant.

(6) On an appeal under this section, the Court may make such order as to the costs of the appeal as the Court considers proper.

PART IV

POWERS OF CO-OPERATION AND PERMITTED DISCLOSURES

Disclosure of information by auditors, accountants and others to the Authority.

34. (1) No duty to which —

(a) an auditor; or

(b) any person, pursuant to a notice served under section 28,

may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Authority (whether or not in response to a request made by the Authority) of any information or opinion on a matter or person to which this Order applies and which is relevant to any function of the Authority under this Order.

(2) This section shall apply whether the auditor or person providing information or documents is currently an auditor or such person in respect of a licensee or not.

Confidentiality of client accounts.

35. (1) Except as provided by subsection (2) and sections 34 and 36, no official of a licensee (including a director or an employee) and no person who, by reason of his professional, banking, insurance or other relationship with a licensee, has by any means access to the records of a licensee or any registers or correspondence or material with regard to the account of any client of that licensee shall, at any time (whether while he continues as such an official or while his professional relationship continues or thereafter) give, divulge or reveal any information whatsoever regarding the moneys or other relevant particulars of the account of that client, and any person who acts in contravention of this subsection shall be guilty of an offence or liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred thousands dollars or both.

(2) This section does not apply where —

(a) information is or had already been made available to the public from other sources, or where information is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;

(b) the client or his personal representative gives written permission to the disclosure of the information;

(c) the client is declared bankrupt or being a company, is being wound up;

- (d) the disclosure of the information is ordered by the Court for the purposes of civil proceedings within Brunei Darussalam;
- (e) the officials of a licensee by compulsion of any written law as defined in section 2 are required to give information to the Authority, or to a police officer or a public officer who is duly authorised under that law to obtain that information, or to a Court in the investigation or prosecution of a criminal offence under any such law;
- (f) the licensee has been served with a garnishee order made by the Court attaching moneys in the account of the client;
- (g) an individual client has died, whether testate or intestate, and the information is required by his appointed personal representative or any person entitled to letters of administration solely in connection with an application for a grant of probate or letters of administration;
- (h) the Court has, on the application of the Authority or the licensee, so ordered.

Permitted disclosures.

36. (1) Section 35 does not preclude the disclosure of information —

- (a) for the purpose of enabling or assisting the Authority or any person acting on his behalf to discharge his functions under this Order or under any other written law under which they respectively exercise a supervisory function;
- (b) by the Authority, any person acting on his behalf or any other person to the Attorney General, being information obtained under section 28 or being information in the possession of the Authority or such person as to any matter in relation to which the powers conferred by this Order are exercisable, but any information so disclosed may only be disclosed by the Attorney General for the purposes of an investigation into a suspected offence whether under this Order or not or a prosecution in Brunei Darussalam or, at the discretion of the Attorney General, elsewhere.

PART V

MISCELLANEOUS OFFENCES, DISQUALIFICATIONS AND COURT PROCEEDINGS

Offence relating to false information or failure to supply information.

37. Any person who knowingly or recklessly provides the Authority or any other person entitled to information under this Order with information which is false or misleading in a

material particular shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

Offences relating to misleading statements.

38. Any person who —

- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or
- (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

shall be guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to act or rely on that statement, promise or forecast and shall be liable on conviction to a term of imprisonment not exceeding two years, a fine not exceeding one hundred and fifty thousand dollars or both.

Offences of partners, directors, etc., of licensees and of bodies corporate, etc.

39. (1) Where an offence under this Order committed by a licensee or former licensee is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is or was a controller in relation to that licensee or former licensee or who was purporting to act in that capacity he shall be guilty of the offence and liable in the same manner as the licensee to the penalty provided for that offence.

(2) Where an offence under this Order committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any person who was a partner, director, manager, secretary or other similar officer of that company shall be guilty of the offence and liable to be proceeded against and punished accordingly.

Aiding and abetting, etc.

40. Without prejudice to section 39, any person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Order shall be liable to be dealt with, tried and punished as a principal offender.

Offences triable by the High Court.

41. Notwithstanding the provision of any other written law, offences under this Order shall be tried in the High Court.

Consent of Attorney General.

42. (1) No proceedings for an offence under this Order shall be instituted except by or with the consent of the Attorney General.

