



LEGISLATIVE DRAFTING WORKSHOP

*Dyg Hj Norazamiah binti Hj Hambali
Pemangku Penasihat Undang-Undang Kanan*

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I) COMMENCEMENT PROVISIONS

TAKE NOTE OF THE DIFFERENCE:

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2. When a law commences
3. When a law has effect

Q: When is the commencement date?

Date of signing

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

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

COMPULSORY EDUCATION ORDER, 2007

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

Citation and long title.

1. (1) This Order may be cited as the Compulsory Education Order, 2007.
- (2) The long title of this Order is "An Order to provide for compulsory education and for matters connected therewith or incidental thereto".

Regulations.

14. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 14th. day of Zulkaedah, 1428 Hijriah corresponding to the 24th. day of November, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

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

“shall commence
on”

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

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

COMPULSORY RELIGIOUS EDUCATION ORDER, 2012

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

Citation, commencement and long title.

1. (1) This Order may be cited as the Compulsory Religious Education Order, 2012 and shall commence on the 1st. day of January, 2013.

(2) The long title of this Order is “An Order to provide for compulsory religious education and for matters connected therewith or incidental thereto”.

Regulations.

16. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

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

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

“date to be
appointed....
notification in the
Gazette”

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

CENTRE FOR STRATEGIC AND POLICY STUDIES ORDER, 2006

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

Citation, commencement and long title.

1. (1) This Order may be cited as the Centre for Strategic and Policy Studies Order, 2006 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the establishment of the Centre for Strategic and Policy Studies and for matters connected therewith".

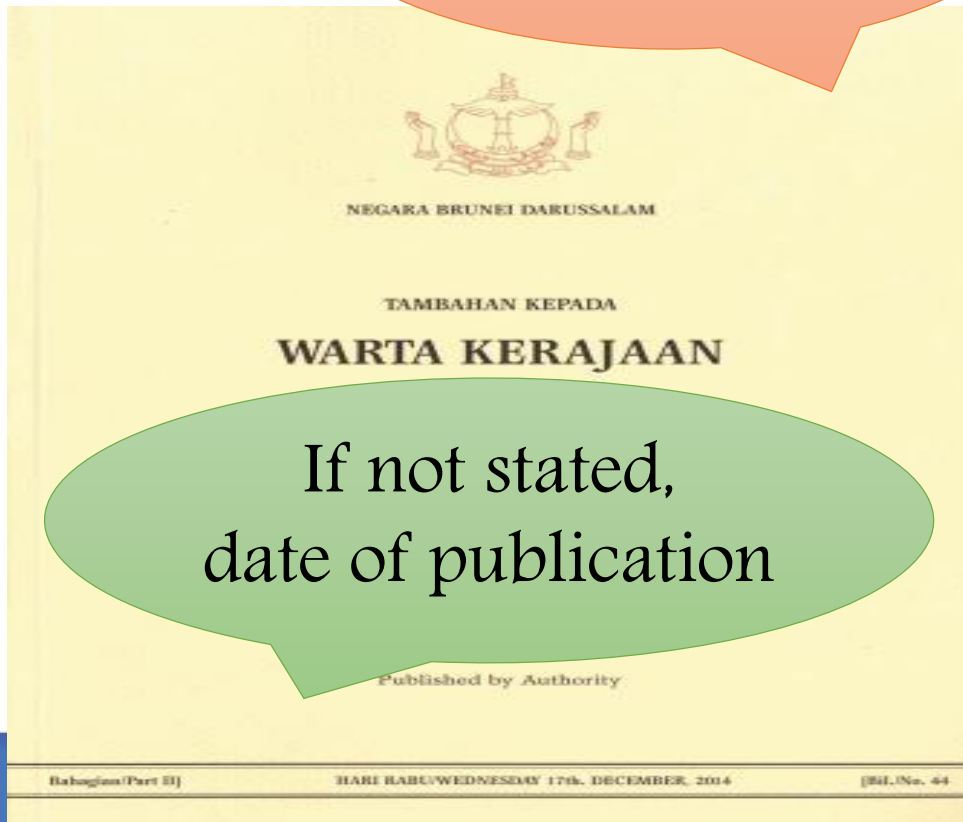
Rules.

25. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such rules as may be necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

Made this 20th. day of Rabiulakhir, 1427 Hijriah corresponding to the 18th. day of May, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

“same date as
the Order”



If not stated,
date of publication

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

BUILDING CONTROL ORDER, 2014

BUILDING CONTROL REGULATIONS, 2014

In exercise of the power conferred by section 74 of the Building Control Order, 2014, the Minister of Development, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Building Control Regulations, 2014 and shall commence on the same date as the Building Control Order, 2014.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

“acceptable solution” means the specifications, design, material or method of construction set out in an Approved Document as provided in regulation 31(1);

“alternative solution” means a solution that entails the use of any design, material or method of construction that differs completely or partially from those in the acceptable solution;

“approved” means approved by the Authority;

“Approved Document” means an Approved Document issued by the Authority under regulation 31;

**WHEN A BILL HAS BEEN PASSED
BY LEGISLATURE...**

It is not law yet!

WHEN A BILL HAS BEEN PASSED BY LEGISLATURE...

- 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
- Bill is then sent to His Majesty the Sultan and Yang Di-Pertuan for assent
- Article 45(1) of Constitution
 - 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

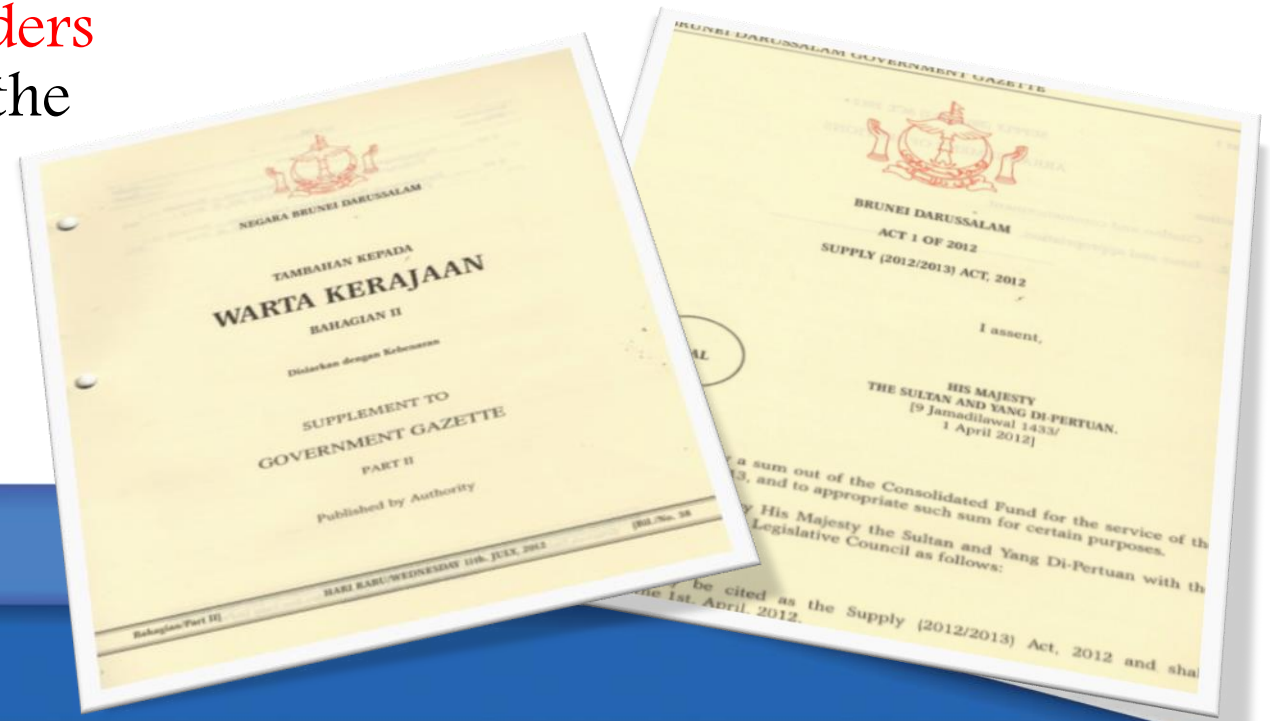


Principal Legislation

- Constitution – Article 83(3) : “makes any **Orders** whatsoever which he considers desirable in the public interest”
- Order/Acts – principal legislation, legal framework, substantive policies and matters

Subsidiary Legislation

- Rules, Regulations, By-Laws, Notifications, Orders, Proclamations
- Operational and technical details



PRINCIPAL LEGISLATION: COMMENCEMENT

- Section 1 contains the commencement date.
- If provision just states name of proposed Order (no reference to date), then it commences on the date of its signing by His Majesty the Sultan and Yang Di-Pertuan.

Example:

Citation

1. This Order may be cited as the XYZ Order, 2017.

***ALWAYS LOOK
AT CITATION!***

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

TOURISM ORDER, 2016

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

PART I

PRELIMINARY

Citation and long title

1. (1) This Order may be cited as the Tourism Order, 2016.

(2) The long title of this Order is “An Order for the establishment of the Brunei Darussalam Tourism Board and to regulate tourism enterprise and for matters connected therewith or incidental thereto”.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Made this 25th. day of Muharram, 1438 Hijriah corresponding to the 26th. day of October, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

- Commencement provisions may state date upfront.

Example:

Citation and commencement

1. This Order may be cited as the XYZ Order, 2017 and shall commence on 1st December 2017.

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

FREE TRADE ZONES ORDER, 2014

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

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Free Trade Zones Order, 2014 and shall commence on 1st January 2015.

(2) The long title of this Order is “An Order to provide for the establishment of free trade zones in Brunei Darussalam and for matters connected therewith and incidental thereto”.

31st. DECEMBER, 2014

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 28th. day of Safar, 1436 Hijriah corresponding to the 21st. day of December, 2014 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

- If it is to be backdated, the date must be stated

Example:

Citation and commencement

1. This Order may be cited as the XYZ Act 2017 and shall be deemed to have commenced on 1st July 2017.

NOTE :

Retrospective laws NOT encouraged, possible only if no prejudice.

NO retrospective criminal laws (new offences or enhancement of existing criminal penalties)

15th. AUGUST, 2016

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

BEAUTY AND HEALTH ESTABLISHMENTS ORDER, 2016

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

PART I

PRELIMINARY

Citation, commencement and long title

1. (1) This Order may be cited as the Beauty and Health Establishments Order, 2016 and shall be deemed to have commence on 1st January 2016.

(2) The long title of this Order is “An Order to regulate beauty and health establishments and for matters connected therewith or incidental thereto”.

Made this 29th. day of Syawal, 1437 Hijriah corresponding to the 3rd. day of August, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

- Date to be notified later since difficult to predict when the Order is ready to come into operation

Example:

Citation and commencement

1. This Order may be cited as the XYZ Act 2009 and shall commence on a date to be appointed by the Minister, with approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the Gazette.

NOTE: The *Gazette* notification can specify different dates for different provisions – section 8(3) Interpretation and General Clauses Act

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

SECURED TRANSACTIONS ORDER, 2016

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

PART I

PRELIMINARY

Citation, commencement and long title

1. (1) This Order may be cited as the Secured Transactions Order, 2016, and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is “An Order to provide for security interests in personal property relating to the creation, perfection, registration, priority and enforcement of personal property securities and for matters connected therewith”.

8th. FEBRUARY, 2017

No. S 11

SECURED TRANSACTIONS ORDER, 2016
(S 10/2016)

Notification of commencement

In exercise of the power conferred by section 1(1) of the Secured Transactions Order, 2016, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby appoints 19th December 2016 as the date on which that Order shall commence.

Dated this 7th. day of Rabiulakhir, 1438 Hijriah corresponding to the 5th. day of January, 2017.

AWANG HAJI NAZMI BIN HAJI MOHAMAD
Permanent Secretary,
Ministry of Finance,
Brunei Darussalam.

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

SYARIAH PENAL CODE ORDER, 2013

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

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Syariah Penal Code Order, 2013 and shall commence on such date or dates to be appointed by the Minister of Religious Affairs, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is “An Order relating to laws in respect of syariah crimes and any matter connected therewith.”

No. S 17

SYARIAH PENAL CODE ORDER, 2013
(S 69/2013)

Notification of commencement

In exercise of the power conferred by section 1(1) and (2) of the Syariah Penal Code Order, 2013, the Minister of Religious Affairs, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby appoints 1st Rejab 1435 Hijriah corresponding to the 1st May 2014 as the date of commencement for the provisions of that Order as set out in the Schedule hereto —

SCHEDULE

PROVISIONS OF SYARIAH PENAL CODE ORDER, 2013

PART I

PART II

PART III

section 94

section 184

section 185

sections 189 to 205

sections 207 to 220

sections 228 to 253

section 254 (except references to sections 172, 194 and 195 of the Religious Council and Kadis Courts Act (Chapter 77)).

Dated this 24th. day of Jamadilakhir, 1435 Hijriah corresponding to the 24th. day of April, 2014.

**PENGIRAN DATO SERI SETIA DR. HAJI MOHAMMAD
BIN PENGIRAN HAJI ABDUL RAHMAN**
Minister of Religious Affairs,
Brunei Darussalam.

SUBSIDIARY LEGISLATION: COMMENCEMENT

- Section 16 Interpretation and General Clauses Act
 - SL must be published in the *Gazette* (unless the principal Act expressly provides otherwise); and
 - Takes effect on the date of publication, unless otherwise provided in the SL

**INDUSTRIAL DESIGNS ORDER, 1999
(S 7/2000)**

INDUSTRIAL DESIGNS (INTERNATIONAL REGISTRATION) RULES, 2014

In exercise of the power conferred by sections 76A and 77(1) of the Emergency (Industrial Designs) Order, 1999, the Minister of Energy in the Office of the Prime Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

PART I

PRELIMINARY

Citation.

1. These Rules may be cited as the Industrial Designs (International Registration) Rules, 2014.

Burden of proving use of protected international design (Brunei Darussalam).

18. If in any civil proceedings relating to a protected international design (Brunei Darussalam), a question arises as to the use to which the design has been put, the holder of the international registration relating to the design bears the burden of showing what use has been made of it.

Communication of information to International Bureau.

19. Notwithstanding any written law or rule of law, the Registrar may communicate to the International Bureau any information which Brunei Darussalam is required to communicate under these Rules, the Geneva Act of the Hague Agreement or the Common Regulations.

Application of S 23/2000.

20. (1) Except as otherwise provided in these Rules, the Industrial Designs Rules, 2000 (S 23/2000) apply, with the necessary modifications, in relation to an international registration designating Brunei Darussalam and to a protected international design (Brunei Darussalam) as they apply in relation to an application for registration of a design and to a registered design.

(2) The provisions of the Order and the Industrial Designs Rules, 2000 (S 23/2000) relating to costs and security for costs and to evidence before the Registrar apply in relation to proceedings under these Rules in the same manner as they apply in relation to proceedings relating to a registered design or an application for registration of a design.

(3) For the avoidance of doubt, rules 3, 6 to 11, 15, 17, 19, 21, 22, 24, 25, 27, 28, 29, 30, 31, 32, 50, 51, 52, 59, 62 and 69 of the Industrial Designs Rules, 2000 (S 23/2000) do not apply to an international registration designating Brunei Darussalam or a protected international design (Brunei Darussalam).

Made this 29th. day of Syawal, 1435 Hijriah corresponding to the 25th. day of August, 2014.

**PEHIN DATU SINGAMANTERI COLONEL (R)
DATO SERI SETIA (DR.) AWANG HAJI MOHAMMAD YASMIN
BIN HAJI UMAR**
Minister of Energy in the Office of the Prime Minister,
Minister responsible for Industrial Designs.

SUBSIDIARY LEGISLATION: COMMENCEMENT

- Refer to the Citation provision in the Subsidiary Legislation
- If no date specified: SL comes into operation on **date of publication**
- But usually SL commences on same date as the Order

Example:

Citation and commencement

1. These Regulations may be cited as the XYZ Regulations, 2017 and shall commence on the same date as the XYZ Order, 2017

SECURED TRANSACTIONS ORDER, 2016

(S 10/2016)

SECURED TRANSACTIONS REGULATIONS, 2016

In exercise of the power conferred by section 92 of the Secured Transactions Order, 2016, the Minister of Finance may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Secured Transactions Regulations, 2016 and shall commence on the same date as the Secured Transactions Order, 2016 (S 10/2016).

- Where SL specifies commencement date that is well in advance ...
 - Be very sure that you are ready to operationalise SL on that date. Once published, the date of commencement cannot be amended. It would be necessary to revoke the entire SL and re-Gazette the SL with the new commencement date.

- SL can state different commencement dates, e.g. if one or more provisions need to take effect retrospectively or different dates for different policies.
- Consider splitting 2 separate SLs instead

NOTE:

- No SL can operate retrospectively to a date earlier than the commencement of the empowering provision in the principal legislation

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

SECURITIES MARKETS ORDER, 2013

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

PART I

PRELIMINARY

Citation.

1. This Order may be cited as the Securities Markets Order, 2013.

Made this 16th. day of Syaaban, 1434 Hijriah corresponding to the 25th. day of June, 2013 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

SECURITIES MARKETS ORDER, 2013
(S 59/2013)

SECURITIES MARKETS REGULATIONS, 2015

In exercise of the powers conferred by section 268 of the Securities Markets Order, the Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation, commencement and application.

1. These Regulations may be cited as the Securities Markets Regulations, 2015 and shall commence on such date to be appointed by the Authority, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

SECURITIES MARKETS ORDER, 2013
(S 59/2013)

SECURITIES MARKETS REGULATIONS, 2015
(S 2/2015)

Notification of commencement

In exercise of the power conferred by regulation 1 of the Securities Markets Regulations, 2015, the Autoriti Monetari Brunei Darussalam, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby appoints 1st February 2015 as the date on which those Regulations shall be deemed to have commenced.

Dated this 26th. day of Muharram, 1438 Hijriah corresponding to the 27th. day of October, 2016.

AWANG YUSOF BIN HAJI ABD RAHMAN
Managing Director,
Autoriti Monetari Brunei Darussalam.

PLEASE NOTE ...

- Give AGC advance notice of commencement date
- Commencement dates of related legislation would need to be co-ordinated.
- If intention is to give public notice of a new piece of legislation, that can always be placed on the website.

II) AMENDING LEGISLATION

- How legislation is amended
- Layout/Standard form
- Techniques of drafting amending provisions

HOW LEGISLATION IS AMENDED

- Amendment Principal Legislation (PL):
 - Primarily amends one particular principal legislation, will follow the name of the principal legislation being amended
 - Can contain consequential and related amendments to other principal legislation

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

PROTECTED AREAS AND PROTECTED PLACES ACT
(AMENDMENT)ORDER, 2015

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

Citation

1. This Order may be cited as the Protected Areas and Protected Places Act [Amendment]Order, 2015.

Amendment of section 2 of Chapter 147

2. The Protected Areas and Protected Places Act, in this Order referred to as the Act, is amended in section 2, by inserting the following new definition immediately before the definition of "officer commanding a Police District"—

“"Minister" means the Minister of Home Affairs,”.

Insertion of new section 6A

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

"Offences by authorised officer

6A. An authorised officer or any person authorised by the Commissioner of Police, any officer commanding a Police District and any police officer of or above the rank of assistant superintendent empowered by the Commissioner of Police or an officer commanding a Police District under section 3 —

(a) knowingly or negligently discloses to any other person information or any other matter which is likely to prejudice the safety of any person or property in a protected are or a protected place; or

(b) knowingly or negligently acts in any manner which is likely to prejudice the safety of any person or property in a protected area or a protected place,

is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 7 years or both.”.

4. Section 7 of the Act is amended by deleting "imprisonment for 2 years and a fine of \$2,000" from the last line and by substituting "imprisonment which may extend to 10 years and with whipping." therefor.

Repeal of section 11

5. Section 11 of the Act is repealed.

Amendment of Schedule to Chapter 4

6. The Schedule to the Interpretation and General Clauses Act is amended by inserting "Section 7 of the Protected Areas and Protected Places Act (Chapter 147)." immediately after "Section 29 of the Misuse of Drugs Act (Chapter 27).”.

Made this 21st. day of Zulhijjah, 1436 Hijriah corresponding to the 5th. day of October, 2015 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

LAYOUT OF AMENDING PL

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

SECURED TRANSACTIONS (AMENDMENT) ORDER, 2016

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

Citation

1. This Order may be cited as Secured Transactions (Amendment) Order, 2016.

Amendment of section 2 of S 10/2016

2. Section 2 of the Secured Transactions Order, 2016, in this Order referred to as the principal Order, is amended in subsection (2)(b), by deleting sub-paragraph (vii).

Amendment of section 3

3. Section 3 of the principal Order is amended, by deleting the definition of “Minister” and by substituting the following definition therefor —

Transitional and saving provisions.

17. (1) Every application for licences pending to be issued under the Act made before the date of commencement of this Order shall be deemed to be an application for a Business Licence.

(2) Any licence issued under the Act and in force immediately before the date of commencement of this Order shall continue to be in force for the remaining period of the licence and shall subsist until its expiry.

(3) Any public officer declared to be an authorised officer under the Miscellaneous Licences Regulations immediately before the date of commencement of this Order shall continue to be authorised officers under the Act as if the public officer had been appointed under section 2B of the Act.

- Heading
- Title

- Citation and commencement

- Amending clauses

- Clauses for saving, transitional provisions and consequential amendments

HOW LEGISLATION IS AMENDED

- Amendment Subsidiary Legislation (SL):
 - By convention, one piece of amending SL amends only one existing SL
 - E.g. the Road Traffic (Amendment) Rules amends only the Road Traffic Rules

**ROAD TRAFFIC ACT
(CHAPTER 68)**

ROAD TRAFFIC (AMENDMENT) REGULATIONS, 2004

In exercise of the power conferred by section 93 of the Road Traffic Act, the Minister of Communications, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation and commencement.

1. These Regulations may be cited as the Road Traffic (Amendment) Regulations, 2004 and shall commence on the same date as the Road Traffic Act (Amendment) Order, 2004.

Amendment of regulation 48.

2. Regulation 48 of the Road Traffic Regulations, in these Regulations referred to as the principal Regulations, is amended by inserting the following new sub-regulation immediately after sub-regulation [3] —

"[3A) No person shall be registered as the new owner of a motor vehicle or trailer if the licensing officer is satisfied that the registered owner of such motor vehicle or trailer has been, at the time of the application for such registration, indebted to the Government or a local authority for a period not exceeding 2 years in respect of such motor vehicle or trailer for the payment of any money (by whatsoever name so called) due under any provision of the Act or of any subsidiary legislation made thereunder:

Provided that any aggrieved person may request that the decision of the licensing officer not to register the new owner be confirmed by the Director who may confirm or rescind it or substitute therefor any decision that could lawfully have been made by the licensing officer."

Substitution of regulation 62.

3. The principal Regulations are amended by repealing regulation 62 and by substituting the following new regulation therefor —

***Conditions to be satisfied before issue of licence.**

62. A licensing officer shall not issue a motor vehicle or trailer licence until the motor vehicle or trailer has been duly registered, and shall not renew any such licence unless he is satisfied that —

**ROAD TRAFFIC ACT
(CHAPTER 68)**

**MOTOR CYCLES (PROTECTIVE HELMETS)
(AMENDMENT) REGULATIONS, 2004**

In exercise of the power conferred by section 93 of the Road Traffic Act, the Minister of Communications, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation.

1. These Regulations may be cited as the Motor Cycles (Protective Helmets) (Amendment) Regulations, 2004.

Amendment of S 42/77.

2. Regulation 3 of the Motor Cycles (Protective Helmets) Regulations, 1977 is amended —

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

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

"(c) the Malaysian Standard Specification MS.6.1:1969 as published by the Standards Institution of Malaysia,".

Made this 24th. day of Muharam, 1425 Hijriah corresponding to the 16th. day of March, 2004.

PEHIN ORANG KAYA AMAR PAHLAWAN
DATO SERI SETIA HAJI AWANG ZAKARIA BIN
DATU MAHAWANGSA HAJI SULAIMAN
Minister of Communications,
Brunei Darussalam.

LAYOUT OF AMENDING SL

EMPLOYMENT ORDER, 2009 (S 37/2009)

EMPLOYMENT (DOMESTIC WORKERS) (AMENDMENT) REGULATIONS, 2014

In exercise of the power conferred by section 111 of the Employment Order, 2009, the Minister of Home Affairs, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations –

Citation.

1. These Regulations may be cited as the Employment (Domestic Workers) (Amendment) Regulations, 2014.

Amendment of regulation 2 of S 39/2009.

2. Regulation 2 of the Employment (Domestic Workers) Regulations, 2009, in these Regulations referred to as the principal Regulations, is amended in sub-regulation (1), by deleting the item “Part II (Contracts of service)” and by substituting the item “Part II (Contracts of service), except section 14[1]” therefor.

Addition of new regulation 3.

3. The principal Regulations are amended by adding the following new regulation –

“Maximum duration of contracts of service.

3. The duration which may be stipulated or implied in any contract of service involving a journey from the place of recruitment to the place of employment shall not exceed 3 years.”.

Made this 6th. day of Sya’aban, 1435 Hijriah corresponding to the 4th. day of June, 2014.

PEHIN UDANA KHATIB DATO PADUKA SERI SETIA
USTAZ HAJI AWANG BADARUDDIN BIN
PENGARAH DATO PADUKA HAJI OTHMAN,
Minister of Home Affairs,
Brunei Darussalam.

- PL Heading
- Title
- Enacting formula

- Citation and commencement

- Amending provisions

- Date of enactment

- Signature Block

TECHNIQUES OF DRAFTING AMENDING PROVISIONS

“21. The Religious Council may make rules for carrying out the purposes of this Act.”

- Textual amendments (preferred & norm)

The Act is amended by deleting “Religious Council” where they appears and by substituting “Islamic Religious Council” therefor.

- Non-textual (referential) amendments

... it is hereby notified that His Majesty the Sultan and Yang Pertuan has directed that the style of the “Religious Council” in any written law shall be changed to that of the “Islamic religious Council”.

2 TYPES OF TEXTUAL AMENDMENT

- Substitution method: substitute entire section, subsection or paragraph with new section, subsection or paragraph.
- Text replacement method: replaces or deletes targeted words within a provision, or adds a word to a provision.

Substitution method

- Section 74 of the Act is repealed and the following new section substituted therefor –
“Power of Registrar to publish journal
74. (1) The Registrar may publish or cause to be published a journal to be called the Trade Marks Journal in which there may be published such documents and information relating to a registered trade mark or an application for registration as the Registrar thinks fit.
(2) For the avoidance of doubt, the Journal shall be the official journal of record.
(3) A publication specified under the Journal need not be in a documentary form.”.
- Section 5 of the Act is amended by repealing subsection (1) and by substituting the following new subsection therefor –
“(1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such deduction and payment of tax at the source in respect of income from any employment, and for the recovery of tax so deducted ; and
les to provide for –
(a) (b) such other matters as are authorised or required by this Act to be prescribed.”.

Disadvantage: does not highlight the particular change.

Text Replacement Method

- in subsection (1), by deleting “public notification” from the second line and by substituting "notification published in the Gazette" therefor
- Section 5 of the principal Order is amended by inserting “or section 4A(1)” immediately after "4" in the first line.
- Section 38 of the Bankruptcy Act, in this Order referred to as the Act, is amended, in subsection (1) –
 - (a) in paragraph (b), by deleting “and” from the last line;
 - (b) in paragraph (c), in the proviso, by deleting the full stop and by substituting a semicolon therefor;
 - (c) by adding the following new paragraph immediately after paragraph (c) –
 - “(d) all amounts due in respect of contributions payable during 12 months next before, on or after the commencement of the date of the receiving order as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation which is an approved scheme under any other written law or any regulations made thereunder.”.

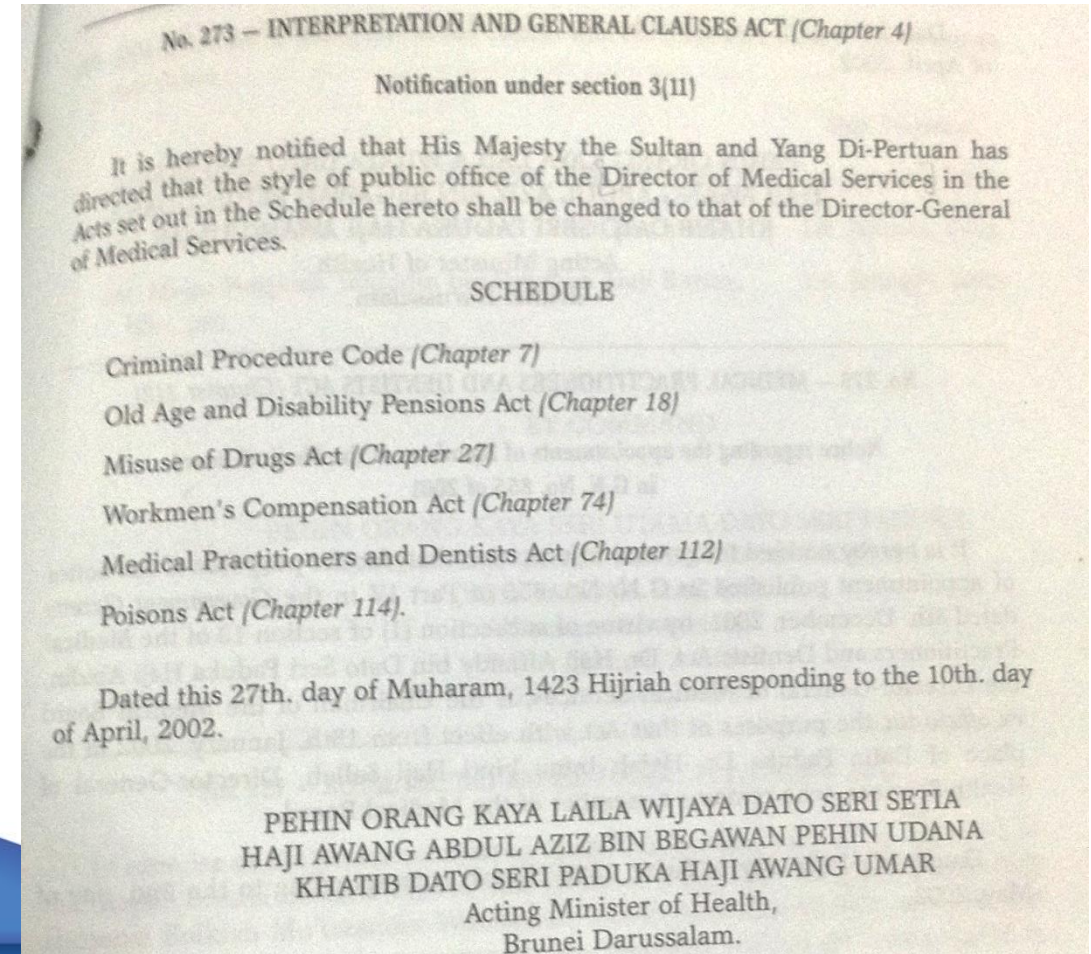
Disadvantage: does not show how the law will appear after amendment.

NON TEXTUAL (REFERENTIAL) AMENDMENT

■ Example: Section 3(11) Interpretation and General Clauses Act

- Restyling of designation of public office etc.

(11) Whenever His Majesty the Sultan and Yang Di-Pertuan, by notification signified in the Gazette, directs that the style of any public office or of one or more officers holding the same public office, or of any public body or any other public authority, or of any place be changed, a reference to such office, officer or officers, body, authority or place in any written law shall be construed as a reference to such office, officer, officers, body, authority or place as so restyled.



PROBLEMS WITH REFERENTIAL AMENDMENT

- Will not cover variations e.g “Director; Medical Services”
- Does not actually amend the law, which could result in confusion. e.g. The text of the provision refers to “Director”. The amendment referentially changes it to “Director-General”.
 - If a subsequent amendment is made to the provision, who do we refer to?

DRAFT THIS!!

BEAUTY AND HEALTH ESTABLISHMENTS ORDER, 2016 (S 46/2016)

Offences

20. Any person who carries on a beauty and health without a valid licence issued by the Registrar is guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Amend to:

Offences

20. Any person who carries on a beauty and health establishment without a valid licence issued by the licensing authority is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or both.

Commencement: 1/7/2017

TECHNIQUES OF DRAFTING AMENDING PROVISIONS

Amendments must be intelligible:

- Try to avoid “bare” amendments. E.g. Change from “Minister of Industry and Primary Resources” to “Minister of Primary Resources and Tourism” –
 - Bare amendment: delete “Industry” and add “Tourism”.
 - Expanded amendment: by deleting the words “of Industry and” and by adding the words “and Tourism”
 - Fuller amendment: by deleting “Minister of Industry and Primary Resources” and by substituting “Minister of Primary Resources and Tourism” therefor.
- If amendments to a provision are extensive, consider repealing and re-enacting the whole provision.

TECHNIQUES OF DRAFTING AMENDING PROVISIONS

- General rule: one clause per part (section, part, Schedule) to be amended, following sequence in principal legislation
- Exception 1: one clause can cover 2 or more consecutive sections or Parts of the principal legislation to be repealed and/or substituted

Amendment of section 10

4. Section 10 of the Customs Order, 2006 is amended, in subsection (3), by deleting “Minister” and by substituting “Controller” therefor.

Further amendment to the Act

The Act is amended by deleting “Minister” where they appears and by substituting “Controller” therefor.

TECHNIQUES OF DRAFTING AMENDING PROVISIONS

- Exception 2: If there are amendments to a number of provisions that affect different piece of legislation, group the amendments into a schedule.

FOURTH SCHEDULE (section 27)	
CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER WRITTEN LAWS	
FIRST COLUMN	SECOND COLUMN
1. Tabung Amanah Pekerja Act (Chapter 167)	
Long title	Delete "and incorporate the Lembaga Tabung Amanah Pekerja," and substitute with "the Employee Trust".
Section 1	Delete "Tabung Amanah Pekerja" and substitute with "Employee Trust".
Section 2	Delete the definitions of "approved fund", "Chairman", "Deputy Chairmen" and "Managing Director". Delete the definition of "Board" and substitute with the following new definition – " "Board" means the Tabung Amanah Pekerja Board established under section 3 of the Tabung Amanah Pekerja Board Order, 2015;"
	Delete the definition of "Chief Executive".
	Delete the definition of "Fund" and substitute with the following new definition – " "Fund" means the Tabung Amanah Pekerja Fund established under section 11 of the Tabung Amanah Pekerja Board Order, 2015;"
	Delete the definition of "members of the Fund" or "members" and substitute with the following new definition –

SOME DRAFTING CONVENTIONS

- Avoid renumbering existing provisions
- Where amendment instrument contains more than 4 clauses, then the 1st reference to the PL or SL being amended will include an abbreviation, to “Act/principal Order” or “principal SL” for remaining amendments
 - Exception: where the name of the Act/principal Order or SL being amended contains only 2 words

Citation

1. This Order may be cited as the Customs (Amendment) Order, 2017.

Insertion of new section 154A to S 39/2006

2. The Customs Order, 2006 is amended by inserting the following new section immediately after section 154 —

“Securities for payment of duty and compliance with this Order

154A. (1) The Controller shall have the right to require and take securities for payment of duty and generally for compliance with this Order and for the protection of revenue.

(2) Pending the giving of the required security, a proper officer of customs may refuse to do any act in the execution of his office in relation to any matter in respect of which the security is required.

(3) The security shall be given in the manner and form determined by the Controller and may be by bond, guarantee, cash deposit or any other method or by the combination of 2 or more such methods.

(4) Any such security may be given in relation to any particular transaction or generally with respect to any class of transactions or to all transactions and for such period and amount as the Controller thinks fit and under such conditions as to forfeiture, penalty or otherwise as he may determine.

(5) If at any time the Controller is not satisfied with the sufficiency of any security, he may require a new security in substitution for or in addition to the security which has been given.”.

Amendment of section 81 of S 1/2016

2. Section 81 of the Insolvency Order, 2016, in this Order referred to as the principal Order, is amended —

(a) by inserting the following new subsection immediately after subsection (1) —

“(1A) The nomination under subsection (1) shall be approved by a majority of the creditors.”;

(b) in subsection (2), by adding “and approved by the creditors”.

Amendment of section 99

3. Section 99 of the principal Order is amended —

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

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

(c) by adding the following new paragraph —

“(h) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members.”;

(d) by adding the following new subsection —

“(2) On an application for winding up on the ground specified in subsection (1)(g) or (h), instead of making an order for the winding up, the

CHECKLIST FOR DRAFTING AMENDING LEGISLATION

- Are the amendments comprehensive?
- Do legislative proposals go beyond the scope of the PL? Check long title.
- Is language and style of amending provision consistent with provisions in PL/SL?
 - This is to avoid interpretive problems arising from inconsistency usage.
- Are amendments consistent with other parts of the PL/SL?
- Are there previous amendments to PL not yet brought into force?
- Have all consequential amendments to PL/SL and other PL/SL been identified and made (cross-references, etc.)?
- Ensure that the amendments are complete, e.g. if inserting new provision, insert also a suitable heading for it
- Are transitional and savings provisions necessary?

III) FEES

- What is it?
- Imposition by legislation
- Refund and Retention
- Fees for exemption?

■ What is a fee?

- “A quid pro quo for a service or benefit conferred”
- To be contrasted with Tax: no need to confer any service or benefit. “A tax is compulsory exaction of money for a public purpose”.
- Fees should be for some service actually provided:
 - If the payee has no choice about getting the service, or if the amount of fee is not for cost recovery, then it may be a tax.
 - No tax or rate may be levied unless authorised by law:
Article 56 of Constitution of Brunei Darussalam

**LETS DISCUSS:
What is your fees?**

IMPOSITION OF FEES BY LEGISLATION

- Fee imposed by Act/Order or subsidiary legislation.
- If imposed by subsidiary legislation, Act/Order must properly empower the making of such subsidiary legislation:
 - General power to make subsidiary legislation is not sufficient: “The Minister may make regulations for carrying out the purposes and provisions of this Act.”
 - Power to impose fees by subsidiary legislation must be specifically referred to in the Act: “The Minister may make rules to prescribe the fees to be charged for the purposes of this Act.”
- If Act/Order empowers making of subsidiary legislation to prescribe any fee, that fee cannot be collected unless it is so prescribed.

IMPOSITION OF FEES BY LEGISLATION

- Power to impose late payment fees or charges must be specifically referred to in Act
 - Late payment fees or charges are generally in the nature of interest or penalties and not for the provision of any service

IMPOSITION OF FEES BY CONTRACT

- Fees imposed by contract or voluntary arrangement
 - Generally, only for services not referred to in Act or subsidiary legislation
 - Imposition by contract of fee for function in Act must be empowered by Act

REFUND OF FEES

- Section 13(b) Interpretation and General Clauses Act

(b) authority to provide for fees and charges shall include authority to provide for the reduction, waiver or refund thereof, either generally or in any particular event or case, or class of cases, or in the discretion of any person;

- Section 48 Interpretation and General Clauses Act

48. Any fee or charge by or under any written law made payable to the Government or to any public body or public officer, not being a fee or charge which is regulated by rules of court —

(a) may be reduced or varied by order of His Majesty the Sultan and Yang Di-Pertuan in Council: Provided that any variation thereof shall not exceed the original figure;

(b) may, in any particular case and on any special ground, be remitted or refunded, in whole or in part, by His Majesty the Sultan and Yang Di-Pertuan in Council.

RETENTION OF FEES

■ Who keeps the fees collected?

Article 58 of Constitution –

Consolidated Fund.

58. All revenues and moneys howsoever raised or received by the Government from whatsoever source shall, subject to this Constitution and any written law, be paid into and form one fund to be known as the “Consolidated Fund”.

■ If fee is to be retained by a statutory body, this should be expressly provided for by the empowering Act. Example:

Fees collected to be paid into funds of Authority.

75. All fees collected by the Authority under this Order or any other written law shall be paid into the funds of the Authority

FEES AND EXEMPTIONS

- Can we charge fees for exemptions?
 - Exemptions are the means by which an administrator ensures that the law does not work unjustly
 - Seeking fees for the grant of an exemption is tantamount to paying the administrator to “look the other way”
 - What if the person seeking exemption is unable to pay?
- Not appropriate to charge fees for exemptions

PENAL PROVISIONS

- What is penal provisions?
- When is it required?
- How is it drafted?
- Composition

1) What is penal provisions?

- A provision that makes an action or a failure to comply a criminal offence
- Consists of 3 elements:
 - The prohibited act – (A person who.....);
 - A statement that the breach of the prohibition is an offence (commits an offence);
 - The punishment for the offence (liable on conviction to...)

General penalty

Any person who commits an offence under this Order for which no penalty is expressly provided is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Specific Penalty

Any person who –

- (a) carries on a beauty and health establishment in respect of which he does not hold a valid licence;
 - (b) for the purpose of obtaining, whether for himself or any other person, the issue of any licence under the provisions of this Order makes any declaration or statement which is false in any material particular or knowingly alters, produces or makes use of any such declaration or statement or any document containing the same;
 - (c) refuses to licence the licensing authority or any officer authorised by him to enter or inspect any licensed place which the officer is authorised under this Order to enter and inspect or obstructs any such officer in the execution of his duty under the provisions of this Order or any regulations made thereunder;
 - (d) carries on a beauty and health establishment in contravention of the provisions of this Order or any regulations made thereunder or any condition of a licence; or
 - (e) issues, publishes or displays or causes to be issued, published or displayed any advertisement relating to beauty and health establishment which is not licensed in accordance with the provisions of this Order,
- is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day during which the offence continues after conviction.

2) When is it required?

- Consider other options before creating an offence
- Are there alternative avenues to redress
- Is the same conduct already an offence?
 - Penal Code

3) How to frame an offence?

- 4 Ws
 - WHO?
 - WHAT?
 - WHEN?
 - WHERE?
- Statement that breach is an offence
- Statement of punishment
- Defences

WHO

- Person liable for offence must be clear
- Offence directed at persons or specific classes of persons
- Person may be made responsible for the conduct of another
- One or more defendants for the same offence
- If both are to be prosecuted (regardless of fault), use “the owner and the master shall each be guilty of an offence”
- Offences by bodies corporate and other entities
- Officer of body corporate, partnership or unincorporated association can be made personally liable if the offence was attributable to his conduct

Offences by body corporate

90. (1) If a body corporate commits an offence under this Order, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management —

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) if the body corporate is found to have committed the offence, shall be deemed to have committed that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves —

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

(2) If any person would be liable under this Order to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed —

(a) by that person's employee in the course of his employment;

(b) by the agent when acting on behalf of that person; or

(c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person.

WHAT

- Actus reus (physical element)
- Mens rea – intent, recklessness, knowledge, negligence
- Strict liability offences – no proof of mens rea being required
 - Offences are –
 - public health, wealth or safety nature;
 - Involving things as minor traffic violations;
 - Sale of impure food;
 - Violations of liquor laws;
 - Pollution of rivers etc.



WHEN

- Offences cannot be backdated
- Different penalties for same offences (depending on when they are committed)

WHERE

- Express provision is required if the provision is to have extra territorial effect
- If there is not such express provision, then the penal provision is presumed to apply to events and persons within Brunei Darussalam
- Extra-territorial offences are exceptional and must be properly justified

Statement of breach

- Prohibition alone insufficient to create an offence – need the operative words “is guilty of an offence”
- Contravene includes failure to comply
- Specific provisions vs general penalty provisions

Statement of punishment

- Formula for imposing punishment – discretionary/mandatory
- Types of punishment – fine, imprisonment, whipping, death etc
- Level of punishment
 - Must be internally consistent
 - Seriousness of problem and level of deterrence necessary
 - Consider penalties for similar offences

Defences

- Offence specific defences – “it shall be defence for him to prove...”
- Generally discouraged, as it conflict with fundamental principle that prosecution must prove every element or offence
- Only if permitted if –
 - Matter peculiarly within knowledge of defendant
 - It would be significantly more difficult for prosecution to disprove matter
- General offences in Penal Code are available eg unsound mind, intoxication, consent, self defence, minor

4) How is penal provision administered

- 1) Which court should hear the prosecution proceedings?
 - Jurisdiction of court – level of punishment of offence
 - Part II Criminal Procedure Code
- 2) What limitations should be placed on prosecution?
 - Generally - NO TIME LIMIT
- 3) How to prove an offence?
 - Innocent until proven guilty
 - Presumption
- 4) Powers of enforcement
 - To require information, search and seizure, arrest

5) General provisions relevant to drafting

- Interpretation and General Clauses Act
 - Section 13(a)(i) - authority to make subsidiary legislation include authority to provide that a contravention thereof shall be punishable by imprisonment for such term, not exceeding 6 months, or with such fine not exceeding \$10,000, or by both such fine and imprisonment, as may be specified in the subsidiary legislation
 - Section 39 – Prescribed penalties deemed maximum

Composition

■ What?

- A procedure by which a person reasonably suspected of having committed an offence pays a sum of money to an administrator to avoid prosecution in court
- Must be authorised by the law itself
- Not meant to enable a Ministry/statutory board to make money from the offender
- Only offences prescribed as compoundable may be compounded
- Composition sums received by Government – Consolidated Fund
- Composition sums received by statutory board officers – Statutory Board/Consolidated Fund
- Prescribed by Order or SL

Composition of offences

91. (1) The Commissioner of Police or any police officer authorised by him in writing in that behalf, or the Director or any person authorised by him in writing in that behalf, may in his discretion compound any such offences against any Act or against any rules or regulations made thereunder as may be prescribed as an offence which may be compounded, and in his discretion compound such offence by collecting from the person reasonably suspected of having committed the same a sum of money not less than \$50 and not exceeding \$500.

(2) The Minister, may with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules to prescribe the offences which may be compounded and the method and procedure thereof.

ROAD TRAFFIC ACT
(CHAPTER 68)

ROAD TRAFFIC (COMPOSITION OF OFFENCES) RULES, 2016

In exercise of the power conferred by section 91 of the Road Traffic Act, the Minister of Communications, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

Citation and commencement

1. These Rules may be cited as the Road Traffic (Composition of Offences) Rules, 2016 and are deemed to have commenced on 1st January 2014.

Offences which may be compounded

2. The offences set out in the Schedule may be compounded by the Commissioner of Police or any police officer authorised by him in writing in that behalf, or the Director or any person authorised by him in writing in that behalf in accordance with section 91(1).

Form

3. An offer to compound shall be in such form as the Commissioner of Police or Director may determine.

Methods of payment

4. (1) When an offer to compound an offence is made and accepted, payment for it shall be made within 14 days from the date the offer to compound was made —

(a) by cash to the Commissioner of Police, the Director or a police officer or person authorised to make the offer to compound pursuant to rule 2, as the case may be, at the place where the offer to compound was made or at the office or police headquarters of the appropriate Police District specified in the offer to compound and he shall account for it in the ordinary way and issue a receipt for such payment to the person to whom the offer to compound was made; or

(b) by an electronic fund transfer system whereby payment may be effected by directing the transfer of funds electronically from the bank account of the payer to a bank account designated by the Commissioner of Police or the Director, who shall account for the payment.



QUESTION AND ANSWER SESSION



THANK YOU

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