

No. S 54

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

**INTERPRETATION AND GENERAL CLAUSES ACT
(AMENDMENT) ORDER, 2004**

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

INTERPRETATION AND GENERAL CLAUSES ACT
(AMENDMENT) ORDER, 2004

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 —

Citation.

1. This Order may be cited as the Interpretation and General Clauses Act (Amendment) Order, 2004.

Amendment of section 3 of Chapter 4.

2. Section 3 of the Interpretation and General Clauses Act, in this Order referred to as the Act, is amended —

(a) in subsection (1) —

- (i) by deleting the definition of "a Bruneian";
- (ii) in the definition of "a citizen of Brunei Darussalam", by inserting "the Sultan and Yang Di-Pertuan" immediately after "Majesty" in the second line;
- (iii) by deleting the definition of "Clerk to the Council of Ministers";
- (iv) in the definition of "Council of Regency", by deleting "a" from the first line and by substituting "the" therefor;
- (v) in the definition of "Government", by deleting "His Majesty the Sultan and Yang Di-Pertuan" and by substituting "Brunei Darussalam" therefor;
- (vi) by deleting the definition of "His Majesty in Council";
- (vii) by deleting the definition of "His Majesty in Privy Council";
- (viii) by deleting the definition of "His Majesty in Religious Council";

- (ix) by deleting the definition of "His Majesty the Sultan and Yang Di-Pertuan" and by substituting the following new definition therefor —

"His Majesty" or "His Majesty the Sultan and Yang Di-Pertuan" means His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and includes —

(a) a Sultan whose accession to the throne has been proclaimed whether or not he has been crowned as the Sultan and Yang Di-Pertuan;

(b) where appropriate, a Council of Regency; and

(c) to the extent to which a Deputy to His Majesty is authorised to act, that Deputy;";

- (x) in the definition of "His Majesty the Sultan and Yang Di-Pertuan in Council", by inserting "His Majesty in Council" or " immediately before "His " in the first line;

- (xi) in the definition of "His Majesty the Sultan and Yang Di-Pertuan in Privy Council", by inserting "His Majesty in Privy Council" or " immediately before "His " in the first line;

- (xii) in the definition of "His Majesty the Sultan and Yang Di-Pertuan in Religious Council", by inserting "His Majesty in Religious Council" or " immediately before "His " in the first line;

- (xiii) by inserting the following new definition immediately after the definition of "instrument" —

"Islamic Religion" means the Islamic Religion according to the Shafeite sect of Ahlis Sunnah Waljamaah;";

- (xiv) in the definition of "Privy Council", by deleting "subsection (1) of section 5 of";

- (xv) in the definition of "property", in paragraph (b), by deleting "incident" from the penultimate line and by substituting "incidental" therefor;

- (xvi) by deleting the definition of "public office" and by substituting the following new definition therefor —

"public office" means any office of emolument under the Government but does not include the Sultanate, the office of

Regent, Kepala Wazir, Chief Justice, Speaker of Legislative Council, Deputy Speaker of Legislative Council, Minister, Parliamentary Secretary, Political Secretary, member of Legislative Council, Ambassador, High Commissioner, Consul-General, Consul or such other office as His Majesty may from time to time by Order prescribe and publish in the *Gazette*;"

- (xvii) by deleting the definition of "public officer" and by substituting the following new definition therefor —

" "public officer" means the holder of any public office and includes any person appointed to act in any such office;"

- (xviii) by deleting the definition of "Public Seal";

- (xix) in the definition of "Regent", by deleting "subsection (1) of section 13 of";

- (xx) in the definition of "Religious Council" —

(aa) by deleting "Religious Council" where it appears for the second time in the first line and by substituting "Majlis Ugama Islam" therefor;

(ab) by deleting "section 5 of";

- (xxi) by deleting the definition of "Seal";

- (xxii) by inserting the following new definition immediately after the definition of "rules of court" —

" "Secretary to the Council of Ministers" means the person appointed under section 22 of the Constitution and includes any person appointed by His Majesty to be Deputy Secretary to that Council;"

- (xxiii) inserting the following new definition immediately after the definition of "the State" —

" "State seal" means the Seal of Brunei Darussalam referred to in section 79 of the Constitution;"

- (xxiv) in the definition of "Supreme Court" —

(aa) by deleting "for" from the first line and by substituting "of" therefor;

(ab) by deleting "by" from the second line and by substituting "under" therefor;

(xxv) in the definition of "written law" —

(aa) by deleting "Enactments and Proclamations," from the first line and by substituting "Proclamations" therefor;

(ab) by deleting "nor" from the third line and by substituting "of the United Kingdom or" therefor;

(ac) by deleting "Royal Charter or Royal Letters Patent nor" from the fourth line and by substituting "or" therefor;

(b) in subsection (7), by deleting "the Sultan" from the second line, from the fourth line and from the penultimate line and by substituting "His Majesty" therefor;

(d) in subsection (20) —

(i) by inserting "of that *Gazette*" immediately after "publication" in the second line;

(ii) by deleting "on which that *Gazette* was" from the second line and by substituting "that *Gazette* is" therefor.

Insertion of new sections 5A and 5B.

3. The Act is amended by inserting the following 2 new sections immediately after section 5 —

"Subdivisions of Acts.

5A. When an Act is divided into Parts, Chapters, titles or other subdivisions, the fact and particulars of such division shall, with or without express mention thereof in the Act, be taken notice of in all courts and for all purposes whatsoever.

Examples and illustrations.

5B. Where an Act includes an example or illustration of the operation of a provision —

(a) the example or illustration shall not be taken to be exhaustive; and

(b) if the example or illustration is inconsistent with the provision, the provision prevails."

Insertion of new section 7A.

4. The Act is amended by inserting the following new section immediately after section 7 —

"Purposive interpretation of written law and use of extrinsic materials.

7A. (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —

(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or

(b) to ascertain the meaning of the provision when —

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

(3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include —

(a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;

(b) any explanatory statement relating to the Bill containing the provision;

(c) any official speech, remarks or address by His Majesty the Sultan and Yang Di-Pertuan;

(d) any relevant material in any official record of debates in Legislative Council;

(e) any treaty or other international agreement that is referred to in the written law; and

(f) any document that is declared by the written law to be a relevant document for the purposes of this section.

(4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —

(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and

(b) the need to avoid prolonging legal or other proceedings without compensating advantage."

Amendment of section 8.

5. Section 8 of the Act is amended by adding the following new subsection —

"(3) Where a written law is to come into operation on a day specified by a notification made under the written law, the notification may specify different days for different provisions of the written law to come into operation."

Amendment of section 10.

6. Section 10 of the Act is amended by deleting "The repeal of any written law" from the first line and by substituting "Where a written law repeals in whole or in part any other written law, unless the contrary intention appears, the repeal" therefor.

Insertion of new section 10A.

7. The Act is amended by inserting the following new section immediately after section 10 —

"Interpretation of section 10.

10A. (1) A reference in section 10 to the repeal of a written law in whole or in part includes a reference to —

(a) a repeal effected by implication;

(b) the abrogation or limitation of the effect of the written law or part; and

(c) the exclusion of the application of the written law or part to any person, subject-matter or circumstance.

(2) Where a written law expires, lapses or otherwise ceases to have effect, section 10 applies as if the written law had been repealed by another written law.

(3) A reference in section 10 to a part of a written law includes a reference to any provision of, or words, figures, drawings or symbols in, the written law."

Amendment of section 13.

8. Section 13 of the Act is amended by adding the following new paragraph —

"(g) Where any Act confers powers to make any subsidiary legislation, expressions used in the subsidiary legislation shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power."

Amendment of section 29.

9. Section 29 of the Act is amended, in the sub-heading, by deleting " , 32 and 33" and by substituting "and 31A" therefor.

Amendment of section 30.

10. Section 30 of the Act is amended —

(a) in the sub-heading, by deleting "with the approval of the Legislative Council";

(b) by deleting " , with the prior approval of the Legislative Council expressed by resolution," from the second and third lines.

Amendment of section 31.

11. Section 31 of the Act is amended —

(a) in the sub-heading, by deleting "with the approval of the majority of the Members of the Council of Ministers";

(b) by deleting " , with the approval of the majority of the Members of the Council of Ministers," from the second and third lines.

Insertion of new section 34A.

12. The Act is amended by inserting the following new section immediately after section 34 —

"Attempt to commit an offence to be deemed an offence.

34A. A provision which constitutes an offence shall, unless the contrary intention appears, be deemed to provide also that an attempt to commit such offence shall be an offence against such provision, punishable as if the offence itself had been committed."

Amendment of section 38.

13. Section 38 of the Act is amended —

(a) in subsection (1), by deleting "specifies" from the first line and by substituting "specified" therefor;

(b) in subsection (3), by deleting "prescribed" from the third line and by substituting "prescribe" therefor.

Amendment of section 45.

14. Section 45 of the Act is amended —

(a) by deleting "to be" from the second line;

(b) by inserting a comma immediately after "proved" in the fourth last line.

Insertion of new section 48A.

15. The Act is amended by inserting the following new section immediately after section 48 —

"Service of documents.

48A. (1) Where a written law authorises or requires a document to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, then, unless the contrary intention appears, the document may be served —

(a) in the case of an individual —

- (i) by delivering it to the individual personally; or
- (ii) by leaving it at, or by sending it by pre-paid post to, the usual or last known address of the place of residence or business of the individual;

(b) in the case of a partnership —

- (i) by delivering it to the secretary or other like officer of the partnership; or
- (ii) by leaving it at, or by sending it by pre-paid post to, the principal or last known place of business of the partnership in Brunei Darussalam;

(c) in the case of a body corporate —

- (i) by delivering it to the secretary or other like officer of the body corporate; or
- (ii) by leaving it at, or by sending it by pre-paid post to, the registered office or a principal office of the body corporate in Brunei Darussalam.

(2) Nothing in subsection (1) —

(a) affects the operation of any written law that authorises the service of a document otherwise than as provided in that subsection; or

(b) affects the power of a court to authorise service of a document otherwise than as provided in that subsection."

Insertion of new section 52.

16. The Act is amended by inserting the following new section immediately after section 51 —

"Saving of rights etc. of His Majesty.

52. No Act shall in any manner whatsoever affect the rights, privileges, position, authority, powers and prerogatives of His Majesty unless it is therein expressly provided."

Made this 3rd. day of Syaaban, 1425 Hijriah corresponding to the 18th. day of September, 2004 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM