

CONSTITUTION OF BRUNEI DARUSSALAM
{Order under section 83(3)}

EMERGENCY (WILLS) ORDER, 1999

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No. S 55

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

EMERGENCY (WILLS) ORDER, 1999

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

1. (1) This Order may be cited as the Emergency (Wills) Order, 1999. Citation and long title.

(2) The long title of this Order is "An Order to make provision for the law governing wills and for matters connected therewith".

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

"property" includes lands, leases, rents and hereditaments corporeal, incorporeal or personal and any individual shares thereof and any estate, right or interest therein or in relation thereto, moneys, shares and other funds, securities for money, charges, debts, choses in action, rights, credits, goods and all other property whatsoever which devolves upon the executor or administrator and any share or interest therein and any contingent, executory or other future interest;

"will" means a declaration intended to have legal effect of the intention of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a codicil and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will or testament of the guardianship, custody and tuition of any child.

(2) This Order shall not apply to the wills of persons professing the Islamic religion whose testamentary powers shall remain unaffected by anything contained in this Order.

(3) Notwithstanding the making of this Order, a will made before the day of commencement of this Order shall, if it would immediately before that day have been construed in accordance with such law, continue to be construed in accordance with the law relating to wills in force in Brunei Darussalam immediately before that day.

(4) For the purposes of subsection (3), a will re-executed, re-published or revived by a cordial shall be deemed to have been made at the time when it was so re-executed, re-published or revived.

Property
disposable by
will.

3. Subject to the provisions of this Order, every person of sound mind may devise, bequeath or dispose of by his will, executed in the manner pursuant to this Order, all property which he owns or to which he is entitled either at law or in equity at the time of his death notwithstanding that he may have become entitled to the property subsequently to the execution of the will.

Will of minor
invalid.

4. No will made by any person under the age of majority shall be valid.

Mode of
execution.

5. (1) No will shall be valid unless it is in writing and executed in the manner pursuant to this Order.

(2) Every will shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction; such signature shall be made or acknowledged by the testator as the signature to his will in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

(3) Notwithstanding subsection (2), every will shall, as far only as regards the position of the signature of the testator or of the person signing for him as mentioned in subsection (2), be deemed to be valid under this section if the signature is so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect, by his signature to the writing signed, as his will; and no such will shall be affected by the circumstance —

(a) that the signature does not follow or is not immediately after the foot or end of the will;

(b) that a blank space intervenes between the concluding word of the will and the signature;

(c) that the signature is placed among the words of the testimonium clause or of the clause of attestation, or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows or is after, or under, or beside the names or one of the names of the subscribing witnesses;

(d) that the signature is on a side or page or other portion of the paper or papers containing the will where no clause or

paragraph or disposing part of the will shall be written above the signature; or

(e) that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

(4) The enumeration of the circumstances in subsection (3) shall not restrict the generality of subsection (3), but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature has been made.

6. (1) No appointment made by will in exercise of any power shall be valid unless the will is executed in the manner pursuant to this Order.

Execution of
appointment
by will.

(2) Every will executed in the manner pursuant to this Order shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

7. Every will executed in the manner pursuant to this Order shall be valid without any other publication thereof.

Publication of
will not
necessary.

8. If any person who attests the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted as a witness to prove the execution thereof, such will shall not on that account be invalid.

Incompetency
of attesting
witness.

9. If any person attests the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any property, other than charges and directions for the payment of any debt, is to be given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be null and void, and the person so attesting shall be admitted as a witness to prove the execution or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

Gifts to an
attesting
witness, etc.
void.

10. If any will charges any property with any debt and any creditor or the wife or husband of any creditor, whose debt is so charged, attests the execution of such will, the creditor, notwithstanding such

Creditor
attesting a
will, a witness.

charge, shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof.

Executor a witness.

11. No person shall, on account of his being an executor of a will, be incompetent to be admitted as a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

Extent to which a will is revoked by marriage or divorce.

12. (1) Every will made by any person shall be revoked by his marriage, except in the case of a will made in exercise of a power of appointment, when the property thereby appointed would not in default of such appointment pass to his heir, executor or administrator or the person entitled in case of his intestacy.

(2) Notwithstanding subsection (1), a will expressed to be made in contemplation of a marriage shall not be revoked by the solemnisation of the marriage contemplated; and this subsection shall apply notwithstanding that the marriage contemplated may be the first, second or subsequent marriage of a person lawfully practising polygamy.

(3) If, after a testator has made a will, a decree of a court dissolves or annuls his marriage —

(a) the will shall take effect as if any appointment of the former spouse as an executor or as the executor and trustee of the will were omitted; and

(b) any devise or bequest to the former spouse shall lapse, except in so far as a contrary intention appears by the will.

Altered circumstances.

13. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

Revocation of will.

14. No will or any part thereof shall be revoked otherwise than as provided by this Order, or by another will executed in the manner pursuant to this Order, or by some writing declaring an intention to revoke the will and executed in the manner in which a will is to be executed pursuant to this Order or by the burning, tearing or otherwise destroying the will, by the testator or by some person in his presence and by his direction with the intention of revoking the will.

Effect of obliteration, etc.

15. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except in so far as the words or effect of the will before such alteration is not apparent, unless such alteration is executed in the same manner as for the execution of the will pursuant to this Order; but the will, with such alteration as part thereof, shall be deemed to

be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will, opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

16. (1) A will or any part thereof which has been revoked in any manner shall be revived by the re-execution thereof or by a codicil executed in the manner pursuant to this Order and showing an intention to revive the will.

Revival of
revoked will.

(2) When any will which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

17. No transfer, conveyance, assignment or other act, made or done subsequently to the execution of a will or codicil of or relating to any property therein comprised, except an act by which such will or codicil is revoked pursuant to this Order, shall prevent the operation of the will or codicil with respect to such estate, right, share or interest in such property as the testator has power to dispose of by will at the time of his death.

Subsequent
acts not to
prevent
operation of
will.

18. Every will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears in the will.

Wills to speak
from death.

19. Unless a contrary intention appears in the will, any property comprised in any devise or bequest which fails or is void by reason of the death of the devisee or legatee in the lifetime of the testator or by reason of such devise or bequest being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise or bequest respectively, if any, contained in the will.

Residuary
devisees or
bequests.

20. A general devise or bequest of the estate or property of the testator described in a general manner shall be construed to include any property to which such description extends which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention appears in the will.

Effect of
general devise
or bequest on
power of
appointment.

21. Where property is devised or bequeathed to any person without any words of limitation, such devise or bequest shall be construed to pass the fee simple or other right to the whole estate or interest in such property which the testator had power to dispose of by will

Devise or
bequest
without words
of limitation.

unless it appears by the will that only a restricted interest was intended for such devisee or legatee.

Words
importing
want or
failure of
issue.

22. In any devise or bequest of property, the words "die without issue" or "die without leaving issue" or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears in the will:

Provided that this section shall not extend to cases where no issue described in a preceding gift is born or if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Trustee or
executor.

23. Where any property is devised or bequeathed to any trustee or executor, such devise or bequest shall be construed to pass the fee simple or other right to the whole estate or interest in such property which the testator had power to dispose of by will unless a lesser interest in such property is given to him expressly or by implication.

Devise or
bequest of
property to
trustee without
limitation.

24. Where any property is devised or bequeathed to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such property or in the surplus rents and profits of the property, the property shall not be given to any person for life, or where such beneficial interest is given to any person for life but the purposes of the trust may continue beyond the life of such person, the devise or bequest shall be construed to vest in or pass to such trustee the fee simple or other right to the whole legal estate or interest in such property which the testator had power to dispose of by will and not an estate determinable when the purposes of the trust is satisfied.

Devise or
bequest to
children or
other issue.

25. Where any person, being a child or other issue of the testator, to whom any property is devised or bequeathed for any estate or interest not determinable at or before his death dies in the lifetime of the testator leaving issue, and any such issue is living at the time of the death of the testator, the devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears in the will.

Privileged
wills of
members of
RBAF, etc.

26. (1) A member of the Royal Brunei Armed Forces being in actual military service and a mariner or seaman, being at sea, may dispose of his property or of the guardianship, custody and tuition of a child or may exercise a power of appointment exercisable by will by a privileged will.

{2} For the purposes of this section, a privileged will means any declaration or disposition, oral or in writing, made by or at the direction of the testator which manifests the intention of the testator which he desires to be carried into effect or to the guardianship, custody and tuition of a child or to the exercise of a power of appointment.

{3} A declaration may be a valid privileged will notwithstanding that it was not executed in the manner appearing to have been intended by the testator or that it was intended by the testator subsequently to execute a formal will to give effect to his testamentary dispositions, unless it appears that the failure to execute such declaration in such manner of such formal will was due to the abandonment by the testator of the testamentary intentions expressed by such declaration.

{4} Sections 4, 5 and 6 shall not apply to privileged wills, nor is it necessary for a written privileged will to be signed by the testator.

{5} A privileged will, other than a will which apart from the provisions of this section would have been valid under this Order, shall be null and void at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

27. A will, being in writing or a privileged will made under section 26, executed outside Brunei Darussalam in the manner required by —

Wills executed
abroad.

(a) this Order;

(b) the law of the place where it was executed;

(c) the law of the testator's domicile at the time of its execution; or

(d) the law of the testator's domicile at the time of his death,

shall be deemed to be a will executed for the purpose of being admitted to probate in Brunei Darussalam.

28. A will executed within Brunei Darussalam by a citizen, whatever may be the domicile of such person at the time of making the will or at the time of his death, shall, as regards movable property and immovable property situate in Brunei Darussalam, be deemed to be a will executed for the purpose of being admitted to probate in

Wills by
citizens.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Brunei Darussalam if it is executed in the manner pursuant to this Order.

Change of
domicile.

29. No will shall be held to be revoked or to have become invalid in point of form nor shall the construction thereof be altered by reason only of any subsequent change of domicile of the person making the will.

Made this 11th. day of Rejab, 1420 Hijriah corresponding to 21st. day of October, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM