

No. S 37

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

**LAND CODE (AMENDMENT) ORDER, 2016**

**ARRANGEMENT OF SECTIONS**

**Section**

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

**LAND CODE (AMENDMENT) ORDER, 2016**

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

**Citation and commencement**

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

**Insertion of new section 1A into Chapter 40**

2. The Land Code in this Order referred to as the Code, is amended by inserting the following new section immediately after section 1 —

**“Interpretation**

1A. In this Code, unless the context otherwise requires —

“claim to or interest in any land” includes a legal or equitable estate established in the land and a right, power or privilege over, in relation to, that land;

“non-citizen” means any person who is not a subject of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam;

“to transfer”, with reference to land means to convey, sell, assign, settle, create by declaration of trust, assent or in any manner dispose of any estate or interest in land, and includes the vesting of any estate or interest in land, but does not include a transfer by way of charge, lease or sub-lease and “transfer” includes a conveyance, sale, assignment, settlement, declaration of trust, assent, disposition of whatever nature, the vesting of any estate or interest in land by an instrument or under a vesting order of court and every instrument capable of vesting any estate or interest in land upon registration of such instrument in the Register, but does not include a charge, lease or sub-lease.”.

**Insertion of new sections 3A, 3B and 3C**

3. The Code is amended by inserting the following three new sections immediately after section 3 —

**“Prohibition on transfer to, or purchase or acquisition by, non-citizen of land etc**

**3A. (1) No —**

(a) person shall, whether for consideration or by way of gift *inter vivos* or otherwise, transfer any land or any estate or interest therein to a non-citizen;

(b) person shall create any trust in respect of any land or any estate or interest therein in favour of a non-citizen; and

(c) non-citizen shall purchase or acquire any land or any estate or interest therein except by way of a charge, lease or sub-lease.

**(2) Any —**

(a) transfer of any land or any estate or interest therein by any person to a non-citizen made in contravention of subsection (1)(a);

(b) trust in respect of any land or any estate or interest therein created by any person in favour of a non-citizen in contravention of subsection (1)(b); or

(c) purchase or acquisition of any land or any estate or interest therein by a non-citizen, except by way of a charge, lease or sub-lease made in contravention of subsection (1)(c),

shall, whether made before or after the commencement of this Order on or after a date to be notified by the Minister in the *Gazette*, be *null* and *void*.

(3) This section shall apply to a legal person, a statutory body constituted under any written law, a society registered under the Societies Act (Chapter 203) and a co-operative society registered under the Co-operative Societies Act (Chapter 84) unless such legal person, statutory body, society and co-operative society is exempted under section 48.

**Non-citizen to furnish particulars of claim or interest in land**

**3B. (1)** A non-citizen claiming to have any claim to or interest in any land, shall, no later than a date to be notified by the Minister in the *Gazette* or such further period as the Minister may allow, furnish to the officer in charge of the Land Office a statement setting out the particulars of such claim or interest.

(2) Such officer in charge of the Land Office shall proceed to inquire into such claim or interest in any land and shall refer the matter to His Majesty in Council for direction.

(3) His Majesty in Council may, upon receiving the matter from the officer in charge of the Land Office direct such claim or interest in any land to be alienated to such extent as is allowed by this Code subject to such restrictions and conditions as His Majesty in Council may think proper and the officer in charge of the Land Office shall rectify the Register and the extract of title in accordance with such direction.

(4) The officer in charge of the Land Office shall report to His Majesty in Council the circumstances of any contravention of the provisions of this section.

(5) If His Majesty in Council is satisfied after such inquiry as His Majesty in Council may deem necessary that any provision of this section has been contravened, His Majesty in Council may make a direction in similar terms to subsection (3).

(6) A direction of His Majesty the Sultan and Yang Di-Pertuan in Council under this section shall be final and shall not be called in question in any court.

**Succession etc. of land by non-citizen**

3C. (1) Notwithstanding any other provision of this Code or of any other written law, no claim to or interest in any land belonging to a deceased person shall pass by bequest, succession or inheritance to any non-citizen who is beneficially entitled under a will or under any written law governing intestate succession.

(2) The legal personal representatives to whom probate or letters of administration are granted in respect of such claim to or interest in any land shall within a period of 12 months of the date of the death of the deceased person furnish to the officer in charge of the Land Office a statement setting out the particulars of the land and of any claim to or interest of the non-citizen therein.

(3) Where a non-citizen would, but for subsection (1), be beneficially entitled to any land, the legal personal representatives to whom probate or letters of administration are granted in respect of such land shall, subject to subsection (4), be bound to sell such land, to a citizen within a period of 5 years of the date of the death of the deceased person and upon such sale to pay, subject to the law of wills and intestate succession, the proceeds thereof, less any expenses necessarily incurred on the such sale or by reason of the administration of a deceased's estate, to or for or on behalf of the non-citizen so beneficially entitled.

(4) Where the legal personal representatives have not sold, or have not been able to sell the land within the period specified in subsection (3),

the legal personal representatives or the trustees of the will or estate of the deceased person for the time being shall furnish to the officer in charge of the Land Office (within such period not exceeding 6 months as such officer may require) a statement setting out the particulars of the land which has not been sold, giving reasons for their failure or omission to sell.

(5) The officer in charge of the Land Office shall, after receipt of such statement or where no such statement has been received within the time specified, seek the direction of the Minister, and the Minister may issue to the officer a notice to attach and sell the land and a copy of such notice shall be served on —

(a) the legal personal representatives to whom probate or letters of administration have been granted in respect of land in question; and

(b) the subsisting chargees (if any) of the land.

(6) Where the officer in charge of the Land Office has sold the land pursuant to the notice to attach and sell under subsection (5), the officer shall pay the proceeds of the sale less any costs incurred to the legal personal representatives or the trustees of the will or estate of the deceased person for the time being and upon the acknowledgment of the receipt of such proceeds of sale by the legal personal representatives or the trustees, the officer in charge of the Land Office shall be discharged from all liability in respect of the application of the proceeds of sale; or the officer, if he is unable to make payment of the proceeds of sale and to obtain such acknowledgment as aforesaid, may make payment into court of such proceeds of sale less all costs incurred thereby.

(7) Where payment of the proceeds of sale has been made by the officer in charge of the Land Office as provided in subsection (6), every non-citizen beneficially entitled under a will or by intestate succession shall be entitled to receive and shall be paid such proceeds of sale by the legal personal representatives or trustees of the will or estate of the deceased person for the time being, and in any case where the proceeds of sale have been paid into court, that non-citizen shall be entitled to make application to court for payment out of court of the proceeds of sale to be made to him, and the payment of the proceeds of sale in either case shall be in accordance with the terms of the will or the law of wills or intestate succession, as the case may be.

(8) Notwithstanding subsections (3) and (5), the officer in charge of the Land Office may, after receipt of the statement referred to in subsections (4) and (5), with the approval of the Minister, allow such extension of time, as the officer may think fit, for the sale of such land.

(9) The provisions of this section shall not apply to a non-citizen who is a surviving joint tenant of any land.

(10) In this section, “letters of administration” and “probate” have the same meanings as in the Probate and Administration Act (Chapter 11).”.

**Insertion of new section 32A**

4. The Code is amended by inserting the following new section immediately after section 32 —

**“Land not to be purchased or acquired by purchaser as nominee on behalf of another person**

32A. (1) No —

(a) person shall, purchase or acquire any estate or interest in any land as a nominee with the intention that the person shall hold it on trust for another person; and

(b) person shall authorise or appoint as his nominee any person to purchase or acquire any estate or interest in any land with the intention that such person shall hold it on trust for himself or another person,

except with the prior approval in writing of His Majesty in Council and subject to such restrictions and conditions as His Majesty in Council may think proper.

(2) Any trust created in whatever manner or form in contravention of subsection (1) whether made before or after the commencement of this Order shall be *null* and *void* and there shall be no resulting trust in favour of the beneficiary; and any contract or covenant between such person and the beneficiary in respect of such estate or interest in land shall be *null* and *void*.

(3) The Land Officer, upon discovering that any instrument of transfer contains any such *void* trust and the instrument is pending final registration or has been finally registered by the Land Officer, shall enter a note in that instrument or the registration copy thereof, as the case may be, stating that such trust is *null* and *void* by virtue of subsection (2).”.

**Insertion of new sections 35 to 49**

5. The Code is amended by inserting the following fifteen new sections immediately after section 34 —

**“Caveats**

35. Any person —

*(a)* claiming to be entitled to, or to be beneficially interested in, any land, or any interest therein capable of registration under this Code; or

*(b)* who is a guardian of the property of an infant beneficially interested in any land,

may apply for the entry of a caveat with the Land Officer in Form G in the Schedule with such variations as circumstances may require accompanied by —

(i) the prescribed fee; and

(ii) the grounds giving rise to the claim by the caveator thereto, verified by a statutory declaration by the applicant or his advocate and solicitor.

**Procedure**

36. (1) The Land Officer shall note on any application under section 35 the time at which it was received and, subject to section 44, shall as soon as may be thereafter (and without being concerned to enquire into the validity of the claim on which it is based) give effect thereto by entering the caveat applied for in the manner provided by subsection (2).

(2) The Land Officer shall record the entry of caveat in the Register and the extract of title together with a statement specifying —

*(a)* the person on whose application it was entered;

*(b)* the time from which it is effective (being the time of receipt of the application, as noted thereon pursuant to subsection (1)); and

*(c)* the reference under which the application is filed.

**Effect of caveat**

37. So long as a caveat remains in force, the Land Officer shall not make any entry in the Register having the effect of transferring, charging, leasing or sub-leasing or otherwise affecting the interest in respect of which the caveat was entered:

Provided that nothing herein shall prevent the recording of a transmission in accordance with section 28 or of any other dealing which has been accepted for registration before receipt of the caveat or to which the caveator has given his written consent.

**Notice of caveat to be given**

38. Upon the entry of the caveat, the Land Officer shall serve notice in Form H to the registered owner of the land or any other person having a registered interest in the land against which the caveat has been entered.

**Procedure for removal**

39. (1) Any registered owner or any other person having a registered interest in land against which a caveat has been entered may at any time apply to the High Court for an order that the caveat be removed.

(2) The Court, upon proof that notice of such application has been duly served, may make such order either *ex parte* or otherwise as is just.

(3) The Land Officer shall, on being duly served with any order under this section for the removal of a caveat, cancel the entry thereof in the Register and the extract of title in accordance with such order.

**Lapse of caveat**

40. Every caveat shall, if not sooner removed by the Land Officer pursuant to an order under section 39 or withdrawn under section 41, lapse after the expiration of 3 years from the time from which it took effect and may, upon payment of the prescribed fee, be renewed for a further period not exceeding 3 years.

**Withdrawal of caveats**

41. (1) A caveat may be withdrawn at any time by or on behalf of the caveator by a notice in Form I accompanied by the prescribed fee and presented to the Land Officer.

(2) On receiving any notice of withdrawal under this section, the Land Officer shall –

(a) cancel the entry of the caveat in the Register and the extract of title; and

(b) give notice of the withdrawal to the registered owner or any other person having a registered interest in the land formerly bound by the caveat.



### **Compensation for wrongful caveats**

42. (1) Any person lodging a caveat without reasonable cause is liable to pay to any person who suffers any damage or loss thereby such compensation as the Court considers just.

(2) Such compensation shall be recoverable in an action at law from the person who entered the caveat by the person who suffered the damages or losses.

### **Limitation on repeated applications**

43. Where the Court has ordered the removal of any caveat under section 39, or where the Land Officer has cancelled any caveat pursuant to section 41(2), it shall not be lawful for the Land Officer to receive a second caveat affecting the same land by the same person or in respect of the same right and for the same cause, except by order of the Court.

### **Land Officer's caveat**

44. The Land Officer may enter a caveat —

(a) for the protection of the interests of the Government or the public;

(b) for securing that the land will be available to satisfy the whole or part of any debt due to the Government;

(c) for the prevention of fraud or improper dealing;

(d) for the protection of any person who is under the disability of unsoundness of mind, is absent from Brunei Darussalam or is an infant, to prohibit the transfer or other dealing with any interest belonging or supposed to belong to any such person;

(e) on behalf of any charitable trust or in the interests of any public body;

(f) to prohibit the dealing with any land or any interest therein capable of registration under this Code in any case in which it appears to him that an error has been made in any document evidencing title to that land or for the prevention of fraud or improper dealing.

### **Procedure**

45. (1) A Land Officer's caveat shall be in Form J and the Land Officer shall record the entry of such caveat in the Register and the extract of title.

(2) Upon the entry of the Land Officer's caveat, the Land Officer shall serve notice in Form H to the registered owner of the land or any other person having a registered interest in the land affected by the caveat.

(3) A Land Officer's caveat shall continue in force until it is cancelled by the Land Officer –

(a) of his own motion; or

(b) on an application in that behalf by the registered owner of the land or any other person having a registered interest in the land or estate affected by the caveat; or

(c) pursuant to any order of the Minister made on an appeal under subsection (5) against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b).

(4) Where the Land Officer effects a cancellation under subsection (3), the Land Officer shall cancel the entry thereof in the Register and the extract of title and notify the registered owner of the land or any other person having a registered interest in the land affected by the caveat.

(5) Any person aggrieved by the decision of the Land Officer's caveat under subsection (1) or his refusal to cancel such caveat upon application under subsection 3(b) may, within 30 days of the receipt of the notice referred to in subsection (2), or such extended period of time as the Minister may allow, appeal in writing against such decision to the Minister whose decision thereon shall be final.

#### **Diplomatic and consular missions in Brunei Darussalam**

46. (1) Any government of a foreign country or territory outside Brunei Darussalam or any accredited agent of that government which intends to purchase or acquire any land for any diplomatic, consular or official purpose of that government or for the purposes of an official residence for any accredited agent of that government shall first seek the permission in writing of His Majesty the Sultan and Yang Di-Pertuan in Council for such purchase or acquisition.

(2) The requirement under subsection (1) for the permission in writing of His Majesty the Sultan and Yang Di-Pertuan in Council shall not apply to the purchase or acquisition (whether by lease, deed of assignment or other agreement) of a leasehold estate or interest for a term not exceeding 7 years, inclusive of any further term which may be granted by way of an option for renewal.

**Savings**

47. Nothing in this Order shall —

(a) affect any transfer of any land to the Official Receiver or trustee in bankruptcy;

(b) prevent the occupation of land as a tenant thereof or from entering into any agreement, whether in writing or otherwise, with the landlord thereof for the occupation of land, or from acquiring any estate or interest under any tenancy agreement, lease or deed of assignment:

Provided that in every such case no term in any such tenancy agreement, lease or deed of assignment shall exceed a period of 7 years at any one time, inclusive of any further term which may be granted by way of an option for renewal;

(c) prevent the transfer of a claim to or interest in land where —

(i) the prior approval in writing of His Majesty the Sultan and Yang Di-Pertuan in Council has been obtained; or

(ii) the land forms part of a *stratum* estate under the Land Code (Strata) Act (Chapter 189).

**Exemption**

48. His Majesty and Yang Di-Pertuan in Council may, either generally or in any particular case, and either permanently or for such period as His Majesty in Council may think fit, exempt any person or class of persons, from all or any of the provisions of this Code; and in granting such exemption His Majesty and Yang Di-Pertuan in Council may impose such conditions as His Majesty in Council may think proper.

**Powers of officer in charge of Land Office**

49. (1) For the purpose of performing his duties under this Code, the officer in charge of the Land Office may summon any person to give evidence or produce any document or other article in his possession.

(2) Any person who —

(a) refuses to attend upon being summoned;

*(b)* refuses to furnish any information or produce any document or other article to the officer in charge of the Land Office;

*(c)* furnishes any information or produces any document which is false in a material particular and which he knows to be false or does not believe to be true; or

*(d)* obstructs or impedes the officer in charge of the Land Office,

is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.”.

**Amendment of Schedule**

6. The Schedule to the Code is amended —

*(a)* by deleting “& 23” from the heading and by substituting “, 23, 35, 38, 41 and 45” therefor;

*(b)* by adding the following new Forms —

“FORM G

Caveat

To the Land Officer .....  
[Here enter name of district as appropriate.]

I ..... of .....hereby apply for the entry of a caveat upon the title to the land by entry in the Register No. ....and registered in the Land Office at .....as follows –  
.....  
.....

2. The grounds of my claim to the \*land/interest are –  
.....  
.....

3. As required by section 35 of the Land Code (Chapter 40), I now submit –

(a) the prescribed fee of \$ .....; and

(b) a statutory declaration of \*myself/my advocate and solicitor verifying the claim set out in paragraph 2 above.

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

Signed by the above-named [.....] in the presence of .....

Entered in the Register Volume.....Folio.....

.....  
Land Officer

---

\* Delete as appropriate.

FORM H

Notice of entry of caveat

To .....of .....  
\*registered owner of the land/person having interest in the land  
describe in the ..... and registered in the Land  
Office at .....

This is to inform you that, in exercise of the powers  
conferred by sections \*38/45(2), I have this day entered, upon the  
Register in respect of the land —

- \* (a) a Land Officer's Caveat.
- \* (b) a caveat on the application of —

.....

and the effect thereof is —

.....  
.....  
.....

*[Here state the effect of the caveat]*

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

*Land Officer*

*District .....*

---

\* Delete as appropriate.

**FORM I**

**Notice to Withdraw Caveat**

To the Land Officer .....

*[Here enter the name of the District as appropriate.]*

I, ..... of ..... being the \*person/  
personal representative of the person who entered Caveat  
Volume No ..... Folio No..... against the \*land/registered  
interest described in the Register No. .... and  
registered in the Land Office at ....., hereby  
give notice that I wish to withdraw the said caveat under section  
41 of the Land Code (Chapter 40).

2. As required, I submit herewith the prescribed fee of  
\$.....

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

.....  
*Signature of \*caveator/  
Personal representative of caveator*

---

\* Delete as appropriate.

**FORM J**

**Entry of Land Officer's Caveat**

By virtue of the powers conferred on me by section 44 of the Land Code (Chapter 40), I have entered a Land Officer's Caveat on the land described in Register No. .... and registered in the Land Office at .....

for the following reason:

.....  
.....  
.....  
.....

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

.....  
*Land Officer*

Entered in the register Volume .....Folio

.....  
*Land Officer*

---

\* Delete as appropriate."



**Consequential amendment to B.R.O.N. dated 1 August 1926**

7. The Land Code Notification is amended by inserting the following new item immediately before "Office Fees" —

"Caveat Fees	
Application for entry of caveat	\$225
Notice for withdrawal of caveat	\$112.50
Renewal of caveat	\$236.25".

Made this 26th. day of Sya'ban, 1437 Hijriah corresponding to the 2nd. day of June, 2016 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM