

No. S 10

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

HIBAH ORDER, 2018

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation, commencement and long title
2. Interpretation
3. Application
4. Exclusive jurisdiction

PART II

HIBAH

5. Conditions for valid *hibah*
6. *Hibah* be made orally, in writing or by gesture
7. Contingent *hibah*
8. Conditional *hibah*
9. No formal delivery of *hibah*
10. *Hibah* of debt
11. *Hibah* of undivided property
12. *Hibah* under circumstances of *marad-al-maut*

PART III

DONOR

13. Conditions for donor
14. *Hibah* by agent
15. *Hibah* by receiver of *wadi'ah*

PART IV

DONEE

16. Donee
17. *Hibah* to minor, insane person or *safih*

PART V

GENERAL

18. *Hibah* for purposes contrary to *Hukum Syara'*
19. Effect of valid *hibah*
20. Revocation
21. *Hibah* with condition of exchange
22. Regulations

SCHEDULE — WORDS, EXPRESSIONS AND ARABIC SCRIPT

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

HIBAH ORDER, 2018

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

PART I

PRELIMINARY

Citation, commencement and long title

1. (1) This Order may be cited as the *Hibah Order, 2018* and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is “An Order to make provision for the law governing *hibah* and for matters connected therewith or incidental thereto”.

Interpretation

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

“donor” means a person who makes a *hibah*;

“*hibah*” means the transfer of the possession of a property of the donor made voluntarily and without any consideration by the donor to the donee during the lifetime of the donor;

“*Hukum Syara*” means the laws of any sects which the Syariah Court considers valid by prioritising the Shafeite sect that has been accepted (*qaul muktamad*);

“*marad-al-maut*” means illness which ordinarily causes death;

“Minister” means the Minister of Religious Affairs;

“parent” means mother or father, and includes their ascendants;

“possession” means the power to exercise exclusive control over a property for the purpose of deriving from it such benefit as it is capable of rendering, or is usually derived from it, by reason of having a right on that property;

“property” means any valuable and saleable thing according to *Hukum Syara'*, but does not include debt for the purpose of making a *hibah* thereof to any person except the debtor;

“*safih*” means a person who recklessly spends his property in an inappropriate and unreasonable manner;

“Syariah Court” means the Syariah Subordinate Court, the Syariah High Court or the Syariah Appeal Court, as the case may be, established under section 6(1) of the Syariah Courts Act (Chapter 184);

“*wadi'ah*” means property vested in a person, not being the owner of such property, for the purpose of custody and trust.

(2) Any provision or interpretation of any provision in this Order that is inconsistent with *Hukum Syara'* shall be invalid to the extent of such inconsistency.

(3) In relation to any matter which is not expressly provided for in this Order, the Syariah Court shall apply *Hukum Syara'*.

(4) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act (Chapter 4) shall have the meanings respectively assigned thereto in that Act to the extent that they do not conflict with *Hukum Syara'*.

(5) For the avoidance of doubt as to the identity or interpretation of any word and expression used in this Order and listed in the Schedule, reference may be made to the original form in Arabic script with respect to that word and expression shown against it in the Schedule.

Application

3. Notwithstanding anything to the contrary in any other written law, this Order applies to all matters in which at least one of the parties professes the Islamic religion.

Exclusive jurisdiction

4. It is hereby declared that no court, other than a Syariah Court shall have jurisdiction to hear or determine any matter in which at least one of the parties professes the Islamic religion and which relates to any matter arising in this Order.

PART II

HIBAH

Conditions for valid *hibah*

5. A *hibah* shall not be valid unless —

(a) the property belongs to the donor;

(b) declaration of the *hibah* is made, either expressly or impliedly, by or on behalf of the donor;

(c) acceptance of the *hibah* is made, either expressly or impliedly, by or on behalf of the donee;

(d) the possession of the property is delivered by the donor to the donee either physically or symbolically depending on the nature of such property;

(e) the property is a determinate property and not its usufruct only; and

(f) the property exists at the time the *hibah* is made.

Illustrations

(a) A said to B by the pronouncement “I give you this thing”, then B said “I accept”. The *hibah* is expressly accepted.

(b) A said to B “These are your clothes”. B then holds those clothes. The *hibah* is impliedly accepted.

(c) A said to B with the pronouncement “I give this house to you”. Hence that house is a *hibah* from a determinate property where A makes a *hibah* to B of the house as a whole and not just to reside in it.

(d) A makes a *hibah* to B of fruits that may be produced by his orchard this year. The *hibah* is not valid because that property does not exist at the time the *hibah* is made.

(e) A makes a *hibah* to B of a lamb which is still in its mother’s womb. The *hibah* is not valid because that property does not exist at the time the *hibah* is made.

Hibah be made orally, in writing or by gesture

6. (1) *Hibah* may be made either orally or in writing:

Provided that if a donor is incapable of such, a *hibah* may be made in any intelligible gesture.

(2) A *hibah* made under subsection (1) shall be witnessed by at least two persons.

(3) A *hibah* made in writing may be signed by, or on behalf of, the donor.

Contingent *hibah*

7. Any *hibah* which is dependent on the occurrence or non-occurrence of an uncertain future event is not valid.

Illustrations

(a) A makes a *hibah* to B of a house if B is married. The *hibah* is not valid.

(b) A makes *hibah* to B of fruits if its yield is good this year. The *hibah* is not valid.

Conditional *hibah*

8. Where a donor makes a *hibah* to a donee with conditions or restrictions as to the possession, disposal or use of the property, the conditions or restrictions shall be void but the *hibah* shall be valid and the donee shall have absolute ownership of that property.

Illustrations

(a) A makes a *hibah* to B of a house with the condition that it is for B's lifetime only and when B dies the house will revert to A. The *hibah* is valid but the condition is void and B shall have absolute ownership of the house and after the death of B, the house will be for B's heirs, and if B has no heirs, that house will be for *Baitulmal*.

(b) A makes a *hibah* to B of a house with the condition that if B dies before A, the house will revert to A and if A dies before B, the house will be for B. The *hibah* is valid but the condition is void and B is the absolute owner of the house and after the death of B, the house will be for B's heirs and if B has no heirs, the house will be for *Baitulmal*.

(c) A makes a *hibah* to B of a house with the condition that B and his heirs will not sell that house. The condition is void but the *hibah* is valid and B shall have the absolute ownership of the house.

No formal delivery of *hibah*

9. *Hibah* shall be validated by declaration and acceptance without the need for formal delivery of possession if —

(a) the *hibah* is given to receiver of *wadi'ah* when the property is in his custody;

(b) the *hibah* is given to a tenant of that property; or

(c) both the donor and the donee reside in the same property when the *hibah* was made.

***Hibah* of debt**

10. A *hibah* of debt made by a creditor to his debtor shall amount to remission of the debt payable by the donee.

Explanation — A *hibah* of debt made by the creditor to any other person other than his debtor shall not be valid.

***Hibah* of undivided property**

11. (1) Property given to two or more donees is valid notwithstanding that property has not been divided respectively to each of the donees.

(2) A *hibah* of property jointly owned by two or more persons is valid notwithstanding that at the time the *hibah* was made the property has not been divided or determined respectively to each of them.

Illustrations

(a) A makes a *hibah* to B and C of a house without first dividing it. B and C accepted the house. The *hibah* is valid notwithstanding each of their portion has not been determined.

(b) A and B own some amount of money as a result of profit from their business. That money has not been divided and determined to each of them and B said to C “I *hibah* to you the portion that I am entitled to receive”. The *hibah* is valid notwithstanding each portion has not been determined.

Hibah* under circumstances of *marad-al-maut

12. Where at the time *hibah* is made the donor is in a state of *marad-al-maut*, the *hibah* shall be valid to the extent of one-third of the property in respect of which the *hibah* is made.

PART III

DONOR

Conditions for donor

13. Subject to the provisions of this Order, a *hibah* shall be made by a person who —

- (a) has attained 15 years of age of *qamariah* year and is sane;
- (b) is not compelled;
- (c) is not *safih*; and
- (d) has not been declared bankrupt.

***Hibah* by agent**

14. (1) *Hibah* made by a person who is not the owner of the property is not valid unless that person is authorised by the owner of the property to make the *hibah* as an agent on his behalf.

(2) If the property is jointly owned by the owner of the property and the agent, the *hibah* made by the agent is valid only to the extent of the portion of the property owned by him unless the other owner of the property authorised the agent to make a *hibah* of the other owner's portion of the property.

Hibah* by receiver of *wadi'ah

15. *Hibah* made by receiver of *wadi'ah* is not valid unless he is authorised by the owner of the property to make the *hibah* in that respect (as a trustee) on his behalf.

PART IV

DONEE

Donee

16. The donee shall exist at the time a *hibah* is made.

Explanation — *Hibah* made to an unborn child or a person whose whereabouts is unknown is not valid.

Hibah* to minor, insane person or *safih

17. (1) A *hibah* made by a parent to his minor child, or by a guardian to his ward, is valid without any formal delivery of possession.

(2) A *hibah* made to a minor, an insane person or a *safih* by a person other than his parent or guardian, shall be validated by delivery of possession to his parent or his guardian, as the case may be.

PART V

GENERAL

Hibah* for purposes contrary to *Hukum Syara'

18. *Hibah* made for a purpose contrary to *Hukum Syara'* is not valid.

Effect of valid *hibah*

19. A valid *hibah* shall not affect any provisions of any other written law relating to the transfer of possession of property which is the subject matter of *hibah*.

Revocation

20. A valid *hibah* shall not be revoked by a donor except for a *hibah* made by a parent to his child, provided that the property is still in the possession of that child.

***Hibah* with condition of exchange**

21. *Hibah* made with the condition of a specified exchange is deemed to be a contract of sale and purchase and shall not be subject to the provisions of this Order.

Illustration

A makes a *hibah* to B of his house with the condition that B in exchange thereof will give his car to A. A and B exchange the house and car accordingly. This is a contract of sale and purchase and is not *hibah*.

Regulations

22. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving

effect to and carrying out the provisions of this Order, and including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

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

SCHEDULE
(section 2(5))

WORDS, EXPRESSIONS AND ARABIC SCRIPT

<i>Baitulmal</i>	----	بيت المال
<i>Hibah</i>	----	هبة
<i>Hukum Syara'</i>	----	حكم شرع
<i>Marad-al-maut</i>	----	مرض الموت
<i>Safih</i>	----	سفيه
<i>Wadi'ah</i>	----	وديعة

Made this 10th. day of Jamadilakhir, 1439 Hijriah corresponding to the 26th. day of February, 2018 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM