

No. S 7

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

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

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

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ORDER, 2005

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

Citation, commencement and long title.

1. (1) This Order may be cited as the Mutual Assistance in Criminal Matters Order, 2005 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the Gazette.

(2) The long title of this Order is "An Order to enable Brunei Darussalam to facilitate the provision and obtaining of mutual legal assistance to and from other countries in criminal matters and for connected purposes".

PART I

PRELIMINARY PROVISIONS OF ORDER

Interpretation.

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

"ancillary criminal matter" includes —

(a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, any property; and

(b) the obtaining, enforcement or satisfaction of a confiscation order;

"authorised officer" means —

(a) the Director, Deputy Director and any other officer of the Narcotics Control Bureau appointed under subsection (1) of section 2A of the Misuse of Drugs Act (Chapter 27);

(b) the Director, Deputy Director, Assistant Director, Chief Special Investigator, a Senior Special Investigator and any other officer of the Anti-Corruption Bureau appointed under subsection (3) of section 3 of the Prevention of Corruption Act (Chapter 131);

(c) any police officer; or

(d) any other person or class of person appointed by the Minister to be an authorised officer or authorised officers for the purposes of this Order;

"criminal investigation" means an investigation –

(a) into an offence; or

(b) for the purposes of an ancillary criminal matter;

"criminal matter" includes a criminal investigation, any criminal proceeding and an ancillary criminal matter;

"criminal proceedings" means a trial of a person for any offence, and includes any proceedings to determine whether a particular person should be tried for any offence and any proceedings in respect of an ancillary criminal matter;

"financial institution" means –

(a) a bank licensed under the Banking Act (Chapter 95);

(b) a bank licensed under the Islamic Banking Act (Chapter 168);

(c) a company licensed under the Finance Companies Act (Chapter 89);

(d) a bank licensed under the International Banking Order, 2000 (S53/00);

(e) the Perbadanan Tabung Amanah Islam Brunei established by subsection (1) of section 3 of the Perbadanan Tabung Amanah Islam Brunei Act (Chapter 163);

(f) a person carrying on money-changing or remittance business under a licence granted under the Money-Changing and Remittance Businesses Act (Chapter 174);

(g) a registered moneylender under the Moneylenders Act (Chapter 62); or

(h) any person designated by the Minister by notification in the Gazette;

"foreign country" means any country or territory outside Brunei Darussalam.

"foreign prisoner" means a person who is being held in legal custody in a foreign country —

(a) pending trial for, or sentence for; or

(b) pursuant to a sentence of imprisonment for,

an offence against the law of that foreign country;

"items subject to legal privilege" means —

(a) a communication between an advocate and solicitor and his client or any person representing his client made in connection with the giving of legal advice to that client;

(b) a communication between an advocate and solicitor and his client or any person representing his client, or between such an advocate and solicitor or his client or any such representative and any other persons, made in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in any such communication and made —

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of judicial proceedings and for the purposes of such proceedings, when they are in possession of a person who is entitled to possession of them, but excluding in any case any communication or item held with the intention of furthering a criminal purpose;

"Minister" means the Minister for the time being responsible for the administration of this Order;

"official record" means a document held by a Government department or agency or a prosecution authority;

"prison" has the same meaning as in section 2 of the Prisons Act (Chapter 51);

"prisoner" has the same meaning as in section 2 of the Prisons Act (Chapter 51);

"process" means any summons, warrant, order or other document in respect of a criminal matter issued —

(a) out of any court of Brunei Darussalam, any Judge or Registrar of the Supreme Court, or any judicial officer of the Court of Magistrate; or

(b) out of any court of a foreign country or by any judge, magistrate or other officer of such a court;

"requesting country", in relation to a request for assistance made under Part III, means the foreign country that made the request;

Objects of Order.

3. The objects of this Order are to facilitate the provision and obtaining by Brunei Darussalam of international assistance in criminal matters, including –

(a) the obtaining of evidence, documents, articles or other things;

(b) the making of arrangements for persons, including detained persons, to give evidence or assist an investigation;

(c) the confiscation of property in respect of an offence;

(d) the service of documents;

(e) the identification and location of persons;

(f) the execution of requests for search and seizure;

(g) the provision of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; and

(h) any other type of assistance that is not contrary to the laws of Brunei Darussalam.

Application of Order.

4. (1) This Order applies to any foreign country, subject to –

(a) any mutual assistance treaty between that country and Brunei Darussalam; and

(b) any multilateral mutual assistance treaty being a treaty to which that country and Brunei Darussalam are parties.

(2) This Order does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police (Interpol) or any other international organisation.

(3) This Order does not prevent the provision or obtaining of international assistance in a criminal matter to or from any foreign country other than assistance of a kind that may be provided or obtained under this Order.

No authority for extradition etc.

5. This Order does not authorise the extradition or rendition, or the arrest or detention with a view to the extradition or rendition, of any person.

PART II

REQUESTS BY BRUNEI DARUSSALAM

PRELIMINARY PROVISIONS OF PART

Application of Part.

6. A request for assistance pursuant to this Part may be made to any foreign country.

Requests to be made by Attorney General.

7. Requests by Brunei Darussalam for assistance under this Part shall be made by the Attorney General.

ASSISTANCE IN OBTAINING ARTICLE, THING OR EVIDENCE

Requests for taking of article, thing or evidence.

8. (1) The Attorney General may request a foreign country to arrange for –
- (a) any article, thing or evidence to be taken in that foreign country; and
 - (b) that article, thing or evidence to be sent to him.
- (2) The Attorney General may request a foreign country –
- (a) to assist in obtaining, by search and seizure if necessary, any article or thing in that foreign country or a photograph or copy thereof; and

(b) to arrange for that article, thing, photograph or copy thereof to be sent to him.

**ASSISTANCE IN ARRANGING FOR EVIDENCE TO BE GIVEN USING
TELEVISION LINK AND ATTENDANCE OF PERSONS
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Requests for hearing evidence from witnesses abroad through television link.

9. The Attorney General may request a foreign country to arrange for a person in that foreign country to give evidence that would be relevant to any criminal matter in Brunei Darussalam, through a live television link.

Requests for attendance of person in Brunei Darussalam.

10. (1) Where the Attorney General is satisfied that there are reasonable grounds for believing that a person in a foreign country could give or provide evidence or assistance relevant to any criminal matter in Brunei Darussalam, the Attorney General may request that foreign country to assist in arranging the attendance of that person in Brunei Darussalam to give or provide that evidence or assistance.

(2) Where the Attorney General is satisfied that a person in respect of whom a request is made to a foreign country under subsection (1) has consented to travel to Brunei Darussalam to give or provide evidence or assistance pursuant to that request, the Attorney General may make arrangements with that foreign country for —

(a) the attendance of that person in Brunei Darussalam;

(b) in the case of a foreign prisoner, his custody while in Brunei Darussalam;

(c) his return to that foreign country; and

(d) any other relevant matters.

Penalty not to be imposed for refusal to consent.

11. Where, pursuant to section 10, the Attorney General has requested the assistance of a foreign country in arranging the attendance in Brunei Darussalam of any person, the person to whom that request relates shall not be subject in Brunei Darussalam to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to travel or to give or provide the evidence or assistance.

Custody of foreign prisoners.

12. (1) Where –

(a) a person who is brought to Brunei Darussalam from a foreign country pursuant to a request made under subsection (1) of section (10) is a foreign prisoner; and

(b) that foreign country has requested that he be kept in custody while he is in Brunei Darussalam,

that person shall, whilst in Brunei Darussalam or travelling to or from Brunei Darussalam pursuant to that request, be held in such custody as the Minister may direct in writing.

(2) A direction pursuant to subsection (1) shall be sufficient authority for the detention of that person in accordance with the terms of such direction.

Release of foreign prisoner upon request by foreign country.

13. Where –

(a) a foreign prisoner is being held in custody in accordance with a direction pursuant to subsection (1) of section 12; and

(b) the foreign country from which that person has been brought has requested his release from such custody,

the Minister shall direct that he be released from custody.

Immunities and privileges.

14. (1) Subject to subsection (3), where a person is in Brunei Darussalam pursuant to a request made under section 10, he shall not –

(a) be detained, prosecuted or punished in Brunei Darussalam for any offence that is alleged to have been committed, or that was committed, before his departure from the foreign country pursuant to that request;

(b) be subject to any civil proceedings in Brunei Darussalam for any act or omission that is alleged to have occurred, or that did occur, before his departure from that country pursuant to the request, being civil proceedings to which he could not be subject if he were not in Brunei Darussalam;

(c) be required to give or provide evidence or assistance in relation to any criminal matter in Brunei Darussalam, other than the criminal matter to which the request relates;

(d) be required, in the proceedings or investigation to which the request relates, to answer any question that he would not be required to answer if those proceedings or that investigation were taking place in that foreign country; and

(e) be required, in such proceedings or investigation, to produce any document, article or thing that he would not be required to produce if those proceedings or that investigation were taking place in that foreign country.

(2) Subsection (1) does not apply in relation to any person where –

(a) he has left Brunei Darussalam and has subsequently returned otherwise than pursuant to the same or another such request; or

(b) he has had the opportunity to leave Brunei Darussalam and has remained in Brunei Darussalam otherwise than for –

(i) the purpose to which the request relates;

(ii) the purpose of giving evidence in any criminal proceedings in Brunei Darussalam declared by the Attorney General in writing to be proceedings in which it is desirable that he gives evidence; or

(iii) the purpose of providing assistance in relation to an investigation in Brunei Darussalam declared by the Attorney General in writing to be an investigation in relation to which it is desirable that he gives assistance.

(3) A declaration in writing by the Attorney General under sub-paragraph (ii) or (iii) of paragraph (b) of subsection (2) has effect from the date specified in the declaration (which may be a day earlier than the day on which that declaration is signed).

Limitation on use of evidence.

15. Where –

(a) a person is in Brunei Darussalam pursuant to a request made under section 10; and

(b) he has given evidence in any criminal proceedings, being —

- (i) the criminal proceedings to which the request relates or any criminal proceedings consequent on the investigation to which the request relates; or
- (ii) criminal proceedings declared by the Attorney General pursuant to sub-paragraph (ii) of paragraph (b) of subsection (2) of section 14 in relation to that person,

that evidence shall be inadmissible and not otherwise used in any prosecution of the person for any offence against the law of Brunei Darussalam, except on the prosecution of that person for the offence of perjury or contempt of court in relation to the giving of that evidence, unless the foreign country concerned has consented to it being so used.

ENFORCEMENT OF CONFISCATION ETC.

Request for enforcement of orders.

16. (1) The Attorney General may request a foreign country to make arrangements for the enforcement of a confiscation order, a charging order or a restraint order where there are grounds for believing that some or all of the property in respect of which any such order is made is located in that country.

(2) In this section, a confiscation order, charging order or restraint order means respectively a confiscation order, restraint order or charging order made by a court in Brunei Darussalam under the Drug Trafficking (Recovery of Proceeds) Act (Chapter 178), the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S52100) or any other similar written law.

SERVICE OF PROCESS

Assistance in service of process.

17. The Attorney General may request a foreign country to assist in effecting service of any process where the Attorney General is satisfied that, for the purposes of or in connection with any criminal matter in Brunei Darussalam, it is necessary or desirable to serve that process on any person in that country.

LOCATION AND IDENTIFICATION OF PERSONS

Assistance in locating or identifying persons.

18. Where the Attorney General is satisfied that there are reasonable grounds for believing that there is, in any foreign country, a person who —

(a) is or might be concerned in or affected by; or

(b) could give or provide evidence or assistance relevant to,

any criminal matter in Brunei Darussalam, the Attorney General may request that country to assist in locating or, if the person's identity is unknown, in identifying and locating him.

MISCELLANEOUS

Restriction on use of evidence.

19. Any evidence, information, document, article or thing that is obtained, provided or produced pursuant to a request made under this Part shall be used by Brunei Darussalam only for the purposes of or in connection with the criminal matter to which that request relates, unless —

(a) the foreign country to which the request was made; and

(b) in the case of any evidence, information, document, article or thing obtained from, or provided or produced by a person while he is in Brunei Darussalam pursuant to a request made under section 10, that person, consents to the use of that evidence, information, document, article or thing for any other purpose.

PART III

REQUESTS TO BRUNEI DARUSSALAM

PRELIMINARY PROVISIONS OF PART

Application of this Part.

20. Assistance under this Part may be provided to any foreign country.

Requests to be made to Attorney General.

21. (1) Every request by a foreign country for assistance in a criminal matter pursuant to this Part shall be made to the Attorney General.

(2) If a foreign country makes a request to a court in Brunei Darussalam for assistance in a criminal matter –

(a) that court must refer that request to the Attorney General; and

(b) that request is then deemed, for the purposes of this Order, to have been made to the Attorney General.

Requests for assistance.

22. (1) If a foreign country requests assistance under this Part, the Attorney General shall consider the following matters in order to decide whether that request should be dealt with –

(a) if there is in force a treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country under which that country has agreed to provide assistance in criminal matters in Brunei Darussalam;

(b) if the request is made in accordance with a convention to which Brunei Darussalam and that country are parties which provides for the convention to be used as a basis of providing assistance in criminal matters;

(c) if paragraphs (a) and (b) are not applicable –

(i) any assurances given by that country that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters;

(ii) the seriousness of the offence to which the request relates;

(iii) the objects of this Order as specified in section 3; and

(iv) any other matters that the Attorney General considers relevant.

(2) If, after considering those matters, the Attorney General decides that the request should be dealt with under this Part, he may deal with that request accordingly.

Form of request.

23. Every request by a foreign country for assistance under this Part shall —

(a) be made in writing or by any other means capable of producing a written record, in the English language;

(b) be made orally only in urgent circumstances but shall subsequently be confirmed in writing in the English language;

(c) specify the purpose of the request and the nature of the assistance being sought;

(d) identify the person who initiated the request; and

(e) be accompanied by —

(i) a statement from that country that the request is made in respect of a criminal matter;

(ii) a description of the nature of that criminal matter and a statement setting out a summary of the relevant facts and law;

(iii) where the request relates to —

(A) the location of a person who is suspected to be involved in or has benefited from the commission of an offence;
or

(B) the tracing of property that is connected with a criminal matter, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting out the basis for suspecting the matter referred to in sub-paragraph (A) or (B);

(iv) a description of the offence to which the criminal matter relates, including its maximum penalty;

(v) details of the procedure that that country wishes to be followed by Brunei Darussalam in giving effect to the request, including details of the manner and form in which any information, article or thing is to be supplied to that country pursuant to that request;

- (vi) a statement setting out the wishes of that country concerning the confidentiality of the request and the reason for those wishes;
- (vii) details of the period within which that country wishes the request to be met;
- (viii) if the request involves a person travelling from Brunei Darussalam to that country, details of allowances to which the person will be entitled, and of the arrangements his accommodation while he is in that country pursuant to that request;
- (ix) any other information required to be forwarded with the request under any treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country; and
- (x) any other information that may assist in giving effect to the request or which is required under the provisions of this Order.

Refusal of assistance.

24. (1) A request by a foreign country for assistance under this Part shall be refused if, in the opinion of the Attorney General –

(a) that country has, in respect of that request, failed to comply with the terms of any treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country;

(b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law applicable in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam;

(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to that person on account of his colour, race, ethnic origin, sex, religion, nationality or political opinions;

(d) the offence to which that request relates is not an offence of sufficient gravity;

(e) the article or thing requested is of insufficient importance to the investigation or could reasonably be obtained by other means;

(f) it would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interests of Brunei Darussalam to provide such assistance;

(g) that country has failed to undertake that the article or thing requested for will not be used, except with the consent of the Attorney General, for a matter other than the criminal matter in respect of which the request was made;

(h) in the case of a request for assistance in obtaining evidence and in search and seizure, that country has failed to undertake to return to the Attorney General, upon his request, anything obtained pursuant to that request upon completion of the criminal matter in respect of which the request was made;

(i) in the case of a request for assistance in arranging the attendance of a person in a foreign country, the person to whom the request relates is not prepared to give his consent to the transfer; or

(j) the provision of the assistance could prejudice a criminal matter in Brunei Darussalam.

(2) A request by a foreign country for assistance under this Part may be refused by the Attorney General –

(a) pursuant to the terms of any treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country;

(b) if, in his opinion, the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in Brunei Darussalam or elsewhere);

(c) if the request relates to the investigation, prosecution or punishment of any person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would not have constituted an offence against the laws of Brunei Darussalam;

(d) if, in his opinion, the provision of the assistance would impose an excessive burden on the resources of Brunei Darussalam;

(e) if, in the case of a request for the attendance of a prisoner in Brunei Darussalam, the granting of that request –

- (i) would not be in the interests of the public;
 - (ii) would not be in the interests of the person to whom the request relates; or
- (f) the request does not comply with the requirements of section 23.

Assistance may be provided subject to conditions.

25. Assistance under this Part may be provided to a requesting country subject to and conditions as the Attorney General may determine in any particular case or class of case.

ASSISTANCE IN OBTAINING EVIDENCE

Assistance in obtaining evidence in Brunei Darussalam.

26. A foreign country may request the Attorney General to assist in arranging –
- (a) the taking of evidence in Brunei Darussalam; or
 - (b) the production of documents, articles or other things in Brunei Darussalam.

Assistance in the taking of evidence.

27. (1) Where, on receipt of a request made under section 26 by a foreign country, the Attorney General is satisfied that –

- (a) the request relates to a criminal matter in that country; and
- (b) there are reasonable grounds for believing that the evidence can be taken or, as the case may be, the documents, articles or other things can be produced in Brunei Darussalam,

he may in writing authorise a Magistrate to take the evidence before transmitting it to that country.

(2) Upon receipt of an authorisation under subsection (1), the Magistrate shall –

- (a) take the evidence of each witness appearing before him;
- (b) cause such evidence to be reduced in writing and certify at the end of that writing that the evidence was taken by him; and

(c) cause the writing, so certified, to be sent to the Attorney General.

(3) The proceedings may be conducted in the presence or absence of the person to whom the criminal matter in the foreign country relates or of his legal representative (if any).

(4) If the foreign country has so requested, the Magistrate conducting proceedings under subsection (2) may permit –

(a) any person to whom the proceedings in that country relates or that person's legal representative; or

(b) the legal representative of the relevant person of that country,

to examine or cross-examine, including through a live television link, from that country, any person giving evidence or producing a document, article or other thing at those proceedings.

(5) The certificate referred to in subsection (2) shall state whether the person to whom the criminal matter in the foreign country relates or his legal representative (if any) was present at the proceedings.

(6) The law with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, upon the hearing of a charge against any person for an offence against the law of Brunei Darussalam shall apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section:

Provided that the Magistrate conducting proceedings under subsection (2) shall record any objection as to whether any evidence should be taken under the laws of that foreign country, but shall not rule on the matter.

(7) For the purpose of this section, the person to whom a criminal matter in a foreign country relates is competent but not compellable to give evidence.

(8) Evidence taken under this section shall not be admissible in evidence or otherwise used, for the purposes of any judicial proceedings, disciplinary proceedings or other proceedings in Brunei Darussalam, except in the prosecution of the person who gave that evidence for the offence of perjury or contempt of court in relation to the giving of that evidence.

Requests for hearing evidence from witness in Brunei Darussalam through live television link.

28. (1) A foreign country may also request the Attorney General to assist for a person in Brunei Darussalam to give evidence through a live television link in a criminal matter before a court in that country.

(2) For the purpose of this section, criminal proceedings include any proceedings on an appeal before a court against a decision in administrative proceedings.

(3) The law with respect to the compelling of persons to attend to give evidence before a Magistrate shall apply so far as it is capable of application.

(4) For the purpose of this section, a person to whom a criminal matter in a foreign country relates is competent but not compellable to give evidence.

Production orders for criminal matters.

29. (1) Where a request is made by a foreign country that any document, article or other thing in Brunei Darussalam be produced for the purposes of any criminal matter in that country, the Attorney General or any person duly appointed by him may apply to the court for an order under subsection (2).

(2) If, on such an application, the court is satisfied that the production of the document, article or other thing is necessary or desirable for the purposes of the criminal matter to which the application relates, it may make an order that the person who appears to the court to be in possession of that document, article or other thing shall —

(a) produce it to an authorised officer for him to take away; or

(b) give an authorised officer access to it,

within 7 days of the date of the order or such other period as the court may consider appropriate.

(3) In this section, the documents, articles or other things —

(a) shall include copies of Government records, documents or information which under the law of Brunei Darussalam are available to the general public;

(b) may include, at the Attorney General's discretion, in whole, in part or subject to conditions, copies of any Government records, documents or information which under the law of Brunei Darussalam are not available to the general public; and

(c) may include, at the court's discretion, items subject to legal privilege.

(4) The proceedings referred to in subsection (2) may be conducted in the presence or absence of the person to whom the criminal proceedings in the foreign country relates or of his legal representative (if any).

(5) The court shall record any objection that the person required to produce any document, article or other thing could not be compelled to produce such document, article or thing for the purposes of any criminal matter in that foreign country, but shall not rule on the matter.

(6) The proceedings referred to in subsection (2) shall be heard in camera.

Special provisions regarding documents etc. in the possession of financial institution.

30. Notwithstanding section 29 or any other written law, if the documents, articles or other things are in the possession of a financial institution, the Attorney General may in writing order that that financial institution provide an authorised officer within such period and in such form and manner as may be specified in the order, the information, documents, articles or other things, including those relevant to any one or more of the following –

(a) whether an account is held by a specified person with that financial institution;

(b) whether a particular person is a signatory to an account;

(c) whether any person holds an account with that financial institution, and the current balance of that account;

(d) details of transactions on such an account over a specified period;

(e) details of any related accounts (including the names of those who hold those accounts);

(f) any transaction conducted by the financial institution on behalf of a specified person.

Supplementary provisions regarding production orders.

31. **(1)** Where a court orders any person under section 29 to give an authorised officer access to any document, article or other thing on any premises, it may, on the same or a subsequent application of an authorised officer, order any person who appears to the court to be entitled to grant entry to the premises, to allow an

authorised officer to enter those premises to obtain access to that document, article or other thing.

(2) Where any material to which an order under section 29 relates consists of information contained in or accessible by means of any data equipment —

(a) an order under section 29 shall have effect as an order to produce the material in a form which can be taken away and which is visible and legible; and

(b) an order under section 29 shall have effect as an order to give access to the material in a form which is visible and legible.

(3) A person is not excused from producing or making available any document, article or other thing by an order under section 29 only on the ground that —

(a) the production or making available of that document, article or other thing will incriminate him or make him liable to any penalty; or

(b) the production or making available of the document, article or other thing would be in breach of an obligation (whether imposed by law or otherwise) on him not to disclose the existence of the contents of that document, article or other thing.

(4) An order under section 29 shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any written law or otherwise.

(5) An authorised officer may photograph or make copies of any document, article or other thing produced or to which access is granted pursuant to an order made under section 29.

(6) Where an authorised officer takes possession of any document, article or other thing under an order made under section 29, takes any photograph or makes any copy of that document, article or other thing under subsection (5), he may retain that document, article or other thing, photograph or copy for a period not exceeding one month pending a written direction from the Attorney General as to the manner in which it is to be dealt with (which may include a direction that the document, article, thing, photograph or copy be sent to the appropriate authority of the foreign country concerned).

(7) Rules of Court made under section 57 may provide for —

(a) the discharge and variation of an order under section 29; and

(b) proceedings relating to such an order.

- (8) In this section, "data equipment" means any equipment which —
- (a) automatically processes information;
 - (b) automatically records or stores information;
 - (c) can be used to cause information to be automatically recorded, stored or otherwise processed on other equipment (wherever situated);
 - (d) can be used to retrieve information whether information is recorded or stored in the equipment itself or in other equipment (wherever situated).

Immunities.

32. (1) No civil or criminal action, other than a criminal action for an offence under section 33, shall lie against any person for —

(a) producing or giving access to any document, article or other thing if he had produced or given access to it in good faith in compliance with an order made against him under section 29 or 30; or

(b) doing or omitting to do any act if he had done or omitted to do that act in good faith and as a result of complying with such an order.

(2) Any person who complies with an order made under section 29 or 30 shall not be treated as being in breach of any restriction upon the disclosure of any information or thing imposed by law, contract or rules of professional conduct.

Failure to comply with a production order.

33. Any person who —

(a) without reasonable excuse contravenes or fails to comply with an order under section 29 or 30; or

(b) in purported compliance with any such order, produces or makes available to an authorised officer any material known to him to be false or misleading in a material particular without —

- (i) indicating to the authorised officer that the material is false or misleading in a material particular and the part that is false or misleading; or

- (ii) providing correct information to the authorised officer if that person is in possession of, or can reasonably acquire, the correct information,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

ASSISTANCE IN TAKING WRITTEN STATEMENT

Assistance in taking written statement.

34. (1) A foreign country may request the Attorney General to assist in the taking of a written statement from any person who is in Brunei Darussalam.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in the foreign country;
- (b) the person to whom the request relates is in Brunei Darussalam;
and
- (c) that person consents to a written statement being taken from him,

the Attorney General may in writing authorise assistance in accordance with this section.

(3) Where, in relation to a request made under subsection (1), the Attorney General had authorised assistance under this section, he may authorise a person to take a written statement from the person to whom the request relates before transmitting it to the foreign country.

(4) The person authorised under subsection (3) shall, in accordance with section 116 of the Criminal Procedure Code (Chapter 7) or any other written law relating to the taking of statements —

- (a) orally examine the person to whom the request relates;
- (b) reduce in writing any statement made by that person; and
- (c) transmit that statement to the Attorney General.

**ASSISTANCE IN OBTAINING ATTENDANCE OF PERSONS IN
FOREIGN COUNTRY**

Assistance in arranging attendance of person to give or provide evidence or assistance in relation to criminal matter in foreign country.

35. (1) A foreign country may request the Attorney General to assist in arranging the attendance in that country of a person in Brunei Darussalam (not being a person to whom section 36 applies) for the purposes of giving or providing evidence or assistance in relation to a criminal matter in that country.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that country;
- (b) there are reasonable grounds for believing that the person concerned could give or provide evidence or assistance relevant to that criminal matter;
- (c) the person concerned has freely consented to attend as requested;
and
- (d) the country concerned has given adequate undertakings in respect of the matters specified in paragraphs (a), (b), (c) and (e) of section 37,

he may in writing authorise assistance in accordance with this section, and may assist in the making of arrangements to facilitate that attendance.

Assistance in arranging attendance of a prisoner in foreign country for specified purposes.

36. (1) A foreign country may request the Attorney General to assist in arranging the attendance in that country for either or both of the purposes specified in subsection (2), of a person in Brunei Darussalam who is a prisoner.

(2) The purposes referred to in subsection (1) are —

- (a) for giving evidence in relation to any criminal proceedings in that country;
- (b) for assistance in relation to a criminal matter in respect of an offence in that country.

(3) The Attorney General may in writing authorise assistance in accordance with this section if, on receipt of a request made under subsection (1), he is satisfied that —

(a) the request relates to the attendance of the person concerned in connection with a criminal matter in that country;

(b) there are reasonable grounds for believing that the person concerned could give or provide evidence or assistance relevant to that criminal matter;

(c) the person concerned has freely consented to attend as requested;

(d) the foreign country has given an adequate undertaking in respect of the matters specified in section 37.

(4) Where assistance is authorised in accordance with subsection (3), the Attorney General may direct that the prisoner be released from the prison in which he is detained for the purpose of travelling to that foreign country to give evidence at the hearing, and may make arrangements for the prisoner to travel to that country in the custody of a police officer or of a prison officer as defined in section 2 of the Prisons Act (Chapter 51).

(5) A direction given pursuant to subsection (4) by the Attorney General in respect of a prisoner shall be sufficient authority for the release of the prisoner from the prison for the purposes of the direction.

(6) Where a person has been transferred to a foreign country in accordance with subsection (3), he shall be deemed or continue to be in legal custody when, being in Brunei Darussalam or on board a Brunei Darussalam aircraft or hovercraft or a Brunei Darussalam ship, he is being taken to or from any place or being kept in custody under the direction made by the Attorney General under subsection (4).

(7) A person authorised by or for the purposes of any such direction to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer in Brunei Darussalam.

(8) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place directed by the Attorney General.

(9) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying fines as it applies to a prisoner.

(10) In subsection (6)–

"Brunei Darussalam aircraft or hovercraft" means any aircraft or hovercraft registered in Brunei Darussalam or any aircraft or hovercraft of His Majesty the Sultan and Yang Di-Pertuan;

"Brunei Darussalam ship" means a Brunei Darussalam ship as defined in subsection (1) of section 2 of the Merchant Shipping Order, 2002 (S27/02) or a ship of His Majesty the Sultan and Yang Di-Pertuan;

In this subsection, references to aircraft, hovercraft and ships of His Majesty the Sultan and Yang Di-Pertuan are to aircraft, hovercraft and ships which belong to or are exclusively employed in the service of His Majesty the Sultan and Yang Di-Pertuan in right of the government of Brunei Darussalam.

Undertaking required from foreign country.

37. Where, pursuant to section 35 or 36, a foreign country requests the assistance of the Attorney General in arranging the attendance in that country of any person to whom either of those sections applies, the Attorney General shall, before authorising such assistance in accordance with either of those sections, obtain an undertaking from that country in relation to the following matters –

- (a) that the person to whom the request relates shall not –
 - (i) be detained, prosecuted, or punished for any offence against the law of the foreign country concerned that is alleged to have been committed, or that was committed, before his departure from Brunei Darussalam, other than an offence in respect of which the Attorney General consents to his being so detained, prosecuted or punished;
 - [ii) be subject to any civil proceedings in respect of any act or omission of that person that is alleged to have occurred, or that did occur, before his departure from Brunei Darussalam, being civil proceedings to which that could not have been subjected to if he were not in that country; or
 - [iii) be required to give or provide evidence or assistance in respect of any criminal matter in that foreign country other than the matter to which the request relates,

unless that person has left that foreign country, or has had the opportunity of leaving that country and has remained there otherwise that for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates;

(b) that any evidence given by him in the criminal proceedings to which the request relates shall be inadmissible and not otherwise used in any prosecution of that person for any offence against a law of that foreign country other than the offence of perjury or contempt of court in relation to the giving of that evidence;

(c) that the person will be returned to Brunei Darussalam in accordance with arrangements agreed by the Attorney General as soon as practicable after giving or providing the evidence or assistance;

(d) in a case where the request relates to a person who is a prisoner in Brunei Darussalam and the Attorney General has requested the foreign country to make arrangements for the keeping of that person in custody while that person is in that country –

- (i) that appropriate arrangements will be made for that purpose;
- (ii) that he will not be released from custody in that country without the prior approval of the Attorney General; and
- (iii) if he is released in that country, at the request of the Attorney General, before the completion of the proceedings to which the request relates, that his accommodation and expenses will be met by the foreign country; and

(e) such other matters (if any) as the Attorney General thinks appropriate.

Penalty not to be imposed for refusal to consent.

38. Where, pursuant to section 35 or 36, a foreign country has requested the assistance of the Attorney General in arranging the attendance in that country of any person, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to attend as requested.

