



**UNDERSTANDING THE LAW :**  
**ROLE AND RESPONSIBILITIES OF THE GOVERNMENT**  
**LIMITS ON EXERCISE OF POWER**



# WHAT TO AVOID



## ➤ Judicial power is exclusive to the Judiciary.

The Legislature and Executive may not impair or direct the exclusive powers of the Judiciary by prescribing a rule of decision for the courts. Nor can judicial power be conferred on the Legislature or Executive.

## ➤ Stopping due process from applying.

Embodies the notion of legal fairness. A person has to be given prior adequate opportunity to present his own case and to be heard.

## ➤ Judge in one's own case.

It is a principle of natural justice that no person can judge a case in which they have an interest.





# WHAT TO AVOID



## ➤ Arbitrariness.

Avoid legislating that reasons need not be given. There must be a system rather than random choice.  
eg. merit-based appeals system.

## ➤ Retrospective legislation.

Legislation regulates future conduct and ensure certainty in the law.

Retrospective criminal law and punishment is absolutely prohibited.

Retrospective civil laws unacceptable if adversely affect vested rights; deprives legal remedy and defence.

## ➤ Getting Government or persons out of bad deals.

Freedom of contract allows certainty of contract for commerce; there can be no unilateral variation of contracts.



# WHAT TO DO

## ➤ Remember our international obligations.

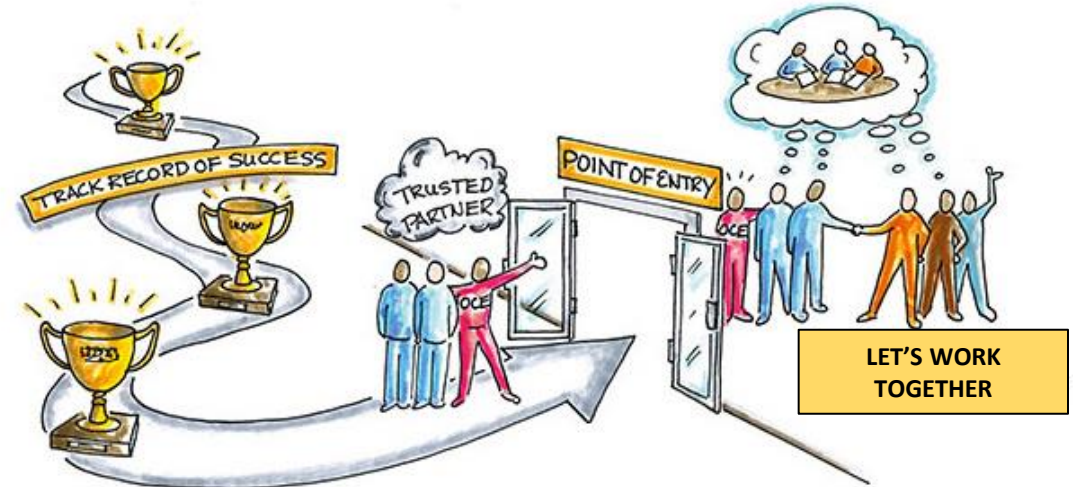
- Domestic law should be consistent with international obligations.
- Amend or introduce new legislation to give effect to new treaties and international obligations.
- Presumption against extra-territoriality unless specifically provided otherwise.
- Policy may be concerned with acts done outside Brunei Darussalam affecting Brunei Darussalam;
- Cross border dealing; persons or properties located outside Brunei Darussalam.
- It is vital that enforcement efforts and information shared with foreign enforcement agencies.
- Take note of international law norms.





# WHAT TO DO

- Legislate with whole-of-Government approach.
- Collective responsibility of the Cabinet.
- Our laws must be coherent.





# WHAT TO DO

- Ensure the correct body carries out new power.
  - The correct public sector agency to exercise power.
  - Notification of Minister responsible for the legislation.





# WHAT TO DO

- Clearly define discretionary powers.
  - Proportionate powers vis-à-vis function.
  - Identify holder of power.
  - Clearly define the scope and circumstances for exercise.





# WHAT TO DO

- Aim for a proportionate legislative response.
- Correct balance between the corrective measure and the severity of the crime.







# WHAT TO DO

## ➤ Punishment must fit the crime.

- Consistency with the law and others generally.
- Avoid one- size-fits all penalty provision.
- Avoid minimum sentences
- Composition amount must be less than the maximum fine.





# WHAT TO DO

- Publish the laws.
- Laws should be accessible to have enforceable laws.
- Once signed laws must be published in the Gazette immediately.







# THANK YOU