ROYAL BRUNEI ARMED FORCES ACT
(CHAPTER 149)

ROYAL BRUNEI ARMED FORCES RULES OF PROCEDURE

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SUBSIDIARY LEGISLATION

ROYAL BRUNEI ARMED FORCES RULES OF PROCEDURE

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SUBSIDIARY LEGISLATION

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ROYAL BRUNEI ARMED FORCES RULES OF PROCEDURE

Commencement: 12th January 2006

PART 1

PRELIMINARY

Citation

1. These Rules may be cited as the Royal Brunei Armed Forces Rules of Procedure.

Interpretation

2. (1) In these Rules, unless the context otherwise requires —

"convening a fresh court" includes dissolving the existing court;

"member" when used in relation to a court-martial does not include the president;

"special finding" means, when used in relation to —

(a) section 93, any finding which a court-martial may make in accordance with that section;

(b) section 108, a finding in accordance with subsection (3) of that section that the accused is not guilty by reason of insanity;

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(c) rule 64(3), a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

(2) Unless there is intention to the contrary, other expressions in these Rules have the same meanings as if these Rules form part of the Act.

Avoidance of delay by commanding officers in investigating charges

3. (1) Where a person subject to military law under the Act has been arrested and detained by military authority, his commanding officer shall, unless it is impracticable, within 48 hours of becoming aware of the person's detention, have such person brought before him and inform him of the allegations against him.

(2) Upon the arrest of a person under subrule (1), his commanding officer shall duly investigate the allegations against such person without unnecessary delay pursuant to section 75(1).

(3) Every case of such a person being arrested and detained beyond the period of 48 hours referred to in this rule without such investigation required under subrule (2) being commenced and the reason therefore shall be reported by his commanding officer to a higher authority.

8 days delay report

4. (1) The report required by section 75(2) with regard to the necessity for further delay bringing an accused to trial shall be in the form set out in Schedule 1 and shall be signed by his commanding officer.

(2) The report shall be sent to the officer who is responsible for convening a court-martial for the trial of the accused.

Arrest not to exceed 72 days without permission from higher authority

5. (1) An accused shall not be held under arrest for more than 72 consecutive days without a court-martial being convened for his trial and there is a direction in writing that he shall not be released from arrest.

(2) When giving such a direction, such officer shall state his reasons for giving it.

PART 2

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

Methods of investigating charges

6. (1) Subject to subrule (3), when a commanding officer investigates a charge, he shall first read and, if necessary, explain the charge to the accused and shall then —

(a) hear the evidence himself in accordance with rule 7; or

(b) cause the evidence to be reduced to writing, in accordance with subrule (2), and read and consider it:

Provided that —

(i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;

(ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7;

(iii) at any time in the course of investigating a charge, he may stay further proceedings in accordance with the provisions of section 81;

(iv) before he submits to higher authority a charge against an officer or warrant officer, or remands a non-commissioned officer or soldier for trial by court-martial, he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9:

Provided that a summary of evidence must be taken if —

(a) the maximum punishment for the offence with which the accused is charged is death;

(b) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 11, requires in writing that a summary of evidence be taken; or

(c) the commanding officer is of the opinion that the interests of justice require a summary of evidence be taken.

(3) Where the evidence taken in accordance with subrule (1) discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

Hearing of evidence by commanding officer

7. When a commanding officer investigates a charge by hearing the evidence himself —

(a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness;

(b) the accused shall be allowed to cross-examine any prosecution witness;

(c) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;

(d) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;

(e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;

(f) if the evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 32.

Summary of evidence

8. A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in Schedule 1 —

(a) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;

(b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence purporting to be signed by him, may be read to the accused and included in the summary of evidence, but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

(c) after all the evidence against the accused has been given, the accused shall be asked —

"Do you wish to say anything in answer to the summary of evidence? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you fail to do so before your trial, the court may draw such inferences, adverse to you, as it may think proper. If you wish to mention any fact now, and you would like it written down this will be done.";

(d) the accused may call witnesses in his defence, who shall give their evidence orally:

Provided that, if a person cannot be compelled to attend as a defence witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any defence witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in this summary of evidence;

(e) neither the accused nor the witness for the defence shall be subject to cross-examination;

(f) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;

(g) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;

(h) the oath shall be administered in accordance with rule 32 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter:

Provided that where, a child called as a witness, does not, in the opinion of the officer taking the summary of evidence, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary of evidence, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

(i) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provisions of this rule.

Abstract of evidence

9. (1) An abstract of evidence shall be made in the following way and shall be in accordance with the form set out in Schedule 1 —

(a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

(b) the accused should not be present while the abstract of the evidence is being made;

(c) it shall consist of a signed statement by, or a precis of the evidence of, each witness whose evidence is necessary to prove the charge; and

(d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with subrule (1), a copy of it shall be handed to the accused and he shall be cautioned in the following terms —

"This is the abstract of evidence in your case. Do you wish to say anything in answer to it? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you fail to do so before your trial, the court may draw such inferences, adverse to you, as it may think proper. If you wish to mention any fact now, and you would like it written down, this will be done.".

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it.

(3) After the accused has been given an opportunity of making a statement in accordance with subrule (2), and after his statement (if any) has been recorded, he may submit to the officer making the abstract the statements of any witness he wishes to be attached to the abstract of evidence and such statements shall be attached to the abstract of evidence and shall thereafter form part of the abstract of evidence.

(4) Any statement made by the accused in accordance with subrule (2) and any statements of witnesses submitted by him in accordance with subrule (3) shall be attached to the abstract of evidence and shall thereafter form part of it.

(5) A certificate made by the person who complied with subrule (2), stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall thereafter form part of it and this certificate shall be in the form set out in Schedule 1.

Investigation before summary dealing by commanding officer

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing —

(a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and

(b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

Reference of charges to higher authority

11. When a commanding officer submits to a higher authority a charge against an officer or warrant officer or has remanded a non-commissioned officer or soldier for trial by court-martial, he shall send to higher authority —

(a) a copy of the charge on which the accused is held;

(b) a draft charge sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;

(c) the summary or abstract of evidence;

(d) a statement of the character and service record of the accused; and

(e) a recommendation as to how the charge should be proceeded with.

Commanding officer not to dismiss charge

12. After a commanding officer has referred a charge to a higher authority in accordance with rule 11 he shall not dismiss it unless it has been referred back to him with a direction to dismiss it.

PREPARATION OF CHARGE SHEETS AND FRAMING OF CHARGES

Charge sheets

13. A charge sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under section 43(1), 44, 52(1) (where that charge is connected with a charge under either of the before-mentioned provisions) or 60 may be included in any charge sheet, notwithstanding the other charges in that charge sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

Contents of charge sheet

14. The commencement of each charge sheet shall state the numbers, rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to military law or otherwise liable to trial by court-martial.

Charges

15. The provisions of Chapter XVIII of the Criminal Procedure Code (Chapter 7) shall *mutatis mutandis* apply to charges under these Rules.

Action by higher authority on receipt of charge

16. When a higher authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that the authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send the appropriate superior authority or other officer concerned the documents mentioned in rule 11 together with his own recommendation as to how the case should be proceeded with.

INVESTIGATION OF, AND SUMMARY DEALINGS WITH, CHARGES BY APPROPRIATE SUPERIOR AUTHORITY

Documents to be given to officers, warrant officers and civilians dealt with summarily

17. An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than 24 hours before the charge is so investigated and dealt with, a copy of the charge sheet containing the charge upon which he will be so dealt with and a copy of the summary or abstract of evidence.

Investigation of, and summary dealings with, charges against officers, warrant officers and civilians

18. When an appropriate superior authority investigates and deals summarily with a charge —

(a) he shall first read the charge to the accused;

(b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them and if the witnesses against the accused do not give their

evidence orally the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;

(c) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;

(d) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;

(e) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 28;

(f) when an appropriate superior authority awards the punishment of forfeiture of seniority the award shall be in the form set out in Schedule 4;

(g) a record shall be made of the proceedings in accordance with the form set out in Schedule 2.

CONVENING OF COURTS-MARTIAL

Duties of convening officer when convening courts-martial

19. (1) Subject to subrule (2), when an officer convenes a court-martial he shall —

(a) issue a convening order in the form set out in Schedule 3;

(b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;

(c) if he is of the opinion that charges should be put in separate charge sheets, so direct and direct the order in which they are to be tried;

(d) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;

(e) appoint the president and members of the court and any waiting members in accordance with rule 20;

(f) if convening a court-martial at which he considers there should be a Judge Advocate, take the necessary steps to procure the appointment of a Judge Advocate by or on behalf of the Judge Advocate General, and failing such appointment, he shall himself appoint a suitable person so to act;

(g) appoint an officer subject to military law or counsel assisted by such an officer to prosecute or detail a commanding officer to appoint an officer subject to military law to prosecute:

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;

(h) appoint the date, time and place for the trial;

(i) send to the president the charge sheet, the convening order and, in any case in which a Judge Advocate has not been appointed, a copy of the summary or abstract of evidence from which any evidence, which in his opinion would be inadmissible under the Act at the court-martial has been expurgated;

(j) send to each member of the court and to each waiting member a copy of the charge sheet;

(k) send to the prosecutor copies of the charge sheet and convening order and the original summary or abstract of evidence;

(l) send to the Judge Advocate (if any) copies of the charge sheet and convening order and a copy of the summary or abstract of evidence;

(m) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 22; and

(n) take steps in accordance with rule 88 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 22:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has reasonably requested and if the accused refuses to defray or to undertake to defray, as the case may be, such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

(2) When an officer convenes a court-martial consequent on an order authorising a retrial made under section 149 —

(a) subrule (1)*(b)* shall not apply but the convening officer shall direct that a charge sheet shall be prepared in accordance with the provisions of section 149(4) and with any directions which may have been given by the Court of Appeal and that the accused shall be tried on the charge in that charge sheet;

(b) when it is proposed to tender any evidence given by any witness at the original trial as evidence at the retrial in accordance with the provisions of section 151, the convening officer shall send to the accused as soon as practicable and in any case not less than 24 hours before his trial and also to the president, the Judge Advocate (if any) and the prosecutor, a copy of any such evidence.

Appointment of president and members

20. The convening officer shall —

(a) appoint the president of a court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint an officer of a specified rank; and

(b) appoint such waiting members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

Officer under instruction

21. (1) Subject to rule 78, any officer subject to military law may, by direction of the convening officer or at the discretion of the president, remain with court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

Preparation of defence

22. (1) An accused who has been remanded for trial by a court-martial shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with his witnesses.

(2) A defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than 24 hours before his trial, he shall be given —

(a) a copy of the charge sheet;

(b) a copy of the summary or abstract of evidence;

(c) notice of any additional evidence which the prosecution intends to adduce; and

(d) a copy of the convening order and, if the accused so requires, the names of any member or waiting member not appointed by name.

(5) When an accused is given a copy of the charge sheet and of the summary or abstract of evidence in accordance with this rule, he shall —

(a) if necessary, have the charge explained to him; and

(b) be informed that, upon his making a written request to his commanding officer not less than 24 hours before his trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these Rules to procure the attendance of any such witness at his trial.

(6) When it is intended to try two or more accused jointly, notice of this fact shall be given to each such accused when he is given a copy of the charge sheet and any such accused may, before trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately.

(7) When a charge sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

ASSEMBLY AND SWEARING IN OF COURT

Preliminary matters to be considered by court and commencement of trial

23. (1) Upon a court-martial assembling, the court shall, before opening, satisfy itself that —

(a) the court has been convened in accordance with the Act and these Rules;

(b) the court consists of not less than the legal minimum number of officers;

(c) the president and members are of the required rank;

(d) the president and members have been duly appointed and are not disqualified under the Act;

(e) if there is a Judge Advocate, he has been duly appointed;

(f) the accused appears from the charge sheet to be subject to military law or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and

(g) each charge is on its face correct in law and framed in accordance with these Rules.

(2) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.

(3) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(4) If the court is not satisfied on any of the matters mentioned in subrule (1), and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereof.

(5) When the court has complied with this rule and is ready to proceed with the trial, the president shall open the court and the trial shall begin.

Objections to Court

24. (1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 87.

(2) When a court is convened to try more than one accused whether separately or jointly, each accused shall be given an opportunity to object to any officer of the court in accordance with the preceding subrule and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to, the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers of the court including any officer who has been appointed by the president in accordance with subrule (9) in place of an officer who has retired.

(8) When an objection to an officer is allowed, that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance, the president should immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy itself that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the president is allowed, the court shall report to the convening officer without proceeding further with the trial.

(12) If as the result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act, the court shall report to the convening officer without proceeding further with the trial and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

Swearing in of Court

25. (1) Immediately after rule 24 has been complied with, an oath shall be administered to the president and each member of the court in accordance with rule 32 and in the presence of the accused.

(2) If there is a Judge Advocate, the oath shall be administered by him to the president first and afterwards to each member of the court and if there is no Judge Advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

(3) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if it thinks fit, proceed to determine that objection in accordance with rule 24, or postpone the trial of that accused and swear the court for the trial of the other accused only.

Swearing in of Judge Advocate

26. After the court has been sworn, an oath shall be administered to the Judge Advocate (if any) in accordance with rule 32 and in the presence of the accused.

Swearing in of officers under instruction

27. After rule 25 and, where necessary, rule 26 have been complied with, an oath shall be administered to any officer under instruction in accordance with rule 32 and in the presence of the accused.

Appointment and swearing in of, and objections to, interpreters

28. (1) A competent and impartial person may be appointed at any time to act as an interpreter at a trial by court-martial, and before he so acts, an oath shall be administered to him in accordance with rule 32 and in the presence of the accused.

(2) Before a person is sworn as an interpreter, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court thinks that the objection is reasonable, that person shall not act as interpreter.

Verbatim record

29. (1) A competent and impartial person may be appointed at any time to record verbatim, by whatever means, the proceedings of a court-martial.

(2) Before such a person so acts, the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court and, if the court thinks that the objection is reasonable, that person shall not so act.

No right of objection to Judge Advocate, prosecutor and officer under instruction

30. The accused shall have no right to object to a Judge Advocate, prosecutor or any officer under instruction.

Order of trials

31. (1) When a court has been convened to try two or more accused separately and have been sworn in accordance with rule 25(3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, then in such order as the court thinks fit.

(2) When a court has been convened to try an accused on charges which are included in more than one charge sheet, the court shall take the charge sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as the president thinks fit.

Oaths and solemn affirmations

32. (1) An oath which is required to be administered under these Rules shall be administered in the form and in the manner set out in Schedule 5:

Provided that —

(a) if any person desires to swear with uplifted hand, he shall be permitted to do so;

(b) the opening words of the oath may be varied to such words and oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 25(2), every oath shall be administered at a court-martial by the president, a member of the court or the Judge Advocate.

(3) Where a person is a child, the oath shall be in appropriate form set out in Schedule 5.

(4) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the form set out in Schedule 5.

ARRAIGNMENT OF ACCUSED

Arraignment of accused

33. (1) After rule 25 and, where necessary, rules 26 and 27 have been complied with, the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court, he shall be required to plead separately to each charge.

(3) If there is more than one charge sheet against the accused before the court, the court shall arraign and try the accused upon the charge in the first of such charge sheets and shall announce its finding thereon and if the accused has pleaded guilty, the court may either proceed to comply with rule 43(1) and (2) before it arraigns him upon the charge in any subsequent charge sheet or it may defer compliance with those subrules until after the accused has been arraigned and tried upon such charge.

Offer of plea

34. (1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court and where he does so —

(a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea, it shall adjourn and report to the convening officer.

(3) When a court reports to the convening officer under this rule, the convening officer shall —

(a) if he approves the decision of the court to allow the plea, dissolve the court;

(b) if he disapproves the decision of the court —

(i) refer the matter back to the court and direct the court to proceed with the trial; or

(ii) convene a fresh court to try the accused.

Objection to charge

35. (1) An accused, before pleading to a charge, may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court upholds the objection, they shall either amend the charge, if permissible under rule 81, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall —

(a) if he approves the decision of the court to allow the objection —

(i) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(ii) amend the charge to which the objection relates if permissible under rule 81, and direct the court to try it as amended;

(b) if he disapproves the decision of the court to allow the objection —

(i) direct the court to try the charge;

(ii) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) convene a fresh court to try the accused.

Plea in bar of trial

36. (1) Where an accused, before pleading to a charge, offers a plea in bar of trial in reliance upon section 120 or 121 —

(a) he may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea, it shall adjourn and report to the convening officer:

Provided that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall —

(a) if he approves the decision of the court to allow the plea —

(i) dissolve the court; or

(ii) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only;

(b) if he disapproves the decision of the court to allow the plea —

(i) direct the court to try the charge;

(ii) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or

(iii) convene a fresh court to try the accused.

Application by accused at joint trial to be tried separately

37. (1) Where two or more accused are charged jointly or are charged in the same charge sheet with offences alleged to have been committed by them separately, any one of the accused may, before pleading to the charge or charges, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately.

(2) If the accused makes an application under subrule (1), the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) Where an application to be tried separately is made under subrule (1) and the court is of the opinion that the interests of justice so require, it shall allow the application and try separately the accused who made it.

Application by accused at trial to have charge tried separately

38. (1) Where a charge sheet contains more than one charge, the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) If the accused makes an application under subrule (1), the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) If the court is of the opinion that the interests of justice so require, it shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge sheet.

Pleas to charge

39. (1) After any pleas under rules 34 and 36, any objection under rule 35, and any applications under rules 37 and 38, have been dealt with, the accused shall be required (subject to subrule (2)) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 93 to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a lesser degree of punishment or where it could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 64, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

Acceptance of guilty plea

40. (1) If an accused pleads guilty to a charge under either subrule (1) or (2) of rule 39, the president or Judge Advocate shall, before the court decides to accept the plea, explain to the accused the nature of the charge and general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either subrule (1) or (2) of rule 39 if —

(a) the court is not satisfied that the accused understands the nature of the charge or the effect of his plea;

(b) the president having regard to all circumstances, considers that the accused should plead not guilty; or

(c) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 39(2), a court shall not accept the plea unless the convening officer concurs and the court is satisfied of the justice of such course and the concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under either subrule (1) or (2) of rule 39 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When a court is satisfied that it can properly accept a plea of guilty under either subrule (1) or (2) of rule 39, it shall record a finding of guilty in respect thereof.

Pleas on alternative charges

41. (1) When an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may —

(a) proceed as if the accused had pleaded not guilty to all the charges; or

(b) with the concurrence of the convening officer (which may be signified by the prosecutor), record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge sheet.

(3) Where the court records such findings under subrule (2)*(b)*, the prosecutor shall, before the accused is arraigned on it, withdraw any charge which is alternative to the charge of which the court has found the accused guilty and which is placed after it in the charge sheet.

Order of trial

42. (1) After the court has recorded a finding of guilty, if there is no other charge in the same charge sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge sheet, it shall proceed with the trial as directed by rule 43.

(2) If there is another charge in the charge sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge sheet, the court shall not comply with rule 45 until after it has dealt with such other charge or tried such other accused and has announced and recorded its finding in respect thereof.

Procedure on finding of guilty after plea of guilty

43. (1) After the court has recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 42, read the summary or abstract of evidence to the court or inform the court of the facts contained therein:

Provided that if the summary or abstract of evidence contains evidence which, in the opinion of the convening officer is inadmissible under the Act, the prosecutor shall not read to the court those parts of the summary or abstract which are inadmissible or inform the court of the facts contained in those parts and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules, sufficient evidence to enable it to determine the sentence.

(3) After subrules (1) and (2) have been complied with, the accused may —

(a) adduce evidence of character and in mitigation of punishment; and

(b) address the court in mitigation of punishment.

(4) After subrule (3) has been complied with, the court shall proceed as directed in rule 69(1), (2), (3) and (4).

Change of plea

44. (1) An accused who has pleaded not guilty may, at any time before the court closes to deliberate on its finding, withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 39(2)) and in such case the court shall, if it is satisfied that it can accept the accused's change of plea under these Rules, record a finding in accordance with the accused's change of plea and so far as is necessary proceed as directed by rule 43.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under subrule (2), it shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 41, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

PROCEDURE ON PLEAS OF NOT GUILTY

Application for adjournment of trial

45. After a plea of not guilty to any charge has been entered —

(a) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that —

(i) any of these Rules relating to procedure before trial has not been complied with and that he has been prejudiced thereby; or

(ii) he has not had sufficient opportunity for preparing his defence;

(b) if the accused applies for an adjournment —

(i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and

(ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;

(c) the court may grant an adjournment if it thinks that the interests of justice so require.

Case for prosecution

46. (1) The prosecutor may, if he desires, and shall, if required by the court, make an opening address explaining the prosecution charge, where necessary, and the nature and general effect of the evidence which he propose to adduce.

(2) The witnesses for the prosecution shall then be called to give their evidence.

Calling of witnesses whose evidence is not contained in summary or abstract of evidence

47. (1) If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused at a reasonable time before the evidence is adduced.

(2) In the absence of the notice and particulars of the evidence as required under subrule (1), the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

Notice to accused that witness will not be called by prosecutor

48. (1) The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or abstract of evidence nor a witness whom he has notified the accused that he intends to call under rule 47.

(2) If the prosecutor does not intend to call such a witness to give evidence, he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

CALLING AND EXAMINATION OF WITNESS

Swearing in of witnesses

49. Save as is otherwise provided by the Act, an oath shall be administered to each witness in accordance with rule 32 before he gives evidence and in the presence of the accused.

Exclusion of witnesses from court

50. During a trial, a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence, the court may direct the witness to withdraw during such discussion.

Examination of witness

51. (1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness he shall reply forthwith. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

Examination of witnesses by court

52. (1) The president, the Judge Advocate and, with permission of the president, any member of the court, may put questions to a witness.

(2) Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

Reading back of evidence to witnesses

53. (1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done, he may ask for the record to be corrected or explain the evidence which he has given and where any such correction is made or explanation given, the prosecutor and the accused may put such questions to the witness in respect of the correction or explanation as seem proper to the court.

(2) When a person has been appointed under rule 29, it shall not be necessary to comply with subrule (1), if, in the opinion of the court and the Judge Advocate (if any), it is unnecessary to do so:

Provided that if any witness so demands, subrule (1) shall be complied with.

Calling of witnesses by court and recalling of witnesses

54. (1) The court may, at any time before it closes to deliberate on its finding or if there is a Judge Advocate before he begins to sum up, call a witness or recall a witness, if the court is of the opinion that the interests of justice so require and where the court calls a witness or recalls a witness, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the court closes to deliberate on its finding or if there is a Judge Advocate before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Written statements and formal admissions

55. (1) The provisions of section 117B of the Criminal Procedure Code (Chapter 7) shall *mutatis mutandis* apply to any written statement which would be admissible in accordance with the provisions of that Code.

(2) The provisions of section 117C of the Criminal Procedure Code (Chapter 7) shall *mutatis mutandis* apply to the admission of any fact of which oral evidence may be given in the proceedings.

Submission of no case to answer and power of court to stop case

56. (1) At the close of the case for the prosecution, the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge and where the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless it is satisfied that —

(a) the prosecution has not established a *prima facie* case on the charge as laid; and

(b) it is not open to it on the evidence adduced to make a special finding under either section 93 or rule 64 (3).

(3) If the court allows the submission, it shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith but if the court disallows the submission, it shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if it does so it shall also announce such finding in open court forthwith.

Explanation to accused of his right when making his defence

57. (1) Where the accused is not represented by a person qualified to appear as counsel at a court-martial, after the close of the case for the prosecution, the president or Judge Advocate (if any) should explain to the accused that —

(a) if he wishes, he may give evidence on oath as a witness;

(b) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the Judge Advocate (if any); and

(c) whether he gives evidence, or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or Judge Advocate has, if necessary, complied with subrule (1), he shall ask the accused if he intends to give evidence on oath and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself, he may make an opening address outlining the case for the defence before the evidence for the defence is given.

Evidence for defence

58. (1) After rule 57 has been complied with, witnesses for the defence (if any) shall be called to give their evidence.

(2) If the defence intends to call two or more witnesses to the facts of the case, and those witnesses include the accused, the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

(3) Rules 49 to 54 and rule 56 apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

Evidence in rebuttal

59. After the witnesses for the defence have given their evidence, the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

Closing address

60. (1) After all the evidence has been given, the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor.

(3) Where two or more accused are represented by the same defending officer or counsel, he may make one closing address only.

(4) Where the accused is not represented by a defending officer or counsel, then, whether or not he himself has given evidence, the prosecutor shall not make a closing address unless the accused has called witnesses as to the facts of the case.

Handing in of written statement by accused

61. For the purposes of rule 57, the handing in by the accused of a written statement shall be treated as the calling of a witness by him.

Summing up by Judge Advocate

62. After the closing addresses, if there is a Judge Advocate, he shall sum up the evidence and advise the court on the law relating to the case in open court.

DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON CHARGE

Deliberation on finding on charge

63. (1) After the closing addresses, or if there is a Judge Advocate, after his summing up, the court shall close to deliberate on its finding on the charge.

(2) While the court is deliberating on its finding on the charge, no person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a Judge Advocate and the court, while deliberating on its finding on the charge require further advice from him, the court shall suspend its deliberation and ask to be given such advice in open court.

Expression of opinions on, and form of, finding

64. (1) The opinion of the president and each member as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Save as is otherwise provided in subrule (4), the court shall record on every charge on which a plea of not guilty has been recorded —

(a) a finding of guilty or a special finding under either section 93 or subrule (3); or

(b) a finding of not guilty, or of not guilty and honourably acquitted, of the charge.

(3) Where the court is of the opinion, as regards any charge, that the facts which it finds to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused

is guilty of the charge subject to any exception or variation which it shall specify in the finding.

(4) Where the court has recorded a finding of guilty on a charge which is laid in the alternative, it shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge sheet and record no finding on any charge alternative thereto which is placed after it in the charge sheet.

Announcement of finding

65. (1) The finding on each charge shall be announced in open court forthwith.

(2) Every finding which requires confirmation shall be announced as being subject to confirmation.

(3) The findings shall be in the form set out in Schedule 3.

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

Completion of procedure on plea of guilty before deliberation on sentence

66. After the court has announced its finding on any charge on which the court has entered a plea of not guilty, if there is another charge in the same charge sheet on which the court has accepted a plea of guilty, the court shall comply with rule 43(1) and (2) in respect of that charge before proceeding with the trial.

All charges in any charge sheets to be dealt with

67. Where there is another charge sheet against the accused before the court, the court shall not comply with rules 68 to 70 until it has arraigned and tried the accused and has complied with rule 65 and, if necessary, with rule 66, in respect of each charge in such other charge sheet unless that charge sheet is withdrawn under rule 79.

Release of accused

68. If the findings on all charges against the accused are not guilty —

(a) the court shall order the accused to be released; and

(b) the president and Judge Advocate (if any) shall date and sign the record of the proceedings and the president or the Judge Advocate shall then forward it as directed in the convening order.

Accused's record and plea in mitigation

69. (1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 93 or rule 64(3), the court before deliberating on its sentence shall whenever possible take evidence of his age, rank and service record and such service record shall include —

(a) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled; and

(b) particulars of any offence of which the accused has been found guilty during his service and which is contained in the service record relating to the accused and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in subrule (1) may be given by a witness who produces to the court a written statement made in the form set out in Schedule 3 which contains a summary of the entries in the service record relating to the accused, after the witness has in court verified such statement and identified the accused as the person to whom it relates.

(3) In addition to the evidence contained in the statement referred to in subrule (2), it shall be the duty of the prosecutor whenever possible to call an officer as a witness to give to the court any information in the possession of the military authorities regarding —

(a) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;

(b) his general conduct in the service; and

(c) particulars of offences which do not appear in the statement referred to above of which the accused has been found guilty by a civil court not being offences of which he was found guilty while under the age of 14 years:

Provided that the court shall not be informed of any such civil offence unless the findings is proved in accordance with section 195, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with subrules (2) and (3) and if the accused so requires the service record, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service record or such certified copy, the court shall cause the form to be corrected accordingly.

(5) After subrules (1) to (4) have been complied with, the accused may —

(a) give evidence on oath and call witnesses in mitigation of punishment and to his character; and

(b) address the court in mitigation of punishment.

Request by accused for other offences to be taken into consideration

70. (1) Before the court closes to deliberate on its sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2) A list of the offences which the court agrees to take into consideration shall be read to the accused by the president or Judge Advocate, who shall ask the accused if he admits having committed them and the accused shall then sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration.

(3) The list made pursuant to subrule (2) shall be signed by the president or Judge Advocate and be attached to the record of the proceedings as an exhibit.

(4) Where offences are taken into consideration by the court then, in addition to any other sentence the court may impose, the court shall have the power to make deductions from the pay of the accused as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration.

DELIBERATION ON SENTENCE

Persons entitled to be present during deliberation on sentence

71. While the court is deliberating on its sentence, no person shall be present except the president, members, Judge Advocate (if any) and any officer under instruction.

Sentence and recommendation for mercy

72. (1) Subject to subrule (2), the court shall award one sentence in respect of all the offences of which the accused is found guilty.

(2) Where the accused is found guilty by a court-martial of two or more offences against section 72, consisting in the commission of offences for which a civil court in Brunei Darussalam could award imprisonment, the court-martial may by its

sentence award, for any of such offences, a term of imprisonment which is to run from the expiry of a term awarded by that sentence for any other of those offences.

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(3) The sentences awarded pursuant to subrules (1) and (2) shall be in the form set out in Schedule 4.

(4) Where the court orders that a sentence of imprisonment or detention is to begin to run from the expiry of some other sentence of imprisonment or detention, the order shall be in the form set out in Schedule 4.

(5) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

(6) When the court has agreed to take into consideration an offence which is not included in the charge sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which it is taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that the court may include in its sentence a direction that such deductions shall be made from the pay of the accused as it would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he had been found guilty.

(7) The court may make a recommendation for mercy and if it does so, shall record in the proceedings its reasons for making it.

Postponement of deliberation on sentence

73. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if it thinks that the interests of justice so require, postpone its deliberation upon the sentence to be awarded to any one or more of such accused until it has recorded and announced its findings in respect of all of such accused.

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

Announcement of sentence and conclusion of trial

74. (1) The sentence, and any recommendation for mercy together with the reasons for making it, shall be announced in open court and the sentence shall also be announced as being subject to confirmation.

(2) When subrule (1) has been complied with, the president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial, the president and Judge Advocate (if any) shall date and sign the record of the proceedings and it shall then be forwarded by the president or the Judge Advocate as directed in the convening order.

General duties of prosecutor and defending officer or counsel

75. (1) It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular —

(a) to conform with these Rules and the practice of the civil courts in Brunei Darussalam relating to the examination, cross-examination and re-examination of witnesses;

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(b) not to refer to any matter not relevant to the charge before the court; and

(c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of any of the provisions of subrule (1), it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

Counsel

76. (1) Subject to these Rules, the following persons shall be allowed to appear as counsel at a court-martial —

(a) an advocate and solicitor who is in possession of a practising certificate and issued under the Legal Profession Act (Chapter 132);

(b) any person who is deemed to be an advocate and solicitor by virtue of section 17(2) of the Legal Profession Act (Chapter 132).

(2) *(a)* Any —

(i) right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court,

(ii) right of the accused to object to the admissibility of evidence at a court-martial; and

(iii) right granted to the accused by rules 22(5), (6) and (7) and rules 24, 25, 28, 29, 34 to 38, 45, 56, 70, 77(2), 89 and 91(2) may be exercised by his defending officer or his counsel on his behalf; and

(b) reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer, the accused shall give the convening officer notice of this fact not less than 24 hours before his trial.

POWERS AND DUTIES OF JUDGE ADVOCATE

General duties of Judge Advocate

77. (1) The Judge Advocate shall be responsible for the proper discharge of his functions to the Judge Advocate General.

(2) The prosecutor and accused respectively are at all times after the Judge Advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(3) On the assembly of the court, the Judge Advocate shall advise the court of any defect in the constitution of the court or in the charge sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise.

(4) The court shall accept the advice of the Judge Advocate on all such matters provided in this rule unless it has weighty reasons for not doing so, and if the court does not accept it, its reasons for not doing so shall be recorded in the proceedings.

(5) After the closing addresses, the Judge Advocate shall sum up the evidence and advise the court upon the law relating to the case before the court closes to deliberate on its finding.

(6) If in the course of deliberating on its finding the court requires further advice from the Judge Advocate, it shall suspend its deliberation and ask, and shall be given, such advice in open court.

(7) If, when the court announces a finding of guilty or a special finding under either section 93 or rule 64(3), the Judge Advocate is of the opinion that such finding or special finding is contrary to the law relating to the case, he shall once more, advise the court what findings are, in his opinion, open to it and the court shall then reconsider its finding in closed court and the record of the proceedings relating to such reconsideration shall be in the form set out in Schedule 3.

(8) The Judge Advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(9) The Judge Advocate has equally with the president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses, or to make his sworn evidence clear and intelligible, or otherwise.

(10) The Judge Advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 89 and responsible for the safe custody of the record of the proceedings under rule 91.

Judge Advocate sitting alone

78. (1) Where there is a Judge Advocate and —

(a) an accused offers a plea to the jurisdiction of the court;

(b) an accused, before pleading to a charge, offers a plea in bar of trial;

(c) during the course of a trial any question as to the admissibility of evidence arises;

(d) during a joint trial, an application is made by any of the accused for a separate trial;

(e) an application is made by an accused that a charge should be tried separately; or

(f) a submission is made to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer,

the president may direct that the point at issue shall be determined by the Judge Advocate in the absence of the president and the members of the court and of any officer under instruction and where the president so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The Judge Advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with subrule (1), hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefore as he may consider necessary.

(3) After the Judge Advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the Judge Advocate shall announce his ruling to them and the court shall follow his ruling.

(4) When a Judge Advocate sits alone, the proceedings before him shall form part of the proceedings of the court, and sections 61(1), 88, 89(1) and (2), sections 90, 95 to 98 and rules 32, 49, 50 to 55, 75, 76, 82 to 84, 88 to 91, 93, 94 and 100 apply to proceedings before the Judge Advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorised by those sections and those rules to be done by the court or by the president may be done by the Judge Advocate when sitting alone.

(5) When a Judge Advocate is presiding alone and a person subject to military law commits an offence under section 61(1), the Judge Advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(6) The Judge Advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the Judge Advocate when sitting alone until after the court has announced its finding.

WITHDRAWAL AND AMENDMENT OF CHARGE SHEETS AND CHARGES

Withdrawal of charge sheets and charges

79. A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge sheet before the accused is arraigned on any charge therein.

Amendment of charge sheets and charges by court

80. (1) At any time during a trial if it appears to the court that there is in the charge sheet —

(a) a mistake in the name or description of the accused;

(b) a mistake which is attributable to a clerical error or omission,

the court may amend the charge sheet so as to correct the mistake.

(2) If at any time during a trial at which there is a Judge Advocate it appears to the court, before it closes to deliberate on its finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under subrule (1), it may, if such addition, omission, or alteration can be made without unfairness to the accused, so amend the charge if the Judge Advocate concurs.

(3) If at any time during a trial at which there is no Judge Advocate it appears to the court, before it closes to deliberate on its finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in a charge which cannot be made under subrule (1), it may adjourn and report its opinion to the convening officer, who may —

(a) amend the charge if permissible under rule 81 and direct the court to try it as amended after due notice of the amendment has been given to the accused;

(b) direct the court to proceed with the trial of the charge without amending it; or

(c) convene a fresh court to try the accused.

Amendment of charges by convening officer

81. When a court reports to the convening officer under either rule 35(2) or rule 80(3), he may amend the charge in respect of which it has reported to him by making any addition to, omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

SITTINGS AND ADJOURNMENT OF COURT

Sittings of court

82. (1) Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such each day as may be reasonable in the circumstances:

Provided that the court shall not sit on Friday and any other public holidays, unless in the opinion of the court or of the convening officer, the exigencies of the service make it necessary to do so.

(2) No proceedings of any court shall be invalid by reason of its happening on a Friday, a Sunday or a public holiday.

Adjournment

83. (1) During a trial the court may adjourn at any time and from place to place as the interests of justice require.

(2) A court may adjourn at any time to consult the convening officer on a point of law.

(3) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

View by court

84. (1) If at any time during a trial before the court closes to deliberate on its finding, it appears to the court that it should, in the interests of justice, view any place or thing, it may adjourn for this purpose.

(2) When the court views any place or thing, the president, members of the court, Judge Advocate (if any), prosecutor, accused and defending officer or counsel (if any) shall be present.

Absence of president, members or Judge Advocate

85. (1) If after the commencement of a trial, the president dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening officer.

(2) If after the commencement of a trial, any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum, the court shall adjourn and the president shall report to the convening officer.

(3) If a Judge Advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and report to the convening officer.

(4) If the president or a member of the court is absent during any part of a trial, he shall take no further part in it and the like steps shall be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

UNFITNESS TO STAND TRIAL AND INSANITY

Unfit to stand trial and insanity

86. (1) *(a)* Where on the trial of a person, the question of his fitness to be tried falls to be determined in accordance with the provisions of section 108, the court shall take evidence as to his condition. If after considering the evidence, it is of the opinion that the accused is fit to stand trial, it shall proceed with the trial;

(b) If it is of the opinion that the accused is unfit to stand trial, it shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of its deliberation on its finding on a charge finds pursuant to section 108(3) that the accused was not guilty of the offence by reason of insanity its finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under either subrule (1) or (2), the president shall announce in open court that the proceedings are terminated and thereupon the president and the Judge Advocate (if any) shall date and sign the record of the proceedings.

(4) The president or Judge Advocate shall forward the record of proceedings made under subrule (3) as directed in the convening order.

Interview with consent of witness

87. (1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence, whose statement of evidence was included in the summary or abstract of evidence pursuant to rule 22(5), or who has made a written statement, a copy of which the accused has served on the prosecution.

(2) Except as provided in rule 48, neither the accused nor any person on his behalf shall without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness —

(a) who was called for the prosecution at the taking of the summary of evidence;

(b) whose statement of evidence was included in the summary of evidence;

(c) whose evidence is included in the abstract of evidence; or

(d) in respect of whom the prosecution has given the accused notice under rule 47 that it intends to call him as a witness at the trial.

Procuring attendance of witnesses

88. (1) A witness who is subject to military law may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

(2) A witness who is not subject to military law may be summoned to attend —

(a) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

(b) a trial by court-martial by an order under the hand of an officer authorised to convene a court-martial or of a staff officer on his behalf or, after the assembly of the court, of the president.

(3) The summons referred to in subrule (2) shall, when it relates to the taking of a summary of evidence be in the form set out in Schedule 1, and, when it relates to a trial by court-martial be in the form set out in Schedule 3, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

(4) The rates or scales of payment of the expenses of witnesses shall be the same as those provided by rules made by His Majesty the Sultan and Yang Di-Pertuan in Council under section 384 of the Criminal Procedure Code (Chapter 7).

Proceedings to be recorded

89. (1) The proceedings of courts-martial shall be recorded in accordance with the following provisions —

(a) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in Schedule 3 and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge the merits of the case;

(b) when no person is employed under rule 29, the evidence should be taken down in narrative form as nearly as possible in the words used:

Provided that if the court, Judge Advocate, prosecutor or accused considers it necessary, any particular question and answer shall be taken down verbatim;

(c) when an objection, submission or application is made during a trial at which no person is employed under rule 29, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or Judge Advocate thinks fit:

Provided that if the prosecutor or accused so requests, a note shall be made of the objection, submission or application, the grounds therefore, the advice of the Judge Advocate (if any) thereon and the decision of the court;

(d) when any address by the prosecutor or the accused or summing up of the Judge Advocate is not in writing and no person is employed under rule 29, it shall only be necessary to record so much of such address or summing up as the court or Judge Advocate thinks proper:

Provided that if the prosecutor or accused so requests, a note shall be made of any particular point in such address or summing up;

(e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but if any comment or report seems to the court to be necessary, the president may forward it to the proper military authority in a separate document.

(2) When a person has been employed under rule 29, a transcript of his record of the proceedings need be made only of that part which relates to a charge of which the accused has been found guilty:

Provided that —

(a) where there is a Judge Advocate he may, where a plea of guilty (including a plea of guilty under rule 39) has been accepted and he has himself made a record sufficient to comply with the requirements of subrule (1), before or after the conclusion of the trial, direct that the verbatim record need not be transcribed;

(b) where there is a Judge Advocate and a finding of guilty has been made as provided by rule 44(1), the Judge Advocate may, before or after the conclusion of the trial, direct that no transcript need be made of any part of the verbatim record relating to that charge which has in his opinion become no longer material to the confirming officer's consideration of the merits of the case;

(c) the confirming officer, any reviewing authority or the Court of Appeal, the Judge Advocate General may, notwithstanding any acquittal or application of subrule (2)*(a)* or *(b)*, require the transcription of the verbatim record of the proceedings or any part of them.

The references in paragraph *(c)* to the confirming authority or a reviewing authority refer also to any officer or authority who would have been the confirming officer or a reviewing authority if the accused had been found guilty of any charge.

Exhibits

90. (1) Subject to subrule (2), any document or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after it has satisfied itself that such copy or extract is correct and the president or the Judge Advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall —

(a) be marked with a number or letter and be signed by the president or Judge Advocate or have a label bearing a number or letter and the signature of the president or Judge Advocate affixed to it;

(b) be attached to or kept with the record of the proceedings, unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under subrule 3*(b)*, the president shall ensure that proper steps are taken for its safe custody.

Custody and inspection of record of proceedings during trial

91. (1) *(a)* During a trial at which there is no Judge Advocate, the record of the proceedings and the exhibits are deemed to be in the custody of the president.

(b) During a trial at which there is a Judge Advocate, the record and the exhibits are deemed to be in the custody of the Judge Advocate, save when he is not present in closed court when they are deemed to be in the custody of the president.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

CONFIRMATION, REVISION AND PROMULGATION

Confirmation and promulgation

92. (1) When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section 125, on the record of the proceedings in the form set out in Schedule 3, and such record of his decision shall form part of the record of the proceedings.

(2) When a court has accepted a plea of guilty made under rule 39(2), the confirming officer may confirm its finding notwithstanding that the court has accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming officer, it is in the interests of justice to do so.

(3) *(a)* When a court has rejected a plea to the jurisdiction of the court or a plea in bar of trial or has overruled an objection to a charge, it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates.

(b) If he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court has rejected a plea to the jurisdiction or a plea in bar of trial or has overruled an objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under subrule (1) state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed, the confirming officer may, in confirming the sentence, vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears that there is sufficient evidence or a plea of guilty under either subrule (1) or (2) of rule 41 to justify the finding of the court, such findings and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof, he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be. The fact of promulgation shall be recorded on the record of the proceedings in the form set out in Schedule 3.

(8) If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

Lost or missing original record of proceedings

93. (1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such copy may, if the president or the Judge Advocate certifies it to be correct, be accepted and used *in lieu* of the original.

(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming officer to follow the course of the proceedings and to judge the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used *in lieu* of the original:

Provided that where part only of the original record of the proceeding of a court-martial has been lost, and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge the merits of the case, such remaining part may, with the consent of the accused, be accepted and used as if it were the complete record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation, the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either subrule (1) or (2), the confirming officer shall withhold confirmation and shall record his decision in the form set out in Schedule 3.

Loss of original record of proceedings after confirmation

94. If after confirmation, the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or the Judge Advocate to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used *in lieu* of the original.

CUSTODY OF RECORD AFTER CONFIRMATION

Custody and preservation of record of proceedings after confirmation

95. For the purposes of section 128(1), the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Judge Advocate General shall be 6 years from the conclusion of the trial.

Petitions

96. (1) If an accused who has been —

(a) sentenced by a court-martial; or

(b) found by a court-martial to be unfit to stand his trial or to be not guilty by reason of insanity,

wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the form set out in Schedule 6.

(2) If an accused who has been —

(a) sentenced by court-martial; or

(b) found by a court-martial to be unfit to stand his trial or to be not guilty by reason of insanity,

wishes to petition after promulgation against the finding otherwise than by means of an appeal petition, he shall present a petition to a reviewing authority at any time within 6 months of promulgation in the form set out in Schedule 6.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority at any time within 6 months of promulgation in the form set out in Schedule 6.

GENERAL

Retrospectively of Rules

97. These Rules also apply to offences committed before the date of commencement.

Language of court-martial

98. All proceedings in a court-martial shall be in the English Language:

Provided that a court-martial may in the interests of justice allow the giving of evidence by a witness in any other language.

Exceptions from rules on account of exigencies of service

99. (1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in subrule (3) impracticable, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the form set out in Schedule 3.

(2) Any declaration made under subrule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) The provisions of these Rules in respect of which a declaration may be made under subrule (1) are —

(a) rule 6(2)*(a)* and *(b)*;

(b) rule 8*(b)* insofar as it relates to the accused's right to insist that a witness shall be compelled to attend the taking of a summary of evidence for cross-examination;

(c) rule 17 insofar as it provides that the documents specified therein must be given to the accused not less than 24 hours before the appropriate superior authority investigates and deals summarily with the charge;

(d) rule 22(2), (3) and (4) insofar as it provides that the documents specified therein shall be given to the accused not less than 24 hours before his trial.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under subrule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Exceptions from Rules in interests of security

100. (1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer on the spot, a charge sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly

useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the form set out in Schedule 3 specifying the document concerned.

(2) Any declaration made under subrule (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under subrule (1) it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under subrule (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

Deviations from forms in Schedules

101. A deviation or omission from a form or form of words set out in a Schedule shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Best course of justice

102. In any case not provided for by these Rules, such course shall be adopted as appears best in the interests of justice.

SCHEDULE 1

FORMS

(rules 4(1), 8, 9(1), (5) and 88(3))

FORM 1

(rule 4(1))

DELAY REPORT

From: (UNIT)
To: (CONVENING OFFICER)

.....[1]EIGHT DAY DELAY REPORT

Number, rank and name of accused: .....

Date of arrest: .....

Alleged offence: ..... Date of alleged offence: .....

The reasons for this retention in arrest are:

.....

.....

.....

Proposed date for summary dealing/trial: .....

Reasons for delay since last report: .....

.....

.....

.....
(Commanding officer)

1 Insert "1st", "2nd", "3rd" , "Final" as the case may be.

FORM 2

(rules 8 and 88(3))

SUMMARY OF EVIDENCE

Summary of evidence in the case of ..... (number, rank, name, unit or other description).

Taken by [the commanding officer of the accused] [..... (rank, name, unit) on the direction of the commanding officer of the accused].

..... (number, rank, name, unit or other description), having been duly sworn[1] state —

(Cross-examined by the accused)

[2]Question .....

Answer .....

or

(The accused declines to cross-examine this witness)

.....
(Signature and rank (if any) of witness)

..... (number, rank, name, unit or other description).

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page ..... Having regard to ..... (insert grounds for non-attendance of witness — see rule 8*(b)*) the attendance of this witness cannot in my opinion be readily procured.

FORM 2 — *(continued)*

[The accused does not demand the attendance of this witness for cross-examination]. [The accused demands the attendance of this witness for cross-examination but the witness is not compellable and has refused to attend].

.....
(Signature of officer taking the summary of evidence)

or

..... (description)

A written statement of this witness's evidence has been read to the accused and is included in this summary at page .....

.....
(Signature of officer taking the summary of evidence)

* The accused having been duly cautioned in accordance with rule 8*(c)* reserves his defence.

or

The accused having been duly cautioned in accordance with rule 8*(c)*.

The accused ..... (number, rank, name, unit or other description) being duly sworn[1] states —

.....
(Signature and rank (if any) of accused if he signs)

FORM 2 — *(continued)*

..... (number, rank, name, unit or other description) having been duly sworn[1] states —

.....
(Signature and rank (if any) of witness)

or

..... (number, rank, name, unit or other description)

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page ..... having regard to ..... (insert grounds for non-attendance of witness — see rule 8*(d)*) the attendance of this witness cannot in my opinion be readily procured.

.....
(Signature of officer taking the summary of evidence)

Certified that rule 8 has been complied with.

This summary of evidence was taken by me at ..... in the presence and hearing of the accused on the ..... day of ..... 20.....

.....
(Signature of officer taking the summary of evidence)

1 When a witness or the accused affirms the words "duly affirmed" should be substituted for the words "been duly sworn" and when a witness is a child is too young to give evidence on oath, the words "without being sworn" should be substituted for the words "having been duly sworn".

2 See however rule 8*(g)*.

* Where an accused calls witnesses without giving evidence himself, the *pro forma* should be amended accordingly.

FORM 3

(rule 9(1))

ABSTRACT OF EVIDENCE

Abstract of evidence in the case of ..... (number, rank, name, unit or other description) consisting of the ..... (insert the number of statements) attached statements and .....[1] (insert the number of precis) precis of evidence of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....[2] on the direction of the commanding officer of the accused].

Date: ..... 20 ....

(Signature and rank)

1 Delete any references to statements or precis which are not applicable.

2 Insert the name and rank of the officer making the abstract.

FORM 4

(rule 9(5))

CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I[1] .....

.....

on the ..... day of ..... 20....

handed to the accused[2].....

.....

a copy of the abstract of evidence relating to him dated the ..... day of ..... 20 ..... and duly cautioned him in accordance with rule 9(2) and that [on the ..... day of ..... 20 ..... he elected to make and sign the statement which is marked ..... and attached to this certificate] [he did not make a statement].

[The accused submitted ..... statements of evidence for the defence which are marked ..... [respectively] and attached to this certificate].

Date: ..... 20 .....

.....
(Signature of certifying officer)

1 Insert the rank, name and unit of officer signing the certificate.

2 Insert the number, rank, name, unit or other description of the accused.

FORM 5

(rule 88(3))

SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

To .....[1]
WHEREAS a charge has been preferred against .....[2]

AND WHEREAS I have directed a summary of the evidence to be taken at .....[3] on the ..... day of ..... 20 .....

You are pursuant to section 99 of the Act and rule 88 of the Royal Brunei Armed Forces Rules of Procedure (R 3) hereby summoned and required to attend as a witness the taking of the said summary of evidence at .....[3] on the ..... day of ..... 20 ..... at ..... a.m./p.m and to bring with you the documents following[4].....

.....

.....

Whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ..... 20 .....

.....
(Signature, rank and unit)
Commanding officer of the accused

1 Insert the name and address of the person to whom the summons is to be sent.

2 Insert the number, rank, name, unit or other description of the accused.

3 Insert the place where the summary of evidence is to be taken.

4 Specify the documents (if any) which the witness is to bring. If the witness is not required to bring documents, delete the words relating to documents.

SCHEDULE 2

(rule 18*(g)*)

RECORD OF PROCEEDINGS BEFORE APPROPRIATE SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME .....
UNIT .....

1. Questions to be put to the accused by the officer dealing with the case before the charge is read —

Q. Have you received a copy of the charge-sheet and [summary] [abstract] of evidence not less than 24 hours ago?
A. .....

Q. Have you had sufficient time to prepare your defence?
A. .....

2. The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question —

Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?
A. .....

3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person, the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused —

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.
A. .....

Q. Do you wish to adduce any other evidence in your defence?
A. .....

5. If the accused elects to give evidence or to make a statement or to call witnesses, the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then —

(i) consider all the evidence and determine whether the accused is guilty of the offence or not; and

SCHEDULE 2 — *(continued)*

(ii) if he determines that the accused is guilty, examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority or of a fine or of stoppages or the finding will involve a forfeiture of pay or, in the case of a civilian, if he intends to award any punishment, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award.

Q. Will you accept my award or do you elect to be tried by court-martial?
A. .....

6. FINDING .....
AWARD .....

Date: ..... 20..... .....

(Signature, rank and appointment of appropriate superior authority)

SCHEDULE 3

(rules 19(1)*(a)*, 65(3), 69(2), 77(7), 88(3), 89(1)*(a)*, 92(1), 92(7), 93(3), 99 and 100)

COURT-MARTIAL FORMS

FORM 1

(rule 19(1)*(a)*)

CONVENING ORDERS FOR COURT-MARTIAL

ORDERS BY .....[1]

The detail of officers as mentioned below shall assemble at ..... at ..... a.m./p.m. on the day of ..... 20 ..... for the purpose of trying by a court-martial the following accused person(s) named in the margin[2] —

.....

.....

PRESIDENT

.....

MEMBERS[3]

.....

.....

WAITING MEMBERS[3]

.....

JUDGE ADVOCATE

The Judge Advocate has been appointed by or on behalf of the Judge Advocate General.

or

.....[4] is hereby appointed Judge Advocate.

FORM 1 — *(continued)*

In the opinion of the convening officer, the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the service.[5]

A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the service.[5]

The record of the proceedings will be forwarded to .....

.....

Signed this .....day of ..... 20 .....

.....

(Signature, rank and appointment of the convening officer)

or

.....

(Signature, rank and appointment of the appropriate staff officer)

Authorised to sign for .....

(Appointment held by the convening officer)

1 Insert rank and name of the convening officer.

2 Insert number, rank, name and unit or other description of the accused.

3 A member or a waiting member may be described by either giving his rank, name and unit or thus: "A ... (rank) to be detailed by the officer commanding .... (unit)".

4 Insert the Judge Advocate's name and any legal qualifications.

5 Delete if inappropriate.

FORM 2

DECLARATION UNDER RULE 99

In the case of .....[1]

I .....[2] [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the following exigencies of the service, namely .....

.....

.....

render compliance with the following rules — .....

.....

..... impracticable.

Signed at ..... this ..... day of ..... 20 .....

.....

(Signature)

[S 107/2008]

1 Insert the number, rank, name, unit or other description of accused.

2 Insert the rank, name and appointment of officer making the declaration.

FORM 3

DECLARATION UNDER RULE 100

In the case of .....[1]

I .....[2] [the officer who [is] [would be] responsible for convening a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the .....[3] contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

.....
(Signature)

[S 107/2008]

1 Insert the number, rank, name, unit or other description of accused.

2 Insert the rank, name and appointment of officer making the declaration.

3 Here indicate the documents.

FORM 4

(rule 88(3))

SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL

To: .....[1]

WHEREAS a court-martial [has been ordered to assemble at .....]

[has assembled at .....]
on the ..... day of 20 ..... for the trial of .....[2]

You are pursuant to section 99 of the Act and rule 88 of the Royal Brunei Armed Forces Rules of Procedure (R 3) hereby summoned and required to attend, as a witness at the sitting of the said court at .....

on the ..... day of ..... 20 .....

at ..... a.m./p.m and to bring with you the following[3] —

.....
.....

and so to attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under my hand at ..... on the .....day of ..... 20 .....

.....
(Signature, rank and appointment)

An officer authorised to convene a court-martial.* President of the court.*

..... authorised to sign for ..... An officer authorised to convene a court-martial.*

* Delete if not applicable.

1 Insert the name and address of the person to whom the summons is to be sent.

2 Insert the number, rank, name, unit or other description of the accused.

3 Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents, delete the words relating to documents.

FORM 4 — *(continued)*

A

(rule 89(1)*(a)*)

RECORD OF PROCEEDING OF COURT-MARTIAL

Proceedings of a court-martial held at .....
on the ..... day of ..... 20 ..... by order of
.....[1]

dated the ..... day of ..... 20 .....

PRESIDENT

MEMBERS

JUDGE ADVOCATE

Trial of .....[2]

The court comply with rule 23 .....
..... not being available
owing to .....
the president appoints ..... a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor .....
Defending [officer] [counsel] .....
at ..... a.m./p.m. the trial begins.

The convening order is read in the hearing of the accused, marked, signed by the president or Judge Advocate, and attached to the record.

The names of the president and members of the court are read in the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as president, or by any of the officers whose names you have heard read?

A. .....

FORM 4 — *(continued)*

The proceedings relating to the objection(s) are recorded on .....
.....[2]

1 Insert the number, rank, name, unit or other description of the accused as given in the charge sheet.
2 Strike out if not applicable.

FORM 4 — *(continued)*

B

SWEARING IN

The president and members of the court are duly sworn.
[The Judge Advocate is duly sworn]

The [following] officers under instruction [listed on page .....] are duly sworn.

Q. Do you object to ..... as interpreter?
A.[1] ..... is duly sworn as interpreter.

VERBATIM RECORDER

Q. Do you object to ..... recording these proceedings verbatim?[2]
A.[1] .....

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under rule 34. The proceedings relating to his plea are recorded on page .....[2]

The accused objects to the ..... charge(s) under rule 35. The proceeding relating to his objection(s) are recorded on page .....[2]

The accused offers *(a)* plea(s) in bar of trial under rule 36, in respect of the charge(s). The proceedings relating to his plea(s) are recorded on page .....[2]

The accused ..... applies under rule 37 to be tried separately. The proceeding relating to his application are recorded on page .....[2]

The accused applies under rule 38 to have charges ..... and ..... tried separately. The proceeding relating to his application are recorded on page .....[2]

1 If there is an objection, the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

2 Delete if not applicable.

FORM 4 — *(continued)*

C

ARRAIGNMENT

The charge sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the president or Judge Advocate and inserted in the record immediately before this page as page(s) .....

Q. Are you guilty or not guilty of the first[1] charge against you which you have heard read?

A. .....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the third charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the sixth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the seventh charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the eighth charge against which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the ninth charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the tenth charge against you which you have heard read?[2]

A. .....

FORM 4 — *(continued)*

Q. Are you guilty or not guilty of the eleventh charge against you which you have heard read?[2]

A. .....

Q. Are you guilty or not guilty of the twelfth charge against you which you have heard read?[2]

A. .....

The accused having pleaded guilty to the ..... charge(s), rule 40 is duly complied with in respect of this / these charge(s).

The accused's pleas to the remaining charges are recorded overleaf.

1 Delete "first" if there is only one charge.

2 Delete if not applicable.

FORM 4 — *(continued)*

D

PROCEEDINGS ON PLEA(S) OF NOT GUILTY[1]

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A.[2] .....

The prosecutor [makes an opening address shortly outlining the facts] [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president or Judge Advocate, marked and attached to the record].

The witnesses for the prosecution are called.

.....

being duly sworn[3] says:

The prosecution is closed.

The accused submits under rule 56 that there is no case for him to answer in respect of the ..... charge(s). The proceedings relating to this submission are recorded on pages .....[4]

DEFENCE

Rule 57 is complied with —

Q. Do you apply to give evidence yourself on oath?

A. .....

Q. Do you intend to call any other person as a witness in your defence?

A. .....

Q. Do you wish to make an opening address?

A. .....

The accused [makes an opening address which is summarised below] [hands in a written address which is read, signed by the president or Judge Advocate, marked ..... and attached to the record].[5]

The witnesses for the defence (including the accused) are ..... called ..... being duly sworn[6] says —

FORM 4 — *(continued)*

The prosecutor [makes a closing address which is summarised on page .....] [hands in a closing address which is read, marked, signed by the president or Judge Advocate and attached to the record].[4]

The accused [makes a closing address which is summarised on page .....] [hand in a closing address which is read, marked, signed by the president or Judge Advocate and attached to the record].

The note of the summing-up of the Judge Advocate is recorded on page .....[4]

FINDING(S)

The court closes to deliberate on its finding(s).

The court finds that the accused[7] ..... is — [8]

ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before it.

The finding(s) [is] [are] read and (with the exception of the finding(s) of "not guilty")[2] [is] [are] announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES[4]

The accused is released.

Signed at ..... this ..... day of ..... 20 .....

....

Judge Advocate *President*

1 Remove this page if not applicable.

2 If the accused asked for an adjournment, the grounds relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

3 When a witness affirms the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

4 Delete if not applicable.

5 Delete if the accused does not intend to call witnesses as to fact, other than himself.

6 When a witness or the accused affirms, the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

7 Insert the number, rank, name, unit or other description of the accused as given on the charge sheet.

8 Set out the finding on each charge in the appropriate form set out in Schedule 3.

FORM 4 — *(continued)*

E

PROCEEDINGS ON PLEA(S) OF GUILTY[1]

The accused[2] .....
is found guilty of .....[3]

The finding(s) [is] [are] read in open court and [is] [are] announced as being subject to confirmation.

The [summary] [abstract] of evidence is read to the court by the prosecutor, marked ....., signed by the president or Judge Advocate and attached to the record.[4]

or

The prosecutor informs the court of the facts contained in the [summary] [abstract] of evidence which is marked ....., signed by the president or Judge Advocate and attached to the record.[4]

1 Delete this page if not applicable.

2 Insert the number, rank and name, unit or other description of the accused as given on the charge sheet.

3 Record the finding on each charge of which the accused is found guilty in the appropriate form set out in Schedule 3.

4 Delete if not applicable. If this paragraph is deleted, rule 43(2) must be complied with.

FORM 4 — *(continued)*

F1

PROCEEDINGS ON CONVICTION

Note: F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should normally be completed before F2 if the accused has pleaded guilty to any charge but the president may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. .....

The evidence for the defence as to the accused's character and in mitigation of punishment, is recorded on pages .....[1]

Q. Do you wish to address the court in mitigation of punishment?

A. .....

The ..... [makes an address in mitigation of punishment, which is summarised [below] [on page .....] [hands in an address in mitigation of punishment, which is read, marked....., signed by the president or Judge Advocate and attached to the record].[1]

The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked ..... , signed by the president or Judge Advocate and attached to the record.[2]

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?

A. .....

The accused makes a statement which is recorded on page .....

The court closes to deliberate on sentence.

* Delete if Fl is completed before F2.

1 Delete this paragraph if not applicable.

2 Delete this paragraph if the accused has not requested other offences to be taken into consideration.

FORM 4— *(continued)*

F2

PROCEEDINGS ON CONVICTION

Note: F2 should be completed before Fl if the accused has pleaded not guilty to all charges.

The prosecutor calls evidence as to the accused's character and record.

..... is duly sworn.

Q. Do you recognise the accused as ..... (number, rank and name)?
A. .....

Q. Do you produce a summary of the service record of the accused?
A. I produce .....

Q. Have you compared it with the service record?
A. .....

Q. Do the entries on it correspond with the service record?
A. .....

The ..... is read, marked....., signed by the president or Judge Advocate and attached to the record.

The accused [declines] [elects] to cross-examine this witness [and the cross-examination is recorded on page .....].

The prosecutor adduces evidence under rule 69(3) which is recorded on pages .....[1]

Final question addressed to the accused personally.

Q. Is there anything further that you wish to say to the court?
A. .....

The accused makes a statement which is recorded on page .....

The court closes to deliberate on sentence.

* Delete if F2 is completed before Fl.

1 Strike out this paragraph if the prosecutor does not adduce evidence under rule 69(3).

FORM 4 — *(continued)*

G

SENTENCE[1]

The court (having taken into consideration that he has spent ..... days in civil custody and ..... days in close arrest and ..... days in open arrest in connection with the matters for which he is before the court)[2] sentence the accused .....[3] to.....[4]

ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before it. The sentence (and recommendation to mercy[5]) [is] [are] announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at ..... this ..... day of ..... 20....

....

Judge Advocate *President*

1 Remove this page if not applicable.

2 The words in brackets are to be struck out when the sentence is mandatory e.g. "to be imprisoned for life" where the offence is murder. In all other cases only words which are inapplicable should be deleted.

3 Insert the number, rank, name, unit or other description of the accused as given on the charge sheet.

4 Record the sentence in the appropriate form of words set out in Schedule 4. Any recommendation to mercy (see rule 72(4), restitution order (see section 125 of the Act), an order that sentences shall run consecutively (see section 111 of the Act) made by the court, should be entered on the record immediately after the sentence).

5 Delete if not applicable.

FORM 4 — *(continued)*

H

CONFIRMATION

(rules 92(1) and 93(3))

Note: These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case[1].

Confirmed

I confirm the court's finding(s) sentence and order under section 125 of the Act but [remit .....[2]] [commute .....[3]]

I confirm the court's finding(s), sentence and order under section 125 of the Act but mitigate the sentence so that it shall be as follows —[4]

I vary the sentence so that it shall be as follows ..... and confirm the finding and sentence as so varied.[5]

I confirm the finding(s) and sentence but [postpone the carrying out of the sentence of ..... until .....[6]] [suspend the sentence of .....]

I confirm the finding(s) but substitute the sentence of ..... for the sentence of the court.[7]

I substitute a finding of ..... for the finding of the court and confirm the sentence but [remit .....[2]] [commute .....[3]]

I substitute a finding of ..... for the finding of the court and substitute the sentence of ..... for the sentence of the court.[8]

I substitute a finding of ..... for the finding of the court on the ..... charge and confirm the finding(s) of the court on the ..... charge(s) and the sentence.

I do not confirmed (on the grounds that .....[9])

I confirm the finding(s) of the court on the ..... charge(s) but do not confirm their finding(s) on the ..... charge(s) (on the grounds that .....[9]). I confirm the sentence but [remit .....[2]] [commute .....[3]].

I refer the finding(s) and sentence to .....[10] for confirmation.

I confirm the finding(s) of the court on the ..... charge(s) and refer the finding(s) on the ..... charge(s) and the sentence to .....[10] for confirmation.

I confirm the finding(s) of the court but refer the sentence to .....[10] for confirmation.

FORM 4 — *(continued)*

CONFIRMATION

[The record] [Part of the record] of the proceedings of the ..... court-martial which tried ..... at ..... on the ..... day of ..... 20 ..... having been lost I do not confirm the finding(s) of the court.

Dated this ..... day of ..... 20 .....

.....[11]

(Signature, rank and appointment of confirming officer)

1 Each form must conclude with the signature block prescribed at the end setting out the place and date of signature. The rank and appointment of the confirming officer should be clearly stated after or under his signature.

2 State what part of the sentence is remitted.

3 State what the sentence is commuted to.

4 This form of words may be used when it is impracticable to use either "remit" or "commute".

5 This form of words is appropriate when the court has expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.

6 Insert the date or event to which the carrying out of the sentence is postponed.

7 This form of words is appropriate when the court has passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.

8 The form of words is appropriate where the court has recorded no finding on some charge alternative to a charge upon which it has recorded a finding of guilty and the confirming officer, being of opinion that the court must have been satisfied of the accused's guilty on the alternative charge, wishes to substitute a finding of guilty on that charge for the finding of the court and to substitute a proper sentence not greater than that imposed by the court.

9 Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction, in bar of trial or on an objection to a charge, he should specifically state that he is withholding confirmation for this reason. In other cases the confirming officer is not bound to give his reasons for withholding confirmation.

10 Insert the appointment of the higher authority to whom the matter is to be referred.

11 See note 1.

FORM 4 — *(continued)*

FINDINGS

(rule 65(3))

Acquittal on all charges

not guilty of [the charge] [all the charges].

not guilty of [the charge] [all the charges], and honourably acquit him thereof.

Acquittal on some but not all charges

not guilty of the .....[1] charge(s) but is guilty of the .....[1] charges(s).

not guilty of the .....[1] charge(s) and honourably acquit him thereof but is guilty of the .....[1]charge(s).

Conviction on all charges

guilty of [the charge] [all the charges].

Special findings

guilty of the .....[1] charge [with the exception of the words .....[2]] [with the exception that .....[2]].

not guilty of the offence charged but is guilty of .....[3]

No finding on alternative charge

guilty of the .....[1] charge; the court record no finding on the ..... (alternative) charge.

Where the accused is unfit to stand his trial

unfit to stand his trial.

FORM 4 — *(continued)*

Acquitted by reason of insanity

not guilty by reason of insanity.

1 Insert the number of the charge or charges as numbered in the charge sheet.

2 Specify the exception in detail. This form is appropriate when a special finding is made under rule 64(3).

3 State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 93(2), (5) or (6) of the Act.

FORM 4 — *(continued)*

SERVICE RECORD OF ACCUSED

(rule 69(2))

Number	Rank	Name	Unit
.....	.....	.....	.....

(Not for use where the accused is a civilian)

1. [1]He was enlisted on ..... 20 ..... and commissioned on ..... 20 .....

2. He is serving on a .....[2]

3. [3]His age is ..... years.

4. He is single/married/divorced/widowed and has ..... children dependent upon him.

5. His gross rate of pay is ..... per day, but he is subject to the following deductions .....[4]

6. His reckonable service towards discharge or transfer to the reserve is ..... years.

7. His reckonable service towards pension, gratuity, etc. is ..... years.

8. (i) He is entitled to the following decorations and awards:

(ii) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet:

9. He holds the substantive rank of ..... with seniority from ..... 20 ..... and has held the acting rank of..... continuously since ..... 20 .....

10. He has been awaiting trial for ..... days since he was first, in connection with the matters for which he is before the court, charged or placed in arrest, of which ..... days were spent in civil custody ..... days were spent in close arrest ..... and days were spent in open arrest.

11. [3][He is not now under sentence] [He is now under sentence of ..... beginning on ..... 20 ..... but suspended on ..... 20 ..... and (not yet put into operation again) (put into operation on ..... 20 .....)]

FORM 4 — *(continued)*

12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandant of a military establishment of the following offences[4] —

	During his service	**In the last 12 months**
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)
For[5]	times(s)	time(s)

13. The Schedule to this form sets out details of any of the following matters which appear in the accused's conduct sheets namely —

(a) offences previously committed by him, being offences of which he has been convicted by court-martial of found guilty during his service by a court other than a court-martial, offences taken into consideration by such courts, and offences of which he has been found guilty by an appropriate superior authority; and

(b) dispensations with trial under section 82 of the Act.

1 Delete inapplicable wording.
2 Insert the type and length of the commission or nature and length of the engagement.
3 Delete inapplicable wording.
4 If there are no entries in his conduct sheets, enter "nil".
5 State briefly the offence.

FORM 4 — *(continued)*

THE SCHEDULE[1]

No: ..... Rank: ..... Name: .....of ..... Units

Description of courts, appropriate superior authority or officer dispensing with trial	Date and place of trial, summary dealing or of order dispensing with trial	Charges on which convicted or found guilty, offences taken into consideration and offences in respect of which trial was dispensed with	Sentence or order of the court as confirmed, award of appropriate superior authority or order of the officer dispensing with trial	Punishment remitted on review or reconsideration
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

I HEREBY CERTIFY that this form and schedule contain a summary of entries in the service books relating to the accused.

Dated this.....day of .....20 .....

.....

(Name, rank and appointment of officer signing)

1 A verbatim extract form from the service books, stating these convictions, etc. must be inserted.

FORM 4 — *(continued)*

RECORD OF RECONSIDERATION OF FINDING UNDER RULE 77(7)

The Judge Advocate advises the court that the finding(s) on the .....[1] charge(s) [is] [are] contrary to the law relating to the case, and that in his opinion the following finding(s) [is] [are] open to them[2] —

.....

The court is closed for reconsideration of finding.

The court on reconsideration finds that the accused is .....[3]

The finding(s) on reconsideration [is] [are] read in open court and (with the exception of the finding(s) of "not guilty")[4] [is] [are] announced as being subject to confirmation.

1 Insert the number of charge as numbered in the charge sheet.

2 Insert the advice given by the Judge Advocate.

3 Set out the finding(s) of the court in the appropriate form(s).

4 Delete the words relating to findings of "not guilty" if there is no such finding.

FORM 4 — *(continued)*

DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY[1]

I ..... [the confirming officer] [the reviewing authority] hereby order the accused to be committed to [imprisonment] [detention] under the sentence passed on him by the court-martial held at ..... on the ..... day of ..... 20 ..... and direct that that sentence and the sentence passed on the accused by [this court-martial] [the court-martial held at ..... day of ..... 20 .....] shall run [concurrently] [consecutively].

....

(Dated) *(Signature)*

1 When the confirming officer is making the determination, this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation: when made by a reviewing authority, it should follow the minute of promulgation.

FORM 4 — *(continued)*

RESTITUTION ORDER[1]

In accordance with subsection ..... of section 125 of the Act, I.....[2] hereby order that .....[3] be [delivered] [paid out of money found in the possession of .....] to .....[4]

Date: ..... 20..... .....

(Signature)
[confirming officer]
[Reviewing authority]

1 When the confirming officer is making the order, this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority, it should follow the minute of promulgation.

2 Insert the rank, name and appointment of confirming officer or reviewing authority as the case may be.

3 Insert the description of article or amount of money, as the case may be.

4 Insert the name of person to whom restitution is being made. If the order directs that property shall be delivered to the person appearing to be the true owner and the title to the property is not in dispute, the following words may be added "and I direct that this order shall be carried out forthwith".

FORM 4 — *(continued)*

ANNULMENT OF TAKING INTO CONSIDERATION

I annul the taking into consideration of the following offences —

.....

.....

[and the Restitution/Compensation Order(s) dependent thereon]

Date: ..... 20..... .....

(Signature)
[Confirming officer]
[Reviewing authority]

FORM 4 — *(continued)*

PROMULGATION

(rule 92(7))

Promulgated and extracts taken at ..... (place) this ..... day of ..... 20 .....

.....

(Signature, rank and appointment of officer making the promulgation)

SCHEDULE 4

FORM 1

(rules 18*(f)*, 72(3) and (4))

SENTENCES

Note: The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.

OFFICERS

Death	To suffer death.
Imprisonment	To be imprisoned for .....
Dismissal with Disgrace	To be dismissed with disgrace from His Majesty's the Sultan and Yang Di-Pertuan service.
Dismissal	To be dismissed from His Majesty's the Sultan and Yang Di-Pertuan service.
Fine	To be fined .....
Severe Reprimand [Reprimand]	To be [severely reprimanded] [reprimand].
Stoppages	To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]

FORM 1 — *(continued)*

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

Death	To suffer death.
Imprisonment and Reduction to the ranks	To be imprisoned for ..... and to be reduced to the rank.
Dismissal with Disgrace and Reduction to the ranks	To be dismissed with disgrace from His Majesty's the Sultan and Yang Di-Pertuan service and to be reduced to the ranks.
Dismissal and Reduction to the ranks	To be dismissed from His Majesty's the Sultan and Yang Di-Pertuan service and reduced to the ranks.
Detention and reduction to the ranks	To undergo detention for .....and to be reduced to the ranks.
Reduction to the ranks [Reduction to .....]	To be reduced [to the ranks] [to the rank of .....]
Fine	To be fined .....
Severe Reprimand [Reprimand]	To be [severely reprimanded] [reprimand].
Stoppages	To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]
Admonition	To be admonished (non-commissioned officers only).

FORM 1 — *(continued)*

SOLDIERS

Death	To suffer death.
Imprisonment	To be imprisoned for .....
Dismissal with Disgrace	To be dismissed with disgrace from His Majesty's the Sultan and Yang Di-Pertuan service.
Dismissal	To be dismissed from His Majesty's the Sultan and Yang Di-Pertuan service.
Detention	To undergo detention for .....
Fine	To be fined .....
Stoppages	To be put under stoppages of pay until he has made good the sum of .....[1] in respect of .....[2]
Restriction of privileges	To be put under restriction of privileges for ..... days.
Admonition	To be admonished.

1 Insert the amount which has to be made good by stoppages in respect of the charge or article specified.

2 Specify the charge or article in respect of which the stoppage is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

FORM 2

(rule 18*(f)*)

FORFEITURE OF SENIORITY OFFICERS

To forfeit ..... (months) (years) seniority as a substantive ..... in the Armed Forces and Reserve Regiment of His Majesty the Sultan and Yang Di-Pertuan.

or

To forfeit all seniority as a substantive.....in the Armed Forces and Regiment of His Majesty the Sultan and Yang Di-Pertuan.

FORM 3

(rule 72(1), (2) and (3))

CONSECUTIVE [SENTENCES OF IMPRISONMENT]
FOR OFFENCES AGAINST THE ACT

(a) In cases where the accused is convicted only of offences under section 72 of the Act

To be [imprisoned] for ..... in respect of the ..... charge, for ..... in respect of the ..... charge, and for ..... in respect of the ..... charge [etc. as required].

[The terms of imprisonment] are to run consecutively]. [The terms of imprisonment] in respect of the ..... and ..... charges are to run consecutively to [each other] [one another] but concurrently with the [terms(s) of imprisonment] in respect of the ..... charge(s)].

(b) In cases where the accused is convicted of offences against section 72 of the Act and also of one or more offences against sections 32 to 71 of the Act

To be [imprisoned] for ..... in respect of ..... the ..... charge, for ..... in respect of the ..... charge, and for ..... in respect of the ..... charge (etc. as required, in respect of all the offences against section 72 for which the court desires to award imprisonment] and [to be imprisoned] for ..... in respect of the ..... charge(s) (specifying the charge or charges of offences other than those against section 72 for which the court desires to award imprisonment, detention). The [terms of imprisonment] in respect of the ..... and the ..... charges are to run consecutively to each other but concurrently with the [terms of imprisonment] in respect of the ..... charge(s).

[S 107/2008]

FORM 4

ORDER THAT SENTENCES ARE TO BEGIN TO RUN
ON EXPIRY OF SOME OTHER SENTENCE

The court hereby orders that the sentence of ..... (state period) [imprisonment] [detention under a custodial order] [detention] passed on the accused by this court-martial shall begin to run from the expiry of the sentence of ..... (state period) [imprisonment] [detention] passed upon him/her by ..... on .....[1]

1 This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

FORM 5

RESTITUITION ORDER[1]

In accordance with subsection ..... of section 125 of the Royal Brunei Armed Forces Act, the court hereby orders that .....[2] be [delivered] [paid] to .....[3]

1 This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

2 Insert the description of the article or the amount of money, as the case may be.

3 Insert the name of the person to whom restitution is to be made. If the order directs that property shall be delivered to the person appearing to be the true owner and the title to the property is not in dispute, the following words may be added, "and the court further order that this order shall be carried out forthwith".

SCHEDULE 5

(rule 32)

OATHS AND AFFIRMATIONS

OATHS AT COURTS-MARTIAL AND AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES*

President and members

I swear by Almighty Allah[1]/Almighty God[2] that I will well and truly try the accused/ accused persons before the court according to the evidence, and that I will duly administer justice according to the Royal Brunei Armed Forces Act, without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Judge Advocate

I swear by Almighty Allah[1]/Almighty God[2] that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Royal Brunei Armed Forces Act, and the rules made thereunder, and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required in due course of law.

Officer under instruction

I swear by Almighty Allah[1]/Almighty God[2] that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Interpreter

I swear by Almighty Allah[1]/Almighty God[2] that I will faithfully interpret, to the best of my knowledge, skill and ability and without fear or favour, affection or ill-will, touching the matter before this court-martial being investigated.

SCHEDULE 5 — *(continued)*

Witness

[For Muslims]

بسم‌الله الرحمن الرحيم

والله وبالله وتالله

I swear in this proceedings that I will say and speak the whole truth and nothing but the truth. If I speak false, I shall be guilty in law and religion.

[For Non-Muslims]

I swear by Almighty God that the evidence which I shall give before this court-martial / at this investigation shall be the truth, the whole truth and nothing but the truth.

Child or young person

I promise before Almighty Allah[1]/Almighty God[2] that the evidence which I shall give before this court-martial/at this investigation shall be the truth, the whole truth and nothing but the truth.

AFFIRMATIONS

The person making an affirmation shall say to or repeat after the person administering the affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty Allah" or "I swear by Almighty God" he shall substitute the words "I do solemnly, sincerely and truly declare and affirm", and for the word "swear" wherever else it occurs the words "solemnly, sincerely and truly declare and affirm".

* These forms of oath are appropriate also at a summary of evidence, board of inquiry and a regimental inquiry where the evidence is ordered to be taken on oath.

1 For Muslims.

2 For Non-Muslims.

SCHEDULE 6

FORM 1

(rule 96(1))

PETITION TO CONFIRMING OFFICER (BEFORE CONFIRMATION)

To the confirming officer.

I .....[1] having been convicted by court-martial on .....[2] at [3] ..... and having been sentenced to ..... hereby petition against the finding(s) on the ..... charge(s)[4] and the sentence[5] on the following grounds — .....

.....

.....

Signed: .....[6]

Dated: .....

1 Insert the accused's number, rank, name, unit or other description.

2 Insert the date when accused was convicted.

3 Insert the place where trial was held.

4 The words "the finding(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against sentence.

5 The words "and the sentence" should be omitted if the accused is not petitioning against sentence.

6 Petitions should be signed by the accused himself but may, if necessary, be signed on his behalf by his representative.

SCHEDULE 6 — *(continued)*

FORM 2

(rule 96(2) and (3))

PETITION TO REVIEWING AUTHORITY (AFTER PROMULGATION)

To: .....

I .....[1] having been convicted by court-martial .....[2] on ..... at .....[3] and having been sentenced to and having had the finding(s) and sentence promulgated to me on .....[4] hereby petition against the finding(s) on the ..... charge(s)[5] and the sentences[6] on the following grounds —

.....

.....

Signed: .....[6]

Dated: .....

1 Insert the accused's number, rank, name, unit or other description.

2 Insert the date when accused was convicted.

3 Insert the place where trial was held.

4 Insert the date on which the findings and sentence were promulgated.

5 The words "the finding(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against sentence.

6 The words "and the sentence" should be omitted if the accused is not petitioning against sentence.

7 Petitions should be signed by the accused himself but may, if necessary, be signed on his behalf by his representative.