



CONSTITUTION AND LEGISLATIVE PROCESS

Public Officers' Law Seminar :
Understanding the Law
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1) RULE OF LAW

The rule of law means that –

“all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from enabling the written law itself, the common law or the Constitution”



RULE OF LAW

- In our system of constitutional government, all executive authority has to be derived from either the Constitution or some legislation.
- The Executive branch does not have any authority independent of the Constitution or legislation.



RULE OF LAW

“The notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits.....”

– Wee Chong Jin CJ in *Chng Suan Tze v. Minister for Home Affairs* (1988) (Singapore)

“It is also a basic proposition of the rule of law that all discretionary power is subject to legal limits”

– Chan Sek Keong CJ in *Vellama d/o Muthu v AG* (2013) (Singapore)



2) CONSTITUTION OF BRUNEI DARUSSALAM

National Philosophy: Melayu Islam Beraja (Malay Islamic Monarchy)

■ Legislature

- His Majesty the Sultan and Yang Di-Pertuan
- Legislative Council
- Enacts/Makes legislation empowering the Executive

■ Executive (the Government)

- His Majesty the Sultan and Yang Di-Pertuan
- Council of Ministers
- Executes Government policy in accordance with the law
- Accountable to His Majesty the Sultan and Yang Di-Pertuan



LEGISLATURE

- Article 39 – His Majesty the Sultan and Yang Di-Pertuan shall have the power to make laws for the peace, order, security and good government of Brunei Darussalam
- Article 40(1) – Subject to this Constitution and to the Standing Orders, any Member of the Legislative Council may introduce any Bill or propose any motion for debate in, or present any petition to the Legislative Council; and such Bill, motion or petition shall be debated and disposed of in accordance with the Standing Orders
- Article 45(1) – When any Bill has been passed by the Legislative Council, such Bill shall only become law either in the form in which it was passed or with such amendments as His Majesty the Sultan and Yang Di-Pertuan shall think fit, if His Majesty the Sultan and Yang Di-Pertuan assents to, signs and seals the Bill with the State Seal
- Article 83(3) – When a Proclamation of Emergency has been made and so long as such Proclamation is in force, His Majesty the Sultan and Yang Di-Pertuan may make any Orders whatsoever which he considers desirable in the public interest; and may prescribe penalties which may be imposed for any offence against any such Order; and may provide for the trial by any court of persons charged with such offences.
- Article 83(7) – Every Order made under this Article shall, at the next meeting of the Legislative Council, be laid before that Council and that Council may resolve that any such Order shall, to the extent and as from such date as may be specified in such resolution, either cease to have effect (and any such cessation shall, if assented to by His Majesty the Sultan and Yang Di-Pertuan, have the same effect as the repeal of a written law) or be passed by that Council



EXECUTIVE

- Article 4(1) – The supreme executive authority of Brunei Darussalam shall be vested in His Majesty the Sultan and Yang Di-Pertuan
- Article 4(1A) – His Majesty the Sultan and Yang Di-Pertuan shall be the Prime Minister
- Article 4(3) – His Majesty the Sultan and Yang Di-Pertuan may appoint from among citizens of Brunei Darussalam any number of Ministers and Deputy Ministers who shall be responsible solely to His Majesty the Sultan and Yang Di-pertuan for the exercise of executive authority and who shall assist and advise His Majesty the Sultan and Yang Di-Pertuan in the discharge of His Majesty the Sultan and Yang Di-Pertuan's executive authority
- Article 10 – There shall be established a Council of Ministers (to be known in Malay as the Majlis Mesyuarat Menteri-Menteri), constituted in accordance with the provisions of this Part
- Article 11 – The Council of Ministers shall consist of the Prime Minister and the Ministers appointed under Clause (3) of Article 4



EXECUTIVE

- Article 70 – Save as otherwise provided in this Constitution, every person holding office in the public service of the Government shall hold office during His Majesty the Sultan and Yang Di-Pertuan's pleasure
- Article 71(1) – There shall be a Public Service Commission which shall consist of a Chairman and such number of members, including a Deputy Chairman, as His Majesty the Sultan and Yang Di-Pertuan may appoint
- Article 74(1) – The power to appoint, transfer, promote, dismiss or exercise disciplinary control over public officers is hereby vested in His Majesty the Sultan and Yang Di-Pertuan



EXECUTIVE

- Article 84B – His Majesty the Sultan and Yang Di-Pertuan can do no wrong in either his personal or any official capacity. His Majesty the Sultan and Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him during or after his reign in either his personal or any official capacity
- Article 84C(1) – The remedy of judicial review is and shall not be available in Brunei Darussalam
- Article 84C(2) – For the avoidance of doubt, there is and shall be no judicial review in any court of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Constitution or any written law or otherwise, including any question relating to compliance with any procedural requirement governing such act or decision
- Article 84(2) – Nothing in this Constitution shall be deemed to derogate from the prerogative powers and jurisdiction of His Majesty the Sultan and Yang Di-Pertuan and, for the avoidance of doubt, it is declared that His Majesty the Sultan and Yang Di-Pertuan retains the power to make laws and to proclaim a further Part or Parts of the law of this Constitution as to His Majesty the Sultan and Yang Di-Pertuan from time to time may seem expedient
- Article 85 – His Majesty the Sultan and Yang Di-Pertuan may, by Proclamation, amend, add to or revoke any of the provisions of this Constitution including this Article; and this Constitution shall not otherwise be amended, added to or revoked



3) KNOW THE LAW:

- Why are laws relevant?
- Types of legislation
- Who has legislative power?
- Limits on exercise of power : What to avoid and what to do?



WHY ARE LAWS RELEVANT?

- Private individual
 - Laws regulate the behaviour of each member of society

- Government
 - Government is also subject to law
 - Laws govern what a government can or cannot do



LAWS OF BRUNEI DARUSSALAM

Laws of Brunei Darussalam = common law + written law

- Common law

- Judge-made, case-by-case basis
- Gradual evolution

- Written law

- Constitution of Brunei Darussalam, Principal and Subsidiary Legislation
- Amended through deliberate process of change



TYPES OF LEGISLATION

PRINCIPAL LEGISLATION

- Laws of Brunei
- Article 83(3) Orders

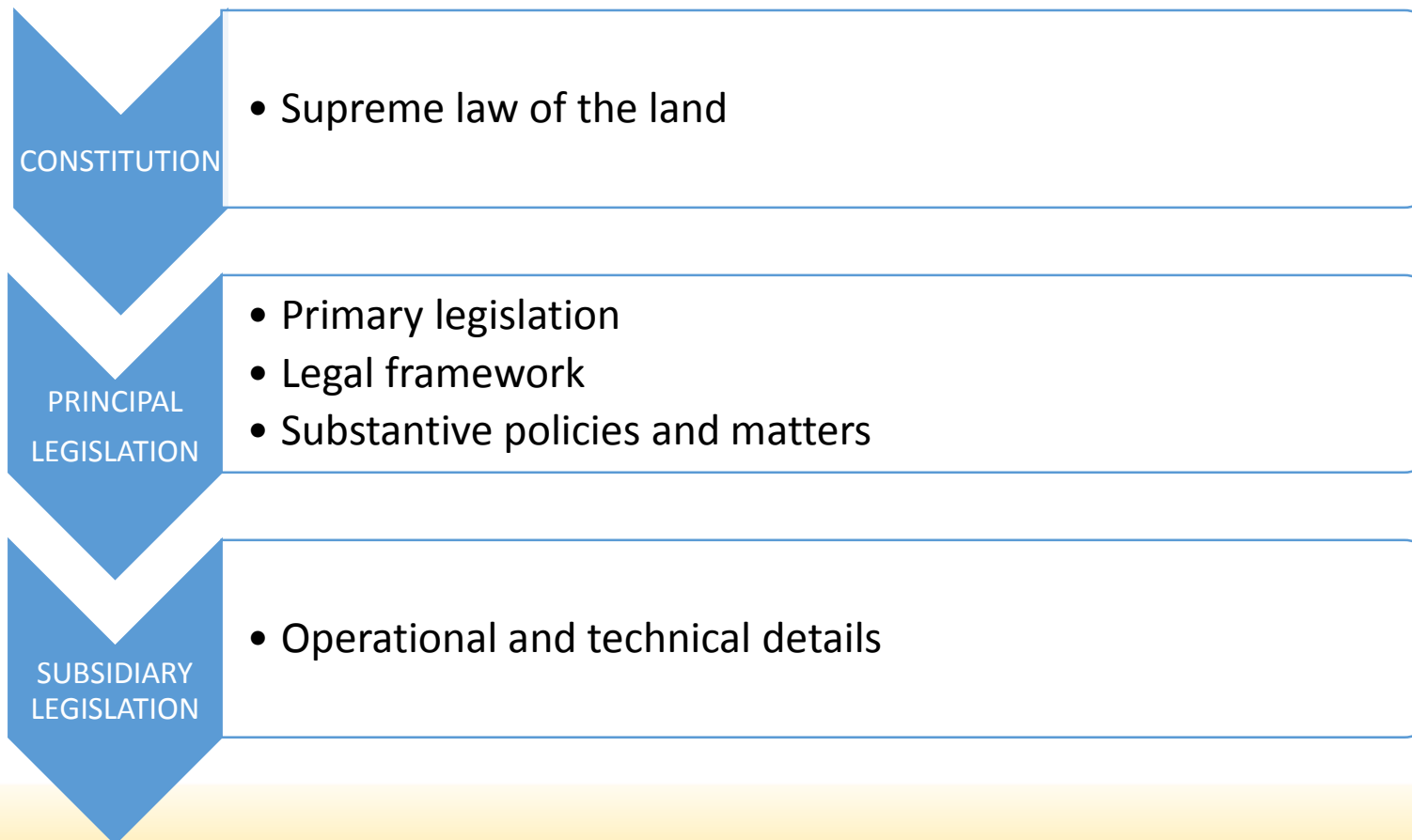


SUBSIDIARY LEGISLATION

- Rules
- Regulations
- By-laws
- Notifications
- Orders
- Proclamations



TYPES OF LEGISLATION





PRINCIPAL OR SUBSIDIARY LEGISLATION?

Principal Legislation	Subsidiary Legislation
Sets out fundamental framework	Implementation of details *in area which His Majesty the Sultan and Yang Di-Pertuan has delegated legislative power
Deals with matters of fundamental importance	Procedural, technical and operational rules *must not be inconsistent with Principal Legislation



PRINCIPAL OR SUBSIDIARY LEGISLATION?

- Following matters should be in Principal Legislation and not Subsidiary Legislation -
 - Rules which seek to take away property rights
 - Rules which attempt to alter common law
 - Changing rules of evidence e.g. presumptions
 - Amending/displacing Acts
 - Invasive powers of enforcement



ENABLING (PRIMARY) LEGISLATION

- The enabling legislation (i.e. that giving the power to make subsidiary legislation) should itself contain the principal substantive and administrative rules needed to give effect to the policy:
 - Matters involving significant effect on policy
 - Rules which will have a significant effect on individual rights and duties
 - Significant offences and penalties
 - Procedural matters which go to the heart of the legislative scheme
 - Amendments and repeals to existing statutes or the common law



THE NEED FOR SUBSIDIARY LEGISLATION

- Functions being delegated owing to:
 - Pressure on legislative time
 - The impracticality of legislating in detail
 - The technical nature of some legislation and its consequent unsuitability for legislative debate



TYPES OF LEGISLATION

	Principal Legislation	Subsidiary Legislation
Made by?	Legislature	Delegated authority
What it can do?	Can override common law	Cannot override common law
	Can repeal other written law or subsidiary legislation	Cannot amend, alter or be inconsistent with a principal legislation



TYPES OF LEGISLATION

	Principal Legislation	Subsidiary Legislation
For?	Provides basic legislative framework	Flashing out administrative and operational details for implementing the principal legislation
		Detailed rules setting out norms and procedures required for the policy to be implemented
		Features of the scheme that are likely to need frequent amendment
		Technical rules in a specialist area
		Procedural rules for regulating meetings of a body



WHO HAS LEGISLATIVE POWER?

- By Legislature
 - = His Majesty the Sultan and Yang Di-Pertuan
 - = Legislative Council
- Only Legislature can make Principal Legislation
- Legislative Council passes Bill
- His Majesty the Sultan and Yang Di-Pertuan assents to Bill = Act
- His Majesty the Sultan and Yang Di-Pertuan makes Orders under Article 83(3) of the Constitution of Brunei Darussalam



WHO HAS LEGISLATIVE POWER?

- By Minister or Statutory body
 - Subsidiary Legislation - Done under authority of Principal Legislation
 - Cannot be inconsistent with any written law



LIMITS ON EXERCISE OF POWER – WHAT TO AVOID

- Judicial power should not be conferred on Executive or Legislature
 - Judicial power is exclusive to Judiciary

- Judge in one's own case



LIMITS ON EXERCISE OF POWER – WHAT TO AVOID

- Stopping due process applying
 - Something should not be done to a person that will deprive him of some right or interest, or legitimate expectation of a benefit, without person being given prior adequate opportunity to present own case

- Arbitrariness
 - Avoid legislating that reasons need not be given
 - Provide merits-based appeals system



LIMITS ON EXERCISE OF POWER – WHAT TO AVOID

- Retrospective legislation
 - Legislation is to govern future acts; otherwise no certainty in the law
 - Constitution absolutely prohibits retrospective criminal laws and punishment
 - Retrospective civil laws unacceptable if –
 - Adversely affects vested rights
 - Deprives legal remedy
 - Deprives legal defence



LIMITS ON EXERCISE OF POWER : WHAT TO DO

- Rule of law
 - All powers of Government derived from the law
 - Accessible rules that are enforceable
 - Check and balance
 - Fair administrative processes
 - Safeguards against arbitrary government



LIMITS ON EXERCISE OF POWER – WHAT TO DO

- Remember our international obligations
 - Domestic law should not be incompatible; if clear and unambiguous, legislation will be given effect despite inconsistency with international obligations
 - Amendments or new legislation to give effect to new treaties and international obligations



LIMITS ON EXERCISE OF POWER – WHAT TO DO

- Legislate with whole-of-Government-perspective
 - Collective responsibility of Cabinet
 - Statute book must be coherent
- Ensure the correct body carries out new power
 - Correct public sector agency to exercise power
 - Minister charged with responsibility for that department or subject – either express in the principal legislation or publication



LIMITS ON EXERCISE OF POWER – WHAT TO DO

- Aim for a proportionate legislative response
- Punishment must fit the crime
 - Consistency with Order/Act and other written laws generally
 - Avoid one-size-fits-all penalty provision
 - Avoid minimum sentences
 - Composition sums < maximum fine
- Clearly define discretionary powers
 - Proportionate powers vis-à-vis function
 - Identify holder of power
 - Scope and circumstances for exercise



4) TRANSLATING POLICY INTO LEGISLATION:

- When is legislation needed?
- When to and when not to legislate?
- When legislation fails?



WHEN IS LEGISLATION NEEDED

- To regulate behaviour
- To override common law
- To introduce certainty of legal effect
- To change existing legal rights or obligations



WHEN IS LEGISLATION NEEDED?

- To create new rights or obligations
 - Offences
 - Statutory duties
- To impose a new power especially coercive
 - Furnishing of information
- To impose a tax or charge on public funds
- To take on new international obligations



WHEN TO AND WHEN NOT TO LEGISLATE?

- Legislate only and to extent necessary

- Reduce red-tape
 - Laws are intrusive, high cost, high maintenance

- Calibrate level of legislation for optimum effect
 - Consider alternatives to legislation



WHAT MAKES A GOOD LEGISLATION

- Constitutional and respects rule of law
- No frequent amendments required
- Gives effect to policies
- Provides clarity and certainty
- Avoids unintended consequences



REASONS FOR FAILURES OF LEGISLATION

- Failure of communication of law to public
 - Solution – amend legislation to remove uncertainty

- Failure of imagination
 - Insufficient analysis of issues and development of specifications
 - Re-wording of legislation will not solve problem
 - Solution – significant changes to legislation needed after analysing problems and working through policy specifications



REASONS FOR FAILURES OF LEGISLATION

- Failure of communication between instructing agency to drafter

Instructing Agency
intends **X**



Drafter understands
Agency's intent to be **Y**



Instructing Agency thinks
legislation means **X**



Drafter drafts
legislation based on **Y**



WORKING WITH LEGISLATIVE DRAFTER FOR EFFECTIVE LEGISLATION

Tasks	Responsibility
Ensuring that details and specification of policy are fully developed and workable	Instructing agency
Design and architecture of legislation	Drafter
Ensuring sound and effective legislation	Both



ROLE OF LEGISLATIVE DRAFTER

- Objectives
 - Effective legislation
 - Legally correct legislation
 - Clear and readable legislation

- Help to identify/solve problems arising in legislative proposals

- Responsible for how legislation is expressed/presented



UNDERSTANDING DRAFTER'S CONSTRAINTS

- **Drafting Services**
 - Demand VS availability of resources
 - Be reasonable and realistic when planning legislative schedule

- **LRD response time depends on**
 - Complexity of subject matter
 - How effective and comprehensive drafting instructions are
 - Internal review process
 - Number of pending legislative project



UNDERSTANDING DRAFTER'S CONSTRAINTS

- Expression and presentation of legislation
 - Consistency with Laws of Brunei
 - House styles and format
- * DRAFTER IS NOT SUBJECT MATTER EXPERT**



WORKING WITH DRAFTER FOR EFFECTIVE LEGISLATION

- Provide clear, comprehensive and concise drafting instructions
- Pamphlet – practical approach on the preparation of Initial Draft
- Drafting Instructions – www.agc.gov.bn



WORKING WITH DRAFTER FOR EFFECTIVE LEGISLATION

- Designate single liaison point for drafter to deal with
- Sufficient seniority and experience
- Be available to clarify drafter's question
- No “post – boxes”
- Must scrutinise draft text to ensure accuracy, effectiveness and robustness



ALTERNATIVES TO LEGISLATION

Consider:

- Status quo

- Use existing law
 - Including laws under purview of other Ministries

- Step-up enforcement
 - E.g. new LTD cameras on roads



ALTERNATIVES TO LEGISLATION

- Information and educational campaigns
 - E.g. flushing of public toilets

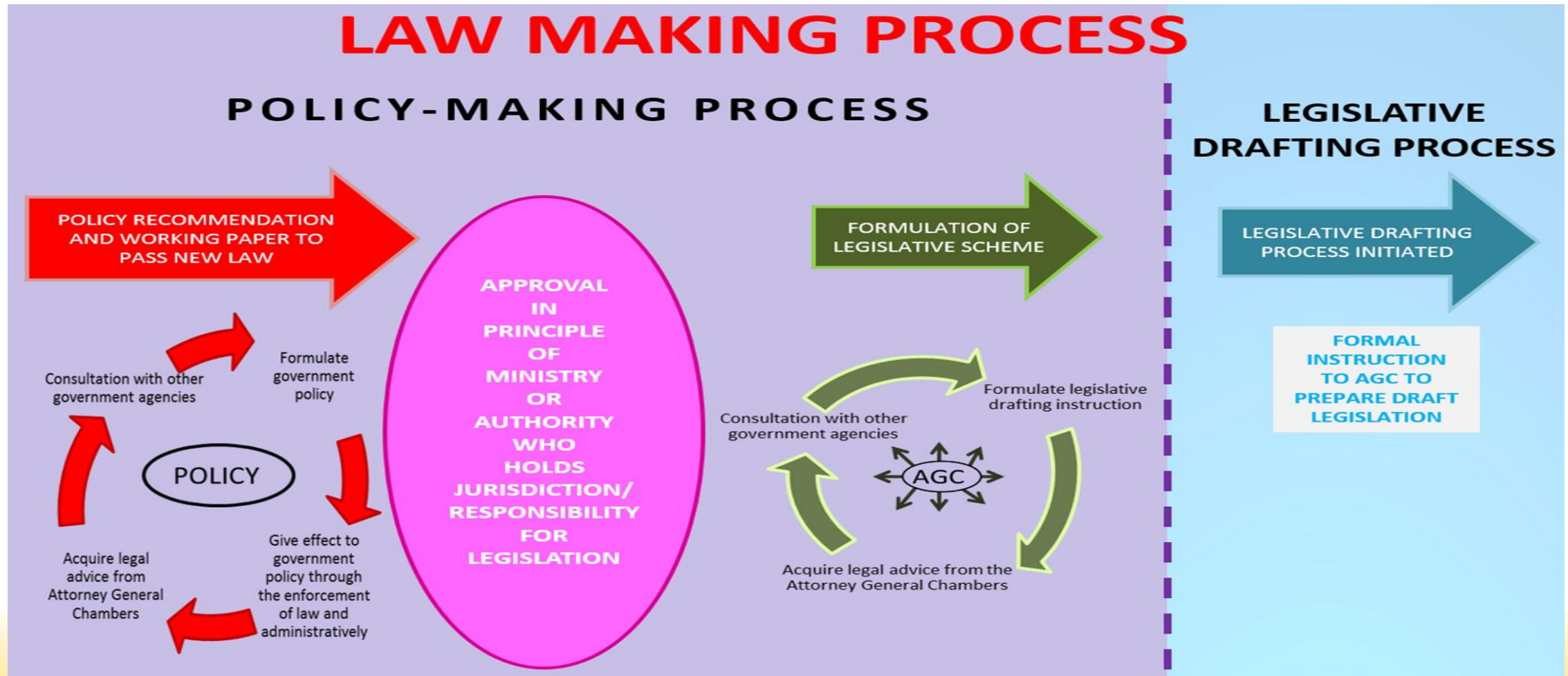
- Voluntary arrangements/contract
 - Must NOT be Tax

- Self-regulation

- Codes/standards = quasi-laws



5) LAW MAKING PROCESS





HOW TO MAKE LEGISLATION?

- Scheduling: proper and realistic planning before making public commitments that require legislation
 - Factors to consider:
 - Actual resources available to instructing Ministry/ statutory authority and Legislation and Research Division
 - Cater for contingencies – legislative drafting process may raise new issues which require time to resolve; iterative process
 - Consultation of stakeholders, industry or public?



HOW TO MAKE LEGISLATION?

- **Drafting Instructions – Things to note:**
 - If another Ministry/statutory authority affected – consultation should be done
 - Questions of policy should be resolved, necessary approvals obtained from all affected agencies (as far as possible)
 - Avoid passing law only to keep indefinitely suspended in operation

Quality instructions essential to giving effect to policy intent in legislation



HOW TO MAKE LEGISLATION?

- Time constraints and scheduling
 - Set aside for more than 6 months for
 - Policy development
 - Legal advice and drafting

- Don't commit to timing of law before AGC is consulted –
Be realistic!



CHECKLIST OF MATTERS TO BE COVERED IN DRAFTING INSTRUCTIONS

- Background Information
- Nature of the problem
- A statement of the history or circumstances giving rise to the proposals and the nature of the issues
- Aims of the legislation or its principal objectives
- Rationale
- The specifics of the proposal
- Any known problems and benefits
- Relevant information



CHECKLIST OF MATTERS TO BE COVERED IN DRAFTING INSTRUCTIONS

- Consultation
- Timeframe
- Contact information
- Consequential amendments
- Commencement date
- Savings and transitional provision
- Appointments
- Table of comparative legislation
- Copy of law
- General



PRACTICAL APPROACH ON THE PREPARATION OF INITIAL DRAFT

1. List out the current issues and implication

- List out the issues concerning the subject matter.
- Please highlight the reasons for the concerns, their implications and the proposed solutions (if any).
- List out potential stakeholders.

2. Benchmark

- Study how other jurisdictions, preferably Singapore, Malaysia or other Commonwealth countries, deal with the issues or the subject matter, that is either administratively or through the introduction of legislation.
- If legislation is proposed, compile the laws (softcopy and hardcopy) of those jurisdictions (countries) that have been identified to be used as reference.



3. Study the benchmark

- Read, study and understand each provision and relate to the issues to be tackled and consider whether it is desirable in the public interest.

4. Preparation of initial draft

- Initial draft does not need to be perfect as long as all relevant provisions are there.
- Relevant provision means the provisions that have basis or reasons to be incorporated in the draft.
- If uncertainty arises with respect to the relevancy of the provision, this can be highlighted in the draft itself in the form of a footnote.



5. Table of Comparative Legislation

- Table of Comparative Legislation can be prepared at the same time when the initial draft is being prepared.
- This Table will be very helpful to assist the Ministry and also the Attorney General's Chambers to understand the source of the provisions proposed.

6. Internal Discussions

- Discussions among stakeholders within your organisation is encouraged to check and test the acceptance of the initial draft as a document to reflect the government policy.

7. Approval-in-principle of Director and Ministry

- Approval-in-principle from the Director and the Ministry concerned to be acquired to endorse the initial draft.



8. Collaboration

- Discussions among stakeholders, if any, outside your organisation, is also encouraged. This ensures their cooperation in the enforcement of legislation in the future and their interest is not affected.

9. Approval-in-principle of Ministry of Finance

- Approval-in-principle from the Ministry of Finance is to be acquired if the initial draft contains any financial provision that involves financial commitment on the part of the Government.

10. Submission of initial draft to Attorney General's Chambers

- The initial draft can now be submitted to the Attorney General's Chambers for consideration and perusal.



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Publication

1. Brunei Darussalam Treaty Series:

- i) Counter Terrorism
- ii) Intellectual Property
- iii) Law of the Sea and Maritime

2. Government Contracts Manual

3. Musings From Chambers: *Chambers Decoded*

4. Attorney General's Chambers Report 2013 - 2015

5. Guidelines on Criminal Case Negotiations

6. Drafting Instructions Handbook (*Panduan Arahan Penggubalan*)

7. Practical Approach on the Preparation of Initial Draft (*Pendekatan Praktikal untuk Menyediakan Rang Permulaan*)

8. Law Making Process

9. Policy Making Process

10. Attorney General's Chambers Strategic Plan 2012 - 2017 (*Rancangan Strategik 2012 - 2017 Pejabat Peguam Negara*) [English Version] [Malay Version]

Legislation Online

E-Library

Publication

Investigation Papers Registry

Intellectual Property



ACTION PLAN FOR ENFORCEMENT OF LAW

1. Human resource
2. Other resources required
3. Training of enforcement officers
4. Awareness programme to the public on the requirements of the new law
5. Cooperation of other stakeholders to ensure enforcement runs properly and smoothly



6) EXERCISING THE LAW

- Discretion
- Delegation of power
- Carltona principle



EXERCISING THE LAW

Decision-makers are to note the following:

- Check whether the relevant legislation under which you are making your decision prescribes a procedure to be followed before a decision may be made
- Even where the relevant legislation does not prescribe any procedure to be followed, be mindful of the need to give the affected person adequate notice of the case he has to meet and the opportunity to make representations before the decision is taken. During the decision-making process, ensure that you do not conduct yourself in any way that may give rise to an allegation that you are biased against one party or in favour of the other
- After you have reached a decision, communicate your decision to the affected person. You would need to include reasons for your decision if there is an express statutory provision requiring you to do so or where there is a right of appeal against your decision. In any event, as a matter of transparency and good administration, you should give reasons for your decision where possible. This may avoid any misunderstanding that your decision is irrational.

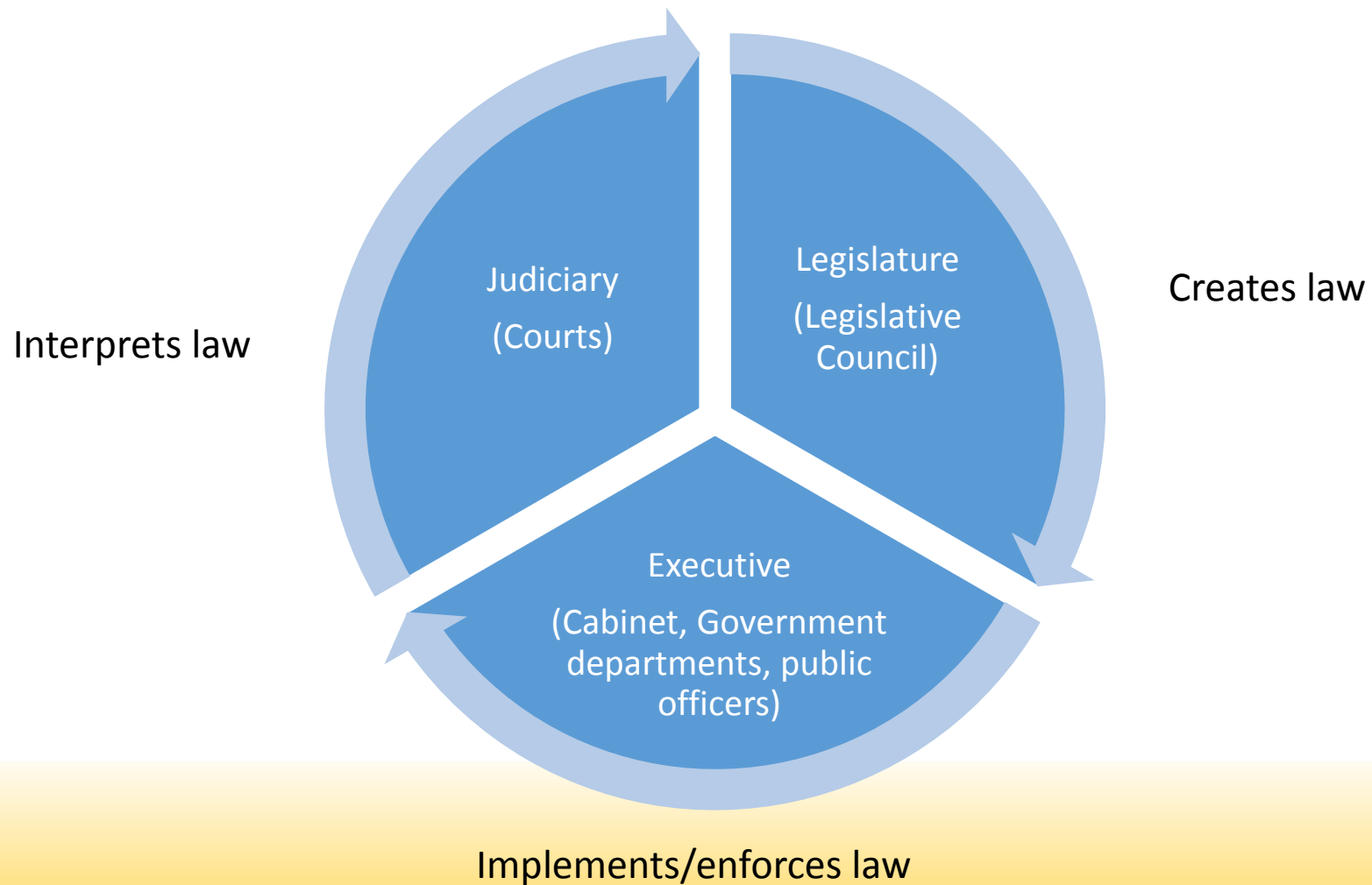


EXERCISE OF DISCRETION

Administrative decisions often include the exercise of discretion. Discretion exists when the decision-maker has the power to make a choice about whether to act or not act, to approve or not approve, or to approve with conditions. The role of the decision-maker is to make a judgment taking into account all relevant information



STRUCTURE OF GOVERNMENT





STRUCTURE OF GOVERNMENT

COUNCIL OF MINISTERS

Administrative powers are statutorily vested in Ministers and other designated authorities

Ministers are assisted by Government departments and public officers

Ministers are accountable to His Majesty the Sultan and Yang Di-Pertuan



DELEGATION

General Rule is that the person named in the legislation must exercise the statutory power and no one else unless –

Permitted by –

1. Express authorisation by specific legislation
2. Pursuant to Interpretation and General Clauses Act (Chapter 4)
3. Carltona Principle



(1) EXPRESSLY PROVIDED BY LEGISLATION

Same powers conferred on assistants/deputies

Section 3(6) of the Customs Order, 2006:

“Deputy Controllers, Assistant Controllers, Senior Superintendents, Superintendents, Deputy Superintendents, and Assistant Superintendents of Customs and Excise shall be subject to the general direction and supervision of the Controller and, subject thereto, shall have and exercise all or any of the powers conferred on the Controller by or under this Order, other than those conferred by subsection (5) of section 11 and by section 23”



(1) EXPRESSLY PROVIDED BY LEGISLATION

Specific power to delegate in the statute:

Section 3(3) of Fisheries Order, 2009:

“The Director may delegate the exercise of any power or the performance of any duty conferred or imposed on him by this Order to the Deputy Director of Fisheries or to such other person as he may think fit”



(2) PURSUANT TO INTERPRETATION AND GENERAL CLAUSES ACT

Delegation of power of Minister:

“31A.(1) Where in any written law a Minister is empowered to exercise any power or perform any duty, he may, in the absence of any provision of law to the contrary, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the Gazette, depute any person by name or the person for the time being discharging the duties of an office designated by him to exercise such powers or perform such duties on behalf of the Minister subject to such conditions, exceptions and qualifications as His Majesty the Sultan and Yang Di-Pertuan may determine, and thereupon or from the date specified by His Majesty the Sultan and Yang Di-Pertuan, the person so deputed shall have and exercise such powers and perform such duties: ”



(2) PURSUANT TO INTERPRETATION AND GENERAL CLAUSES ACT

The requirement of s 31A (1):

- Must specify to whom and what powers to be delegated
- His Majesty the Sultan and Yang Di-Pertuan's approval
- Gazette notification



(2) PURSUANT TO INTERPRETATION AND GENERAL CLAUSES ACT

- The limits:
 - Cannot delegate power to make subsidiary legislation: proviso to section 31A(1) and section 32 Interpretation and General Clauses Act
 - Cannot delegate if there is a provision of law to the contrary (e.g. quasi-judicial power such as the power to consider and determine appeals)



(2) PURSUANT TO INTERPRETATION AND GENERAL CLAUSES ACT

Signing of documents

“17B. Where in any written law any document is required to be under the hand of or countersigned by a Minister in exercise of any powers conferred thereby, it shall be sufficient for such document to be under the hand of or signed or countersigned by the Permanent Secretary to the Ministry for which the Minister is responsible or by any public officer duly authorised in writing by the Minister.”



(3) CARLTONA PRINCIPLE

- Alter ego principle, not a delegation as such
- Power exercised by public officers in the name of and under the authority of the Minister (e.g. “for Minister for Finance”)
- Minister remains responsible for the decision
Rationale: Ministerial responsibility & administrative necessity



(3) CARLTONA PRINCIPLE

- Minister A wishing to employ Carltona principle must designate the person B he is prepared to have act on his behalf and in his own name, preferably in writing

Limits:

- B must be under A's control as A remains ultimately responsible (so B should be within A's Ministry/department)
- Act must not be inherently non-delegable or one that must be exercised by A personally



AGENCY

Agent is a third party (not part of Government) but acts for the Government in certain matters



CREATION OF AGENCY

1. Appointment by express agreement (contract)
 - Power of Attorney or Agency Agreement
2. Appointment by Statute
 - Some statutory boards are vested with statutory function of acting as the Government's agent for certain purposes (e.g. AMBD, AITI, DARE, BIA)



DELEGATION VS AGENCY

Delegation	Agency
B exercises power in B's own name as if B had that power	B acts on A's behalf
B is directly responsible for his own acts	A is directly responsible for B's acts
Within Government	Third party (not part of Government)



TERMINATION OF AGENCY

- Act of parties

- Operation of law:
 - Expiration of time
 - Performance
 - Incapacity (e.g. death, bankruptcy, liquidation)



KEY LEARNING POINTS

- Know the scope of your powers – the source of your power, and legislation that governs the area of your work
- Know who can exercise your powers – extended definition? power to delegate? Carltona principle?
- If in doubt, seek advice from your lawyers



QUESTION AND ANSWER SESSION

Public Officers' Law Seminar :
Understanding the Law
11th and 13th November 2017

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THANK YOU

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