(2) Notwithstanding any written law or rule of law to the contrary, proceedings for an offence under this Order may be commenced within the period of three years from the date on which evidence, sufficient in the opinion of the Attorney General to justify the proceedings, comes to the knowledge of the Authority or, where the person against whom the proceedings may be taken was outside Brunei Darussalam at that date, within the period of three years from the date on which he first lands in Brunei Darussalam thereafter, whichever of these periods last expires.

Judicial proceedings in camera.

43. Judicial proceedings, other than criminal proceedings relating to a licensee or an interested person may at the discretion of the Court be heard in camera and no details of the proceedings shall be published by any person except in accordance with section 44.

Reporting of judicial proceedings.

44. Every decision of the Court in respect of any proceedings concerning the application or interpretation of this Order may be reported or published for the purposes of affording a record of those proceedings, provided that the Court may order that —

- (a) any written decision of the Court shall be edited to such extent as shall be necessary to preserve confidentiality in respect of the identity of every interested person and of the subject matter of the proceedings; and
- (b) no such decision shall be reported or published unless or until the Court shall have ascertained the views of the parties to the proceedings as to the adequacy of any editing undertaken and certified in writing to the Chief Registrar of the Court that the decision as edited may be released for reporting or publication.

PART VI

SUPPLEMENTARY

Transitional provisions.

45. Any person who is at the commencement of this Order carrying on any business for which a licence is required under the provisions of this Order shall within a period of three months from the date of its commencement comply with the provisions of this Order.

Exemptions.

46. (1) The persons and activities specified in the Third Schedule are not required to be licensed under this Order.

(2) The Minister may by order exempt any person or business or class of persons or class of business or profession from any of the provisions of this Order.

(3) Any order made under subsection (2) may contain different provisions for different classes of person, of business or profession, or international business, or with respect to any provisions of this Order.

Saving of private rights.

47. Nothing in this Order shall prejudice any right that an interested person or any other person may have to take civil proceedings or obtain relief against a licensee, former licensee, associate, director or employee of any licensee or former licensee or any other person connected in any way with international business services.

Power to restrict or extend scope of Order.

48. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan the Authority, may by order amend —

- (a) the definitions in section 2 so as to extend or restrict for the purpose of all or any of the provisions of the Order the activities which are to constitute the carrying on of international business or otherwise;
- (b) the Second Schedule so as to vary, extend or restrict the particulars to be provided by an applicant for a licence or any fees to be paid by any applicant for a licence;
- (c) the Third Schedule so as to vary, extend or restrict the persons or activities which are exempt from the provisions of this Order; or exempt any person or business or class of persons or class of business or profession from any of the provisions of this Order.

Power to make regulations.

49. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan make such regulations generally as he considers necessary or expedient for the purpose of carrying the provisions of this Order into effect.

Power to appoint assistants.

50. (1) The Authority may authorise or appoint any persons to assist in the exercise of his functions under this Order, either generally or in any particular case.

(2) The Authority and any persons appointed under subsection (1) shall be deemed to be public servants within the meaning of the Penal Code (Chapter 22).

Power of the Authority to compound.

51. The Authority may, without instituting proceedings against any person for any offence under this Order, or any regulations made under this Order, which is punishable only by a fine or a default penalty, demand and receive the amount of the fine or default penalty or such reduced amount as he thinks fit from that person, whereupon —

- (a) if that person pays that amount to the Authority within fourteen days after the demand, no proceedings shall be taken against him in relation to the offence;
- (b) if that person does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to the offence.

Recovery of fees and expenses, etc.

52. There shall be recoverable as a civil debt due to the Government from a licensee the amount of any fees, levies or charges payable under section 15 and any remuneration and expenses payable by the licensee to the Authority or to any person appointed or authorised by the Authority under this Order to assist him in the control of and the carrying on of the business of the licensee.

Publication of list of licensees.

53. The Authority shall cause to be published in the *Gazette* in each year a list of all persons to whom licences have been issued under this Order, and if any licence is issued, revoked or surrendered during the interval between the publication of two such lists, notice thereof shall also be caused to be published in the *Gazette*.

Immunity.

54. The Authority and any person who is acting under the authority of the Authority shall not be liable, in damages or otherwise, as a result of anything done by him *bona fide* in the exercise of any power or the performance of any function or duty, arising out of, conferred or imposed by or under this Order.

Exemptions from taxes and duties.

55. (1) No income tax, tax on capital gains or other direct tax shall be levied, withheld or collected in respect of licensee under this Order —

- (a) on or in respect of any dividends or earnings attributable to any share, debt or securities of a licensee; or

- (b) on or in respect of any dividends, interest or other returns from any shares, securities, deposits or other borrowings of a licensee or any assets managed by a licensee, if the dividends, interest or other returns are shown to be in respect of shares, securities, deposits, borrowings or other assets beneficially owned by a person who either is not a resident or is an IBC, an international foreign company, an international limited partnership or an international trust, or is a subsidiary of a licensee authorised under section 3(3).

(2) No estate, inheritance, succession or similar tax shall be levied in respect of any shares, securities or assets of a licensee or in respect of the transfer of any such shares or assets.

(3) Notwithstanding anything in the Stamp Act (Chapter 34), duty shall not be chargeable on any of the following —

- (a) instruments relating to transfers of any property to or by a licensee;
- (b) instruments relating to transactions in respect of the shares, debt obligations or other securities of a licensee;
- (c) instruments relating in any way to the assets or activities of a licensee.

(4) If, with respect to any goods imported or to be imported by a licensee, the Minister is satisfied —

- (a) that the goods are not being made or manufactured in Brunei Darussalam;
- (b) that the goods are essential as equipment or fixtures for the purposes of conducting international business services in Brunei Darussalam and will be used exclusively for those purposes; and
- (c) that the licensee will notify the Minister prior to the sale, transfer or disposal of the goods (whether within or outside Brunei Darussalam),

the Minister may by order exempt the licensee from all, or so much as he considers appropriate, of any customs duty which would otherwise be levied in respect of the goods.

(5) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34) and expressions used in subsection (4) have the same meaning as in the Customs Act (Chapter 36).

(6) No filing, return or financial information shall be required from a licensee in relation to any taxation, duty or other levy in respect of which relief is granted under this section.

FIRST SCHEDULE
(Section 2)

PART I

CONTROLLERS

1. (1) In this Order, "controller", in relation to a person, means —
- (a) a person who, either alone or together with any associate or associates —
 - (i) directly or indirectly holds ten per cent or more of the share capital issued by the company;
 - (ii) is entitled to exercise or control the exercise of not less than ten per cent of the voting power at any general meeting of the company or any other company of which it is a subsidiary undertaking; or
 - (iii) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company;
 - (b) a director or equivalent by whatever name called;
 - (c) a person in accordance with whose direction, whether given directly or indirectly, any director of the company, or director of any other company of which the company is a subsidiary undertaking, is accustomed to act (but disregarding advice given in a professional capacity);
 - (d) a person who, either alone or together with one or more other persons, is responsible for the conduct of the person's international business in Brunei Darussalam;
 - (e) a person who has been appointed as liquidator of a company in a voluntary winding-up or as administrator of the person's affairs.

PART II

PARENT, SUBSIDIARY AND HOLDING INSTITUTIONS

Definition of subsidiary holding and affiliate companies, etc.

1. For the purposes of this Order, a company is a subsidiary of another company if —

- (a) it is controlled by —
 - (i) that other company; or

- (ii) that other company and one or more companies, each of which is controlled by that other company; or
 - (iii) two or more companies, each of which is controlled by that other company; or
 - (b) it is a subsidiary of a subsidiary of that other company.
2. For the purposes of this Order, a company is the holding company of another only if that other company is its subsidiary.
3. For the purposes of this Order, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.
4. For the purposes of this Order, a company is controlled by another company or person or by two or more companies only if —
- (a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or person or by for the benefit of those other companies; and
 - (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first mentioned company.
5. For the purposes of this Schedule, "company" means a body corporate however constituted in any part of the world and includes an institution.

SECOND SCHEDULE
(Section 6(1)(b)(ii))

PART I

PARTICULARS TO BE SPECIFIED IN LICENCE APPLICATIONS

1. Applicant.

1.1 **Name** of applicant.

1.2 **Address** in Brunei Darussalam of the registered office of the applicant.

1.3 In the case of a company —

1.3.1 the names and addresses of —

(a) all directors and shareholders and their nationalities;

(b) all officers and managers; and

(c) foreign agents or offices;

1.3.2 a description of any material contractual arrangements with such persons;

1.3.3 an agreement by which such persons and their employees agree to be bound by this Order and to submit to the jurisdiction of the Court for purposes of enforcement of such agreement.

2. Group Structures.

2.1 **Subsidiary companies:** names and registered office address and names of their registered agents.

2.2 Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.

3. Financial Information.

3.1 **Annual accounts** of the company and of its holding company, if any, for the preceding three years and thereafter annual duly audited and certified by an independent auditor.

3.2 Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

4. Guarantee: minimum capital.

4.1 A written undertaking to provide and set apart a fully paid-up capital before or at the time it commences business, such as the Authority may in its absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Authority.

4.2 The guarantee referred to in paragraph 4.1 shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligation of the parties to it are governed exclusively by the law of Brunei Darussalam and the Court shall be the exclusive forum and venue for these purposes.

5. References and Experience: to establish integrity, competence, track record and technical support as part of "fit and proper criteria".

- 5.1 **Character references**, together with such other evidence as the Authority may require, that neither the applicant nor, in the case of a company, any director or officer of the company has a criminal record.
- 5.2 References, including one from an internationally recognised bank or trust company.
- 5.3 **Competence**: evidence that the applicant himself or some person or company directly or indirectly connected with the applicant possesses appropriate experience in company management.
- 5.4 A statement describing the aspects of international business the applicant will seek to undertake, and the experience of the application or its directors or employees in such business.
- 5.5 Where the applicant intends to act as a financial fiduciary in connection with his business of international business, a detailed statement of the nature of such activities and the applicant's experience as a financial fiduciary.

6. Constitution.

- 6.1 Evidence of the proper incorporation of the company in Brunei Darussalam under the Companies Act (Chapter 39), or in the country of incorporation, as the case may be.
- 6.2 A copy of the act, charter, certificate of incorporation or memorandum and articles of association of the applicant, as may be appropriate, verified by an affidavit sworn by a director or officer, and duly authenticated as follows —
 - 6.2.1 in the case of a company incorporated in Brunei Darussalam, notarised; and
 - 6.2.2 in the case of a foreign company, certified and authenticated under the laws of the country or place where such company was incorporated.

7. Professional Advisers.

7.1 Auditors

- 7.1.1 Names and address of auditors of the applicant, together with a letter from such auditors confirming that they act for the applicant.

7.2 Advocates and Solicitors

- 7.1.2 Names and address of advocates and solicitors, if any, of the applicant, together with a letter from such advocates and solicitors confirming that they act for the applicant.

8. Notices.

8.1 In the case of a company —

8.1.1 the names and address of one of its officers who is the authorised agent resident in Brunei Darussalam to accept on behalf of the applicant service of process and any notices required to be served on it; and

8.1.2 the name and address of another of its officers or who in the absence or inability to act of the officer named in sub-paragraph 8.1.1 is the authorised agent resident in Brunei Darussalam of the applicant for the purposes of sub-paragraph 8.1.1.

9. Insurance.

9.1 Evidence, if available, of satisfactory insurance to cover —

9.1.1 professional indemnity; and

9.1.2 employee fidelity insurance.

10. If not within the Brunei Darussalam, the address of the principal office of the applicant and of its registered office, if it is different.

11. Where appropriate, a statement in writing in a form acceptable to the Authority from the authority responsible for the administration of the laws relating to banking or trust businesses, as the case may be, and the supervision of such businesses, in the country in which the applicant or its parent company is incorporated that such authority is aware of the application.

12.1. A statement giving the date for the drawing up of the annual accounts of the applicant.

12.2. Details of the current business activities, if any, of the applicant and its proposed activities if the licence applied for is granted including —

12.3. A detailed statement setting out its proposed initial assets and its proposed assets and expected liabilities at the end of each of the two years next succeeding the date of such grant together with an estimate of expected income;

12.4. Particulars of its management structure and personnel;

12.5. Statement as to its customer base, including, in the case of an application for a Restricted Licence, the names and addresses of its customers; and

12.6. A copy of its most recent balance sheet and details of its fee earnings, if any.

13. A chart showing the relationship to its subsidiaries and affiliates and any holding company.

PART II

APPLICATION FEES AND LICENCE FEES

Licence under section 9

Application Fees	Issue Fees	Annual Fees
two thousand dollars	one thousand dollars	two thousand dollars

THIRD SCHEDULE (Section 44(2))

EXEMPT PERSONS AND EXEMPT ACTIVITIES

Introducers of business.

1. Persons who make arrangements with a view to persons carrying on international business.

Holders of a Mutual Funds licence.

2. Persons who hold a valid Mutual Funds licence granted under any law relating to mutual funds, but only as regards the activities permitted by such a licence.

Holders of advances, deposits, etc., by persons who hold a banking licence, or by persons in connection with the supply of agents and services.

3. (1) Persons who hold a valid banking licence granted under the Banking Act (Chapter 95) or under the Islamic Banking Act (Chapter 168), but only as regards the activities permitted by such a licence.
- (2) Persons who hold money on trust in the course of a business of supplying goods or services by way of sale, or hire or other provision of goods and services which does not otherwise constitute international business.
- (3) For the purpose of sub-paragraph (2), money is held on trust in the course of business of the description referred to if it is paid —

- (a) by way of advance or part payment for the goods or services provided;
- (b) by way of security for performance by the customer of the agreement between the customer and the supplier or provider, or in respect of loss which may result from the non-performance of a contract by customer; or
- (c) by way of security for the delivery or return of any property by or from the customer, whether in a particular state of repair or otherwise.

Private trust companies.

- 4. (1) As regards the carrying on of international trust business, an IBC or foreign international company which carries on such business only as a private trust company.
- (2) In sub-paragraph (1) "private trust company" means an IBC or foreign international company which is intended to be a trustee of no more than three qualifying trusts of which one or more members of a family, corporate group or one or more specified charitable institutions or trusts are the principal beneficiaries for the time being, or which is intended to be a trustee of no more than three purpose trusts having common purposes, settlers and enforcers.
- (3) The exemption conferred by sub-paragraph (1) shall only apply where at least one of the directors of the private trust company is supplied by a licensee conducting international trust business, and a licensee is a co-trustee, or is the sole shareholder (whether beneficially or upon a trust) of the private trust company.

Employees of persons holding a licence.

- 5. Any person who is an employee of a person who holds a valid licence granted under this Order, as regards any aspect of international business performed by him on behalf of his employer in the course of his employment.

Professional advisers.

- 6. Any person who is a professional adviser of a person who holds a valid licence granted under this Order, as regards any advice given in a professional capacity and which does not otherwise amount to carrying on international business.

Connected companies and joint enterprises.

- 7. (1) Entering into a transaction which would otherwise amount to the carrying on of international business by one person solely with another person, if —

- (a) the persons are connected companies and the transaction is undertaken for the benefit of that other person solely in connection with its own business and not that of any third party;
- (b) the persons participate together in a joint enterprise and the transaction is undertaken for the benefit of that enterprise and not that of any third party; or
- (c) one of the persons is a director, other officer or employee of a company acting in his capacity as trustee and the other is that company or a connected company in relation to that company,

unless either person carries on international business or holds himself out as doing so.

- (2) For the purposes of sub-paragraphs 1(a) and 1(c), a company is connected with another company if —
 - (a) they are in the same group;
 - (b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights, (other than as nominee shareholder) which are attributable to the share capital and are exercisable in all circumstances at any general meeting of the other company or of its holding company; or
 - (c) the first-mentioned company holds, or a company in the same group as the first-mentioned company holds, an interest in the equity share capital of the other company carrying rights to vote in all circumstances at general meetings for the purpose of the securing a contribution to the activities of the first-mentioned company or the company in the same group as that company respectively by the exercise of control or influence arising from that interest.
- (3) For the purpose of sub-paragraph 1(b), "joint enterprise" means an enterprise into which the persons participating enter for commercial purposes related to a business other than international business carried on by such persons; and where a person participating is a company, each company with which it is connected shall also be regarded as a person participating in the enterprise.

Protectors, Advisers, Settlers.

- 8. No protector, adviser or settlor of a qualifying trust shall in that capacity require to be licensed.

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

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