Information about remand prisoner spent in custody overseas pursuant to request under section 36.

39. (1) If a prisoner who has been charged with or convicted of an offence against the law of Brunei Darussalam is transferred to a foreign country pursuant to a request by that country under section 36 before sentence is imposed for the Brunei Darussalam offence, the Attorney General may request the foreign country to provide a certificate recording the dates and total period during which the prisoner was detained outside Brunei Darussalam in connection with the request before such sentence was imposed.

(2) A certificate provided under subsection (1) is presumed to be accurate, unless the contrary is proved.

(3) The Attorney General may issue a certificate setting out the dates and period referred to in subsection (1) if –

(a) the foreign country does not provide a certificate within a reasonable time after he has made a request under subsection (1) and

(b) he is satisfied from the information that an accurate calculation can be made of the period referred to in subsection (1).

Custody of persons in transit.

40. (1) A person who is in custody in a foreign country and has consented to give evidence or provide assistance in relation to a criminal matter in another foreign country may be transported through Brunei Darussalam, to that other foreign country, if the first mentioned foreign country has given prior notice of this to the Attorney General.

(2) The person being transported through Brunei Darussalam in custody may, if an aircraft or vessel by which he is being transported lands or calls in Brunei Darussalam, be kept in such custody in Brunei Darussalam with such authorised officer as the Attorney General has directed in writing until his transportation is continued.

(3) Where –

(a) a person is being held in custody pursuant to a direction under subsection (2) and

(b) his transportation is not, in the opinion of the Attorney General, continued within a reasonable time,

the Attorney General may direct that he be transported in custody to the foreign country from which he was first transported, and such direction shall be sufficient authority for his removal from Brunei Darussalam by such means as the Attorney General shall direct.

Escape from custody.

41. (1) Any person who, being a person held in custody pursuant to a direction under subsection (2) of section 40, escapes from custody is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) Any police officer may, without warrant, arrest any person if he has reasonable grounds to believe that he is a person referred to in subsection (1).

(3) A person who has been so arrested shall be returned to custody in accordance with the direction.

ASSISTANCE IN SEARCH AND SEIZURE

Request for search and seizure.

42. (1) A foreign country may request the Attorney General to assist in obtaining any article or thing by search or seizure.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

(a) the request relates to a criminal matter in that country; and

(b) there are reasonable grounds for believing that the article or thing to which the request relates is relevant to the criminal matter and is located in Brunei Darussalam,

the Attorney General, or an authorised officer directed by him, may apply to the court for a warrant referred to in section 43 in respect of specified premises.

Search warrants.

43. (1) On an application referred to in section 42, the court may issue a warrant authorising an authorised officer to enter and search the specified premises if the court is satisfied that —

(a) an order made under section 29 in relation to anything on the premises has not been complied with; or

(b) it is necessary or desirable for the purposes of the foreign criminal matter to which the application relates.

(2) A warrant issued under this section shall be subject to such conditions as the court may specify.

Additional powers of person executing search warrant.

44. (1) Where an authorised officer has entered premises in the execution of a warrant issued under section 43, he may seize and retain any article or thing that is specified in the warrant.

(2) An authorised officer may photograph or make a copy of any article or thing seized under subsection (1).

(3) Where an authorised officer seizes a photograph or makes a copy of any article or thing under a warrant, he may retain that article, thing, photograph or copy for a period not exceeding one month pending a direction in writing from the Attorney General as to the manner in which it is to be dealt with (which may include a direction that the article, thing, photograph or copy be sent to the foreign country concerned.).

(4) Any person who hinders or obstructs an authorised officer in the execution of a warrant issued under section 43 is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Immunities.

45. (1) No civil or criminal action shall lie against any person for –

(a) producing or giving access to any article or thing if he had produced or given access to it in good faith in compliance with a warrant issued against him under section 43; or

(b) doing or omitting to do any act if he had done or omitted to do that act in good faith in compliance with such a warrant.

(2) Any person who complies with a warrant issued under section 43 shall not be treated as being in breach of any restriction upon the disclosure of any information, article or thing imposed by law, contract or rules of professional conduct.

Custody and disposal of article or thing seized.

46. (1) Where any authorised officer has seized any article or thing pursuant to a warrant issued under section 43, he shall deliver it into the custody of the Commissioner of Police.

(2) Where the article or thing has been delivered into his custody under subsection (1), the Commissioner of Police shall arrange for it to be kept for a period not exceeding one month from the day on which it was seized pending a direction in writing from the Attorney General as to the manner in which it is to be dealt with (which may include a direction that it be sent to the foreign country).

(3) Where, before the expiry of the period referred to in subsection (2), the Attorney General gives a direction in respect of the article or thing, it shall be dealt with in accordance with that direction.

(4) If no direction has been given by the Attorney General before the expiry of the period referred to in subsection (2), the Commissioner of Police shall arrange for the article or thing to be returned to the person from whose possession it was seized as soon as practicable after such expiry.

Attorney General to provide written declaration as to search and seizure.

47. Where, pursuant to a request made under section 42 by a foreign country, a search warrant is issued under section 43, the Attorney General shall, at the request of that country, provide such written declaration as that country may require concerning the result of any search conducted pursuant to the warrant, the place and circumstances of the seizure of any article or thing pursuant to the warrant, and the custody of any article or thing so seized.

ASSISTANCE IN LOCATING AND IDENTIFYING PERSONS

Assistance in locating and identifying persons.

48. (1) A foreign country may request the Attorney General to assist in locating, or identifying and locating, a person who is believed to be in Brunei Darussalam.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that —

- (a) the request relates to a criminal matter in that country; and
- (b) there are reasonable grounds for believing that the person to whom the request relates —
 - (i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
 - (ii) is in Brunei Darussalam,

the Attorney General may in writing authorise assistance in accordance with this section.

(3) Where, in relation to a request made under subsection (1), the Attorney General has authorised assistance in accordance with this section, the Attorney

General shall forward that request to the appropriate agency in Brunei Darussalam.

(4) The appropriate agency referred to in subsection (3) shall use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates, and shall advise the Attorney General of the outcome of those endeavours.

(5) On receipt of such advice, the Attorney General shall inform the foreign country of the result of the inquiries made pursuant to the request.

ASSISTANCE IN ARRANGING SERVICE OF PROCESS

Assistance in arranging service.

49. (1) A foreign country may request the Attorney General to assist in effecting the service of process on a person in Brunei Darussalam.

(2) Where, on receipt of a request made under subsection (1), the Attorney General is satisfied that –

(a) the request relates to a criminal matter in that country;

(b) there are reasonable grounds for believing that that person to whom the request relates is in Brunei Darussalam;

(c) that country has furnished sufficient details to that person of the consequences of a failure to comply with such process; and

(d) where the request relates to the service of a summons to appear as a witness in that country, that country has given an adequate undertaking in respect of the matters specified in section 50,

the Attorney General may authorise assistance in accordance with this section.

(3) Where service has been authorised under subsection (2), the Attorney General shall direct an authorised officer to arrange service, and in such a case the authorised officer shall –

(a) use his best endeavours to have the process served –

(i) in accordance with the procedure proposed in the request; or

(ii) if that procedure is unlawful in Brunei Darussalam, or if no procedure is so proposed, in accordance with the Rules of the Supreme Court (R1 of Chapter 5); and

(b) if the document –

- (i) has been served, transmit to the Attorney General for transmission to the appropriate authority a certificate as to service; and
- (ii) has not been served, transmit to the Attorney General for transmission to the appropriate authority a statement of the reasons which prevented the service.

(4) Rules of Court made under section 57 may provide for –

(a) the documents and other information to accompany the service of process; and

(b) the form of the certificate referred to in sub-paragraph (i) of paragraph (b) of subsection (3) and the statement referred to in sub-paragraph (ii) of paragraph (b) of subsection (3).

Undertaking by foreign country.

50. Where, pursuant to a request under section 49, a foreign country has requested the assistance of the Attorney General in effecting the service on any person of a summons to appear as a witness in that country, the Attorney General shall, before authorising assistance in accordance with that section, obtain from that country an undertaking that that person will not be subject to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

Penalty not to be imposed for failure to comply with summons.

51. Where, pursuant to a request under section 49, a foreign country has requested the assistance of the Attorney General in effecting the service on any person of a summons to appear as a witness in that country, that person shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of his refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

PART IV

MISCELLANEOUS PROVISIONS

Authentication of documents etc.

52. (1) Subject to the law relating to the admissibility of evidence, any document or record that is obtained, provided or produced pursuant to a request made under this Order which is duly authenticated is admissible in evidence in any criminal proceedings.

(2) A document or record duly authenticated for the purposes of subsection (1) if it purports to be signed or certified by a Judge, Magistrate or other judicial officer in or of that foreign country.

(3) For the purposes of subsection (2), a document or record is deemed to be duly authenticated if an electronic signature (as defined in subsection (3) of section 54) is used.

(4) Nothing in this section prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Order or of any other written law.

Legal recognition of electronic document or record.

53. It is hereby declared for the purposes of this Order that any document or record shall not be denied legal effect, validity or enforceability solely on the ground that it is in electronic form.

Legal recognition of electronic signature.

54. (1) For the avoidance of doubt, in respect of any provision in this Order that requires a signature or provides for certain consequences if a document or record is not signed, an electronic signature satisfies that requirement.

(2) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a party, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record or document is that of such party.

(3) In this section, "electronic signature" means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted with the intention of authenticating or approving that record.

Delegation.

55. The Attorney General may delegate to a public officer any of his powers under this Order.

Regulations.

56. (1) The Minister may with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for all or any of the following purposes —

(a) prescribing the forms of application, notice, certificate, and other documents for the purposes of this Order and requiring the use of such forms;

(b) prescribing the procedure to be followed in dealing with requests made under this Order and providing for notification of the results of action taken pursuant to any such request;

(c) prescribing the procedures for obtaining evidence or producing documents, articles or things pursuant to section 29;

(d) providing for the payment of fees, travelling allowances and expenses to any person in Brunei Darussalam who gives or provides evidence or assistance pursuant to a request made under this Order;

(e) prescribing conditions for the protection of any property sent to or by a foreign country pursuant to a request made under this Order; and making provision for the return of property in Brunei Darussalam pursuant to such a request;

(f) providing for such other matters as are necessary or expedient for giving effect to and carrying out the provisions of this Order and for the due administration thereof.

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

Rules of Court.

57. The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court for the purposes of this Order.

7th. MARCH, 2005

Made this 22nd. day of **Muharam**, 1426 Hijriah corresponding to the 3rd. day of March, 2005 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM