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Chapter 1

Social and Cultural Overview of Brunei

Brunei has a system of an absolute monarchy and people's way of living aligns with Islamic principles. The foundation of the country is built around family values and simple ways of living which are taken from Islamic principles that continue to shape the society and people of Brunei. The majority of people in Brunei speak Malay and English. Many of the population can also speak Chinese. There are some areas where indigenous people speak their own language.

Brunei culture descends from the “Malay Realm” which is a cultural value and tradition deeply practiced among Bruneians until today. Religious laws are also firmly held in Brunei. Sanctions from breaching religious rules and traditions have been effectively enforced to wrongdoers.¹ It can be said that cultures and traditions create values that can regulate social orders of Brunei. These values became an origin for laws and regulations enacted in a way that reflect cultures and traditions. Therefore, a person who violates traditions and cultural values of the Malay realm will be condemned and punished in a various way.

Brunei has a long-term development plan for the country (2007-2017) laying down three development pillars. The first pillar is to develop plans for better education and enhanced working skills. The second pillar is to develop plans for enhancing people's welfare. The third pillar is to develop plans for a sustainable economy. To achieve these pillars, the long-term development plan calls for collaboration between private and public entities to invest in social infrastructures with great emphasizes on public housing, education, and public health.²

¹ ASEAN Information Center, The Government Public Relations Department, *Society and Culture of Brunei*, http://www.aseanhai.net/ewt_news.php?nid=915&filename=index, accessed on 19 September 2015.

² Brunei Darussalam: National Housing Programme in Brunei Darussalam: Homes for the Nation, Senior Officials Meeting on the 17th ASEAN Conference on Civil Service Matters, 26-27 September 2013, Yangon, Myanmar, “Promotion of Good Governance: Towards Fulfilling People's Aspirations and Welfare”, Country Paper, p.4, <http://www.ocsc.go.th/ocsc/th/files/000/Brunei%20Paper.pdf>, 19 September 2015.

1.1 Social and Cultural Policy

Brunei launched a national policy called “Wawasan 2035” or the Brunei’s Nation Vision laying down a social policy on various areas (e.g. education and environment). The policy emphasizes on social development, enhancing capacity in building social infrastructure, and better public management for sustainable society and economy.³

Besides social policy, the Wawasan 2035 also touches on cultural policy at a national level, especially on traditional cultures (e.g. royal marriage, language, and media).

Brunei maintains social and cultural policies on the following areas.

1.1.1 Education policy

The education policy appears on the Wawasan 2035 which calls for improving education to resonate the national development plan in 2009. The government of Brunei, therefore, initiated a new education strategy called the New National Education of the 21st Century. Adopted from the French education concept, the strategy places importance on the student-centered learning, especially in the fields of science and mathematics as well as incorporating Islamic Religious Knowledge (IRK) as a compulsory subject in a curriculum. The government aims to increase a number of higher education students from 13% to 30% within 5 years. The budget of 80 million USD has been allocated to implement 15 electronic education projects under this new education strategy.⁴

The new education strategy under the Wawasan 2035 emphasized on the following areas:

1) Primary education investment

³ Public Works Department, Brunei Darussalam, as of 26 August 2015, http://www.pwd.gov.bn/index.php?option=com_content&view=article&id=30&Itemid=110&lang=en, Accessed on 13 September 2015.

⁴ Department of Economic Planning and Development Brunei, *Brunei Darussalam Long Term National Development Plan: Wawasan Brunei 2035*, Bandar Seri Begawan, Brunei Darussalam, 2007.

- 2) Adopting international education model to improve teaching and learning methods
- 3) Aiming to achieve educational excellence at secondary, higher education, and vocational level.
- 4) Improving IT capacity for students, teachers, and institutional executives as well as employing IT to enhance curriculum management
- 5) Launching projects that encourage learning experience and increase access to higher education
- 6) Promoting research and development as well as innovation in public institutions and other international and public-private partnership institutions
- 7) Providing public access to education through IT-integrated services
- 8) Improving institutional management system

The above strategic areas aim to promote capabilities of Brunei's youths to become professionally successful in a highly competitive environment. To achieve these strategic areas, the Ministry of Education launched a strategic plan 2012-2017 emphasizing on three strategies to achieve education excellence: (1) teaching and learning excellence (2) professionalism and responsibility and (3) efficiency and innovation.⁵

Moreover, the government of Brunei launched the 10-year education strategy (2008-2017) emphasizing on the following areas:

- 1) Enhancing management skills and leadership
- 2) Enhancing teaching and learning quality
- 3) Increasing vocational institutions' capabilities within 2012
- 4) Producing efficient human resources⁶

⁵ Ministry of Education of Brunei Darussalam, *Brunei Darussalam National Education for All 2015 Report*, prepared by the relevant national authorities in view of the World Education Forum (Incheon, Republic of Korea, 19-22 May 2015) <http://unesdoc.unesco.org/images/0023/002305/230503E.pdf> accessed on 16 September 2015.

⁶ Ibrahim Haji Abd.Rahman, *The Role of Technical and Vocational Education Training (TVET) Providers in Training for Employees*, Information Paper on Brunei Darussalam For APEC FORUM on Human Resource Development 19–21 November 2008, Chiba City, Japan, <http://hrd.apec.org/images/8/84/78.10.pdf>, accessed on 19 September 2015.

1.1.2 Public housing policy

The public housing policy of the government aims at providing housing to people. The policy is a long-term project to provide decent living environment to people and assisting people who want to have their own houses. Since 80% of the whole population work for the government, they receive financial concessions from the government in building and owning houses. The government also provides mortgages for people who want to own lands. The government also rented out houses to people with cheap renting rates. Moreover, the government launches eight housing projects in four districts around the country to provide housing to indigenous people who do not own lands or properties.

The National Housing Programme: NHP

The programme is launched under the “Homes of the Nation” initiative by the government aiming to respond to the rising demands in housing of the population. The government intends to provide safe and sound houses to a person who possesses the following qualifications:

- 1) he/she is a Brunei citizen
- 2) he/she is aged at 18 or over from the application date
- 3) he/she does not own lands nor has ever transferred any land to the government
- 4) he/she has income between 445-3, 030 USD per month
- 5) he/she has never disposed nor distributed his/her own land or houses

A person having salary less than 445 USD per month will be able to participate in a housing project under the Governmental Office and the Ministry of Culture, Youth, and Sports. Moreover, such person can receive assistance from foundations such as Sultan Haji Hassanal Bolkiah Foundation and Majlis Ugama Islam of Brunei Foundation.⁷ Under these housing projects, schools, convenient stores,

⁷ Brunei Darussalam, National Housing Programme in Brunei Darussalam: Homes for the Nation, Senior Officials Meeting on the 17th ASEAN Conference on Civil Service Matters, 26-27 September 2013, Yangon, Myanmar, “Promotion of Good Governance: Towards Fulfilling People’s Aspirations and Welfare”, Country Paper, pp.2-3, <http://www.ocsc.go.th/ocsc/th/files/000/Brunei%20Paper.pdf>, accessed on 19 September 2017.

parks, mosques, and community halls will be required to locate in the area houses in order to encourage local gatherings and acquaintances as well as a sense of community.

1.1.3 Environmental and eco-tourism policy

Environment protection is one of the areas that the Brunei government is attempting to achieve. Therefore, the National Development Plan or the Rancangan Kemajuan Negara (RKN) 2012-2017 addressed the following key concerns in environmental protection: (1) the lack of legal measures to protect environment at international standards (2) the lack of a quality assessment of water at main rivers, and (3) inadequacy of waste management system.⁸ These concerns have been addressed in the Brunei Vision and the RKN 2007-2012 which suggest resolutions including employment of waste recycling, reinvigorating urban and rural planning, conserving extinguishable animals and plants and maintaining bio-diversity, encouraging forestation, conserving water resources, preventing land erosion, rehabilitating abandoned lands, and enhancing community management of local national resources.⁹

One of the major environmental problems of the country is a natural disaster. The Bruneian government addressed this problem in the Strategic National Action Plan (SNAP) for Disaster Risk Reduction to conform with the Hyogo Framework for Action (HFA) under the ASEAN Agreement on Disaster Management and Emergency Response: AADMER). In addition, the Bruneian government launched other initiatives to counteract disaster concerns including an enhancement of water drainage management and flood prevention measures, improving basic infrastructures, and improving legal measures and law enforcement in relations to land management to prevent flooding. Moreover, the Bruneian government addressed the lack of technology and innovation to tackle environmental problems in the Brunei Vision 2035 in the following areas: (1) the lack of a key authority in developing technology and innovation for the benefits of all stakeholders in the nation (2) the lack of

⁸ Department of Economic Planning and Development (2008a), *National Development Plan 2007-2012*, Brunei Darussalam, p.159.

⁹*Ibid*, p.158.

expertise and knowledge (3) a comparable limited numbers of research and development to other countries in the region.¹⁰

The Bruneian government also launched the Know Your Country (KNY) programme (Kenali Negara Kitani) to promote domestic tourism which emphasizes on an environmental protection and eco-tourism in order to attract both domestic and international tourists. One of the projects of the KNY programme, the Heart of Borneo Initiative (HOB), is a conservation of a rain forest area of more than 220,000 square kilometers which is the only remaining rain forest area in Asia hosting more than 6% of the world's animals and plants and more than 3 million indigenous people. The project started in February 2007.¹¹

1.1.4 Cultural and traditional policy

The conservation of long-held royal rituals has been maintained in the royal marriage of Prince Abdul Malik, the son of Sultan Haji Hassanal Bolkiah, on 4 April 2015. The marriage ceremony started at the Istana Nurul Iman place, the official residence of the Sultan Bolkiah, before heading to the bride's residence. The ceremony was conducted in accordance with the "Istiadat Berbedak" which is the country's traditional rituals. The Sultan and the queen along with royal family members and many high-ranked officials joined the ceremony, which lasted for 11 days.

The Deputy Minister of Culture, Youth and Sports, Dato Paduka Hj Mohd Hamid bin Hj Mohd Jaafar, stresses on the importance of conserving cultural and traditional heritage by establishing the Cultural Heritage Institution as well as strengthening law enforcement and other agreements relating to culture to conserve long-held cultures and traditions of the nation. In terms of arts and handicrafts, Brunei is renowned for building boats, silver, copper utensils, weaving garments and carpets, and building wood baskets. In addition, the country is also great at producing Malay weapons, crafting wood, building local musical instruments and women's

¹⁰ *Ibid*, p.171.

¹¹Standard Chartered, *Sustainability Report 2009 Heart of Borneo*, http://www.standardchartered.com/-/sustainability-review09/TH/leading_way_in_communities/our_stories/heart_of_borneo.html, accessed on 27 September 2015.

accessories. The Deputy intends to incentivize local people to produce these local products in order to expand the cultural and traditional industry and enhance sustainable development.¹²

1.1.5 Policy on dressing culture

Due to the country's proximity with Indonesia and Malaysia, the dressing culture of Brunei is similar to those countries which reflects conservatism. Men are dressed in Baju Melayu, which consists of a long-sleeve shirt, which has lengths covering knees, and a pair of sarong. Women are dressed in Baju Kurung, which is a long colorful dress covering a whole body from head to toe.

Dressing improperly in public is considered to be a part of an offence "Indecent Behaviour" ¹³ under Section 197 of the Syariah Penal Code Order.¹⁴ This offence is also applied to non-Muslims. The offence imposes a fine of at least 2,000 Brunei Dollars or at least six months imprisonment, or both. Since this offence is also considered as a disgrace to Islamic religion and morals which causes a negative impact toward people witnessing this indecency, any person who persuades, encourages, or causes a person to commit the indecent behavior is also subject to at least 8,000 Brunei Dollars or at least two years imprisonment, or both. However, although the law does not make dressing improperly a direct offence, Islamic senior legal advisors of the Ministry of Religion deem that it is included in the indecent behavior which is the offence under Section 197 of the Syariah law above.¹⁵

¹² Judith Staines, *Brunei call for sustainable development of culture and heritage industry*, ASIA-EUROPE Foundation, ASEF Culture 360, <http://culture360.asef.org/news/brunei-call-for-sustainable-development-of-culture-and-heritage-industry/>, accessed on 25 September 2015.

¹³ According to Hj Hardifadhillah Hj Mohd Salleh Senior law enforcement agency of the Foreign Ministry of the Islamic at Bridex Hall 3 February 2014.

¹⁴ The Syariah Penal Code Order Section 197 states that "(1) Any person who commits an act of indecent behavior in any a public place is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 imprisonment for a term not exceeding 6 months or both. (2) Any person who organizes, persuades or encourages any other person to commit any act of indecent behavior is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both."

1.1.6 Language policy

The Sultan of Brunei encourages the use of Malay language, which is the traditional language, and concerns about the impact of globalization to the Malay language, especially on the improper use of the language in mobile texting and in a cyber space. He conveys a message that “we always maintain the autonomy in our language which will not be substituted as a second language”. Therefore, the Sultan is satisfied that the Constitution in 1959 (revised in 2004) indicates that Malay is the official language of Brunei.

Even though Malay and English are considered official languages, Brunei has more than 10 local languages and dialects including Chinese.¹⁶ There is no direct institution which oversees policies and planning of the two official languages. However, there are some organizations which are responsible in some relatable parts including the Ministry of Education, the Dewan Bahasa dan Pustaka Brunei (the Institute of Language and Literature of Brunei) and the Radio and Television Brunei.¹⁷

1.1.7 Social policy

Brunei’s social policy mainly has an objective to regulate the people’s behavior through the following rules.

Control of narcotics: selling and buying narcotics and controlled substances are illegal and subject to death penalty. However, smoking is allowed under Islamic rules but is not a well-received behaviour. Alcohol beverages are prohibited both for consumption and trading. There is no permit for a sale of alcohol beverages in Brunei.

¹⁵ Rabiatul Kamit, “Wearing indecent clothing is crime under Syariah law”, *The Brunei Times*, 4 February 2014, <http://www.bt.com.bn/frontpage-news-national/2014/02/04/wearing-indecent-clothing-crime-under-syariah-law>, accessed on 23 September 2015.

¹⁶ Paolo Coluzzi, *Majority and minority language planning in Brunei Darussalam*, John Benjamins Publishing Company, http://umexpert.um.edu.my/file/publication/00011613_73664.pdf, accessed on 23 September 2015, pp.222-223.

¹⁷ *Ibid*, p.225.

Social norms: a non-Muslim cannot be with an opposite sex Muslim in a private place except such they are both married. The social welfare is managed by the Ministry of Culture, Youth and Sports which is available as a monthly grant for purposes of supporting an education fee, mentor fee, job consultancy fee, and other supports such as food and a disaster relief. The government maintains strategies on both social services and socio-economic development, especially in education, health, and housing.¹⁸

Brunei has a social welfare scheme which applies to its nationals and people who have permanent residences in Brunei. The government guarantees basic education, housing, and health care. Furthermore, there is no personal income tax in Brunei. With a high level of social welfare, there is less political conflict in Brunei since people are satisfied with the social leverage. However, there are some social problems such as illegal foreign workers and unemployment that are highly addressed by the government.¹⁹

Nur Judy, the Vice President 1 of Brunei Council on Social Welfare (Majlis Kesejahteraan Masyarakat) conducts a research on the appropriateness of Brunei's social welfare policy, substantiality and challenges, which suggests that while the social welfare guarantees fair and equitable access to benefits, the country must not over-rely on assistance from social welfare. Currently, Brunei's social welfare scheme is compliant with the International Labour Organization rules which emphasize on access to health care (including mother and child care and basic financial assistance for children), access to nutrition, access to fundamental goods and services, access to financial assistance when being unable to receive income due to sickness, unemployment, pregnancy, being disabled, or elderly. With a total population of 400,000, Brunei is ranked among countries with the highest social welfare contribution. However, the Vice President 1 of Brunei Council on Social Welfare

¹⁸ The International Bank for Reconstruction and Development the World Bank and the ASEAN Secretariat, *Country Report of the ASEAN Assessment on the Social Impact of the Global Financial Crisis: Brunei Darussalam, with financial support of the Australian Government*, <http://www.asean.org/archive/publications/ARCR/Brunei.pdf>, accessed on 12 September 2015.

¹⁹ ASEAN Summit, *Brunei Darussalam*, http://aseansummit.police7.go.th/index.php?option=com_content-&task=view&id=37&Itemid=52g, accessed on 12 September 2015.

concerns that over-reliance on social welfare might cause challenges in the future. At the moment, this issue has been addressed nationally in order to find a solution.²⁰

1.1.8 Media and online communications policy

Media is heavily controlled by the government's strict rules since the country's reform in 1962. Generally, news are reported with restrict views on subjects such as police affairs and local documentaries on livelihood of people in a community. Reporters without Borders reported that there was no criticism on how the government ran the country in Brunei. In addition, Freedom House ranked Brunei's media as "no freedom". The royal family controls a privately owned media company such as Brunei Press Sdn Bhd, which publishes Borneo Bulletin. Editors and journalists conduct self-review and self-audit on contents relating to politics and religion.

The Sultan expressed his concerns over online critics of the country's Islamic law. He also emphasizes that people should be cautious of Internet users who are insulting Brunei's Islamic scholars and leaders of the government. The effects of these criticisms would be negative to the country as a whole since the media is spanning across the globe. The youths are encouraged to stay cautious not to be persuaded by the perpetrators who intend to cause conflicts in the country. In reaction to the Sultan's message, Sam Zarifi from the International Commission of Jurists (ICJ) urged Brunei to respect the dissenting views of its citizens. He maintains that the Sutan's statement implies that human rights, particularly respect for freedom of opinion and expression, is widely disregarded by the authorities in Brunei. He emphasizes that free and unhindered debates on issues like the enactment or implementation of a law are important cornerstones of a democratic society.²¹

²⁰ The Brunei Times, *Social welfare policy needs review*, <http://www.bt.com.bn/news-national/2014/07/13/social-welfare-policy-needs-review>, accessed on 15 September 2015.

²¹ Unknown, "Sultan of Brunei Threatens Critics of Sharia Law", *Mapping Global Media Policy*, 5 March 2014, <http://www.globalmediapolicy.net/node/10599>, accessed on 23 September 2015.

1.1.9 Healthcare Policy

The policy seeks to improve the health and well-being of the people of Brunei through a high quality and comprehensive health care system that is effective, efficient, responsive, affordable, equitable and accessible to all in the country. Mobile healthcare services are provided to people in distant areas or people living on the river. Military officers and families can access to healthcare services provided by military units. Public healthcare consulting and operation services are free of charge. The government also bears the cost of referral of a patient to England, if the patient gives consent, to receive special care which is unavailable in Brunei. In such referral, the government supports expenditure of the patient's dependants. The government also provides medical checkups during pregnancy along with medication and some infant supplies after birth.

The government is fully committed to continuously improving the health status of the people, and considers government funding for health care a major public investment in human development. The Ministry of Health's agenda for the 21st century focuses on health improvement for people-centered development. Health policies and programmes are reviewed regularly in the context of changing economic, social and technological environments and health situations. In looking ahead to the future, the following four principles are observed in the provision of health services for all citizens: (1) ensuring universal access to better health care (2) enabling equity of access to comprehensive health services (3) promoting partnership and public participation in the concept of co-production of efficient and effective health services for all, and (4) ensuring that the health service system is sustainable within the institutional capacity and financial resources of the Ministry of Health.²²

In meeting the agenda's objectives, the Ministry of Health sets out both strategic and instrumental goals as follows.

Strategic goals

²² World Health Organization, Western Pacific Region, *Country Health Information Profiles: Brunei Darussalam*, p.32, http://www.wpro.who.int/countries/brn/3BRUpro2011_finaldraft.pdf, accessed on 21 September 2015.

- to promote primary health care
- to focus on the management of priority chronic diseases
- to pursue high quality in health care
- to achieve a more equitable allocation of funds for diverse health services and to venture into alternative sources of health care financing
- to promote selected areas of excellence in health services.²³

Instrumental goals

- to develop comprehensive health databases and information management systems that support operational, professional and managerial functions
- to improve the quality of policy-making and management decisions at higher levels of the organization so that the Ministry becomes an effective enterprise and its administrators effective managers
- to create and promote a disciplined workforce with positive work attitudes, through teamwork, a sense of belonging and responsibility, to achieve the organizational mission, goals and objectives
- to improve competency and standards among all health care professionals
- to enhance cost-effectiveness in the delivery of all aspects of health services
- to improve the management of support services in order to contribute to the overall quality of health services.²⁴

1.1.10 Social security policy

The social security in Brunei is regulated by the following laws: (1) the old-age and disability pensions of 1955 as amended in 1984; (2) the employees' trust fund of

²³ *Ibid.*

²⁴ *Ibid.*

1992 and the supplementary pension scheme of 2009, implemented in 2010. The social security of Brunei consists of a provident fund, supplementary defined contribution scheme, and universal old-age and disability pension system. The system covers employees up to the age of 60 who are citizens or permanent residents of Brunei, including government civil servants who began service on or after 1 January 1993. Civil servants who started their career before 1 January 1993 are covered by the government pension scheme. Voluntary coverage is available for self-employed persons who are 60 years of age or older. There are special systems for armed forces personnel, police force personnel, and prison wardens. Moreover, there is a supplementary pension for both public and private employees who is between 18 to 59 years of age who are citizens or permanent residents of Brunei. Pension funds are contributed by both the insured person and an employer in the following proportions: (i) insured person: 5% of monthly earnings that exceed 80 Brunei Dollars; and (ii) employer: 5% of monthly payroll (3% for the insured's account and 0.5% for survivor benefits). Additional voluntary contributions are permitted. There are no maximum earnings used to calculate contributions.²⁵

The Tabung Amanah Pekerja (TAP) scheme is the contributory pension scheme contributed by 5% of an employee's basic salary and another 5% from an employee. This scheme's fund is managed by the Ministry of Finance. The contributor to the scheme's fund will receive dividends at statutory age. However, an employee can withdraw some portions of money from the scheme in advance which reduces the overall capital in the fund. The TAP scheme is widely perceived as an ineffective way to encourage retirement savings because many employees use money from the TAP to settle personal debts rather than to save money for retirement.²⁶

There is another pension scheme which is called the Supplemental Contributory Pensions (SCP) Scheme. The SCP was established under the Supplemental Contributory Pension Order (2009) and enforced since 1 January 2010. It is an additional scheme that complements the existing TAP Scheme. Similar

²⁵ Pension and Development Network, Brunei, <http://www.pensiondevelopment.org/51/brunei.htm>, accessed on 22 September 2015.

²⁶ Oxford Business Group, *The Report: Brunei Darussalam 2009*, p.37.

to TAP Scheme, it is compulsory for all employees in the public and private sector. In addition, those who are self-employed are encouraged to join the scheme.²⁷

1.1.11 Religious Policy

The religion is highly connected with the government's affairs in Brunei. The government operates on the core notion to build a strong and harmonious nation under the Islamic principles and the Sultan's philosophy that is guided by Malay culture, Islamic principles, and monarchy system or the "Melayu Islam Beraja (MIB)". The MIB is the philosophy of the nation encompassing Malay culture and language, Islamic religion, and MIB scheme of governing the nation. Being an Islamic state, values and laws must reflect the principles of Islam. Beraja means the country that is ruled by a monarchy. Islamic principles are highly influential in Brunei as an individual incorporates Islamic principles into their daily life. Second to the Islamic principles is family and working values.²⁸

Although the Constitution grants freedom of religions, the national religion of Brunei is the Muslim religion according to Shafi'i sect of the religion. Other religions can be held in Brunei as long as the person professing them in any part of the country practices them in peace and harmony.²⁹ However, there are many criticisms that the government only supports the Shafi'i school of Sunni Islam and discourages other religions by imposing measures that legally and politically restrict other religions besides the Shafi'i Islam.³⁰

²⁷ Ministry of Finance Brunei Darussalam, Supplemental Contributory Pensions, <http://www.mof.gov.bn/index.php/about-scp#sthash.94EQ5xGj.dpuf>, Last Updated on 8 October 2013, accessed on 22 September 2015.

²⁸ Nichan Singhaputargun, *Absolute Monarchy Principles of Islam and Administration of Brunei Darussalam*, 20 July 2013, <http://www.prachatai.com/journal/2013/07/47797> accessed on 29 September 2015.

²⁹ The constitution states, "The religion of Brunei Darussalam shall be the Muslim religion according to the Shafi'i sect of the religion: Provided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam."

³⁰ United States Department of State, *Diplomacy in Action: Brunei*, <http://www.state.gov/documents/organization/171648.pdf>, accessed on 22 September 2015.

1.1.12 Science, technology and innovation policy

The Wawasan 2035 or the Brunei's Nation Vision launches strategies on science, technology and innovation in order to enhance the country's capabilities and to be globally recognised as an economy-driven market. Instead of oil and gas focus, the government intends to develop the whole economy by encouraging innovations to build a sustainable growth for the nation.

In accordance with the Luang Prabang Joint Declaration, Brunei was appointed to be in charge of Information Technology (IT). The Brunei government plans to achieve IT goals by giving full support to ICT agencies and applying IT in civil management and governmental services in order to become a full and effective e-government.

Since Brunei is widely recognised among Islamic nations as a country which embraces principles of a moderate Muslim and effectively incorporates religious beliefs into a daily life, the Brunei government aims to establish the country as a hub of halal products which seeks to promote the Brunei Halal brand as an internationally recognised brand. To achieve this, the government promotes the efficient process of halal product certification on both food and non-food products. Furthermore, there have been attempts by the government to promote research and development of new technologies and innovations in order to enhance standards of halal products. To this end, the Ministry of Industry and Primary Resources establishes new agencies to support halal products development as follows.

1) The Halal Industry Innovation Centre (HIIC)

Established in 2013, this agency aims to support the research and development of Halal products. Moreover, it is set out to be the main agency for development in manufacturing and logistics. Presently, the HIIC has several researching networks with many countries including Australian, United States of America, and Japan.

2) The Brunei Wafriah Holding Sdn Bhd & Ghanim International Food Corporation Sdn Bhd

Established in 2009, this private agency operates under supervision from the Ministry of Industry and Primary Resources to develop the brand “Brunei Halal” to be globally recognised and to develop Halal productions and exports in small and medium businesses. It also seeks investment opportunities for the Original Equipment Manufacturer (OEM) which is a production service under the authorization of a brand owner. The products are to be reviewed and controlled for quality by the owner. At the moment, Brunei has some OEM joint ventures with companies in China, India, and Thailand.³¹

1.1.13 Youth policy

According to Brunei’s National Youth Policy, youth in Brunei are aged 15-40 years. The policy aims to achieve the following five areas of excellence.³²

- 1) Uphold Islam as the official religion and integral to daily life
- 2) Enable youth to contribute to the economy, culture and society
- 3) Foster understanding and awareness
- 4) Build knowledge and skills of youth
- 5) Develop attitudes and personal qualities, such as patriotism, confidence and creativity

The policy includes key strategic areas including education, employment and training, leadership, social and economic initiatives, international exchange, community service, as well as sports.

³¹ Ministry of Foreign Affairs, *Cooperation on Science, Technology and Innovation*, State Department at Bandar Seri Begawan, Brunei. <http://www.mfa.go.th/business/contents/files/activities-20140326-161533-499239.doc>, accessed on 22 September 2015.

³² Youthpolicy.org, Brunei, last updated on: 28 April 2014 <http://www.youthpolicy.org/factsheets/country/brunei/>, accessed on 22 September 2015.

1.2 Treaties and International Agreements relating to Social and Cultural dimensions

Brunei has concluded several treaties and international agreements relating to socio-cultural dimensions as follows.

1.2.1 The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984), signed on 22 September 2015, no ratification has been made by Brunei.

Part 1 (articles 1-16) provides definition of “torture” and renders it a criminal offence under universal jurisdiction.

Part 2 (articles 17-24) establishes the Committee against Torture carrying functions assigned by the Convention. The Committee consists of 10 independent experts appointed by country members. An injured individual is entitled to submit claim to the Committee to seek legal recourse under the Convention.

Part 3 (articles 25-33) provides rules concerning accession, reservations, amendments, and dispute settlements.

1.2.2 The Convention on the Elimination of All Forms of Discrimination against Women (1979), ratified on 24 May 2006.

The Convention requires Member States to have obligations in maintaining equality on the basis of sex and eliminating legal measures which are contrary to the provisions of the Convention. Member States shall provide legal measures that prevent discrimination against women. In addition, judicial and public institutions shall be provided to give effects to the provisions of the Convention which must establish procedures for an injured person to seek redress from an discriminatory action perpetrated by an individual, public organization, or private institution.

1.2.3 The Convention on the Rights of the Child (1989), ratified on 27 December 1995.

Part 1 (articles 1-41) imposes general obligations on Member States to respect and ensure the rights of the child which include protection of freedom and liberty to live, access to welfare, protection of civil rights, protection of the child's dignity in case of penal conviction, and protection of vulnerable children

Part 2 (articles 42-45) provides rules and formalities for ratifying countries.

Part 3 (articles 46-54) lists the Convention's obligations and monitoring and reviewing procedures as well as other conditions in applying the provisions of the Convention.

1.2.4 The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2000), ratified 9 June 2009.

This Convention adopts the guidelines of the International Labour Organization (ILO) which requires Member States to ensure that the worst forms of child labour will be immediately prevented and eliminated.

1.2.5 The Convention against Discrimination in Education (1960), ratified on 25 January 1985.

This Convention is conceived by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) which requires Member States to prevent any discrimination which has an effect of nullifying or impairing equality of treatment in education and in particular; (1) any discriminatory measure depriving any person or group of persons of access to education of any type or at any level; (2) any discriminatory measure limiting any person or group of persons to education of an inferior standard; (3) any discriminatory measure establishing or maintaining separate educational systems or institutions; and (4) any discriminatory measure inflicting on any person or group of persons conditions which encroaches the dignity of man.

1.2.6 The Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (2000), ratified on 21 November 2006.

This Optional Protocol is concluded for the purpose of implementing the Convention on the Rights of the Child of its provisions, especially articles 32, 34, and 35 on an exploitation of children for economic benefits.

Part 1 (articles 1-3) requires Member States to prevent the sale of children, child prostitution, and child pornography by promulgating legal measures to prescribe criminal sanctions for these offences.

Part 2 (articles 4-6) provides obligations concerning court jurisdiction, trial procedures, extradition, and investigation.

Part 3 (articles 7-10) provides obligations concerning confiscation of properties used in perpetrating the offence, measures to protect rights and benefits of the child, preventive policies and raising public awareness, international collaborations in preventing and rehabilitating an injured child as well as repatriation of an injured child.

Part 4 (articles 11-17) indicates reporting requirements pursuant to the provisions of the Optional Protocol.

1.2.7 The Convention on the Rights of Persons with Disabilities (2006), signed on 18 December 2007, no ratification has been made yet.

Part 1 (articles 1-3) provides objectives, definitions, and general obligations concerning guarantees of human rights and fundamental freedoms by all persons with disabilities, effective inclusion of persons with disabilities, and treatment of all persons with disabilities without discrimination.

Part 2 (articles 4-8) requires Member States to respect obligations to ensure equality of all persons, non-discrimination treatments against women with disabilities, children with disabilities, and an obligation to raise public awareness.

Part 3 (articles 9-30) ensures rights of persons with disabilities including the rights to employment, healthcare, education, freedom of expression, freedom to relocation, freedom from torture, and rights to establish a family.

Part 4 (articles 31-50) provides rules concerning statistical assimilation, international cooperation, review and monitoring requirements on the implementation of the provisions of the Convention, as well as functions of the Committee.

1.2.8 The Convention on the Safety of United Nations and Associated Personnel (1994), ratified on 1 August 2013.

In order to grant an adequate protection for the United Nations and associated personnel, Member States are required to adopt appropriate and effective measures for the prevention of attacks committed against the United Nations and associated personnel and for the criminal punishment of those who have committed such attacks as well as to cooperate among Member States to prevent crimes associated with the United Nations and associated personnel, and to assist one another in criminal procedures.

1.2.9 Membership of International Organization

Brunei became the 191st member of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 17 March 2005. Brunei also ratified the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972) in August 2011, and the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003).

The Ministry of Education is a member of several concerning international organizations including the UNESCO, the Southeast Asian Ministers of Education Organization, and the Asia-Pacific Economic Cooperation. This reaffirms the commitment to enhance an education development to meet international standards in accordance with the Millennium Development Goals under the UNESCO.

1.3 Cooperation between Thailand and Brunei in Social and Cultural Dimensions

Thailand and Brunei established the Joint Commission for Bilateral Cooperation (JCBC) on 30-31 March 2003 in Bangkok and also held its first meeting. The Foreign Minister of Thailand and the Foreign Minister of Brunei chaired the meeting which discussed the promotion of cooperation between the two countries in many areas including trade, investment, fishery, industry, Islamic Bank of Thailand, labour, academic cooperation, tourism, media and communications, and culture. The outcome of the meeting indicates a firm commitment of both countries to enhance relationships. In addition, Thailand was successful in making Brunei see the importance of investing in Halal food industry. The Islamic Bank of Thailand was jointly established on 3 September 2003. In the 15th General Meeting of Pacific Economic Cooperation Council (PECC), the Prime Minister of Thailand gave a keynote speech at the meeting and visited the Sultan of Brunei where both parties discussed key issues including establishing an Islamic university in Thailand, tourism cooperation, setting up Matching Fund (between the Brunei Investment Agency and the Thai Pension Fund), and cooperation between the Royal Brunei Airlines and the Thai Airways Company.

1.3.1 Cultural Cooperation

On the first meeting of the Joint Commission for Bilateral Cooperation (JCBC) held in Bangkok on 30-31 March 2003, both countries mutually agreed to extend a cultural cooperation. Moreover, as the 20th anniversary of Thailand – Brunei relationships, the Embassy of Thailand in Banda Seri Begawan, Brunei, the Ministry of Foreign Affairs, and the Ministry of Culture and Sports jointly hosted the Thailand Festival 2003 where both countries exchanged arts and cultural dialogues including the exhibition of Thai arts and musicians in Brunei on 23-26 May 2003.³³

1.3.2 Education and Academic Cooperation

There have been exchanges in terms of education and academic areas between the two countries. Some Muslim students from the South of Thailand

³³ ASEAN Summit, *Brunei Darussalam*, http://aseansummit.police7go.th/index.php?option=com-_content&task=view&id=37&Itemid=52g, accessed on 12 September 2014.

received grants from the government of Brunei to study politics and religion studies. In addition, there are a number of students who study in Brunei under a sponsorship of Thai organizations such as PTT Public Company. Also, in 2006, the Thai government grants a student sponsorship to study in Brunei under the Thai Language Learning among ASEAN Diplomats programme.³⁴

The Ministry of Foreign Affairs and the Embassy of Brunei in Thailand provide student grants to study in Brunei on both undergraduate and graduate level. The grant recipient must be from the ASEAN countries. In 2002, students from the South of Thailand were selected by the Islamic Committee to receive the grant to study in a field of religion-related at the University of Brunei Darussalam. Most cooperation in education and academic field between Thailand and Brunei is derived from the cooperative framework between the Southeast Asian Ministers of Education Organization (SEAMEO) and ASEAN. Under the framework, Brunei pioneers in establishing the SEAMEO VOCTECH Center which aims primarily to be the education center for vocational studies and promote vocational training and research. The SEAMEO VOCTECH Center gains supports from other international institutions in organizing training courses. The Center has 10-12 training courses each year for the SEAMEO members. In terms of higher education network, Brunei is a member of the ASEAN University Network (AUN) through the University of Brunei.

In the international education conference in 2003, the Minister of Education of Thailand, Mr. Chaturon Chaisang, and the Ministry of Education of Brunei, H.E. Penin Abdul Rahman Taib, mutually discussed and agree to enhance education cooperation between the two countries, especially on the joint research project with Thai universities concerning Malay and Thai language studies and higher education research. Moreover, the meeting emphasized on vocational studies with a prospect of exchanging students and teachers. Thailand also requested cooperation in Islamic studies and a curriculum exchange in religion studies.

In the SEAMEO Senior Officials Meeting on 22 November 2007, the Deputy Permanent Secretary of the Ministry of Education of Thailand, Mr. Chinnapat

³⁴ *Ibid.*

Bhumirat, and the Deputy Permanent Secretary of the Ministry of Education of Brunei, Mrs. Hajah Norjum Haji Mohd Yusop, discussed the bilateral cooperation on education and mutually agreed to conclude an MOU on education cooperation. Brunei was particularly interested to have cooperation in vocational and technology programme, agriculture, sports science, and information technology. Thailand was particularly interested to have cooperation in educational research, environmental studies, library and curating development, English teaching, ICT-enabled teaching, and studies about encouraging peace in the South of Thailand. Moreover, both countries agreed to set up exchange programmes for teachers and students to enhance learning experiences and broaden knowledge about Islamic teaching and learning.

On 19 October 2009, the MOU on education cooperation had been signed between the Minister of Education of Thailand and the Minister of Education of Brunei at Bandar Seri Begawan, Brunei. The Education Minister of Thailand, Mr. Julin Laksanavisit, travelled to Brunei as the president of SEAMRO to visit the SEAMEO VOCTECH Center and other education institutions. The MOU between the two countries established cooperation on all levels of education and emphasized on areas such as institutional networking, technical and vocational programmes, sports science, information technology, credit transfer and student transfer, recognition of qualifications, vocational courses and experts, bilingual courses, mathematics and science, teaching and professional development, and ethics.

Thailand hosted the Joint Working Group on Education Cooperation under the MOU on Education between Thailand and Brunei on 7-10 September 2011 in Bangkok to discuss the following projects.

- 1) Cooperation to improve English language
- 2) Cooperation to exchange teachers in special education of the Basic Education Commission in order to enhance education quality of both countries
- 3) Cooperation in student transfer of M-I-T (student transfer among Malaysia - Indonesia – Thailand) of the Higher Education Commission, which would extend to Brunei. However, Brunei requested for preparation period and would inform Thailand of the time join the scheme in due course

4) Cooperation on technical and vocational schools

5) Cooperation on sports. Brunei was interested in sports training, teacher's training, sports activity exchange, and sports camp. To achieve this, the Permanent Secretary of Ministry of Education coordinated with the Ministry of Tourism and Sports for further action.³⁵

1.3.3 Information Cooperation

During the official visit of the Prime Minister of Thailand to Brunei on 16 August 2001, the foreign ministers of both countries signed the Memorandum of Understanding (MOU) between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Kingdom of Thailand on Cooperation in the Field of Information and Broadcasting in order to promote cooperation on information exchange, public relations, radio programme exchange, and television programme, content, and media exchange. Presently, the MOU has been executed by establishing the Joint Technical Committee on information and Broadcasting. Moreover, both countries have occasionally hosted media events; for example, the National Broadcasting of Thailand and the Radio Television Brunei hosted the third musical and cultural exchanges event at Kad Theatre, Lotus Pang Suan Keaw, Chiang Mai.³⁶

³⁵ Office of International Cooperation, Ministry of Education, *Education Cooperation with Brunei Darussalam*, February 2014, http://www.bic.moe.go.th/newth/index.php?option=com_k2&view=item&id=3618:brunei-education-cooperation-2014-02-10&Itemid=332, accessed on 22 September 2015.

³⁶ *Ibid.*

Chapter 2

Political and Security Overview in Brunei

The Constitution of 1 January 1984 indicates that the Sultan shall be the head of state and the Prime Minister of Brunei. The Sultan also assumes a position of the Minister of Defence and the Minister of Finance. According to law, the Prime Minister of Brunei has to be a Melayu-born person and a Sunni Muslim. The legislative function of the country had been suspended for a while before it was revived again in 2004 where 21 legislative members were appointed. The first legislative council meeting was held on 24 September 2004. The Sultan approved laws to amend the 1959 Constitution leading to an election for 15 seats of legislative members out of the total 45 seats. The Sultan appointed the rest of 30 seats. Such election was widely admired by the international community, academia, and active political parties as a start of a democratic process in Brunei.

In 2005, the Sultan called for a major reform of the Ministers and appointed the Crown Prince Al-Muhtadee Billah as a Senior Minister of the Prime Minister Office. This has a subtle implication on the succession of the country's executive power in the future. Moreover, the new Ministry of Energy was appointed to oversee energy resources development of the country. The reform creates an opportunity for experts and people from business sectors as well as non-Muslims to take important positions in the parliament for the first time. This reflects the Sultan's intention to boost the country's economic and energy sector and to display the country's standpoint of being a moderate Islamic state. Brunei also aims to attract foreign investors and increase economic capabilities to uplift the country's competitiveness among other countries.³⁷

Presently, the Brunei's head of state is His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah. He accessed to the Sultanate on 5 October 1967 as the 29th Sultan. He currently holds positions of the Prime Minister, the Minister of

³⁷ The Commonwealth, Brunei Darussalam : Constitution and politics <http://thecommonwealth.org/our-member-countries/brunei-darussalam/constitution-politics>, accessed on 21 March 2017

Defence and the Minister of Finance. The main positions in the parliament are as follows.

- The Prime Minister (currently held by the Sultan)
- The Minister of Defence (currently held by the Sultan)
- The Minister of Finance (currently held by the Sultan)
- The Senior Minister of the Prime Minister Office (currently held by the Crown Prince Pengiran Muda Haji Al-Muhtadee Billah)
- The Minister of Foreign Affairs
- The Minister of Education
- The Minister of Religious Affairs
- The Minister of Industry and Primary Resources
- The Minister of Communication
- The Minister of Home Affairs
- The Minister of Health
- The Minister of Development
- The Minister of Culture, Youth, and Sports
- The Minister of Energy at the Prime Minister Office
- The Second Minister of Finance

2.1 Political and Security Policy

Brunei retains a system of an absolute monarchy. Being a less-populated country, Brunei has rarely been under a political pressure or faced with social resistance or economic crisis. The country holds a decent economic standing due to a major export in oil and gas. Historically, Brunei made a decision to be independent from Malaysia, thus the sharing of resources became separated from Malaysia. Brunei runs the country effectively thanks to a small population of an approximate 400,000 people. The GDP of the country is sufficient to develop human capital, which makes Brunei to be one of the top-ranked countries in human development index along

with many Western countries. People in Brunei generally have decent quality of life despite being non-democratic nation.³⁸

The national policy of Brunei emphasizes on harmonization of the nation and maintaining independency. The strategic plans in politics stress on development of policy making bodies, enhancing economic policies, modernizing civil services, revamping the governmental image, uplifting rules of law in the justice system, creating capabilities in crime prevention, and enhancing the country's capabilities to cope with crisis.³⁹ Besides politics, the national security plans are included in the Wawasan 2035 which focus on domestic and international security including creating the country's efficiency to cope with emergency such as training the Royal Brunei Police Force (RBPF) to deal with hostage taking in piracy. Moreover, the RBPF is trained to deal with a national disaster and terrorism which may affect tourists. The government also encourages military forces and a regional security by sending troops to observe the ceasefire between the Philippines and the Moro Islamic Liberation Front (MILF) in Mindanao, and joining the peace-monitoring mission to Aceh Province.

In addition, Brunei maintains policies in the following areas of politics and security.

2.1.1 Administration Policy

Administrative and executive functions

The administrative functions and a decision-making power in Brunei are centralized within the power of the government before distributing powers, budget, and resources to subordinated organizations. As a welfare state, Brunei retains a strong top-down order in politics to ensure that the people are equally and thoroughly facilitated. Brunei treats people based on Islamic principles of equality and fraternity. For instance, the Sultan sits at the same level as people at the mosque. Throughout the history, Islamic principles are highly influential in the

³⁸ Nichan Singhaputargun, *Absolute Monarchy Principles of Islam and Administration of Brunei Darussalam*, 20 July 2013, <http://www.prachatai.com/journal/2013/07/47797> accessed on 29 September 2015.

³⁹ Prime Minister's Office Brunei Darussalam, *Strategic Themes*, <http://www.pmo.gov.bn/SitePages/-Strategic%20Themes.aspx>, accessed on 13 September 2015.

exercising of the Sultan's power. The government and its people are connected under "The Concept of Islamic State" which the country's prosperity and security are built upon. The principle of "Melayu Islam Beraja (MIB)" is the philosophy of the nation to encompass Malay culture and language, Islamic religion, and the Brunei's monarchy system. The MIB principle is a key to governing the nation in which all Bruneians must respect and obey. Existing and future civil officials must commit themselves to the MIB principle as one can be disqualified from being a civil official should he fails to respect the MIB principle in any part. The MIB principle is also displayed on the Brunei's national flag. In the flag, the red crest of Brunei in the middle consists of the flag and the Royal umbrella (both symbolizing the Brunei's monarchy), the wing of four feathers (meaning to protect justice, peace and prosperity of the country), the crescent (symbolizing Islam) with yellow Arabic writings as the nation's motto "Always in service with God's guidance", the hand (signifying the government's duties to create wealth, peace, and prosperity), and the banner at the bottom inscripted with Arabic writings as "Brunei Darussalam" or the "Abode of Peace". As a welfare state, there is no income tax on people and there are public services available in all parts of the country. The government embraces the philosophy of good governance derived by the Islamic principles. The yellow field of the flag represents the Sultan of Brunei. The black and white stripes of the flag represent the chief ministers of Brunei. The red crest of Brunei stands in the middle of the flag.⁴⁰

The Prime Minister Office's mission is to achieve excellent leadership and good governance for national prosperity and stability. Therefore, the decision-making powers of the government have to be executed effectively for the benefits of the nation.⁴¹ Brunei maintains the system of absolute monarchy by adhering to the principle of MIB, which is the philosophy of the nation that encompasses Malay culture and language, Islamic religion, and the Brunei's monarchy system. The Sultan assumes positions as the head of state who is also the Prime Minister and the

⁴⁰ Nichan Singhaputargun, *Absolute Monarchy Principles of Islam and Administration of Brunei Darussalam*, 20 July 2013, <http://www.prachatai.com/journal/2013/07/47797> accessed on 29 September 2015.

⁴¹ Prime Minister's Office Brunei Darussalam, *Vision, Mission, Roles and Functions*, [http://www.pmo.gov.bn/Site/Pages/Vision, %20Mission,%20Roles%20and%20Functions.aspx](http://www.pmo.gov.bn/Site/Pages/Vision,%20Mission,%20Roles%20and%20Functions.aspx), accessed on 13 September 2015

Minister of Defence, advised by the Advisory Council and the Cabinet. There had been an absence of the legislative council and the parliament in Brunei until the Sultan appointed the parliament of Brunei in 2000 for the first time since 1984, which was the year that Brunei became independent from Great Britain. The sovereignty of Brunei consists of the executive power, the judicial power, and the legislative power.

1) The Executive Power

The Sultan maintains positions as the Prime Minister, the Minister of Defence, and the Minister of Finance. The Advisory Councils are appointed by the Sultan which consist of the Council of Cabinet Ministers, the Religious Council, the Privy Council, and the Council of Succession.

2) The Legislative Power

The Brunei Legislative Council (Legco) is appointed by the Sultan. The Legco currently has 33 members and hold an annual meeting in March.

3) The Judicial Power

The Judicial Power is exercised by the High Court, the Court of Appeal, the Intermediate Court and the Sharia Court. The Sultan appoints important positions in courts.

The Constitution of Brunei

The Constitution was first declared in 1959 and subsequently revised in 1971 and 1984. The 1959 Constitution granted the Sultan an absolute power to run the country. In exercising the power, the Sultan is advised by five councils; the Religious Council, the Privy Council, the Council of Cabinet Ministers, the Legislative Council, and the Council of Succession which enacts rules of monarchical succession. Under the 1959 Constitution, the Prime Minister was the highest position of the executive power which was advised by the British High Commissioner except religious affairs and Melayu traditions. The Constitution was later amended in 1971 which gave Britain power to run the country's foreign affairs. The defence power was shared between Brunei and Britain. The Constitution was amended again when Brunei was granted independency in 1 January 1984. In that year, the Sutan assumed the role of the Prime Minister, the Minister of Finance, and the Minister of Defence. In October

1986, the Sultan resigned from the post as the Minister of Defence. In accordance with the 1959 Constitution, the appointment of Councils rests within the Sultan's power. The Religious Council gives advice to the Sultan in matters concerning religious affairs. The Privy Council takes orders from the Sultan in amending or withdrawing the constitution. The Legislative Council acts as the government's legal advisor and enacts law in accordance with the Constitution and other laws.

Political Parties

Presently, political parties in Brunei play a minimal role in politics. It can be said that political parties do not carry any impact on Brunei's politics. Brunei has small political parties which are almost inactive in politics as they carry less activities. They are Parti Kesedaran Rakyat Brunei (PAKAR) and the recently approved Parti Perpaduan Kebangsaan Brunei (PPKB).

Brunei Districts

Brunei has four districts as follows.

1) Belait

Belait is the biggest district of Brunei. It is located in the west of the country. The capital town is Kuala Belait. Other towns include Badas, Kerangan, Nyatan, Labi, Lumut, Seria, Sukang and Talingan. The district is bordered by the South China Sea in the north, Tutang District in the east, and Malaysia in the west and the south.

2) Brunei-Muara

It is the smallest district of Brunei located at the farthest north of the country. The capital town is Bandar Seri Begawan which is also the capital of Brunei. The other important town is Muara. The district is bordered by the South China Sea in the north, the Brunei's gulf in the east, Malaysia in the south, and Tutong District in the west. There are also many small islands in the Brunei's gulf.

3) Temburong

It is located at the farthest east of the country. Its location is unique as it is isolated from the mainland of the country. The Brunei's gulf is the only connection

to the mainland. People from this district need to transport by boats across the Brunei's gulf to reach the mainland. For a road transport, people from the district need to transit through part of Malaysia, Lim Bang, where the passport is required, to get to the mainland of Brunei.

4) Tutong

The capital town carries the same name as the district's name. Other towns include Kuala Abang, Lamunin, Melit, Pananjong, and Telisai. The district is bordered by the South China Sea in the north, Malaysia and Brunei-Muara district in the east, and Belait district in the west.

2.1.2 National Defence Policy

In the past, Brunei and Britain engaged in a Treaty which allowed the Gurkha troop (indigenous group in Nepal) to settle in a town called Seria to carry defence duties in Brunei. The defence function of the country has a minimal role although Brunei has also taken part in claiming territorial rights over the Spratly Islands along with other claimants (Malaysia, China, Taiwan, Vietnam, and Philippines).

The defence policy of the country is stipulated in the 2011 Defence White Paper. The country's defence policy aims to maintain effective defence capabilities in the face of aggression and other challenges which threaten the national security. It is the intention of the nation to keep an eye on emerging situations in order to intercept trends or events which constitute threats to national security. The role of defence authority is to protect national interest and support law enforcement authorities in order to maintain national security by commanding, cooperating with relevant authorities, responding to crisis in security as well as preventing cross-border threats. The most challenging aspect of the Brunei's national security is coping with emerging threats in a globalized era. With a current world's situation, Brunei can be affected by new threats, natural disaster, unexpected epidemic. It is important that Brunei cope with these problems effectively. As Brunei is located in the area of

Southeast Asia where the dispute about territory is ongoing, the nations in the region should cooperate to settle the conflict amicably.⁴²

2.1.3 National Security Policy

Brunei is a member of ASEAN Community. Brunei became the 6th ASEAN nation in 7 January 1984. Brunei's accession to ASEAN is backed by two reasons as follows.

1) National Security

Brunei is confident that the non-interference principle of ASEAN will ensure that integrity of Brunei will not be invaded by neighboring countries such as Indonesia and Malaysia.

2) International Relations

Since Brunei is a relatively new country (declared independency in 1984), the country needs to uplift international relations with other countries in order to gain recognition and credentials in international community. Joining ASEAN is one of the strategies to get recognition from international community.

Being a small country, Brunei lacks political power and bargaining power. Brunei attempts to enrich politics, economics, and security by emphasizing on regionalism. Previously, Brunei had always focused on political relations with major Western nations such as the United Kingdom. As ASEAN gains more membership by Brunei's accession, its political power in international politics accelerates. In terms of economic power, Brunei is a leading global player in oil exports. Brunei is also a member of powerful international forums such as the Commonwealth of Nations and the Organization of Islamic Cooperation (OIC). ASEAN and Brunei see mutual benefits in the global politics. Therefore, having Brunei as a member of ASEAN should benefit both of them to be recognized in international politics.

Brunei signed the ASEAN Charter which became effective on 15 December 2008. One of the main functions of ASEAN is to uphold the integrity of the region for

⁴² Oxford Business Group, *The Report: Brunei Darussalam 2011*, Oxford Business Group, 2011 – Brunei p.196.

maintaining peace and security. ASEAN security functions are overseen by the ASEAN Defence Minister's Meeting (ADMM) which has the following objectives.

- To promote regional peace and stability through dialogue and cooperation in defence and security;
- To give guidance to existing senior defence and military officials dialogue and cooperation in the field of defence and security within ASEAN and between ASEAN and dialogue partners;
- To promote mutual trust and confidence through greater understanding of defence and security challenges as well as enhancement of transparency and openness; and
- To contribute to the establishment of an ASEAN Political - Security Community (APSC) as stipulated in the Bali Concord II and to promote the implementation of the Vientiane Action Programme (VAP) on APSC.

The role of Brunei's Ministry of Defence will comply with the ADMM's objectives above and the ASEAN Political - Security Community (APSC) Blueprint.

Brunei hosted the 7th ASEAN Summit Meeting on 5-6 November 2001 at Bandar Seri Begawan. At the summit, The Brunei leader condemned the sabotage occurred in the United States. ASEAN members also signed the ASEAN Declaration on Joint Action to Counter Terrorism which is a cooperation to prevent all forms of terrorism bilaterally, regionally and globally in order to make ASEAN a safe and secured region from threats. This cooperation will bring peace, stability and security into the region which are fundamentals for development and prosperity in ASEAN.

2.2 Treaties and International Agreements relating to Politics and Security

Brunei has concluded several treaties and international agreements relating to politics and security as follows.

2.2.1 The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1950)

Brunei ratified on 14 October 1991

The convention protects members of armed forces who have laid down their arms and those placed out of combat by sickness, wounds, and detention as well as medical and religious personnel not taking part in the hostility to be treated humanely. Important provisions of the Convention are as follows.⁴³

Article 12 requires members of the armed forces and other persons wounded and sick to be treated humanely. Particularly, they shall not be murdered or exterminated, subjected to torture or to biological experiments. The medical treatment unit shall be respected along with responsible persons who treat the wounded, materials and buildings used for medical treatment, transportation of medical treatment, and clear markings of medical treatment unit.

Article 15 calls on members to collect the wounded and sick and to protect them against pillage and ill-treatment even if they are in a state of prisoners of war.

Article 16 requires parties to the conflict to record as soon as possible, in respect of each wounded, sick or dead person of the adverse party to assist in identification.

Article 9 calls members to constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

2.2.2 The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949)

Brunei ratified on 14 October 1991

This convention applies to arm conflicts occurring at sea and requires humane treatment to the wounded and sick as well as shipwrecked members. The provisions in this Convention grant similar protection as the Geneva Convention for

⁴³Jean Pictet, Geneva Conventions of 12 August 1949: Commentary, *International Committee of the Red Cross*, 1958, http://www.loc.gov/rr/frd/Military_Law/Geneva_conventions-1949.html, accessed on 14 September 2015.

the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1950) to persons not actively taking part in the hostilities such as medical treatment unit, places of treatment, and medical transportation.

2.2.3 The Geneva Convention relative to the Treatment of Prisoners of War (1950)

Brunei ratified on 14 October 1991

The Convention applies to the persons who have fallen into the power of the enemy. The Convention indicates types of persons qualified to be prisoners of war as well as protection and treatment granted to prisoners of war. Prisoners of war are in the hands of the enemy power, but not of the individuals or military units who have captured them. Responsibility for the application of the Convention rests on the party who hold prisoners of war in its custody. The treatment of prisoners of war needs to be humane. There shall be no revenge taken out of prisoners of war being held in custody.

The Convention lays obligations for concerning parties from the moment they hold custodian of the prisoners of war until the power to hold the prisoners of war have been transferred. In terms of medical treatment unit, a personnel who is part of a medical treatment unit shall not be treated as a prisoner of war but shall be entitled to the same treatment as granted to a prisoner of war and shall not be forced to carry other duties beyond scope of an original work.

2.2.4 The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I, 1977)

Brunei ratified on 14 October 1991

The Protocol applies to international armed conflicts as well as war of independence. The overall obligations of the Protocol require member states to grant protection and treatment to persons in the international armed conflicts as well as require actions of conflicts and war to conform to the Hague Conventions of 1899 and 1907.

2.2.5 The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II, 1977)

Brunei ratified on 14 October 1991.

The Protocol applies to non-international conflicts occurring between a government and an opposing party or other armed forces within domestic territory or a civil war. The Protocol aims to protect persons not taking active parts in the conflict or cease to become a part of the conflict.

2.2.6 The International Convention against the Taking of Hostages (1979)

Brunei ratified on 18 October 1988.

The act of hostage-taking for the purposes of the Convention refers to any person who seizes or detains and threatens to kill, to injure or to continue to detain a hostage in order to compel a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.

2.2.7 The International Convention for the Suppression of Terrorist Bombings (1997)

Brunei ratified on 14 March 2002.

The Convention aims to elevate international cooperation in effectively preventing terrorism as well as prosecuting and punishing a person committing a crime relating to the use of bombings or explosive or other lethal device.

2.2.8 The International Convention for the Suppression of the Financing of Terrorism (1999)

Brunei ratified on 4 December 2002.

The Convention requires member states to:

- Establish offences under the Convention as criminal offences under its domestic law with appropriate sanctions depending on the severity of the crime committed by both natural persons and juridical persons;
- Take appropriate measures for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences;
- Capture and prosecute an alleged offender or extradite to a relevant member state (the Convention establishes that the offences are extraditable);
- Cooperate in the prevention of the offences by requiring financial institutions and other professions involved in financial transactions to report unusual or suspicious transactions, and keep records for at least five years (similar to the money laundry law);
- Exchange relevant information among member states

2.2.9 The International Convention for the Suppression of Unlawful Seizure of Aircraft (1720)

Brunei ratified on 6 April 1986.

The Convention provides offences for an act of seizing or exercising control over an aircraft by force or threat or any form of intimidation while on board. The Convention applies only if the place of take-off or the place of actual landing of the aircraft on board is situated outside the territory of the state of registration of that aircraft.

2.2.10 The United Nations Convention against Transnational Organized Crime (2000)

Brunei ratified on 25 March 2008.

The Convention calls on member states to commit themselves to taking a series of measures to prevent, investigate, and prosecute four offences which are; 1)

participation in an organized criminal group, 2) money laundering, 3) corruption and 4) obstruction of justice. The offence under the Convention also applies to a serious transnational and organized crime which is an offence punishable by at least four years imprisonment. The Convention also provides for extradition, transfer of prisoners, mutual assistance in criminal proceedings including evidence and information collection, information exchange between concerning authorities, training, academic assistance as well as other measures in relations to economic development, victim protection and witness protection.

2.3 Cooperation between Thailand and Brunei in Politics and Security

Thailand and Brunei established diplomatic relations on 1 January 1983. Relationship of both countries is firmly held as there has always been a series of royal and senior official visits between them. Both countries maintain positive attitude toward each other and have never engaged in hostilities throughout history. Both countries have share the same directions as members of ASEAN and the United Nations. The Sultan and the Queen of Brunei visited to join the Sixtieth Anniversary Celebrations of King Bhumibol Adulyadej's Accession to the Throne on 11-14 June 2006. The Prime Minister of Thailand also had an official visit to Brunei on 9 November 2006 after taking a position as an ASEAN leader.

Joint Commission for Bilateral Cooperation (JCBC) between Thailand and Brunei has been established on its first meeting on 30-31 March 2003 in Bangkok. The Thai Foreign Minister and the Brunei Foreign Minister were the chairs of the meeting. The meeting discussed a promotion of relations and cooperation in military. Thailand and Brunei share the same attitude in defence and security and had exchanged visits of high-ranked and senior commanders of both countries.⁴⁴

⁴⁴ ASEAN Summit, *Brunei Darussalam*, <http://aseansummit.police.go.th/index.php?option=com-content&task=view&id=37&Itemid=52g>, accessed on 12 September 2015.

Chapter 3

Education Laws and Regulations

3.1 Introduction

Development of education system in Brunei Darussalam is in line with the national long-term development vision “Wawasan Brunei 2035” which puts the emphasis on education and human capital development. The government promotes universal access to education services. The statistics shows that the literacy rate is over 95% and the gross enrolment rates both at primary and secondary levels are over 100%.⁴⁵

Education system in Brunei Darussalam has been reformed under the framework of the National Education System for the 21st Century (SPN 21) which aims to foster the ability of students to face with the social and economic challenges. SPN 21 has given priorities to mathematics, science and English as the key subjects in the primary and secondary school curricula. It also promotes the use of ICT through one-to-one computing, for example. Initiatives implemented as part of SPN 21 include monitoring systems and teaching methods, teacher training and education infrastructure development programmes.⁴⁶

Despite the achievements of basic education, the tertiary education needs improvement. The study shows that gross enrolment rate is only 19.6%, considerably below those in other Southeast Asian countries, such as Malaysia and Thailand which have 42% and 48% gross enrolment rate respectively. The low tertiary enrolment rates result from the imbalances of the economy and their effects on the labour market. There are not enough jobs on offer from the public sector and the oil and gas industry. While the private sector cannot attract skilled labour because it cannot compete with the higher wages. Therefore, diversifying the economy and enhancing private sector development could help improving the tertiary education attainment level.⁴⁷

⁴⁵ Organisation for Economic Co-operation and Development, *Structural Policy Country Notes: Brunei Darussalam*, Available at: <http://www.oecd.org/site/seao/Brunei%20Darussalam.pdf>, p.12, accessed 26 October 2015.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

Brunei's education system is modelled on the British system, called Brunei-Cambridge GCE A-levels, to prepare students for higher education or overseas study. Education system in Brunei Darussalam is divided into different levels of instruction as follows.

Pre-schooling has a period of one year in which children can attend at the age of five. However, children may enter private pre-schools at age 3 and stay at the pre-school level for three years before transitioning to primary education.⁴⁸ The instruction at primary level is focused on the health, social and developmental growth of young children.⁴⁹

Primary education lasts six years. The instruction is focused on Malay, English, Mathematics, Writing and Science. Students must take Malay and English examination. They are also required to pass Malay, English, Mathematics and either Writing or Science examinations to be able to attend Secondary Level.

The duration of Lower Secondary School is three years. It assists the channelling of students to either vocational schools or higher education. After three years, students sit for the PMB examination which serves as a national assessment of students' achievement.⁵⁰

Upon passing the PMB examination, students are channelled into the Science, Arts or Technical stream in the Upper Secondary Level which takes two years to complete. At the end of Form V, students will sit for the Brunei-Cambridge General Certificate of Education Ordinary Level (GCE 'O' Level) examination. Those with 'O' Level passes may then decide to opt for employment, undertake training programmes at technical or vocational institutions or complete their tertiary education either at a domestic university or abroad.⁵¹

Students pursuing technical and vocational education can receive the

⁴⁸International Council for Open and Distance Education, Education System, Available at: http://www.icde.org/projects/regulatory_frameworks_for_distance_education/country_profiles/brunei/education_system, accessed 26 October 2015.

⁴⁹APEC: Human Resources Development Working Group, Education in Brunei Darussalam, Education in Brunei Darussalam, Available at: http://hrd.apec.org/index.php/Education_in_Brunei_Darussalam, accessed 26 October 2015.

⁵⁰ *Ibid.*

⁵¹ See N. 4 Above.

National Skill Certificate (NSC). Vocational education courses include electrical and electronics, clerical studies, furniture making, plumbing, hairdressing, carpentry, bricklaying and concreting, painting and decorating, and fish husbandry.⁵²

There are 80 private schools in Brunei offering nursery, primary and secondary education. The role of these non-Government schools is to support the government in providing education for the children and also offer parental choice.⁵³

Higher education is provided at college, technological institution or university which offer 2.5-year programmes. Islamic religious education is also offered at some universities.⁵⁴

The government of Brunei Darussalam has taken full responsibility for the education of its students. The overarching aim of the national education system is for students to be lifelong learners who are confident and creative, connected, and actively involved in the quest for knowledge. The National Education System for the Twenty-First Century (SPN21), launched in 2009, aims to:

- Fulfil the needs and challenges to develop the country and its population during the 21st century. Students as future leaders must possess the relevant knowledge and skills, as well as the right values and attitudes in order to meet the changing needs of the society of the future.
- Realise the vision and mission of the Ministry of Education, e.g. quality education for development of the nation and holistic education to achieve fullest potential for all.
- Develop 21st century skills, whereby schools and educational institutions within the country will be appropriately equipped with the necessary facilities and teaching staff and trainers.⁵⁵

The Compulsory Education Order of 2007 ensures that all children are provided at least nine years of formal education. Children aged 6 to 15 receive education either in government or private schools. Private schools account for 30%

⁵² See N. 5 Above.

⁵³ See N. 4 Above.

⁵⁴ See N. 4 Above.

⁵⁵ See N. 5 Above.

of the schools in Brunei Darussalam.⁵⁶

The Ministry of Education is responsible for the entire education system with a mandate to produce a generation of citizens capable of upholding the country's ideology and aspirations in the fast-changing and competitive world of tomorrow which is in line with the Long-Term Development Plan 2035 outlining the Ministry's goals to strengthen the national education system. Critical skills for the 21st century include: communication, numeracy, information and communication technologies, thinking and problem-solving skills, self-management and competitive skills, study and work skills, and social, physical and athletic skills.⁵⁷ Moreover, the Minister and Deputy Minister are responsible for decision-making on all important policy matters. The Ministry of Education develops all curricula and syllabuses with input from other stakeholders through the Curriculum Development Department (CDD), formed in 1978. Key learning areas addressed by central curricula aim at nurturing learners to be intellectually, spiritually, emotionally and physically balanced individuals.⁵⁸

3.2 Education Laws and Regulations in Brunei Darussalam

3.2.1 Primary Education

Brunei Darussalam has laws and legislation concerning primary education which require every children attending either government or private schools to receive at least 9-year education which includes primary and lower secondary levels. Laws and legislation concerning primary education are Education (Brunei Board of Examinations) Act of 1976, Education Act of 2003, Compulsory Education Act of 2007, and Education (Non-Government School) Act of 1953 as detailed below.

1) Education (Brunei Board of Examinations) Act, 1976

1.1) Main points of the Education (Brunei Board of Examinations) Act, 1976

⁵⁶ See N. 5 Above.

⁵⁷ See N. 5 Above.

⁵⁸ See N. 5 Above.

The Education (Brunei Board of Examinations) Act, 1976 established the Brunei Education Examinations Board, a responsible agency for the conduct of examinations including primary education certification and as administered by the Minister of Education.⁵⁹ There are two types of examination for certification at primary level.

1. The examinations conducted during secondary education which include Brunei Junior Certificate of Education and Sijil Rendah Pelajaran Brunei
2. The examinations conducted after graduation from secondary education which include Brunei-Cambridge General Certificate of Education (Ordinary Level) Sijil'Am Pelajaran Singapura Cambridge (Peringkat Biasa) and Brunei-Cambridge General Certificate of Education (Advanced Level) Sijil'Am Pelajaran Singapura Cambridge (Peringkat Tinggi)

1.2) Appointment of Board of Examinations and the period of office

The Brunei Board of Examinations consists of a Chairman who is appointed by His Majesty the Sultan and Yang Di-Pertuan, the Director of Education or his representative, the state Religious Affairs Officer or his representative, and not

⁵⁹ Section 5 of Education (Brunei Board of Examinations) Act, 1976 states that “(1) The board shall subject to the provisions of this Act of any regulations made thereunder be responsible for the conduct of examinations for the purpose of this Act.

(2) The examinations to be held shall include

(a) examinations to be termed the “Brunei Junior Certificate of Education” and “Sijil Rendah Pelajaran Brunei” to be held at such stage in the secondary course as shall be prescribed;

(b) examinations to be termed the “Brunei Cambridge General Certificate of Education (Ordinary Level) Sijil'Am Pelajaran Singapura Cambridge (Peringkat Biasa)” and “Brunei Cambridge General Certificate of Education (Advance Level) Sijil'Am Pelajaran Singapura Cambridge (Peringkat Tinggi)” to be held at the end of the secondary school course;

(c) such other examinations to be conducted for or on behalf of any body (whether local or overseas) which the Minister may deem to be in the public interest to hold.”

less than 7 and not more than 11 other members appointed by His Majesty.⁶⁰ The Board members hold the office for a period of 3 years.⁶¹ Nevertheless, on the expiration of the period of office of a member, His Majesty may reappoint such member for a further period.⁶² On the death, bankruptcy, inability to act, resignation, absence from Brunei Darussalam for more than 6 months without the written permission of the Chairman, he shall forthwith cease to be a member of the Board.⁶³

1.3) Meetings of Brunei Board of Examinations

With the responsibility to conduct examinations, this Act states that the Board shall meet at least twice a year. The quorum of the Board shall be 7 members and in the event of the votes on any question being equal, the Chairman shall have a casting vote in addition to his original vote.⁶⁴

2) Education Act, 2003, Revised Edition 2011

2.1) Main points of the Education Act, 2003

The Education Act of 2003 makes provision for the registration and regulation of all schools and educational institutions in Brunei Darussalam. The Act states that the National Education System shall comprise pre-school education, primary education, secondary education, post-secondary education and higher education but shall not include education in expatriate schools.⁶⁵ In general, there are 2 categories of educational institutions which are government educational institutions and private educational institutions.⁶⁶

The Act also states that the Malay language shall be the main

⁶⁰ Section 2 (2) of Education (Brunei Board of Examinations) Act, 1976.

⁶¹ Section 2 (4) of Education (Brunei Board of Examinations) Act, 1976.

⁶² Section 2 (5) of Education (Brunei Board of Examinations) Act, 1976.

⁶³ Section 2 (6) of Education (Brunei Board of Examinations) Act, 1976.

⁶⁴ Section 3 of Education (Brunei Board of Examinations) Act, 1976.

⁶⁵ Section 17 (1) of Education Act, 2003.

⁶⁶ Section 18 of Education Act, 2003.

medium of instruction in all educational institutions. The English language may also be used as the medium of instruction, together with the Malay language. The Arabic language may be used as a medium of instruction in Arabic or other schools but in these schools, the Malay language and the English language must be taught as compulsory subjects.⁶⁷

In addition, all schools within the National Education System and registered under this Act shall use a curriculum known as the National Curriculum which shall be prescribed by the Minister.⁶⁸

With regard to pre-school, this Act states that the Minister may establish and maintain kindergartens and pre-school classes.⁶⁹ The programmes and activities of every kindergarten shall be based on the curriculum approved by the Minister.⁷⁰

Concerning primary education, the Act states that it shall be the Minister's duty to provide primary education in government schools. The minimum age for entry into primary school is 6 years old but the Minister may make an exception and allow a pupil between the age of 5 and 6 years old to enter primary school. This shall also apply to private schools.⁷¹

The Minister also has a duty to provide secondary education in government schools including post-secondary education but excluding higher education or university. Post-secondary education may be provided in colleges and other educational institutions.⁷²

Brunei Darussalam also provides technical, vocational and special education. Technical and vocational education includes skills training, specialised training, training for the upgrading of existing skills, and such other technical or vocational training as may be approved by the Minister.⁷³ Technical and vocational education may be provided in skills training centres, vocational schools, technical colleges, nursing colleges, technological institutions and such other educational

⁶⁷ Section 19 of Education Act, 2003.

⁶⁸ Section 20 (1) of Education Act, 2003.

⁶⁹ Section 22 of Education Act, 2003.

⁷⁰ Section 23 of Education Act, 2003.

⁷¹ Section 25 of Education Act, 2003.

⁷² Section 27 (1) of Education Act, 2003.

⁷³ Section 28 (1) of Education Act, 2003.

institutions as determined by the Minister.⁷⁴ The Act also allows the Minister to provide special education in government primary or secondary schools and in any special school established by the Minister.⁷⁵

The Act states that it shall be compulsory for pupil professing the Islamic Religion in a school to be provided with Islamic Education⁷⁶ which studies about Fardhu ‘Ain and Fardhu Kifayah.

Regarding private educational institutions, the Act states that approval from the Minister is required for the establishment and maintenance of a private educational institution.⁷⁷ Such private academic schools shall comply with the National Curriculum.⁷⁸ Every private academic educational institution at the post-secondary level is required to teach the philosophy of the Malay Islamic Monarchy as one of its subjects in addition to any other subject or course of study taught in the institution.⁷⁹

Under the Education Act of 2003, there are 7 categories of private educational institution which are pre-primary education, primary education, secondary education, college or post-secondary education, technical college and vocational education, university and learning centres. Every private educational institution shall register under this Act within 5 years of the date of approval of application.⁸⁰ However, a private education institution shall be deemed to have ceased its operations and its courses of studies if the Minister withdraws his approval for its establishment; the Registrar General cancels its registration; the board of governors has arrived at a decision to cease its operations; the limited company that established the educational institution has been wound up; or the educational institution is forced to close down for any other reason.⁸¹ Furthermore, a private

⁷⁴ Section 28 (3) of Education Act, 2003.

⁷⁵ Section 30 (1) of Education Act, 2003.

⁷⁶ Section 32 (1) of Education Act, 2003.

⁷⁷ Section 56 (1) of Education Act, 2003.

⁷⁸ Section 57 of Education Act, 2003.

⁷⁹ Section 58 of Education Act, 2003.

⁸⁰ Section 65 (1) of Education Act, 2003.

⁸¹ Section 71(1) of Education Act, 2003 states that “A private educational institution shall be deemed to have ceased its operations and its courses of studies if —

(a) the Minister withdraws his approval for its establishment under section 60 (3) (c);

(b) the Registrar General cancels its registration under section 86 (1);

educational institution shall only conduct courses of study or training programmes which are conducted either independently or jointly, in association, affiliation or collaboration with another institute within or outside of Brunei Darussalam, with the Minister's approval in writing.⁸²

2.2) Registration of Educational Institutions

The Education Act of 2003 states that every educational institution shall be registered under this Act.⁸³ Nevertheless, the Registrar General may refuse to register if the educational institution does not satisfy the prescribed standards of health and safety; the educational institution is used or likely to be used for a purpose detrimental to the interests of Brunei Darussalam, the public or the pupils; the name under which the educational institution is to be registered is undesirable; or the proposed fees for the pupils are unreasonable.⁸⁴ In addition, no person shall promote an educational institution, whether by advertisement, prospectus, brochure or otherwise, unless the educational institution has been registered or a provisional certificate of registration has been issued.⁸⁵

Additionally, the Registrar General may at any time cancel the registration of an educational institution if the registration of the educational institution was made by mistake or due to any false or misleading statement; there has been a breach of any condition imposed by the Registrar General; or the educational institution is being used for a purpose that is in conflict with its constitution.⁸⁶

(c) the board of governors has arrived at a decision to cease its operations;

(d) the limited company that established the educational institution has been wound up either —

(i) voluntarily by the board of directors; or

(ii) by an order of court; or

(e) the educational institution is forced to close down for any other reason.”

⁸² Section 73 (1) of Education Act, 2003.

⁸³ Section 75 (1) of Education Act, 2003.

⁸⁴ Section 83 of Education Act, 2003.

⁸⁵ Section 85 of Education Act, 2003.

⁸⁶ Section 86 of Education Act, 2003 states that “The Registrar General may at any time cancel the registration of an educational institution if he is satisfied that it is expedient to do so on any of the following grounds

(a) the occurrence of any of the matters specified in section 83 (a);

2.3) Registration of Governors

Governor is a person appointed by the government to manage educational institution. This definition includes a person appointed and registered as manager of the school in accordance with Section 55 of the Education (Non-Government School) Act of 1953. The Education Act of 2003 states that the Registrar General shall register a person as a governor of an educational institution and shall issue to him a certificate of registration in the prescribed form.⁸⁷ However, the Registrar General may refuse to register a person as a governor of an educational institution if that person has been convicted of an offence and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000; that person has, otherwise than by reason only of an educational institution having ceased to exist, been struck off any register established under this Act or under the provisions of any previous corresponding written law; that person has made a false or misleading statement in, or in connection with, his application for registration, or has intentionally suppressed any fact which is material to the application; or that person is under 25 years of age.⁸⁸ Any person who is aggrieved by the refusal may, within 21 days of being informed of the refusal, appeal to the Minister whose decision shall be final.⁸⁹

(b) discipline in the educational institution is not being adequately maintained;

(c) the registration of the educational institution was made by mistake or due to any false or misleading statement;

(d) the chairman of the board of governors or any other person responsible for the management of the educational institution has made a false or misleading statement in a material particular in promoting the educational institution;

(e) there has been a breach of any condition imposed by the Registrar General under section 75 (3);

(f) the educational institution has committed an offence under this Act or under any other written law;

(g) the educational institution is being used for a purpose that is in conflict with its constitution and objectives under its articles and memorandum of association and instrument of government;

(h) there is no chairman of the board of governors of the educational institution, or that the person appointed to be the chairman of the board of governors or to be head teacher or principal or chief executive is not a fit and proper person to act as such.”

⁸⁷ Section 88 (1) of Education Act, 2003.

⁸⁸ Section 89 of Education Act, 2003.

⁸⁹ Section 91 of Education Act, 2003.

The Registrar General may remove a governor if any of the aforementioned occurs. Moreover, the Registrar General may strike off a governor from the register if it appears to the Registrar General that he is a person who ought not to remain as a governor; or if he has obtained his registration in consequence of a mistake or due to any false or misleading statement furnished in or in connection with his application for registration.⁹⁰ A governor struck off the register may, within 21 days of the notice being served upon him, appeal to the Minister whose decision shall be final.⁹¹

2.4) Registration of Teachers

Apart from the registration of educational institution and its governor, the Education Act of 2003 also makes provision for registration of every person who teaches in an educational institution.⁹² However, it does not apply to persons appointed by the Public Service Commission.⁹³ The Registrar General may refuse to register any person as a teacher under this Act if he is satisfied that the person is under the age of 18 years; has no qualifications to teach or has inadequate qualifications; has made a statement which is false or misleading in, or in connection with, his application for registration; suffers from some physical or mental illness or disease rendering him unsuitable to be a teacher; or has been convicted of any offence and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000.⁹⁴ A person aggrieved by the refusal of the Registrar

⁹⁰ Section 92 of Education Act, 2003.

⁹¹ Section 95 of Education Act, 2003.

⁹² Section 98 of Education Act, 2003.

⁹³ Section 99 of Education Act, 2003.

⁹⁴ Section 102 of Education Act, 2003 states that "The Registrar General may refuse to register any person as a teacher under this Act if he is satisfied that the person

(a) is under the age of 18 years;

(b) has no qualifications to teach or has qualifications which in the opinion of the Registrar General are inadequate for the purpose;

(c) has made a statement which is false or misleading in, or in connection with, his application for registration, or has intentionally suppressed any fact which is material to the application;

(d) suffers from some physical or mental illness or disease rendering him, in the opinion of the Registrar General, unsuitable to be a teacher;

General to register him as a teacher may, within 21 days of the notice being served upon, appeal to the Minister whose decision shall be final.⁹⁵ The Registrar General may also serve on a registered teacher a notice of intention to revoke his registration.⁹⁶ The Registrar General may allow non-registered teachers to teach e.g. practice teachers or persons whose applications for registration are being reviewed.

2.5) Inspection of Educational Institutions

The Registrar General is also authorised to inspect an educational institution registered under this Act.⁹⁷ The Registrar General may examine any book, document, electronic media material or other article as he may consider necessary and remove and detain any book, document, electronic media material or other article which appears to be detrimental to the interests of the public or the pupils. In addition, the Director of Schools' Inspectorate shall be appointed by His Majesty the Sultan and Yang Di-Pertuan to ensure that an adequate standard of teaching is developed and maintained in educational institutions.⁹⁸

3) Compulsory Education Act, 2007, Revised Edition 2011

3.1) Main points of the Compulsory Education Act, 2007

The Compulsory Education Act, 2007 makes provision for compulsory education in Brunei Darussalam. The Act states that a child aged between 6-15 years shall attend Government school. A child of compulsory school age is a person who is born on or after 1 January 2002; a citizen of Brunei Darussalam; and residing in Brunei

(e) has been convicted of any offence and sentenced to imprisonment for a term of not less than one year or to a fine of not less than \$2,000;

(f) is not a fit and proper person to be registered as a teacher; or

(g) has not complied with the prescribed procedure for application under any regulations relating to the registration of teachers.”

⁹⁵ Section 104 of Education Act, 2003.

⁹⁶ Section 106 of Education Act, 2003.

⁹⁷ Section 111 of Education Act, 2003.

⁹⁸ Section 115 (1) of Education Act, 2003.

Darussalam.⁹⁹ However, the Ministry may, by order published in the Gazette and subject to such conditions as he may impose, exempt any child or class of child of compulsory school age from primary education.¹⁰⁰

This Act also provides for the establishment of Compulsory Education Board to investigate whether any provisions of this Act has been or is being contravened; and make recommendations to the Permanent Secretary on the enforcement of any provision of this Act.

3.2) Appointment of Compulsory Education Board and the period of office

Compulsory Education Board consists of members appointed by the Minister of Education. The Minister shall appoint one of the members of the Board to be the chairman.¹⁰¹ The period of office is not clearly stated. Therefore, a member of the Board shall hold and vacate his office in accordance with the terms of his appointment and shall be eligible for re-appointment.¹⁰²

A member of the Board may resign his office at any time by giving notice in writing to the Minister.¹⁰³ The Minister may revoke the appointment of any member of the Board if he has been guilty of neglect of duty or misconduct; has become bankrupt; has become incapacitated by physical or mental illness; or is otherwise unable or unfit to discharge the functions of a member.¹⁰⁴

3.3) Meetings of Compulsory Education Board

At any meeting of the Board, one-half of the number of appointed members shall form a quorum.¹⁰⁵ All questions arising at any meeting of the Board shall be decided by a majority of votes of the members present and, in the case of

⁹⁹ Section 3 (1) of Compulsory Education Act, 2007.

¹⁰⁰ Section 4 (1) of Compulsory Education Act, 2007.

¹⁰¹ Section 5 of Compulsory Education Act, 2007.

¹⁰² Section 6 (1) of Compulsory Education Act, 2007.

¹⁰³ Section 6 (2) of Compulsory Education Act, 2007.

¹⁰⁴ Section 6 (3) of Compulsory Education Act, 2007.

¹⁰⁵ Section 7 (1) of Compulsory Education Act, 2007.

an equality of votes, the chairman or, in his absence, the member acting as chairman, shall have a casting vote.¹⁰⁶

4) Education (Non-Government School) Act, 1953

4.1) Main points of the Education (Non-Government School) Act, 1953

The Education (Non-Government School) Act of 1953 stipulates the registration and regulation of non-government schools in Brunei Darussalam. The Act shall apply to only non-government schools. However, His Majesty the Sultan and Yang Di-Pertuan may exempt any school or category of schools from all or any of the provisions of this Part.¹⁰⁷

Every non-government school in Brunei Darussalam shall be registered under this Act.¹⁰⁸ This Act does not recognise non-government schools established without compliance with the law of Brunei Darussalam (e.g. private schools established under the law of other countries) and without the approval from the Minister of Education.

4.2) Registration of Non-Government Schools and its Personnel

The Education (Non-Government) School Act of 1953 requires a non-government school to appoint a supervisor before applying for a registration to oversee and regulate the school and contact with the Director of Education. Such appointment, in writing, shall be signed by the managers of the school and submitted to the Minister.¹⁰⁹ The Minister may refuse to register a school if it appears to him that (a) the school is unsanitary for use as a school, or that the area provided for the open air recreation of the pupils is inadequate or unsatisfactory, or that the school building or any part thereof is unsuitable by reason of danger from fire or that it is otherwise a dangerous building; or (b) such school is likely to be used for the

¹⁰⁶ Section 7 (4) of Compulsory Education Act, 2007.

¹⁰⁷ Section 3 of Education (Non-Government School) Act, 1953.

¹⁰⁸ Section 4 (1) of Education (Non-Government School) Act, 1953.

¹⁰⁹ Section 7 of Education (Non-Government School) Act, 1953.

purpose of political propaganda detrimental to the interests of Brunei Darussalam, or as a meeting place for an unlawful society; or (c) the supervisor appointed by the managers is not fit or proper to act as supervisor; or (d) any manager or teacher named in the application form has been refused registration under this Act; or (e) the existing educational facilities are already adequate in the area in which it is proposed to open such school; or (f) the opening of such school would be detrimental to the interests of Brunei Darussalam or of the public.¹¹⁰ However, the Minister may require as a condition precedent to the registration of any school.¹¹¹ For example, the school shall assure that it is not established with a political purpose detrimental to the interests of Brunei Darussalam, or affirm that the school has proper sanitation or adequate area for open air recreation of the pupils.

This Act also requires the registration of school managers and teachers. The Minister may refuse to register any person as a manager of, or teacher in, a school¹¹² if that person has been convicted of an offence punishable with imprisonment or an offence against this Act; or has been removed from the manager or teacher position; or the Minister has a probable cause to believe that managers or teachers violate this Act; or teacher does not have adequate qualifications. The

¹¹⁰ Section 8 (1) of Education (Non-Government School) Act, 1953.

¹¹¹ Section 8 (2) of Education (Non-Government School) Act, 1953.

¹¹² Section 10 (1) of Education (Non-Government School) Act, 1953 states that “The Minister may refuse to register any person as a manager of, or teacher in, a school if

(a) such person has been convicted by any Court of competent jurisdiction in Brunei Darussalam or elsewhere of an offence punishable with imprisonment, or of an offence against this Part or against any regulation made under the provisions of paragraph (d), (f), (g), or (h), of subsection (1) of section 29; or

(b) such person shall have been a manager of, or a teacher in, any school struck off the register under the provisions of this Part at the time when such school was struck off the register; or

(c) the Minister has reasonable grounds to believe that such person has at any time, acted as a manager of, or teacher in, any school on contravention of the provisions of this Part; or

(d) it appears to the Minister that it will be prejudicial to the interests of Brunei Darussalam or of the public or of the pupils of the school that such person should be so registered; or

(e) in the case of a person applying to be registered as a teacher, such person’s qualifications to act as such teacher are, in the opinion of the Minister, inadequate; or

(f) such person has made a false or misleading statement in a material particular in his application for registration.”

Minister shall, in case of the registration of a school, issue the supervisor thereof a certificate of registration of the school in the prescribed form.¹¹³

Upon any change of registered manager or teacher, the supervisor shall, report in writing the happenings of such change to the Minister within 20 days.¹¹⁴

4.3) Strike-off the Register of Non-Government School, Manager and Teacher

The Minister may strike off the Register of any school¹¹⁵ if the school does not comply with this Act or other related regulations or is no longer suitable for use as a school. The Minister shall inform the supervisor of the violation of this Act or other inappropriate causes in order to improve and comply with this Act. The Minister may strike off the Register of the school if the supervisor does not comply within a designated period (not less than 14 days); the school is unsanitary; the school is registered by mistake or misunderstanding; the school does not have the supervisor; the supervisor does not have proper qualifications; or the school is used for the purpose of political propaganda or as a meeting place for unlawful society.

In addition, the Minister may strike the manager or teacher off the register if such manager or teacher shall be or have been convicted by any competent Court of an offence punishable with imprisonment or an offence against this Act; or has been a manager of or teacher in any school being struck off the register under this Act; or has obtained the registration by reason of any false or misleading particular or particulars contained in his application for registration.¹¹⁶

¹¹³ Section 12 (2) of Education (Non-Government School) Act, 1953.

¹¹⁴ Section 14 (1) of Education (Non-Government School) Act, 1953.

¹¹⁵ Section 17 (1) of Education (Non-Government School) Act, 1953.

¹¹⁶ Section 18 (1) of Education (Non-Government School) Act, 1953 states that "If any registered manager or registered teacher shall

(a) at any time, whether before or after the date of his registration, be or have been convicted by any competent Court in Brunei Darussalam or elsewhere of an offence punishable with imprisonment; or

(b) at any time, whether before or after the date of his registration, have been a manager of or teacher in any school, struck off the register under this Act, at the time when such school was struck off the register; or

(c) at any time, whether before or after the date of his registration, be or have been convicted by any competent Court in Brunei Darussalam of an offence against this Part or against any Regulation made under

When the Minister refuses to register a school or imposes any condition precedent to such registration or refuses to register any person as a manager or teacher or strikes any registered manager or teacher off the register, the applicant or such manager or teacher, as the case may be, may appeal to His Majesty in Council by sending him by registered post a petition, concisely stating the grounds of the appeal, within 14 days, or such longer time as His Majesty in Council may allow, of being notified of such refusal, imposition of condition or striking off, as the case may be.¹¹⁷ The decision of His Majesty in Council upon any appeal shall be final and shall not be questioned in any Court.¹¹⁸

4.4) Power of His Majesty in Council

His Majesty in Council may make all such regulations as may be necessary for the purpose of carrying out or giving effect to the provisions of this Act. His Majesty in Council may make regulations concerning health, sanitation and safety of school and its building; fire prevention measures; operational guidelines and practices for school and teachers; prohibition of inappropriate books and requirements for books used in school; prohibition and control on school expression or school-related flag, symbol, picture, poster, slogan or any document; pupil and teacher uniform; any book or document to be used for reference in school; any school recreational or special activity; and school fees and expenditures.¹¹⁹

the provisions of paragraph (d), (f), (g) or (h) of subsection (1) of section 29; or

(d) after the date of his registration, appear to the Minister to be a person who ought not, in the interest of Brunei Darussalam or of the public or of the pupils of such school, to remain a manager of or teacher in such school as the case may be; or

(e) have obtained his registration as manager or teacher by reason of any false or misleading particular or particulars contained in his application for registration.”

¹¹⁷ Section 19 (1) of Education (Non-Government School) Act, 1953.

¹¹⁸ Section 19 (2) (c) of Education (Non-Government School) Act, 1953.

¹¹⁹ Section 29 (1) of Education (Non-Government School) Act, 1953 states that “His Majesty in Council may make all such regulations as may be necessary for the purpose of carrying out or giving effect to the provisions of this Part and, in particular and without prejudice to the generality of the power conferred by this section, may, by such regulations

(a) prescribe anything that may be prescribed under this Part;

(b) provide for the hygienic character and proper sanitation of schools and buildings used as or in connection with schools, and for taking and exercising precautionary measure against fire;

4.5) Control of Secular Instruction

In every school, secular instruction shall be under the control of the Minister.¹²⁰ Where the Director intends to impose on any school a new secular curriculum, he shall submit proposals for that purpose to the Minister.¹²¹ After the proposals have been approved by the Minister, the Director shall notify the supervisor of the school of the proposals and may give such directions and require any manager or teacher to do or omit to do things as may be necessary for the purpose of carrying out the proposals.¹²²

5) Compulsory Religious Education Act, 2013

(c) provide for the proper conduct and efficiency of schools and teachers, and regulate the methods of enforcing discipline in schools;

(d) prohibit the use, in any school or any specified class of school, of any book or written matter the use of which appears undesirable or prescribe the books or series of books to be used in any school or specified class of schools;

(e) prohibit the import or sale of any school textbook the use of which in schools appears undesirable;

(f) prohibit or control the display in any school, or in or on any property used by or in connection with a school, of any flags, insignia, signs, pictures, posters, photographs, slogans, or written matter;

(g) prohibit or regulate the wearing by teachers or pupils of any distinctive dress, apparel or emblem;

(h) control or regulate the books, papers or written matter kept in any school for reference, recreation or extra-curricular activities;

(i) provide for the proper keeping of school registers and books of account at registered schools;

(j) provide for the medical inspection of pupils in schools and of school premises;

(k) provide for the control and supervision of subscriptions and collections at, or on behalf of, schools;

(l) provide for the distribution and management of grants in aid;

(m) prohibit schools or any class of school conducted for profit;

(n) require the preparation and execution in respect of any school or class of schools of a written constitution, scheme or deed of trust, providing for the management of such school or the administration of its property or revenues in such manner as the Director may consider satisfactory;

(o) provide for the returns, particulars and information to be furnished to the Director and the forms in which and the times and places at which such returns, particulars and information shall be furnished;

(p) fix the maxima of fees and other charges made by any school or class of school;

(q) prescribe the penalty, not exceeding a fine of \$8,000 or imprisonment for a term of 3 months or both such fine and imprisonment, for the contravention of any regulation made under this section.”

¹²⁰ Section 31 of Education (Non-Government School) Act, 1953.

¹²¹ Section 32 (1) of Education (Non-Government School) Act, 1953.

¹²² Section 32 (4) of Education (Non-Government School) Act, 1953.

5.1) Main points of the Compulsory Religious Education Act, 2013

The Compulsory Religious Education Act of 2013 makes provisions for the compulsory religious education of a Muslim child born on or after January 1, 2006 who is residing in Brunei Darussalam and whose parent is a citizen of Brunei Darussalam or a permanent resident.¹²³ Under this Act, every parent of a child of compulsory religious school age from 7-15 years old shall ensure that his child is enrolled in a religious school and remains as such for the duration of the compulsory religious education of 7 years but may be completed between 7 and 8 years.¹²⁴ However, if the Minister of Religious Affairs considers it desirable and in the interest of the child or the public to do, may exempt any child or any class or description of children¹²⁵ from 7-year compulsory religious education.

This Act also established the Compulsory Religious Education Board for the purpose of carrying out or giving effect to the provisions of this Act.

5.2) Appointment of Compulsory Religious Education Board and the period of office

The Compulsory Religious Education Act of 2013 stipulates the establishment of Compulsory Religious Education Board.¹²⁶ The Board shall comprise the Deputy Permanent Secretary of the Ministry of Religious Affairs, to be the chairman; the Director of Islamic Studies, to be the deputy chairman; not less than seven members to be appointed by the Minister; and the Assistant Director of Islamic Studies, to be the secretary.¹²⁷

A member of the Board shall hold office for a period of 3 years from the date of his appointment and vacate his office in accordance with the terms of his appointment and shall be eligible for re-appointment.¹²⁸ A member of the Board

¹²³ Section 3 of Compulsory Religious Education Act, 2013.

¹²⁴ Section 5 of Compulsory Religious Education Act, 2013.

¹²⁵ Section 6 of Compulsory Religious Education Act, 2013.

¹²⁶ Section 7 (1) of Compulsory Religious Education Act, 2013.

¹²⁷ Section 7 (2) of Compulsory Religious Education Act, 2013.

¹²⁸ Section 9 (1) of Compulsory Religious Education Act, 2013.

may resign his office at any time by giving notice in writing to the Minister.¹²⁹ The Minister may revoke the appointment if any member of the Board has been guilty of neglect of duty or misconduct; has become bankrupt or made an arrangement with his creditors; or is otherwise unable to discharge the functions of a member.¹³⁰

5.3) Meetings of the Compulsory Religious Education Board

At any meeting of the Board, one-third of the number of appointed members shall form a quorum.¹³¹ All questions arising at any meeting of the Board shall be decided by a majority of votes of the members present and, in the case of an equality of votes, the chairman shall have a casting vote.¹³²

The duties of the Board shall be to investigate whether any provisions of this Act has been or is being contravened; to make recommendations to the Permanent Secretary of the Ministry of Religious Affairs on the enforcement of this Act; and generally to do all such acts and things as are necessary to be carried out under this Act.¹³³

3.2.2 Tertiary Education

Laws and legislation concerning tertiary education in Brunei Darussalam include the Education Act of 2003, Universiti Brunei Darussalam Act of 1988, and Universiti Islam Sultan Sharif Ali Act of 2008 which state the requirements for the establishment of university and roles of concerned parties. Additionally, there is the Politeknik Brunei Order of 2014 which aims to provide education in engineering, technology, science and other related subjects by focusing on advanced knowledge, its application and the exchange with the business sector.

¹²⁹ Section 9 (2) of Compulsory Religious Education Act, 2013.

¹³⁰ Section 9 (3) of Compulsory Religious Education Act, 2013.

¹³¹ Section 10 (1) of Compulsory Religious Education Act, 2013.

¹³² Section 10 (4) of Compulsory Religious Education Act, 2013.

¹³³ Section 11 (1) of Compulsory Religious Education Act, 2013.

1) Education Act, 2003

1.1) Main points of the Education Act, 2003

This Act assigns the Ministry of Education to be responsible for the provision of tertiary education or university-level education. If not legally authorised, it prohibits the establishment and operations of educational institution, including the use of the word “university”. The establishment of any campus and institution related to the university requires approval in writing from the Minister of Education.¹³⁴ In addition, the curriculum being taught in university needs to be approved by the Minister.¹³⁵ The university has to take into account national education policies of Brunei Darussalam and the philosophy of Malay Islamic Monarchy as part of the required courses in the study programmes. The university may also consider teaching the Malay Islamic Monarchy philosophy as an additional course.¹³⁶

1.2) Courses of Instruction

The university may appoint a Rector to provide advice on instruction, management, administration, welfare and university discipline.¹³⁷ The university teacher shall obtain a certificate of registration or be in the process of registration; or get an approval to teach from the Registrar General of Educational Institutions and Teachers.¹³⁸ The Minister may make regulations on education standard of the university including registration, establishment and management of the university, the appointment and termination of the Rector, courses and seminars, certification and degrees, and examination.¹³⁹

¹³⁴ Section 38 of Education Act, 2003.

¹³⁵ Section 40 of Education Act, 2003.

¹³⁶ Section 41 of Education Act, 2003.

¹³⁷ Section 43 (4) of Education Act, 2003.

¹³⁸ Section 51 of Education Act, 2003.

¹³⁹ Section 54 of Education Act, 2003 states that “The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations in respect of higher educational institutions for the supervision, regulation

2) Universiti Brunei Darussalam Act, 1988, Revised Edition 2013

2.1) Main points of Universiti Brunei Darussalam Act, 1988

The Universiti Brunei Darussalam Act of 1988 makes provision for the establishment and the operations of Universiti Brunei Darussalam. The University shall receive grants-in-aid from the Ministry of Finance as approved by the Government¹⁴⁰ and shall be deemed to be a charitable institution exempted from income tax.¹⁴¹ The management of Universiti Brunei Darussalam shall comply with the provisions in the university constitution which appears as a Schedule of this Act.

2.2) Constitution of Universiti Brunei Darussalam

The Constitution of Universiti Brunei Darussalam states that the University shall have the powers to provide courses of instruction, to hold

or control of the standard of education in those institutions and may, without prejudice to the generality of this provision, include the following

- (a) their registration, establishment and management;
- (b) the appointment and determination of the powers and duties of the chief executives, other officers of the institutions, teachers and employees;
- (c) the registration and the cancellation of registration of the chief executives and teachers of the institutions;
- (d) the course of studies and training programmes;
- (e) assessments, evaluation and examinations of pupils;
- (f) the award of certificates, diplomas or degrees;
- (g) health and safety;
- (h) the prescription and determination of fees;
- (i) the provision of facilities;
- (j) affiliation, association and collaboration set up between higher educational institutions;
- (k) the discipline and behaviour of pupils;
- (l) student associations;
- (m) council, bodies or committees for extra-curricular activities;
- (n) the closure of institutions;
- (o) examinations; and
- (p) such other matters considered necessary by the Minister.”

¹⁴⁰ Section 6 (1) of Universiti Brunei Darussalam Act, 1988.

¹⁴¹ Section 10 of Universiti Brunei Darussalam Act, 1988.

examinations, to make provisions for research, and to take such other steps for the advancement and dissemination of knowledge; to confer degrees and diplomas upon and grant certificates to persons who have followed courses of study approved by the University; to establish a University printing press and to publish books and other matters; to institute and award fellowships, scholarships, prizes, exhibitions, and other forms of assistance towards the advancement and dissemination of knowledge.

In addition, the University has the power to invest in land or securities and to enter into contracts as may be required for the purposes of the University. The University may appoint, promote, discipline and regulate the conditions of service of the officers, teachers and staff of the University and may do all such acts and things to further instruction, research, finance, administration, welfare and discipline in the University.¹⁴²

The Senate shall be the academic body of the University and shall have the control and general direction of instruction, research and examination, and the award of degrees, diplomas and certificates.¹⁴³ The University shall be divided into such number and names of faculties, centres and schools as may be prescribed by statute.¹⁴⁴

2.3) Statutes and Regulations of the University

Statutes are considered as instruments for the management and operations of the University which may be made to prescribe the powers and duties of the officers of the University; the methods of appointment and the conditions of service of the officers and teachers of the University; the determination of degrees, diplomas and other academic distinctions to be conferred by the University; the management of the library and research institutes; all other matters which under this

¹⁴² Section 4 (1) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

¹⁴³ Section 17 (4) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

¹⁴⁴ Section 18 (1) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

Constitution may be regulated by statute; and the composition, powers, duties and procedure of the authorities of the University.¹⁴⁵

This Constitution also makes provision for university regulations which shall be made for the principles governing the award of degrees, diplomas and other academic distinctions; the number and scope of examinations; the appointment, powers and duties of examiners and the conduct of examinations; and the admission of students to the examinations and the degree and diploma courses of the University.¹⁴⁶

Any statute or regulation shall be made, amended or revoked as determined by the Vice-Chancellor.¹⁴⁷

2.4) Admission of Students

A student shall be admitted to a course of study in the University when he has satisfied the entry requirements prescribed for the course of study.¹⁴⁸

¹⁴⁵ Section 26(2) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

¹⁴⁶ Section 28 of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988) states that “Subject to the provisions of this Constitution and the statutes, regulations may be made for all or any of the following matters

- (a) the principles governing the award of degrees, diplomas and other academic distinctions;
- (b) the number and scope of examinations;
- (c) the appointment, powers and duties of examiners and the conduct of examinations;
- (d) the admission of students to the examinations and the degree and diploma courses of the University;
- (e) the conditions of residence and the welfare of students;
- (f) the fees to be charged for courses of study, residence, admission to examination, degrees and diplomas and any other fees that may be levied by the University;
- (g) the management of lecture halls and laboratories;
- (h) the composition, powers and duties of any Board, committee or other body not specifically provided for in this Constitution or by statute;
- (i) all matters which by this Constitution or any statute may be prescribed by regulations; and
- (j) all matters within the powers of the University and not otherwise provided for by this Part.”

¹⁴⁷ Section 32 (1) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

¹⁴⁸ Section 45 of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

2.5) Universiti Brunei Darussalam Students' Association and Students' Representative Council

The registered students of the University, other than external students, non-graduating students, postgraduate diploma students or higher degree students, shall constitute a body to be known as Universiti Brunei Darussalam Students' Association.¹⁴⁹ Provided that a student shall cease to be a registered student for the purpose of this paragraph if he has passed the final examination of his course for graduation unless the Vice-Chancellor authorises in writing that such student, if he is a member of the Students' Representative Council, may continue to be a registered student within the meaning of this paragraph until the election of a new Students' Representative Council in the following academic year or for such lesser period as the Vice-Chancellor may determine.¹⁵⁰

3) Universiti Islam Sultan Sharif Ali Act, 2008, Revised Edition 2011

3.1) Main points of the Universiti Islam Sultan Sharif Ali Act, 2008

The Universiti Islam Sultan Sharif Ali Act of 2008 provides for the establishment and the operations of Universiti Islam Sultan Sharif Ali. The University shall receive grants-in-aid from the Ministry of Finance as approved by the Government¹⁵¹ and shall be deemed to be a charitable institution exempted from income tax.¹⁵² The management of Universiti Islam Sultan Sharif Ali shall comply with the provisions in the university constitution which appears as a Schedule of this Act.

3.2) Constitution of Universiti Islam Sultan Sharif Ali

¹⁴⁹ Section 46 (1) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

¹⁵⁰ Section 46 (4) of Constitution of Universiti Brunei Darussalam (Schedule of Universiti Brunei Darussalam Act, 1988).

¹⁵¹ Section 6 (1) of Universiti Islam Sultan Sharif Ali Act, 2008.

¹⁵² Section 10 of Universiti Islam Sultan Sharif Ali Act, 2008.

The Constitution of Universiti Islam Sultan Sharif Ali states that the University shall have the powers to provide courses of instruction, to hold examinations, to make provisions for research, and to take such other steps for the advancement and dissemination of knowledge; to confer degrees and diplomas upon and grant certificates to persons who have followed courses of study approved by the University; to establish a University printing press and to publish books and other matters; to institute and award fellowships, scholarships, prizes, exhibitions, and other forms of assistance towards the advancement and dissemination of knowledge.

In addition, the University has the power to invest in land or securities; to establish and manage its own funds; and to enter into contracts as may be required for the purposes of the University.

The University may appoint, promote, discipline and regulate the conditions of service of the officers, teachers and staff of the University and may do all such acts and things to further instruction, research, finance, administration, welfare and discipline in the University.¹⁵³

The Senate shall be the academic body of the University and shall have the control and general direction of instruction, research and examination, and the award of degrees, diplomas and certificates.¹⁵⁴

The University shall be divided into such number and names of faculties, centres and schools as may be prescribed by statute.¹⁵⁵ The Board of Studies may be appointed by the Senate to deal with matters pertaining to any Faculty, Centre or School; and to consider proposals referred to it by the Senate for the establishment of a new Faculty, Centre or School.¹⁵⁶

¹⁵³ Section 4 (1) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁵⁴ Section 17 (4) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁵⁵ Section 18 (1) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁵⁶ Section 20 of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

The Constitution also provides for the establishment of Association of Alumni formed by not less than 30 graduates of the University.¹⁵⁷

3.3) Statutes and Regulations of the University

Statutes are considered as instruments for the management and operations of the University which may be made to prescribe the powers and duties of the officers of the University; the methods of appointment and the conditions of service of the officers and teachers of the University; the determination of degrees, diplomas and other academic distinctions to be conferred by the University; the management of the library and research institutes; all other matters which under this Constitution may be regulated by statute; and the composition, powers, duties and procedure of the authorities of the University.¹⁵⁸

This Constitution also makes provision for university regulations which shall be made for the principles governing the award of degrees, diplomas and other academic distinctions; the number and scope of examinations; the appointment, powers and duties of examiners and the conduct of examinations; and the admission of students to the examinations and the degree and diploma courses of the University.¹⁵⁹

¹⁵⁷ Section 24 (1) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁵⁸ Section 27 (2) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁵⁹ Section 29 of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008) states that “Subject to the provisions of this Constitution and the statutes, regulations may be made for all or any of the following matters —

- (a) the principles governing the award of degrees, diplomas and other academic distinctions;
- (b) the number and scope of examinations;
- (c) the appointment, powers and duties of examiners and the conduct of examinations;
- (d) the admission of students to the examinations and the degree and diploma courses of the University;
- (e) the conditions of residence and the welfare of students;
- (f) the fees to be charged for courses of study, residence, admission to examination, degrees and diplomas and any other fees that may be levied by the University;
- (g) the management of lecture halls and laboratories;

Any statute or regulation shall be made, amended or revoked as determined by the Rector.¹⁶⁰

3.4) Admission of Students

A student shall be admitted to a course of study in the University when he has satisfied the entry requirements prescribed for the course of study.¹⁶¹

3.5) Universiti Islam Sultan Sharif Ali Students' Association and Students' Representative Council

The registered students of the University, other than external students, non-graduating students, postgraduate diploma students or higher degree students, shall constitute a body to be known as Universiti Islam Sultan Sharif Ali Students' Association.¹⁶²

Provided that a student shall cease to be a registered student for the purpose of this paragraph if he has passed the final examination of his course for graduation unless the Rector authorises in writing that such student, if he is a member of the Students' Representative Council, may continue to be a registered student within the meaning of this paragraph until the election of a new Students'

(h) the composition, powers and duties of any Board, committee or other body not specifically provided for in this Constitution or by statute;

(i) all matters which by this Constitution or any statute may be prescribed by regulations; and

(j) all matters within the powers of the University and not otherwise provided for by this Part."

¹⁶⁰ Section 33 (1) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁶¹ Section 46 of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁶² Section 47 (1) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

Representative Council in the following academic year or for such lesser period as the Rector may determine.¹⁶³

4) Politeknik Brunei Order, 2014

4.1) Main points of Politeknik Brunei Order, 2014

The Politeknik Brunei Order of 2014 makes provisions for the establishment and operations of polytechnic schools which provides education and training on engineering, technology, science, commerce and other subjects including theoretical and applied research and development to foster exchange of knowledge and skills among business and industry sector. Therefore, polytechnic schools may be in the forms of a School of Business, a School of Information Communication and Technology, a School of Science and Engineering and such other schools as may be constituted by the Board on recommendation of the Senate.¹⁶⁴ The Politeknik Brunei shall receive grants-in-aid from the Ministry of Finance as approved by the Government.¹⁶⁵ Politeknik Brunei may invest its moneys in such manner as it thinks fit; and engage in any financial activity or participate in any financial arrangement for the purpose of managing or hedging against any financial risk that arises or is likely to arise from such investment.¹⁶⁶

4.2) Appointment of a Director of Politeknik Brunei

¹⁶³ Section 47 (4) of Constitution of Universiti Islam Sultan Sharif Ali (Schedule of Universiti Islam Sultan Sharif Ali Act, 2008).

¹⁶⁴ Section 9 (1) of Politeknik Brunei Order, 2014.

¹⁶⁵ Section 15 (1) of Politeknik Brunei Order, 2014.

¹⁶⁶ Section 16 of Politeknik Brunei Order, 2014.

The Politeknik Brunei Order of 2014 states that the Minister of Education may appoint a Director of Politeknik Brunei. The Director shall be the chief executive and academic officer of the Politeknik Brunei and shall be responsible for the proper administration and academic management of the Politeknik Brunei; for the proper enforcement of regulations made under this Constitution; and for the welfare and discipline of the staff and students of the Politeknik Brunei.¹⁶⁷

4.3) The Board of Directors and the Senate

The Board of Directors consists of the Chairman, the Deputy Chairman, the Committee and not less than 9 and not more than 18 other members representing the public sector and the private sector. A member of the Board (excluding the Committee) shall be appointed by the Minister and hold office for a period of 3 years and vacate his office in accordance with the terms of his appointment and shall be eligible for re-appointment.

The Board shall have power to administer and manage the finances, accounts, investments, property, business, and all affairs whatsoever of the Politeknik; to enter into, vary, carry out and cancel contracts on behalf of the Politeknik Brunei; and to do all such other acts and things as may be requisite to give effect to the powers conferred on the Board by the Order or this Constitution.

The Politeknik Brunei Order of 2014 states that at every meeting of the Board, one-third of the number of members shall constitute a quorum. Decisions at meetings of the Board shall be adopted by a simple majority of the votes of the members present and voting, except that in the case of an equality of votes, the Chairman shall have a casting vote.¹⁶⁸

The Senate is responsible for the administration and management of the Politeknik Brunei. The Senate may design the courses of instruction, make regulations, set conditions for scholarship provision and do other such acts and things. The Senate comprises the Chairman, the Deputy Chairman, Board Assistant, Registrar, Director and other members appointed by the Committee. The Senate

¹⁶⁷ First Schedule, Section 3 of Politeknik Brunei Order, 2014.

¹⁶⁸ First Schedule, Section 11 of Politeknik Brunei Order, 2014.

shall meet at least twice in every academic year. The quorum at every meeting of the Senate shall be one-quarter of the total number of members of the Senate.¹⁶⁹

¹⁶⁹ First Schedule, Section 12 (2) of Politeknik Brunei Order, 2014.

Chapter 4

Labour Laws and Regulations

4.1 Introduction

Brunei Darussalam became a member of the International Labour Organisation (ILO) in 2007. Though Brunei has not ratified all of ILO's eight fundamental Conventions, the country has attempted to improve its labour law and practice in order to comply with the commitments Brunei accepted at Singapore in 1996 and Doha 2001 in the WTO Ministerial Declarations, and in the ILO Declaration on Fundamental Principles and Rights at Work in June 1998.¹⁷⁰

The Employment Order 2009 is the latest law on occupational safety. The Order applies to both local workers and immigrant employees. Replacing the Labour Act of 1995, the Employment Order 2009 makes provision for labour rights including annual leave, welfare, retirement benefit, employment of children and young persons, employment of women, and improved labour protection for employee working extra time. Punishment terms have also been adjusted to be more up-to-date. In case of violation of this Order, there shall be both civil and criminal punishment.¹⁷¹

The Department of Labour under the Ministry of Home Affairs is responsible for enforcement of labour laws and regulations including matters related to workers' compensation, occupational safety and health which shall comply with the Employment Order. The Labour Department shall inspect the workplace and labour practices to ensure the conformity to labour standards.¹⁷²

¹⁷⁰ International Trade Union Confederation (ITUC), *Internationally-Recognised Core Labour Standards in Brunei Darussalam: Report for the WTO General Council Review of the Trade Policies of Brunei Darussalam*, (Geneva, February 2008) Available at: http://www.ituc-csi.org/IMG/pdf/Brunei.final_1_.pdf, accessed 28 October, 2015.

¹⁷¹ Employment Order, 2009.

¹⁷² The Brunei Times, *Labour Department briefs on labour quota requirements*, Available at: <http://www.bt.com.bn/news-national/2014/05/16/labour-department-briefs-labour-quota-requirements>, accessed 28 October, 2015.

4.2 Labour Laws and Regulations in Brunei Darussalam

4.2.1 Labour Protection Law

Employment Order, 2009 is the newest labour law passed by the government of Brunei. The Order makes provision for labour protection in various aspects as detailed below.

1) Contents of Contract of Service

Every contract of service shall clearly define the rights and obligations of the parties thereto, and without prejudice to the generality thereof shall include the following particulars:

- The name of the employer or group of employers and, where practicable, the undertaking and place of employment;
- The name and place of origin of the employee, his place of engagement and any other particulars necessary for his identification;
- Where possible, the names and addresses of the next of kin of the employee;
- The nature of employment
- The duration of employment and the method of calculation thereof;
- The appropriate period of notice to be given by the party wishing to terminate the contract of service
- The rates of salary and the method of calculation thereof, the manner and times of payment of salary, the advances of salary, if any, and the manner of repayment of any such advances;
- The measures to be taken to provide for the welfare of the employee and any dependent who may accompany him under the terms of the contract of service;

- The conditions of repatriation, if the employee is not a citizen of Brunei Darussalam.¹⁷³

2) Minimum Age for Employment

A person who has not attained the age of 16 years shall not be capable of entering into a contract of service. However, a person who has attained the age of 16 years but who has not attained the age of 18 years shall be capable of entering into a contract of service in an occupation approved by the commissioner as not being injurious to the moral and physical development of youths.¹⁷⁴

3) Medical Examinations

Every employee who enters into a contract of service shall be medically examined by a medical practitioner at the expense of the employer. A medical certificate shall be obtained before the contract of service is signed.¹⁷⁵

4) Termination of Contract of Service

A contract of service may be terminated by the Commissioner if the employee has been mistreated, and in such event the Commissioner may order the employer to award the employee reasonable compensation for such mistreatment.¹⁷⁶

An employer shall be deemed to be in breach of his contract of service with the employee if he fails to pay his salary in accordance with this Order. An employee shall be deemed to be in breach of his contract of service with the employer if he has been continuously absent from work for more than 2 days without period leave

¹⁷³ Section 11 of Employment Order, 2009.

¹⁷⁴ Section 9 of Employment Order, 2009.

¹⁷⁵ Section 16 of Employment Order 2009.

¹⁷⁶ Section 17 of Employment Order 2009.

from his employer or without reasonable excuse; or without informing or attempting to inform his employer of the reason for the absence.¹⁷⁷

A contract of service for a specified period of time or for performance of a specified piece of work shall terminate when the period of time for which such contract of service was made has expired or when the piece of work specified in such contract of service has been completed.¹⁷⁸ A contract of service for an unspecified period of time shall continue in force until terminated by either party giving to the other party notice of his intention to terminate the contract of service in accordance with this Order.¹⁷⁹

5) Change of Employer

If a contract of employment between any corporate body and an employee is modified and some other body corporate is substituted as the employer, the employee's period of employment at the time when the modification takes effect shall count as a period of employment with such other body corporate and the change of employer shall not break the continuity of the period of employment.¹⁸⁰

¹⁷⁷ Section 19 of Employment Order 2009.

¹⁷⁸ Section 21 of Employment Order 2009.

¹⁷⁹ Section 22 of Employment Order 2009, states that "(1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate the contract of service.

(2) The length of such notice shall be determined by the contract of service or, in the absence of any provision, in accordance with subsection (3).

(3) Subject to subsection (2), the notice to terminate a contract of service shall be not less than –

(a) one day's notice, if the employee has been employed for less than 26 weeks;

(b) one week's notice, if the employee has been employed for at least 26 weeks but less than 2 years;

(c) 2 week's notice, if the employee has been employed for at least 2 years but less than 5 years;

(d) 4 week's notice, if the employee has been employed for at least 5 years.

(4) This section does not prevent either party from waiving his right to notice on any occasion

(5) The notice to terminate shall be in writing and may be given at any time, and the day on which the notice is given shall be included in calculating the period of the notice."

¹⁸⁰ Section 25 (1) of Employment Order 2009.

The period of employment shall also continue in the event of the death of an employer¹⁸¹ or change in the partners, personal representatives or trustees.

6) Misconduct of Employee

An employer may dismiss without notice an employee on the grounds of misconduct or he may down-grade the employee; or suspend him from work.¹⁸² Where an employee considers that he has been dismissed without just cause or excuse by his employer, he may, within one month of the dismissal, make representative in writing to be reinstated in his former employment.¹⁸³

7) Contracts of Apprenticeship

The parent or guardian of a person who has not attained the age of 16 years may, with his consent, enter into the written contract of apprenticeship for a period not exceeding 5 years.¹⁸⁴ Whenever any person who has not attained the age of 16 years is without a known parent or guardian, the Commissioner may authorise his apprenticeship, and may appoint any fit and proper person to sign the contract of apprenticeship and act generally as his guardian.¹⁸⁵

Any person who has attained the age of 16 years and any person who is above the age of 18 years, may apprentice himself for a period not exceeding 5 years.¹⁸⁶

8) Payment of Salaries

No salary period shall exceed one month.¹⁸⁷ The calculation of salary¹⁸⁸, the times of payment and payment for overtime work¹⁸⁹, payment in case of termination

¹⁸¹ Section 25 (2) of Employment Order 2009.

¹⁸² Section 26 (1) of Employment Order, 2009.

¹⁸³ Section 26 (2) of Employment Order, 2009.

¹⁸⁴ Section 28 (1) of Employment Order, 2009.

¹⁸⁵ Section 28 (2) of Employment Order, 2009.

¹⁸⁶ Section 29 of Employment Order, 2009.

¹⁸⁷ Section 37 of Employment Order, 2009.

of contract of service,¹⁹⁰ payment in case of dismissal,¹⁹¹ deduction from the salary in case of absence from work, for damage, or for house accommodation supplied by the employer¹⁹² shall comply to provisions made by this Order.

¹⁸⁸ Section 38 of Employment Order, 2009 states that “(1) If a monthly-rated employee has not completed a whole month of service because (a) he commenced employment after the first day of the month;

(b) his employment was terminated before the end of the month; or

(c) he took leave of absence without pay for one or more days of the month,

Monthly gross rate of pay X Number of days the employee actually worked in that month

Number of days on which the employer is required to work in that month

(2) In calculating the number of days actually worked by an employee in a month under subsection (1), any day on which an employee is required to work for 5 hours or less under his contract of service shall be regarded as half day.”

¹⁸⁹ Section 39 of Employment Order, 2009 states that “(1) Salary earned by an employee under a contract of service, other than additional payments for overtime work, shall be paid before the expiry of the 7th day after the last day of the salary period in respect of which the salary is payable.

(2) Additional payments for overtime work shall be paid not later than 14 days after the last day of the salary period during which the overtime work was performed.

(3) The total salary due to an employee on completion of his contract of service shall be paid to him on completion of the contract.”

¹⁹⁰ Section 40 of Employment Order, 2009 states that “(1) Subject to the provisions of this Order, the total salary due to an employee who terminates his contract of service with his employer under section 26, or after giving prior notice to the employer as required under section 22, shall be paid to him on the day on which the contract of service is terminated.

(2) Subject to the provisions of this Order, the total salary due to an employee who –

(a) terminates his contract of service without giving prior notice to his employer as required under section 22 ; or

(b) has already given prior notice under section 22, but the employee terminates his contract of service without waiting for the expiry of the notice, shall be paid to him not later than 7 days after the day on which the contract of service was terminated.

(3) The employer may, subject to any order made by a court or the Commissioner to the contrary, deduct from the salary due to the employee such sum as the employee is liable to pay in lieu of prior notice under section 23 (1).”

¹⁹¹ Section 41 of Employment Order, 2009 states that “Subject to the provisions of this Order, the salary and any other sum due to an employee who has been dismissed or whose contract of service has been terminated by his employer shall be paid on the day of dismissal or termination, as the case may be, or, if this is not possible, within 3 days thereafter, not including rest days and public holidays.’

¹⁹² Section 45 of Employment Order, 2009 states that “(1) The following deductions may be made from the salary of an employee –

(a) deductions for absence from work;

(b) deduction for damage to or loss of goods expressly entrusted to an employee for custody or for loss of money for which an employee is required to account, where the damage or loss is directly attributable to his neglect or default;

9) Rest Days, Hours of Work, and Holidays

Every employee shall be allowed, in each week, a rest day of one whole day which shall be Sunday or such other day as the employer may determine.¹⁹³

No employee shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature required to be carried on continuously by a succession of shift.¹⁹⁴ In the event of any dispute, the Commissioner may decide whether or not an employee is engaged in work which by reason of its nature

(c) deductions for the actual cost of meals supplied by the employer at the request of the employee;

(d) deductions for house accommodation supplied by the employer;

(e) deduction for such amenities and services supplied by the employer as the Commissioner may authorize;

(f) deduction for recovery of advances or loans or for adjustment of over-payments of salary;

(g) deductions for income tax payable by the employee;

(h) deductions for contributions payable by an employer on behalf of an employee under and in accordance with the provisions of the Tabung Amanah Pekerja Act (Chapter 167);

(i) deductions made at the request of the employee for the purpose of a superannuation scheme or provident fund or any other scheme which is lawfully established for the benefit of the employee and is approved by the Commissioner;

(j) deductions made with the written consent of the employee and paid by the employer to any co-operative society registered under any written law in respect of subscriptions, entrance fees, instalments of loans, interest and other dues payable by the employee to such society; and

(k) any other deductions which may be approved by the Minister

(2) For the purposes of subsection (1) (e), "service" does not include the supply of tools and raw materials required for the purposes of employment."

¹⁹³ Section 63 of Employment Order, 2009 states that "(1) Every employee shall be allowed, in each week, a rest day of one whole day which shall be Sunday or such other day as the employer may determine.

(2) The employer may substitute any continuous period of 30 hours as arrest day for and employee engaged in shift work.

(3) Where in any week a continuous period of 30 hours commencing at any time before 6.00 p.m. on a Sunday is substituted as a rest day for an employee engaged in shift work, such rest day shall be deemed to have been granted within that week notwithstanding that the period of 30 hours end after that week.

(4) Where the rest day of an employee are determined by the employer, the employer shall, before the commencement of the month in which the rest day fall, prepare or cause to be prepared a roster of the days appointed to be rest days therein."

¹⁹⁴ Section 64 (1) of Employment Order, 2009.

required to be carried on continuously by a succession of shift.¹⁹⁵ Any employee who at this own request work on a rest day or a public holiday shall be paid for that day.¹⁹⁶

In the contract of service, the employer shall not require the employee to:

(a) work for more than 6 consecutive hours without a period of leisure¹⁹⁷;

(b) work for more than 8 hours in one day or for more than 44 hours in one week.¹⁹⁸

¹⁹⁵ Section 64 (2) of Employment Order, 2009.

¹⁹⁶ Section 64 (3) of Employment Order, 2009 states that “Any employee who at this own request work on a rest day or a public holiday shall be paid for that day –

(a) if the period of work does not exceed one-haft of his normal hours of work, a sum at the basic rate of pay for haft a day’s work;

(b) if the period of work is more than one-haft but does not exceed his normal hours of work, a sum of the basic rate of pay for one day’s work;

(c) if the period of work exceeds his normal hours of work for one day –

(i) a sum of the basic rate of pay for one day’s work; and

(ii) a sum at the rate of not less than one and one-haft time his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of woke for one day.”

¹⁹⁷ Section 65 (1)(a) of Employment Order, 2009 states that “more than 6 consecutive hours without a period of leisure;

¹⁹⁸ Section 65 (1)(b) of Employment Order, 2009 states that “more than 8 hours in one day or for more than 44 hours in one week:

Provided that –

(i) an employee who is engaged in work must be carried on continuously may be required to work for 8 consecutive hours, inclusive of the period or periods of not less than 45 minutes in the aggregate, during which he shall have the opportunity to have a meal;

(ii) where under a contract of service, the number of hours of work on one or more days of the week is less than 8, the limit of 8 hours may be exceeded on the remaining days of the week, but no employee shall be required to work for more than 9 hours in one day or 44 hours in one week;

(iii) where under the contract of service, the number of days on which the employee is required to work in a week is not more than 5 days, the limit of 8 hours in one day may be exceeded, but no employee shall be required to work for more than 9 hours in one day or 44 hours in one week; and

(iv) where under the contract of service, the number of hours of work in every alternate week is less than 44, the limit of 44 hours in one week may be exceeded in the other week, but no employee shall be required to work for more than 48 hours in one week or for more than 88 hours in any continuous period of 2 weeks.”

The employer may request the employee to work overtime, on a rest day or a public holiday. In the event of any dispute, the Commissioner shall have the power to decide whether or not the employer was justified in calling upon the employee to work in the case of any work, the performance of which is essential to the life of the community; any work which is essential for defence or security; any urgent work to be done to any machinery or plant; any interruption of work which was impossible to foresee; work in any industrial undertaking essential to the economy of Brunei Darussalam or in any of the essential services as defined in the Internal Security Act (Chapter 133).¹⁹⁹

Except in the circumstances described above, an employee shall not be permitted to work for more than 12 hours in any one day²⁰⁰

An employee who is engaged under his contract of service in regular shift work or who has otherwise consented in writing may be required to work for more than 6 consecutive hours, for more than 8 hours in any one day or for more than 44 hours in any one week, but the average number of hours worked over any continuous period of 3 weeks shall not exceed 44 hours per week.

Every employee shall be entitled to a paid holiday at his gross rate of pay on every public holiday that falls during the time that he is employed.²⁰¹ No employee shall be entitled to holiday pay for any public holiday which fall on a day when the employee is on leave of absence without pay granted by the employer at the request of the employee.²⁰²

¹⁹⁹ Section 65 (3) of Employment Order, 2009.

²⁰⁰ Section 65 (8) of Employment Order, 2009.

²⁰¹ Section 70 (1) of Employment Order, 2009 states that “Every employee shall be entitled to a paid holiday at his gross rate of pay on every public holiday that falls during the time that he is employed:

Provided that –

(a) by agreement between the employer and the employee, any other day or days may be substituted for any one or more public holidays;

(b) if any public holiday fall on a rest day, the working day next following that rest day shall be a paid holiday; and

(c) if any public holiday fall on a day when the employee is not required to work under his contract of service, the employer may either pay the employee for that holiday at his gross rate of pay or give a employee a day off in substitution for that holiday.”

²⁰² Section 70 (2) of Employment Order, 2009.

The employee who has served an employer for a period of not less than 3 months shall be entitled to paid annual leave of 7 days in respect of the first 12 months of continuous service with the same employer;²⁰³ and an additional one day's annual leave for every subsequent 12 months of continuous service with the same employer.²⁰⁴

Any employee who has served an employer for a period of not less than 6 months shall, after undergoing a medical examination by a medical practitioner be entitled to paid sick leave not exceeding in the aggregate –

- (a) 14 days in each year if no hospitalisation is necessary; or
- (b) 60 days in each year if hospitalisation is necessary,

as may be certified by the medical practitioner.²⁰⁵

10) Health, Accommodation and Medical Care

Every employer who undertakes to provide accommodation for workmen with whom he has entered into a contract of service, shall provide and maintain for those workmen and their dependants sufficient and proper hygienic accommodation; sufficient supply of wholesome water; and sufficient and proper sanitary arrangements.²⁰⁶ Every employer is responsible for:

- Providing such first-aid equipment at every place of employment where workmen are employed.²⁰⁷
- Providing all workmen such medical attention and treatment with medicines of good quality, first aid equipment and appliances for the transportation of sick or injured workmen.²⁰⁸

²⁰³ Section 71 (1) (a) of Employment Order, 2009.

²⁰⁴ Section 71 (1) (b) of Employment Order, 2009.

²⁰⁵ Section 72 (1) of Employment Order, 2009.

²⁰⁶ Section 80 of Employment Order, 2009.

²⁰⁷ Section 82 of Employment Order, 2009.

²⁰⁸ Section 83 (1) of Employment Order, 2009.

- Taking for treatment as soon as possible every workman injured or falling ill during the course of his employment and every resident workman and resident dependant on a place of employment requiring medical attention at a hospital or dispensary.²⁰⁹ The cost of maintenance and treatment of a workman and of his dependant residing on the place of employment in or at a hospital or dispensary shall be borne or paid by the employer as long as the workman remains in his employment.²¹⁰

11) Part-time Employees

Part-time employee means an employee who is required under his contract of service with an employer to work for less than 30 hours a week which the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the Gazette, declare that any employee or class of employee is not to be regarded as a part-time employee.²¹¹

12) Employment of Women

Every female employee shall be entitled to absent herself from work during:

- (1) the period of 4 weeks immediately before her confinement; and
- (2) the period of 5 weeks immediately after her confinement.²¹²

²⁰⁹ Section 83 (2) of Employment Order, 2009.

²¹⁰ Section 83 (3) of Employment Order, 2009.

²¹¹ Section 88 of Employment Order, 2009.

²¹² Section 91 (1) of Employment Order, 2009 states that "Subject to this section, every female employee shall be entitled to absent herself from work –

(a) during -

- (i) the period of 4 weeks immediately before her confinement; and
- (ii) the period of 5 weeks immediately after her confinement;

(b) during a period of 9 weeks, as agreed to by her and her employer, commencing –

- (i) not earlier than 28 days immediately preceding the day of her confinement; and
- (ii) not later than the day of her confinement."

During a period of 9 weeks, every female employee shall be entitled to receive payment from her employer.²¹³ However, a female employee who has served an employer for less than 180 days immediately preceding the day of her confinement shall not be entitled to any pay during the benefit period.²¹⁴

A female employee shall, at least one week before absenting herself from work, give notice to her employer specifying the date of which she intends to commence absenting herself from work.²¹⁵ A female employee who has been confined shall, as soon as practicable, inform her employer of the date on which she was confined.²¹⁶ Any female employee who fails to give notice as required or who fails to inform her employer as required shall be entitled to only one-half of the amount of any payment to which she would otherwise be entitled under this Part.²¹⁷ The payment shall be paid to every female employee absent from work for confinement under the provisions of this Order. The payment shall be paid for every day of the benefit period, including public holidays.²¹⁸

If a female employee dies during her absence for confinement, a sum of money at the rate set out in this Order shall be paid to the person nominated by her or her personal representative.²¹⁹ When a female employer absents herself from work, it shall not be lawful for her employer to give her notice of dismissal.²²⁰

²¹³ Section 91(2) of Employment Order, 2009 states that “Subject to this section, every female employee shall be entitled to receive payment from her employer at her gross rate of pay for any of the following periods –

(a) where subsection (1) (a) applies, the period of 4 weeks referred to the subsection (1) (a) (i) and the first 4 weeks of the period referred to in subsection (1) (a) (ii);

(b) where subsection (1) (b) applies, the first 8 weeks of the period referred to in subsection (1) (b).”

²¹⁴ Section 91 (3) of Employment Order, 2009.

²¹⁵ Section 94 (1) of Employment Order, 2009.

²¹⁶ Section 94 (2) of Employment Order, 2009.

²¹⁷ Section 94 (3) of Employment Order, 2009.

²¹⁸ Section 96 of Employment Order, 2009.

²¹⁹ Section 97 of Employment Order, 2009 states that “(1) If a female employee, after giving notice to her employer under section 94 (1), abstains from work in expectation of her confinement and dies from any cause before her confinement, the employer shall pay –

(a) to the person nominated by her under section 94 (4); or

(b) if there is no such person, to her personal representative,

a sum of money at the rate set out in section 91 from the date immediately following the last day on which she worked to the day immediately preceding the day of her death and, except in the circumstances mentioned in the subsection, no employer shall be liable to pay any sum in respect of a period exceeding 30 days.

Any employer who knowingly employs a female employee at any time during the period of 4 weeks immediately following her confinement is guilty of an offence.²²¹ Any employer who fails to pay his female employee during her absence for confinement is guilty of an offence.²²²

13) Employment of Children and Young Persons

No person shall employ a child. However, a child may be employed in an industrial undertaking in which only members of the same family are employed.²²³ A child who has attained the age of 14 years may be employed in light work suited to his capacity in an undertaking which is not in industrial undertaking.²²⁴ A certificate of a medical practitioner shall be conclusive on the question of whether any work is suited to the capacity of any particular child.²²⁵

Employment of young persons in any industrial undertaking²²⁶ and minimum rates of salary²²⁷ shall be in line with what the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the Gazette, declares any industrial undertaking to be an industrial undertaking in which no young person shall be employed.

Nevertheless, the above-mentioned provisions on the employment of children and young persons do not apply to the employment of children and young persons in any work approved and supervised by the Ministry of Education, the

(2) If a female employee dies from any cause on or after the day of her confinement and before any payment to which she entitled has been paid to her, the employer shall pay –

(a) to the person nominated by her under section 94 (4); or

(b) if there is no such person, to her personal representative,

a sum of money to which she was on the date of her death entitled in respect of the period up to the day of her confinement and in respect of the period after her confinement up to the day immediately preceding the day of her death.”

²²⁰ Section 98 of Employment Order, 2009.

²²¹ Section 100 of Employment Order, 2009.

²²² Section 102 of Employment Order, 2009.

²²³ Section 103 (2) of Employment Order, 2009.

²²⁴ Section 103 (3) of Employment Order, 2009.

²²⁵ Section 103 (4) of Employment Order, 2009.

²²⁶ Section 104 of Employment Order, 2009.

²²⁷ Section 106 (1) (2) of Employment Order, 2009.

Institute of Technical Education or any authorised government agency and the employment of young persons under any apprenticeship programme approved and supervised by the Institute of Technical Education or any authorised government agency.²²⁸

A child or young person in respect of whom any of the offences mentioned in this Part has been committed may be brought before any court and that court, if satisfied that the child or young person is in need of care or protection, may exercise with respect to that child or young person all or any of the powers conferred by any written law.²²⁹ The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to regulate the employment of children in any occupation and no child or young person shall be employed under any circumstances or under any conditions which may be prohibited by the Minister by such regulations.²³⁰ Any person who employs a child or young person in contravention of the provisions of this Order; any parent or guardian who knowingly or negligently suffers or permits any such employment; or in the case where a child or young person suffers serious injury or death resulting from such employment, is guilty of an offence and liable on conviction to a fine, imprisonment or both.²³¹

14) Immigrant employee

No person shall knowingly employ any immigrant employee unless he has obtained a licence from the Commissioner to do so.²³² Any employer who contravenes the provisions in this Order is guilty of an offence and liable on conviction to a fine, imprisonment, or both.²³³ No employer shall, without reasonable grounds, terminate the contract of service of a local employee for the purpose of employing an immigrant employee.²³⁴

²²⁸ Section 107 of Employment Order, 2009.

²²⁹ Section 108 of Employment Order, 2009.

²³⁰ Section 109 of Employment Order, 2009.

²³¹ Section 110 (1) of Employment Order, 2009.

²³² Section 112 (1) of Employment Order, 2009.

²³³ Section 112 (2) of Employment Order, 2009.

²³⁴ Section 113 of Employment Order, 2009.

15) Repatriation

Every immigrant employee who is a party to a contract of service under this Order and who has been brought to Brunei Darussalam by an employer shall have the right to be repatriated at the expense of the employer²³⁵ including when the immigrant employee is ordered to leave Brunei Darussalam,²³⁶ and repatriation of any dependant of the immigrant employee who is repatriated or in the event of his death.²³⁷ The expenses of repatriation shall include travelling and subsistence expenses during the journey; any subsistence expenses during the period between the date of termination and the date of repatriation; and provision for interment and the payment of the reasonable expenses of burial.²³⁸

In addition, the Employment Information Act of 1974 makes provisions for employment contract and punishment of an employer who does not provide information about the employment. The Act mainly provides for power of the Commissioner to collect information on the employment.

4.2.2 Social Security and Compensation Law

The law on social security and compensation in Brunei Darussalam is the Workmen's Compensation Act of 1984 which provides for the payment of compensation to workmen for injuries suffered in the course of their employment. The main points of this Act are detailed as follows.

1) Workman's Compensation for Injury

If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall be liable to pay compensation in accordance with the provisions of this Act.²³⁹ It shall include an

²³⁵ Section 114 (1) of Employment Order, 2009.

²³⁶ Section 114 (2) of Employment Order, 2009.

²³⁷ Section 114 (3) of Employment Order, 2009.

²³⁸ Section 114 (4) of Employment Order, 2009.

²³⁹ Section 4 (1) of Workmen's Compensation Act, 1984.

accident happening to a workman while he is, with the express or implied permission of his employer, travelling as a passenger by any vehicle, ship, vessel or aircraft to or from his place of work;²⁴⁰ an accident happening to a workman in or about any premises at which he is for the time being employed while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimize damage to property;²⁴¹ and an accident happening to a workman while he is acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by his employer and such act was done for the purposes of and in connection with the employer's trade or business.²⁴²

If a workman whose normal place of employment is in Brunei Darussalam or whose contract of employment was made in Brunei Darussalam is injured or dies as a result of an accident occurring outside Brunei Darussalam in circumstances in which if such accident had happened in Brunei Darussalam such workman would have been entitled to compensation under this Act, the employer of such workman shall be liable to pay compensation in accordance with the provisions of this Act.²⁴³

An employer shall not be liable to pay compensation in respect of any injury which does not incapacitate the workman for a period of at least 7 days from earning full wages at the work on which he was employed”

An employer shall not be liable to pay compensation in respect of any injury to a workman resulting from an accident if it is proved that the injury is directly attributable to the workman having been under the influence of alcohol or a drug, unless such injury results in the death or permanent incapacity causing a loss of earning capacity.²⁴⁴ Moreover, no compensation shall be payable in respect of any incapacity or death resulting from a deliberate self-injury or the deliberate aggravation of an accidental injury.²⁴⁵

²⁴⁰ Section 4 (2) of Workmen's Compensation Act, 1984.

²⁴¹ Section 4 (3) of Workmen's Compensation Act, 1984.

²⁴² Section 4 (4) of Workmen's Compensation Act, 1984.

²⁴³ Section 4 (5) of Workmen's Compensation Act, 1984.

²⁴⁴ Section 4 (7) of Workmen's Compensation Act, 1984.

²⁴⁵ Section 4 (8) of Workmen's Compensation Act, 1984.

2) Compensation for Occupational Diseases

If a workman contracts a disease or injury related to the occupation, or if a workman contracts such a disease or injury within 12 months after ceasing to be so employed, and if incapacity or the death of such workman results from that disease, compensation shall be payable.²⁴⁶ When a workman enters into a contract of employment with any employer to work in any occupation, he shall, if requested to do so by the employer, submit himself for examination by a registered medical practitioner, the fee for which shall be paid by the employer.²⁴⁷ No compensation shall be payable in respect of the incapacity or death of a workman if the disablement begins or the death happens more than 12 months after the workman has ceased to be employed.²⁴⁸

For the purposes of calculating the monthly earnings of the workman in a claim for compensation, the date of commencement of the incapacity of the workman, or the date of his death shall be treated as the date of the happening of the accident, and if he is not then so employed, the last day on which he was so employed shall for this purpose be deemed to be the date of the happening of the accident.²⁴⁹ The compensation shall be payable to or for the benefit of the workman, or of his dependants as provided by this Act.²⁵⁰ The compensation payable shall not be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman.²⁵¹

When notice of an accident is given to the employer within 7 days after the happening,²⁵² the employer may offer to have the workman examined free of charge by a registered medical practitioner and may further offer to pay the cost of such medical treatment of and such medicines for such workman as the registered medical practitioner may deem necessary.²⁵³

²⁴⁶ Section 5 (1) of Workmen's Compensation Act, 1984.

²⁴⁷ Section 5 (2) of Workmen's Compensation Act, 1984.

²⁴⁸ Section 5 (3) of Workmen's Compensation Act, 1984.

²⁴⁹ Section 5 (4) of Workmen's Compensation Act, 1984.

²⁵⁰ Section 7 of Workmen's Compensation Act, 1984.

²⁵¹ Section 11 of Workmen's Compensation Act, 1984.

²⁵² Section 12 (1) of Workmen's Compensation Act, 1984.

²⁵³ Section 15 (1) of Workmen's Compensation Act, 1984.

The Minister shall from time to time by notification on the Gazette declare which hospitals are approved hospitals for the purpose of this Act,²⁵⁴ which hospitals are special hospitals with suitable equipment and supervision for the purpose of this Act.²⁵⁵ Where an injured workman is admitted to a hospital, the employer shall, in addition to the payment of compensation, be liable to pay all ward and treatment fees, the cost of medicines and artificial limbs, surgical appliances and other prostheses required.²⁵⁶

3) Periodical Payment of Compensation

Any periodical payment payable under this Act may be under an agreement between the workman and the employer and consented to and recorded by the Commissioner.²⁵⁷ If the workman and the employer cannot agree and the payments are continued for not less than 6 months, an arbitrator may determine the payments be commuted into lump sum.²⁵⁸

4) Special Provisions relating to Seamen

This Act shall apply to masters and seamen where such persons are members of the crew of any registered Brunei Darussalam ship, or of any other Brunei Darussalam ship of which the owner resides or has his principal place of business in Brunei Darussalam. The Act makes special provisions relating to the notice of the accident and the claim for compensation in the case of the death, injury, periodical payment, and proceedings for the recovery of compensation by dependants of masters or seamen. This Act shall also apply to any person employed on board any such ship, employed for the purposes of the ship or of any passengers or cargo or mails carried by the ship.²⁵⁹

²⁵⁴ Section 16 (1) of Workmen's Compensation Act, 1984.

²⁵⁵ Section 16 (2) of Workmen's Compensation Act, 1984.

²⁵⁶ Section 16 (3) of Workmen's Compensation Act, 1984.

²⁵⁷ Section 17 (1) of Workmen's Compensation Act, 1984.

²⁵⁸ Section 18 of Workmen's Compensation Act, 1984.

²⁵⁹ Section 23 (1) of Workmen's Compensation Act, 1984.

5) Employer to Insure

Every employer shall insure and keep himself insured with an insurer approved by the Minister in respect of any liability which he may incur under the provisions of this Act. Any employer who, for the purpose of defraying the cost of insurance, makes any deduction from the earnings of a workman shall be guilty of both civil and criminal offences.²⁶⁰

An approved insurer shall collect, compile and maintain in respect of all employers insured by him statistics and information relating to the occurrence and cause of accidents and occupational diseases; any settlement of claim for compensation; any claim for compensation; and the amount of any premium or charge paid by employers in respect of the insurance of workmen.²⁶¹

4.2.3 Occupational Safety, Health and Environment Law

The law on occupational safety, health and environment in Brunei Darussalam is the Workplace Safety and Health Order, 2009 which provides for the investigations, inquiries, and reporting of dangerous occurrences at workplace; safety and health training courses; and penalties in case of an offence. The main points of this Order is detailed below.

1) General Duties of Persons at Workplaces

The Workplace Safety and Health Order imposes duty and liability of persons at workplace including an employer; a contractor; a self-employed person; a designer, manufacturer or supplier of any machinery, equipment or hazardous substance for use at work; and an erector, installer or modifier of machinery equipment for use at work.²⁶²

It shall be the duty of every occupier of any workplace to take such measures to ensure that the workplace; all means of access to or egress from the

²⁶⁰ Section 27 of Workmen's Compensation Act, 1984.

²⁶¹ Section 28 of Workmen's Compensation Act, 1984. (a)

²⁶² Section 10 of Workplace Safety and Health Order, 2009.

workplace; and any machinery, equipment, plant article, or substance kept at the workplace are safe and without risks to health to every person within those premises, whether or not that person is at work or is an employee of the occupier.²⁶³

Every employer shall take such measures to ensure the safety and health of his employee at work, of persons who may be affected by any undertaking carried on at the workplace. Such necessary measures include:²⁶⁴

- 1) Providing and maintaining for those persons a work environment that is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;
- 2) Ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article, or process used by those persons;
- 3) Ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things
- 4) Developing and implementing procedures for dealing with emergencies that may arise while those persons are at work;
- 5) Ensuring that the person at work has adequate instruction, information, training and supervision as is necessary for him to perform his work.

Every employer shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while they are at his workplace.²⁶⁵

It shall be the duty of every self-employed person (whether or not he is also a contractor or sub-contractor) to take such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on at the workplace.²⁶⁶ Every self-employed person shall, where required by the regulations, give to persons (not being his employees) the prescribed

²⁶³ Section 11 of Workplace Safety and Health Order, 2009.

²⁶⁴ Section 12 of Workplace Safety and Health Order, 2009.

²⁶⁵ Section 12 (4) of Workplace Safety and Health Order, 2009.

²⁶⁶ Section 13 (1) of Workplace Safety and Health Order, 2009.

information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while they are at his workplace.²⁶⁷

It shall be the duty of every person at work to use in such manner so as to provide the protection intended, any suitable appliance, protective clothing, convenience, equipment or other means or thing provided for securing his safety, health and welfare while at work; to cooperate with his employer or principal to such extent as will enable his employer, to comply with this Order; and not to wilfully or recklessly interfere with or misuse any appliance.²⁶⁸

It shall be the duty of any person who manufactures or supplies any machinery, equipment or hazardous substance for use at work to ensure that the information about the precautions to be taken for the proper use and maintenance of the machinery, equipment or hazardous substance is available; and to ensure that the machinery, equipment or hazardous substance is safe and without risk to health, when properly used.²⁶⁹

It shall be the duty of any person who erects, installs or modifies any machinery or equipment for use at work to ensure that the machinery or equipment is erected, installed or modified in such manner that is safe, and without risk to health, when properly used.²⁷⁰

This Order also provides for other related duties of occupiers and employers. For example, an employer shall not dismiss or threaten to dismiss an employee for the conditions stated in this Order.²⁷¹

²⁶⁷ Section 13 (2) of Workplace Safety and Health Order, 2009.

²⁶⁸ Section 15 of Workplace Safety and Health Order, 2009.

²⁶⁹ Section 16 (1) (2) of Workplace Safety and Health Order, 2009.

²⁷⁰ Section 17 (1) (2) (3) (4) of Workplace Safety and Health Order, 2009.

²⁷¹ Section 18 (2) of Workplace Safety and Health Order, 2009 states that “An employer shall not dismiss or threaten to dismiss an employee because the employee –

- (a) has assisted (whether by the giving of information or otherwise) an inspector, and authorized person or any public officer in the conduct of any inspection or investigation under this Order for a breach or an alleged breach of this Order, or proposes to do so;
- (b) has in good faith sought the assistance of, or made a report to an inspectors or authorized person in relation to a safety and health matter, or proposes to do so;
- (c) is performing his duties in good faith as a member of a workplace safety and health committee; or
- (d) has complied with an order made under section 21 or has otherwise complied with this Order, or proposes to do so.”

2) Safety and Health Management Arrangements

Every workplace shall have a workplace safety and health officer or a workplace safety and health coordinator appointed for the purposes of workplace safety and health management.²⁷² A workplace safety and health committee shall be appointed to keep under review circumstances in the workplace; to promote co-operation between the employer and the employees in achieving and maintaining safe and healthy working conditions; and to carry out inspections of any accident or dangerous occurrence in the interests of the safety and health of the employees.²⁷³

3) Safety and Health Training Courses

The Minister may, by order published in the Gazette, require such prescribed class or description of persons to attend and complete safety and health training course before allowing him to perform any work for which the training is required. Any safety and health training course shall be conducted by a training provider authorised by the Commissioner. An employer who contravenes is guilty of an offence and liable on conviction to a fine, imprisonment or both.²⁷⁴

²⁷² Section 28 of Workplace Safety and Health Order, 2009.

²⁷³ Section 29 of Workplace Safety and Health Order, 2009.

²⁷⁴ Section 31 of Workplace Safety and Health Order, 2009.

Chapter 5

Public Health Laws and Regulations

5.1 Introduction

Health care in Brunei Darussalam is fully subsidised by the government. The service is provided at hospitals as well as health clinics, travelling clinics, and a flying doctor service. The pharmaceutical industry benefits from the wealth of raw materials provided by the country's rainforests.²⁷⁵ Labels for food products must contain the following information either in Malay or English: name of food, list of ingredients, net/drained content, name and address of manufacturer, packer, wholesaler, importer and distributor, the country of origin, lot identification, date and storage instructions, and instructions and date for use. Where a suitable common name for the food product is not available, a description to indicate the nature of the food is required. All imports of meat and products containing meat must conform to labelling requirements approved by the Board for Issuing Halal Import Permits. For food with animal or alcohol content, the origin of the animal or alcohol product must also be indicated. In addition, the contents of all meat products should be clearly mentioned on the label.²⁷⁶

The Department of Health Services under the Ministry of Health ensures food imported and distributed in Brunei is safe. Food importers are required to comply with the Public Health (Food) Act 1998, which protect consumers from dangerous adulterated or poor quality foods. Food importers are required to submit the customs declaration form together with relevant documents to the Food safety and Quality Control Division, Department of Health Services, for endorsement.²⁷⁷

Other sanitary and health restrictions are maintained under the Poisons Act 1956 and the Misuse of Drugs Regulations, which are enforced by the Pharmaceutical Enforcement Services, in the Ministry of Health. This includes regulation of all

²⁷⁵ Commonwealth Health Online, *Health systems in Brunei Darussalam*, Available at; http://www.commonwealthhealth.org/asia/brunei_darussalam/health_systems_in_brunei_darussalam, accessed 28 October 2015.

²⁷⁶ World Trade Organisation: Trade Policy Review, *Trade Policies and Practices by Measures: Brunei Darussalam*, p. 33.

²⁷⁷ *Ibid.*

imports and exports of pharmaceuticals, chemicals, agri-chemicals, pesticides, etc. Regular inspections are also conducted on pharmaceutical wholesalers, clinics, and retailers in Brunei. Imported veterinary pharmaceuticals, animal vaccines, and agri-chemicals are controlled by the Department of Agriculture through the Ministry of Health under the Poisons Act.²⁷⁸

5.2 Public Health Laws and Regulations in Brunei Darussalam

5.2.1 Food and Drug and Medical Devices Law

The laws relating to food, drug and medical devices in Brunei Darussalam include the Poisons Act 1956 which regulates the importation, possession, manufacture, compounding, storage, transport and sale of poisons in order to prevent the misuse; and the Public Health (Food) Act 1998 which makes specific regulations to regulate public health in respect of food and for matters connected therewith. The main points of these laws are outlined as follows.

1) The Poisons Act, 1956, Revised Edition 1984

1.1) Main point of the Poisons Act, 1956

The Poisons Act of 1956 regulates the importation, possession, manufacture, compounding, storage, transport and sale of poisons. The Act states that no person shall without a licence from a Licensing Officer import, possess for sale, sell or offer for sale any poison.²⁷⁹ Other than the licence, it shall be lawful for any person to sell any poison if the sale is effected in accordance with the provisions of the licence and with any conditions specified therein; the sale is effected on the premises specified in the licence; or the sale is effected by or under the personal supervision of the person named in the licence. Where the poison is one included in

²⁷⁸ *Ibid.*

²⁷⁹ Section 5 of Poisons Act, 1956.

Part I of the Poisons List, the sale is effected by or under the personal supervision of a licensed pharmacist or licensed practitioner.²⁸⁰

The container of the poison shall be labelled with the name of the poison; with the word “Poison” or other or other prescribed indication of the character thereof; and with the name of the seller of the poison and the address of the premises on which it was sold.²⁸¹ The seller of any poison shall not deliver it until he has made an entry in a book stating the date of the sale, the name and address of the purchaser and of the person, if any, introducing him, the name and quantity of the substance sold and the purpose for which it is stated by the purchaser to be required. The purchaser and the person introducing him, if any, have affixed their signatures to the entry aforesaid.²⁸² Nevertheless, such condition may be exempted if the medicine is supplied by a registered medical practitioner; a dentist; a veterinary surgeon for the purposes of treatment; and by a licensed pharmacist.

The medicine must be distinctly labelled with the name and address of the firm or person by whom it is supplied or dispensed and with a serial number or other reference to the entry in the book. On the day on which the medicine is supplied or dispensed, the entry in the book should contain the date on which the medicine was supplied or dispensed; the ingredients of the medicine, the name of the medicine, and the quantity supplied; the name and address of a licensed pharmacist, and the name and address of the person to whom, and the date on which the prescription was given. If the medicine was not dispensed by a licensed pharmacist, the name and address of the person to whom it was supplied must be entered in a book.²⁸³

Nothing in the provisions mentioned above shall extend to or affect the sale of poisons by way of wholesale dealing; the sale to be exported from Brunei Darussalam Darussalam; the sale to be used by a registered medical practitioner, dentist or veterinary surgeon for the purposes of his profession; the sale for use in or in connection with any hospital, dispensary or similar institution; the sale for use by or on behalf of a Government Department requiring the article for the purposes of

²⁸⁰ Section 6 (1) (a) of Poisons Act, 1956.

²⁸¹ Section 6 (2) of Poisons Act, 1956.

²⁸² Section 6 (3) (b) of Poisons Act, 1956.

²⁸³ Section 7 (3) of Poisons Act, 1956.

the public service; or the sale to a person or institution concerned with scientific education or research.²⁸⁴

This Act also prohibits any person from knowingly keeping or having in his possession or under his control any poison otherwise than in an unbroken case or package as received from the manufacturer; or in a package or other receptacle distinctly labelled with the name of the substance contained therein and also bearing some distinction or mark indicating that it contains poison.²⁸⁵ In addition, this Act prohibits any person from keeping any poison for sale or for dispensing purposes except in an unbroken case or package as received from the manufacturer; in a bottle or other vessel locked or otherwise safely secured in a manner different from that in which bottles or vessels containing non-poisonous substances are secured in the same warehouse; in a bottle or other vessel readily distinguishable by touch; and in a package kept in a room or cupboard under lock and key set apart for the keeping or storage of dangerous substances.²⁸⁶

The Poisons Act of 1956 includes the Poisons List as a Schedule.

1.2) Licence

There are 4 types of licences: licences to import and store poisons; wholesale and retail licences to deal generally in poisons; wholesale licences to keep and sell by wholesale the poisons specified in such licences; and retail licences to keep and sell the poisons specified in such licences.²⁸⁷ Every licence issued under this Act shall be personal to the licensee named therein and shall not in any case be transferable to another person and no licence shall authorise the sale of any poison by any person other than the person named therein.²⁸⁸ The Director of Medical

²⁸⁴ Section 8 of Poisons Act, 1956.

²⁸⁵ Section 9 (1) of Poisons Act, 1956.

²⁸⁶ Section 9 (3) of Poisons Act, 1956.

²⁸⁷ Section 11 (1) of Poisons Act, 1956.

²⁸⁸ Section 11 (4) of Poisons Act, 1956.

Services shall in or about the month of February in each year cause to be printed and published in the Gazette lists of all persons licensed under this Act.²⁸⁹

1.3) Prohibition of Sale of Poisons

The Poisons Act, 1956 prohibits the sale of poisons to any person under 18 years of age. Any person contravening shall be guilty of an offence to a fine of 4,000 Brunei dollars or imprisonment for 6 months.²⁹⁰

2) Public Health (Food) Act, 1998, Revised Edition 2012

2.1) Main points of the Public Health (Food) Act, 1998

The Public Health (Food) Act of 1998 makes specific provisions to regulate public health in respect of food and for matters connected with manufacture, processing, importation and advertisement.

According to this Act, “food” includes any substance manufactured, processed, sold or represented for use for human consumption. The following acts shall be considered as an offence under this Act: prepare, sell or import any food that is injurious to health; label, sell, or advertise any food in a manner that is false, misleading or deceptive as regards its character, nature, quality, composition, merit or safety, weight, origin, age or proportion; label, package, prepare, manufacture, sell, import or advertise any food which does not comply with any standard prescribed for such food; sell any food which contains any substance the addition or use of

²⁸⁹ Section 13 (1) of Poison Act, 1956.

²⁹⁰ Section 20 of Poisons Act, 1956.

which is prohibited by any regulations; sell any food which contains more than 50 parts of methyl alcohol or isopropyl alcohol.²⁹¹

In addition, the Minister of Health may make regulations for the purpose of carrying out this Act to prohibit or regulate the sale, advertisement, or importation of any food or appliance; to prescribe the standard, composition, weight, or purity of any food; to prohibit any mode of preparation or preparation of any food; or to perform any other measures as prescribed under this Act.²⁹²

2.2) Importation

This Act prohibits the importation of any food or appliances which do not comply with this Act and with any regulations made thereunder.²⁹³ Processed food may be imported for the purpose of relabelling so that it can be made to comply with this Act.²⁹⁴ Raw or semi-processed food may be imported for the purpose of reprocessing or reconditioning so that it can be made to comply with this Act.²⁹⁵ However, where such food is imported and is not so re-labelled, reprocessed or reconditioned within 3 months of such importation, it shall be exported by the importer within 2 months or such longer period as the Director may determine or, if it is not so exported, shall be forfeited or disposed of as the Director may direct.²⁹⁶

2.3) Analysis of Food

This Act prescribes the form of a certificate of the results of an analysis given by a food analyst as appears in the Schedule. The certificate shall be signed by the food analyst.²⁹⁷ A certificate purporting to be signed by a food analyst shall be admitted in evidence in proceedings for an offence against this Act.²⁹⁸

²⁹¹ Section 9 (1) of Public Health (food) Act, 1998.

²⁹² Section 16 of Public Health (food) Act, 1998.

²⁹³ Section 6 (1) of Public Health (food) Act, 1998.

²⁹⁴ Section 6 (2) of Public Health (food) Act, 1998.

²⁹⁵ Section 6 (3) of Public Health (food) Act, 1998.

²⁹⁶ Section 6 (4) of Public Health (food) Act, 1998.

²⁹⁷ Section 8 (1) of Public Health (food) Act, 1998.

²⁹⁸ Section 8 (4) of Public Health (food) Act, 1998.

2.4) Halal Food

When used in relation to food in any form, the expressions “Halal” or any other expressions indicating that Muslims are permitted by their religion to consume such food, such expressions shall have the following meanings, that is to say the food in relation to which such expressions or expression are used: neither is nor consist of or contains any part of an animal that a Muslim is prohibited to consume or that has not been slaughtered in accordance with Hukum Syara’; does not contain anything which is considered to be impure; has not been prepared, processed or manufactured using any instrument that was not free from anything impure; and has not in the course of preparation, processing or storage been in contact with or close proximity to any prohibited food or anything that is considered to be impure according to Hukum Syara’.²⁹⁹

2.5) Presumptions

In proceedings under this Act a package containing an article to which this Act applies, or bearing a name, address or mark of the person by whom it was imported, manufactured or packed shall, until the contrary is proved, be presumed to have been imported, manufactured or packed by that person; any substance commonly used for human consumption, if sold or offered, exposed or kept for sale, shall, until the contrary is proved, be presumed to have been sold or to have been intended for sale, for human consumption; the contents of any package appearing to be intact and in the original state of packing by the manufacturer shall, until the contrary is proved, be presumed to be food of the description on the label of such package.³⁰⁰ Any food shall be deemed to be adulterated if it contains, or is mixed or diluted with, any substance which diminishes in any manner its nutritive or other beneficial properties; any substance or ingredient has been extracted or omitted therefrom, and by reason of such extraction or omission the nutritive or other beneficial properties of the food as sold are less than those of the food in its pure

²⁹⁹ Section 10 of Public Health (food) Act, 1998.

³⁰⁰ Section 12 (1) of Public Health (food) Act, 1998.

and normal state; or if it contains any substance which renders the food injurious to health.³⁰¹

5.2.2 Drug Prevention and Control Law

The law concerning drug prevention and control in Brunei Darussalam is the Tobacco Order, 2005 which regulates the importation and sale of tobacco products; prohibits advertisements relating to smoking; and stipulates punishment in case of an offence against this Order. The main points of this Order are outlined below.

1) Control of Tobacco Products

Prohibition on importation and sale of tobacco products

No person shall import, sell or offer for sale any chewing tobacco; or such other tobacco product as the Minister may, by notification published in the Gazette, specify, intended, labelled or described as suitable for inhaling, chewing or any oral use other than smoking.³⁰² No person shall import, sell or offer for sale any cigarette containing a yield of more than 1.3 milligrams of nicotine per cigarette; or a yield of more than 15 milligrams of tar per cigarette.³⁰³

Number of cigarettes in package

No person shall sell or offer for sale cigarettes by retail; or permit the sale or offer for sale of cigarettes by retail, except in a package that contains not less than the prescribed number of cigarettes.³⁰⁴

Package means any box, carton or other container in which cigarettes are supplied by the manufacturer or importer for the purpose of sale by retail; and includes, in the case where the package is, or several packages are, contained inside

³⁰¹ Section 12 (2) of Public Health (food) Act, 1998.

³⁰² Section 3 (1) of Tobacco Order, 2005.

³⁰³ Section 3 (2) of Tobacco Order, 2005.

³⁰⁴ Section 4 (1) of Tobacco Order, 2005.

one or more larger packages. The prescribed number of cigarettes means 20 cigarettes; or such number as the Minister may, by notification published in the Gazette, specify.³⁰⁵

No person shall import, sell or offer for sale, any confectionery or other food product, or any toy or other article, that is designed to resemble a tobacco product or which is sold in a package designed to resemble the packaging commonly associated with tobacco products.³⁰⁶

No person shall sell or offer for sale any goods with any tobacco product as a free gift; any tobacco product with any other goods as a free gift; distribute or give any free sample of tobacco product to the public, other than to persons who are associated or concerned in the manufacture, distribution or sale of tobacco products; or offer or give any tobacco product as a prize in any lottery, raffle, draw, game or competition.³⁰⁷

No person shall under any contract, agreement, undertaking or understanding with another person, promote a tobacco product in exchange for any sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given by the other person or by any other person; or vice versa.³⁰⁸

The Order prohibits the sale of any tobacco product to a person below the age of 18 years; or buying or acquiring any tobacco product for the purpose of giving it to a person below the age of 18 years.³⁰⁹ Every retailer shall cause to be displayed suitable and sufficient numbers of notices of an adequate size in conspicuous positions in the premises or place where the product is sold, stating to the effect that the sale of any tobacco product to persons below the age of 18 years is prohibited by law.³¹⁰

The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations impose requirements to ensure that such tobacco

³⁰⁵ Section 4 (3) of Tobacco Order, 2005.

³⁰⁶ Section 6 (1) of Tobacco Order, 2005.

³⁰⁷ Section 7 of Tobacco Order, 2005.

³⁰⁸ Section 8 (1) of Tobacco Order, 2005.

³⁰⁹ Section 9 (1) of Tobacco Order, 2005.

³¹⁰ Section 11 (1) of Tobacco Order, 2005.

products as may be specified therein be marked with, labelled or accompanied by any warning relating to health, information or description as may be prescribed.³¹¹

2) Smoking in Specified Places and Specified Vehicles

The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the Gazette, specify any premises or building or any such part thereof being used for commercial, industrial or recreational purposes; any common property of any residential premises or building; or any public service vehicle or any part thereof, as being a place or a vehicle in which smoking shall not be permitted.³¹²

The manager of every specified place and the operator of every specified vehicle shall display a suitable and sufficient number of notices of an adequate size in conspicuous position therein stating to the effect that smoking is prohibited by law.³¹³

The manager or the operator shall require any person who smokes therein in contravention of any notification to cease smoking immediately; and if that person refuses, neglects or fails to cease smoking, he shall require him to leave the specified place or specified vehicle immediately.³¹⁴ If such person refuses to leave the specified place or specified vehicle, the manager or the operator shall seek the assistance of any police officer or authorised officer.³¹⁵

Any other person who is aggrieved by the smoking may lodge a complaint to the manager or operator and it shall be the duty of that manager or operator to take all reasonable steps to investigate into the complaint; and if the complaint is found to be true, to take action in accordance with this Order.³¹⁶

3) Control of Advertisements

³¹¹ Section 13 (1) of Tobacco Order, 2005.

³¹² Section 15 (1) of Tobacco Order, 2005.

³¹³ Section 15 (2) of Tobacco Order 2005.

³¹⁴ Section 16 (1) of Tobacco Order, 2005.

³¹⁵ Section 16 (2) of Tobacco Order, 2005.

³¹⁶ Section 16 (3) of Tobacco Order, 2005.

Prohibition on advertisements relating to smoking

Any person who prints, publishes or causes to be printed or published or takes part in the publication of, any tobacco product advertisement; displays or affixes a tobacco advertisement; sells, or causes or permits to be sold, any magazine, newspaper, film or videotape or any other thing that contains a tobacco product advertisement; or distributes, or causes or permits to be distributed, any tobacco product advertisement, is guilty of an offence and liable on conviction to a fine, imprisonment or both.³¹⁷

The Minister may approve, for such time and upon such conditions as he may think fit, the publication of an advertisement which mentions or refers to the brand name associated with or the name or trade name of a person associated or concerned in the manufacture, distribution or marketing of a tobacco product for the purpose.³¹⁸ However, it does not apply to any advertisement which directly or indirectly, leads to, induces, urges, promotes or encourages the use of any tobacco product for the purpose of smoking.³¹⁹

The Misuse of Drugs Act, 1978 provides for the control of dangerous or otherwise harmful drugs and for purposes connected therewith including possession, manufacture, importation and exportation of controlled drugs. The Act also stipulates punishment in case of an offence against this Act. The main points of this Act are outlined below.

1) Offences Involving Controlled Drugs

It shall be an offence for a person to traffic in a controlled drug; offer to traffic in a controlled drug; or do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.³²⁰ It shall be an offence for a person to

³¹⁷ Section 17 (1) of Tobacco Order, 2005.

³¹⁸ Section 17 (2) of Tobacco Order, 2005.

³¹⁹ Section 17 (3) of Tobacco Order, 2005.

³²⁰ Section 3 of Misuse of drugs Act, 1978.

have a controlled drug in his possession for the purpose of trafficking.³²¹ Except as authorised by this Act or the regulations made thereunder, it shall be an offence for a person to manufacture a controlled drug.³²² Except as authorised, it shall be an offence for a person to import into or export from Brunei Darussalam a controlled drug.³²³

Except as authorised by this Act or the regulations made thereunder, it shall be an offence for a person to have in his possession a controlled drug; or smoke, administer to himself or otherwise consume a controlled drug.³²⁴ Except as authorised, it shall be an offence for a person to have in his possession any pipe, syringe, utensil, apparatus or other article intended for the smoking, administration or consumption of a controlled drug.³²⁵

2) Cultivation of Cannabis, Opium and Coca Plants

It shall be an offence for a person to cultivate any plant of the genus cannabis, or any plant of the species papaver somniferum or any plant of the genus erythroxylon from which cocaine can be extracted.³²⁶

Any person who manufactures, supplies, has in his possession, or imports or exports any controlled equipment, controlled material or controlled substance shall be guilty of an offence³²⁷ unless the person shows that the equipment, material or substance is the subject of a licence, permit or any other form of authorisation issued or granted under regulations made thereunder.³²⁸

3) Regulation of Controlled Substance

³²¹ Section 3A of Misuse of drugs Act, 1978.

³²² Section 4 of Misuse of drugs Act, 1978.

³²³ Section 5 of Misuse of drugs Act, 1978.

³²⁴ Section 6 of Misuse of drugs Act, 1978.

³²⁵ Section 7 of Misuse of drugs Act, 1978.

³²⁶ Section 8 of Misuse of drugs Act, 1978.

³²⁷ Section 8A (1) of Misuse of drugs Act, 1978.

³²⁸ Section 8A (2) of Misuse of drugs Act, 1978.

The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations make provision for the regulation and control of the import and export of any controlled equipment, controlled material or controlled substance by licensing; imposing the requirement for the registration of premises used in connection with the import, export, or distribution; imposing the requirement for the documentation of transactions involving any controlled equipment, controlled material or controlled substance; and the labelling of consignments of any controlled equipment, controlled material or controlled substance.³²⁹

4) Responsibilities of Owners and Tenants

It shall be an offence for a person being the owner, tenant, occupier or person in charge of any place or premises, to permit such place or premises or any part thereof to be opened, kept or used for the purpose of smoking, administration or consumption of any controlled drug or for unlawful trafficking in or the unlawful manufacturing of a controlled drug.³³⁰

5) Abetments and Attempts Punishable as Offences

Any person who abets the commission of or who attempts to commit or does any act preparatory to or in furtherance of the commission of any offence against this Act shall be guilty of such offence and shall be liable on conviction to the punishment provided for such offence.³³¹

6) Offences by Corporations

Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such

³²⁹ Section 8B (1) of Misuse of drugs Act, 1978.

³³⁰ Section 9 of Misuse of drugs Act, 1978.

³³¹ Section 10 of Misuse of drugs Act, 1978.

capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against accordingly.³³²

³³² Section 12 of Misuse of drugs Act, 1978.

Chapter 6

Social Welfare Laws and Regulations

6.1 Introduction

The Government of Brunei Darussalam plays an important role in developing social protection systems³³³ which the government is responsible for providing subsistence benefits for vulnerable groups who are not self-reliant such as the elderly people and the disabled. In addition to subsistence benefits, the government provides health and education services, social welfare and housing support, as well as other benefits for its citizens and permanent residents.³³⁴ The government puts its social development programmes into two categories: (i) welfare programmes and (ii) socio-economic development programmes. These programmes are primarily administered through Department of Community Development, the Ministry of Culture, Youth, and Sports. Laws relating to social welfare in Brunei Darussalam make provisions for providing assistance to people in need which are children, women, the elderly and the disabled. These laws also make provisions for prevention and suppression of prostitution and consumer protection which are detailed as follows.

6.2 Social Welfare Laws and Regulations in Brunei Darussalam

6.2.1 Laws and regulations relating to the protection of children, women, the elderly and improving quality of life of people with disabilities

In Brunei Darussalam, the laws relating to the protection of children, women, the elderly and improving quality of life of people with disabilities are Old Age and

³³³ Hajah Sainah binti Haji Saim, Social Protection in Brunei Darussalam – Current and Challenges, available at: http://www.eria.org/publications/research_project_reports/images/pdf/y2009/no9/CH-05_Brunei_pp.124-156.pdf, Accessed on 23 November 2015.

³³⁴ ASEAN, The country Report of The ASEAN Assessment on The Social Impact of The Global Financial Crisis: Brunei Darussalam, available at: <http://www.asean.org/archive/publications/ARCR/Brunei.pdf>, Accessed on 23 November 2015.

Disability Pensions Act, 1955 and Children and Young Persons Act, 2010 which are both described in detail below.

1) Old Age and Disability Pensions Act, 1955, Revised Edition 1984

1.1) Main points of the Old Age and Disability Pensions Act, 1955, Revised Edition 1984

The Old Age and Disability Pensions Act, 1955, Revised Edition 1984 provides for pecuniary payments by way of old age pensions, pensions for blind persons, disability pensions, and allowances for dependants of persons suffering from Hansen's disease and lunatics granted to whom is resident within Brunei Darussalam.³³⁵ Such pensions shall be charged on and paid out of the revenues of Brunei Darussalam.³³⁶ The receipt of any pension or allowance granted in pursuance of this Act shall not deprive the recipient of any other franchise, right, or privilege extended to him by an individual, an organization or a charity.³³⁷ The following pensions and allowances may be granted in pursuance of this Act:

1. old age pension
2. pensions for the blind, including allowances for the dependants of any blind person
3. allowances for the dependants of any person suffering from Hansen's disease while such leper is receiving treatment in any leper colony or settlement approved by the Director of Medical Services
4. allowances for the dependants of any lunatic who is either detained in any mental hospital, or committed to the care of any relative or friend
5. disability pension

³³⁵ Section 12 (1) of Old Age and Disability Pensions Act, 1955.

³³⁶ Section 4 of Old Age and Disability Pensions Act, 1955.

³³⁷ Section 6 of Old Age and Disability Pensions Act, 1955.

6. such other pensions and allowance as His Majesty in Council may by regulations made under this Act.

A pension or other allowance granted in pursuance of this Act shall not be assignable, transferable or chargeable except for the purpose of satisfying a debt due to Government or an order of any competent Court.³³⁸ If any person to whom a pension or other allowance granted in pursuance of this Act is adjudicated bankrupt or is sentenced to a term of imprisonment by any competent Court for any offence or ceases to fulfil any of the statutory conditions qualifying him for the payment of such pension or allowance,³³⁹ the Controller of Pensions may, as he shall think fit, direct that all or any part of the entitled moneys be withheld.³⁴⁰ Not more than one pension or allowance payable in pursuance of this Act shall be payable to or in respect of any one person.³⁴¹ Except where any person is of old age and blind, both those pensions shall be payable to that person.³⁴²

1.2) Old age pension

An old age pension shall be payable at the rate of 50 Brunei dollars per month. It shall be paid to any person who has attained the age of 60 years and either was born in Brunei Darussalam and has resided in Brunei Darussalam for a

³³⁸ Section 9 of Old Age and Disability Pensions Act, 1955.

³³⁹ Section 10 (1) of Old Age and Disability Pensions Act, 1955.

³⁴⁰ Section 11 of Old Age and Disability Pensions Act, 1955 states that "Where a pension or allowance granted in pursuance of this Act ceases by reason of subsection (1) of section 10 of this Act, it shall be lawful for the Controller, from time to time during the remainder of the life of the person in respect of whom such pension or allowance is granted, or during such shorter period or periods, either continuous or discontinuous, as the Controller shall think fit, to direct that all or any part of the moneys to which such person would have been entitled by way of pension or allowance, had he not become so disqualified, shall be paid to or for the maintenance or benefit of all or any, to the exclusion of the other or others, of the following, that is to say, such person and any dependant of his, in such proportions and manner as the Controller thinks proper, and such moneys shall be paid or applied accordingly."

³⁴¹ Section 20 (1) of Old Age and Disability Pensions Act, 1955.

³⁴² Section 20 (2) of Old Age and Disability Pensions Act, 1955 states that "Where any person fulfils the statutory conditions relating to (a) the pension referred to in paragraph (a) of section 7, and also (b) the pension referred to in paragraph (b) of section 7, both those pensions shall be payable to that person."

period of at least 10 years, or was born outside Brunei Darussalam and has resided in Brunei Darussalam for a period of at least 30 years.³⁴³

1.3) Pensions for the blind and allowances for the dependants of any blind person

Pension for the blind shall be payable at the rate of 50 Brunei dollars per month. It shall be paid to any person who has attained the age of 15 years by virtue of his blindness unable to work and has resided in Brunei Darussalam for a period of at least 10 years.³⁴⁴ An allowance shall be paid to the dependant at the rate of 25 Brunei dollars per month if he is under the age of 15 years; and at the rate of 45 Brunei dollars per month if he is of the age of 15 years or more.

1.4) Rehabilitation allowance for sufferers from Hansen's disease and Hansen's disease allowance for the dependants of sufferers from Hansen's disease

A rehabilitation allowance shall be paid under the approval by the Director of Medical Services to any person who has resided in Brunei Darussalam for a period of at least 10 years before entering such colony or settlement for persons suffering from Hansen's disease. A rehabilitation allowance may be paid for a period of 6 months and it may be extended for a further period not exceeding 6 months.³⁴⁵ An allowance shall be payable at the rate of 50 Brunei dollars per month.

Whenever the Pensions Officer is satisfied that there is need for a Hansen's disease allowance, such an allowance shall be payable to or for the benefit of the dependant of any person suffering from Hansen's disease.³⁴⁶ An allowance shall be paid to the dependant at the rate of 25 Brunei dollars per month if he is under the age of 15 years and at the rate of 45 Brunei dollars per month if he is of the age of 15 years or more.

³⁴³ Section 3 of Old Age and Disability Pensions Regulations, 1955.

³⁴⁴ Section 4 (1) of Old Age and Disability Pensions Regulations, 1955.

³⁴⁵ Section 5 of Old Age and Disability Pensions Regulations, 1955.

³⁴⁶ Section 6 of Old Age and Disability Pensions Regulations, 1955.

1.5) Allowances for the dependants of any lunatic who is either detained in any mental hospital, or committed to the care of any relative or friend

Whenever the Pensions Officer is satisfied that there is need for a lunatic's allowance, such an allowance shall be payable to or for the benefit of the dependant of any person who is a lunatic has attained the age of 15 years is either detained in any Mental Hospital or committed to the care of any relative or friend and resided in Brunei Darussalam for a period of at least 10 years preceding the date upon which he was detained or committed.³⁴⁷ An allowance shall be paid to the dependant at the rate of 25 Brunei dollars per month if he is under the age of 15 years and at the rate of 45 Brunei dollars per month if he is of the age of 15 years or more.

1.6) Disability pension

A disability pension shall be paid to any person who has attained the age of 15 years is by virtue of disability unable to work; has been resident in Brunei Darussalam for a period of at least 10 years immediately preceding the date upon which he became eligible for such allowance and is undergoing medical treatment approved by the Director of Medical Services or any medical officer in the service of the Government, in respect of such disability.³⁴⁸ A disability pension shall be payable at the rate of 50 Brunei dollars per month.

1.7) Claim for pension or allowance

Every claim for any pension or allowance to be granted in pursuance to this Act, and every question whether the statutory conditions are fulfilled, or whether any person is disqualified for receiving such pension or allowance, shall be decided by the pensions Officer. Any person who is dissatisfied with the exercise of any discretion conferred on any officer may appeal against such exercise to the

³⁴⁷ Section 7 of Old Age and Disability Pensions Regulations, 1955.

³⁴⁸ Section 8 of Old Age and Disability Pensions Regulations, 1955.

Controller, who may make such order in respect thereof as he may consider just.³⁴⁹ Any person who is dissatisfied with any decision confirmed by, or any order, action or decision of the Controller may appeal to His Majesty in Council by sending by registered post a petition, concisely stating the grounds of appeal, within 21 days, or such longer time as His Majesty in Council may allow, of being notified of such order, action or decision, as the case may be.³⁵⁰

2) Children and Young Persons Act, 2010, Revised Edition 2012

2.1) Main points of the Children and Young Persons Act, 2010, Revised Edition 2012

The Children and Young Persons Act, 2010, Revised Edition 2012 provides for the care and protection of children. A child or young person is in need of protection if he is in any of the following circumstances.

1. The child or young person has been or there is substantial risk that he will be physically or emotionally injured or sexually abused by his guardian
2. The child or young person has been or there is substantial risk that he will be physically or emotionally injured or sexually abused and his guardian, knowing of such injury, abuse or risk, has not protected or is unlikely to protect him from such injury or abuse
3. The guardian of the child or young person is unfit, or has neglected or is unable, to exercise proper supervision and control over him and he is falling into bad association, is exposed to moral danger or is beyond control

³⁴⁹ Section 14 of Old Age and Disability Pensions Act, 1955.

³⁵⁰ Section 15 (1) of Old Age and Disability Pensions Act, 1955.

4. The guardian of the child or young person has neglected or is unwilling to provide for him adequate care, food, clothing and shelter
5. The child or young person has no guardian, or has been abandoned by his guardian
6. The child or young person needs to be examined, investigated or treated for the purpose of restoring or preserving his health and his guardian neglects or refuses to have him so examined, investigated or treated
7. The child or young person behaves in a manner that is or is likely to be harmful to himself or to any other person and his guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the guardian have failed
8. There is such conflict between the child or young person and his guardian, or between his guardians, that family relationships are seriously disrupted, thereby causing him emotional injury
9. The child or young person is a person in respect of whom any of the offences has been committed and his guardian has not protected or is unlikely to protect him from such offence
10. The child or young person is a member of the same household as a child or young person referred to in item 9 or a member of the same household of the person who has been convicted of any of the offences referred to in item 9, and appears to be in danger of the commission upon or in respect of him of a similar offence and his guardian is the person who committed or is believed to have committed such offence or is unable or unwilling to protect him from such offence
11. The child or young person is found begging.³⁵¹

This Act also makes provision for procedure in and powers of juvenile courts, remand home, detention centre, approved home and approved school.

³⁵¹ Section 2 (2) of Children and Young Persons Act, 2010.

2.2) Juvenile Court

The magistrate, when determining the method of dealing with a child or young person, shall sit with two advisers selected from a panel of advisers nominated by the Chief Justice, except that where it appears that the Court cannot without adjournment be fully constituted and that an adjournment would be inexpedient in the interests of justice, he may sit with one adviser or he may sit alone.³⁵²

Where a child or young person is charged with any offence triable only by the High Court, he shall be tried by the High Court unless the Public Prosecutor applies to a Juvenile Court for it to try such offence; and the legal representative of that child or young person agrees to the offence being tried by a Juvenile Court.³⁵³

2.3) Action Team on Child Protection

The Act provides for the establishment of groups of persons which shall be known as an Action Team on Child Protection, for the purposes of coordinating locally-based services to families, children and young persons in cases where children or young persons are in need of protection.³⁵⁴ Each Action Team on Child Protection shall consist of not less than seven members as may be appointed by the Minister of Culture, Youth and Sports.³⁵⁵

2.4) Temporary custody of children and young persons

Any protector or police officer who is satisfied on reasonable grounds that a child or young person is in need of protection may, by day and by night, enter any premises in which the child or young person is to be found take him into temporary custody and commit him to a place of safety, unless such protector or

³⁵² Section 9 (2) of Children and Young Persons Act, 2010.

³⁵³ Section 10 (2) of Children and Young Persons Act, 2010.

³⁵⁴ Section 13 of Children and Young Persons Act, 2010.

³⁵⁵ Section 14 of Children and Young Persons Act, 2010.

police officer is satisfied that the taking of proceedings in relation to such child or young person is undesirable in his best interests or that proceedings are about to be taken by some other person.³⁵⁶ If a protector or police officer who takes a child or young person into temporary custody is of the opinion that he is in need of medical examination or treatment, such protector or police officer may, instead of taking him to a place of safety, take him to a medical officer.³⁵⁷ If a medical officer is of the opinion that a child or young person requires treatment, a protector or police officer may authorise such treatment.³⁵⁸ If a medical officer is of the opinion that a child or young person who he has examined or treated has been physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, he shall immediately notify a protector or a police officer.³⁵⁹

2.5) Duty of member of family and child care centre

If any member of the family of a child³⁶⁰ or child care centre³⁶¹ believes on reasonable grounds that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a protector.

2.6) Offences in relation to health and welfare of children and young persons

Offences in relation to health and welfare of children and young persons are triable only by the High Court.³⁶² Any person who causes or procures any

³⁵⁶ Section 17 (1) of Children and Young Persons Act, 2010.

³⁵⁷ Section 18 (1) of Children and Young Persons Act, 2010.

³⁵⁸ Section 20 (1) of Children and Young Persons Act, 2010.

³⁵⁹ Section 23 (1) of Children and Young Persons Act, 2010.

³⁶⁰ Section 25 (1) of Children and Young Persons Act, 2010 states that “If any member of the family of a child believes on reasonable grounds that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a protector.”

³⁶¹ Section 26 (1) of Children and Young Persons Act, 2010 states that “If a child care centre believes on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, it shall immediately inform a protector.”

³⁶² Section 27 of Children and Young Persons Act, 2010.

child or young person allows him to be at any premises or place for the purposes of begging or any illegal activity or any other activity detrimental to his health or welfare, is guilty of an offence against this Act.³⁶³

2.7) Trafficking in children and young persons

Every person who takes any part in any transaction the object of which is to transfer or confer the possession, custody or control of a child or young person for any valuable consideration is guilty of an offence against this Act.³⁶⁴ Any person who by or under any false pretence or representation or fraudulent or deceitful means, made or used either within or outside Brunei Darussalam, brings or assists in bringing any child or young person into or outside Brunei Darussalam is also guilty of an offence against this Act.³⁶⁵ A protector may examine any child or young person who has entered or been brought into Brunei Darussalam.³⁶⁶

2.8) Punishment of children and young persons

The Act states that a child shall not be sentenced or ordered to be imprisoned for any offence.³⁶⁷ No child or young person shall be sentenced by any court other than the High Court to corporal punishment.³⁶⁸ No person shall be detained in a place of detention after he has attained the age of 18 years and no

³⁶³ Section 29 of Children and Young Persons Act, 2010.

³⁶⁴ Section 35 (1) of Children and Young Persons Act, 2010.

³⁶⁵ Section 36 of Children and Young Persons Act, 2010 states that “Any person who by or under any false pretence or representation or fraudulent or deceitful means, made or used either within or outside Brunei Darussalam, brings or assists in bringing any child or young person into or outside Brunei Darussalam is guilty of an offence and liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years with or without whipping not exceeding 10 strokes, or both.”

³⁶⁶ Section 37 of Children and Young Persons Act, 2010 states that “A protector or any person authorised in that behalf in writing by him may require any child or young person who has entered Brunei Darussalam or been brought into Brunei Darussalam and any person who may appear to have his custody or control to appear before the protector at any reasonable time and at any convenient place, and the protector may thereupon examine such child or young person as to his reasons for entering or being in Brunei Darussalam and may examine such other person with respect to such child or young person.”

³⁶⁷ Section 44 (1) of Children and Young Persons Act, 2010.

³⁶⁸ Section 44 (3) of Children and Young Persons Act, 2010.

person shall be detained in an approved school or an approved home after he has attained the age of 19 years.³⁶⁹

Where the guardian of a child or young person proves to a Juvenile Court that he is unable to control him, the Court may order him to be placed under the supervision of a Community Development officer or of some other person appointed for the purpose by the Court, for a period not exceeding 3 years.³⁷⁰

2.9) Remand home

Whenever any person below the age of 18 years has been arrested and is not released on bail, any police officer shall cause that person to be remanded in a remand home unless the officer certifies that it is impracticable to do so he is of so unruly a character that he cannot safely be so remanded or by reason of his state of health or of his mental or bodily condition it is inadvisable to so remand him.³⁷¹

6.2.2 Laws and regulations relating to prevention of human trafficking and suppression of prostitution

Laws and regulations relating to prevention of human trafficking and suppression of prostitution in Brunei Darussalam are the Trafficking and Smuggling of Persons Order, 2004 and the Women and Girls Protection Act, 1973 which are described in detail as follows.

³⁶⁹ Section 54 of Children and Young Persons Act, 2010.

³⁷⁰ Section 58 (1) of Children and Young Persons Act, 2010 states that “Where the guardian of a child or young person proves to a Juvenile Court that he is unable to control him, the Court, if satisfied that

(a) it is expedient so to deal with the child or young person and

(b) the guardian understands the results which will follow from, and consents to, the making of the order, may order him

(i) to be placed under the supervision of a Community Development officer or of some other person appointed for the purpose by the Court, for a period not exceeding 3 years or

(ii) to be sent to an approved home for a period of not less than 2 years and not more than 3 years.”

³⁷¹ Section 61 (2) of Children and Young Persons Act, 2010.

1) Trafficking and Smuggling of Persons Order, 2004

1.1) Main points of the Trafficking and Smuggling of Persons Order, 2004

The Trafficking and Smuggling of Persons Order of 2004 applies when Brunei Darussalam is the receiving country or the exploitation for purposes of people trafficking occurs in Brunei Darussalam or if the receiving country is a foreign country but the people trafficking or people smuggling starts in Brunei Darussalam or transits in Brunei Darussalam or if the person who engages in the people trafficking or people smuggling is a citizen of Brunei Darussalam or a person to whom a Residence Permit or an Entry Permit has been issued under the Immigration Act.³⁷²

The following acts are considered as offences under this Order.

1. Offence of people trafficking
2. Offence of children trafficking
3. Offence of exploiting a trafficked person
4. Offence of people smuggling
5. Offence to facilitate stay of a smuggled person
6. Offence relating to forged travel or identity documents

This Order also provides for liability of commercial carrier which brings a trafficked or smuggled person into a receiving country and, the person does not have the travel documents required for lawful entry into that country. However, a commercial carrier shall not be guilty of an offence if the commercial carrier has reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country or the entry into the receiving country occurred only because of illness of or injury to a

³⁷² Section 3 of Trafficking and smuggling of persons Order, 2004.

person on board, stress of weather or other circumstances beyond the control of the commercial carrier.

1.2) Offence of people trafficking

Any person who recruits, transports, transfers, harbours or receives any person or persons for the purpose of exploitation either by threat use of force abduction fraud deception or abuse of power or of a position of vulnerability, shall be guilty of an offence and liable on conviction to a fine not exceeding 1,000,000 Brunei dollars, imprisonment for a term of 4-30 years and whipping.³⁷³

1.3) Offence of children trafficking

Any person who recruits, transports, transfers, harbour or receives a child by any means for the purposes of exploitation shall be guilty of an offence and liable on conviction to a fine not exceeding 1,000,000 Brunei dollars, imprisonment for a term of 4-30 years and not less than 5 strokes of whipping.³⁷⁴

1.4) Offence of exploiting a trafficked person

Any person who engages in or profits from the exploitation of a trafficked person shall be guilty of an offence and liable on conviction to a fine not exceeding 1,000,000 Brunei dollars, imprisonment for a term of 4-30 years and whipping.³⁷⁵

1.5) Offence of people smuggling

³⁷³ Section 4 of Trafficking and smuggling of persons Order, 2004.

³⁷⁴ Section 5 of Trafficking and smuggling of persons Order, 2004.

³⁷⁵ Section 6 of Trafficking and smuggling of persons Order, 2004.

Any person who engages in people smuggling shall be guilty of an offence and liable on conviction to a fine not exceeding 1,000,000 Brunei dollars, imprisonment for a term not exceeding 30 years and whipping.³⁷⁶

Any person who facilitates the continued presence of a smuggled person in a receiving country in order to obtain a financial or other material benefit shall be guilty of an offence and liable on conviction to a fine not exceeding 1,000,000 Brunei dollars, imprisonment for a term not exceeding 30 years and whipping.³⁷⁷ Such assistance or facilitation includes producing, providing or procuring forged travel or identity documents in respect of the smuggled person.³⁷⁸

Any person who engages in people smuggling with the smuggled person subjected to exploitation, torture or any other degrading treatment or the life or safety of the smuggled person is endangered, shall be guilty of an offence and liable on conviction to a fine not exceeding 1,000,000 Brunei dollars, imprisonment for a term of 4-30 years and not less than 5 strokes of whipping.³⁷⁹

1.6) Offence relating to forged travel or identity documents

Any person who makes obtains gives or sells or possesses, a forged travel or identity document for the purpose of facilitating people trafficking or people smuggling, shall be guilty of an offence and liable on conviction to a fine not exceeding 50,000 Brunei dollars, imprisonment for a term not exceeding 10 years or both.³⁸⁰

This Order also provides for liability of any person attempting, abetting, and conspiring with another person to commit an offence under this Order. Any police officer, Immigration Officer or officer of customs may arrest without warrant any person who he reasonably believes has committed an offence under this Order.³⁸¹ Any police officer, Immigration Officer or officer of customs may

³⁷⁶ Section 7 (1) of Trafficking and smuggling of persons Order, 2004.

³⁷⁷ Section 8 (1) of Trafficking and smuggling of persons Order, 2004.

³⁷⁸ Section 8 (2) of Trafficking and smuggling of persons Order, 2004.

³⁷⁹ Section 9 of Trafficking and smuggling of persons Order, 2004.

³⁸⁰ Section 11 of Trafficking and smuggling of persons Order, 2004.

³⁸¹ Section 15 (1) of Trafficking and smuggling of persons Order, 2004.

without a warrant enter and search any premises; and stop and search any ship, vehicle and person, whether in public place or not, if he has reason to believe that any evidence of the commission of an offence against this Order. However, no woman shall be searched except by a woman.³⁸²

2) Women and Girls Protection Act, 1973, Revised Edition 1984

2.1) Main points of the Women and Girls Protection Act, 1973, Revised Edition 1984

The Women and Girls Protection Act of 1973, Revised Edition 1984 is an Act relating to the protection of women and girls and to make provision for the suppression of brothels. The Act stipulates liability for any person who sells or lets to hire any woman or girl for the purpose of prostitution receives or harbours any woman or girl for that purpose detains any woman or girl in a brothel or for prostitution traffics in any woman or girl whether or not for the purpose of prostitution or keeps a brothel. This Act also provides for legal proceedings relating to offences under this Act and the Penal Code.

2.2) Selling or hiring of woman or girl for purpose of prostitution

This Act makes provision for liability of any person who traffics, procures or has in possession any woman or girl for the purpose of prostitution within or without Brunei Darussalam. Such person shall be liable to imprisonment for 5 years and a fine of 20,000 Brunei dollars. In addition, any person who procures any woman or girl under the age of 21 years, or any woman or girl of or above that age except by way of marriage for the purpose of prostitution shall be guilty of an offence under this Act.

Moreover, any person who by or under fraudulent or deceitful means brings into Brunei any woman or girl for the purpose of prostitution or receives or harbours any woman or girl for the purpose of having carnal connection, except by

³⁸² Section 16 of Trafficking and smuggling of persons Order, 2004.

way of marriage, shall be liable under the Act. In addition, detaining any woman or girl in brothel against her will is an offence with 5 years' imprisonment and a fine of 20,000 Brunei dollars.³⁸³

If the convict is male, in addition to any other punishment awarded, he may be sentenced to be whipped.³⁸⁴

2.3) Traffic in women and girls

Any person who buys, sells, procures, traffics in, or imports into Brunei for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be liable to imprisonment for 5 years and to a fine of 20,000 Brunei dollars, except it is satisfied that such act is conducted for the purpose of marriage or adoption solemnised under the laws and customs in force in Brunei.³⁸⁵

2.4) Prostitution

This Act makes provision for an offence by any person knowingly lives wholly or in part on the earnings of prostitution of any other person or in any public place persistently solicits or importunes on behalf of a woman or girl, for immoral purposes. Such person shall be liable to imprisonment for 5 years and to a fine of 20,000. If the convict is male, in addition to any other punishment awarded, he may be sentenced to be whipped. In addition, any person who exercises control, direction or influence over the act of prostitution, he shall be deemed to be guilty of an offence under this Act.³⁸⁶

2.5) Suppression of brothels

³⁸³ Section 3 (1) of Women and Girls Protection, 1973.

³⁸⁴ Section 3 (2) of Women and Girls Protection, 1973.

³⁸⁵ Section 4 of Women and Girls Protection, 1973.

³⁸⁶ Section 5 of Women and Girls Protection, 1973.

The Act states that any person who keeps or manages or acts or assists in the management of a brothel or being the tenant, lessee, occupier, or the person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel; or being the owner of any premises, or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel shall be liable to imprisonment for one year and to a fine of 5,000 Brunei dollars and on a second or subsequent conviction shall be liable to imprisonment for 5 years and to a fine of 20,000 Brunei dollars.³⁸⁷

2.6) Trials under the Women and Girls Protection Act, 1973, Revised Edition 1984

This Act makes provision that the Court may order that all proceedings before it shall be dealt with in camera in any case where the girl in respect of whom an offence under this Act is alleged to have been committed has not attained the age of 16 years. No newspaper report of any proceedings under this section in any court shall reveal the name or address of any woman or girl in respect of whom the offence is alleged to be committed, nor shall any picture be published in any newspaper as being or including a picture of any such woman or girl.³⁸⁸

³⁸⁷ Section 6 of Women and Girls Protection, 1973 states that “Any person who

(a) keeps or manages or acts or assists in the management of a brothel; or

(b) being the tenant, lessee, occupier, or the person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel; or

(c) being the owner of any premises, or the agent of such owner, lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel, shall be liable to imprisonment for one year and to a fine of \$5,000; and on a second or subsequent conviction shall be liable to imprisonment for 5 years and to a fine of \$20,000. Any person being the tenant, lessee, occupier or person in charge of any place who lets such place or any part thereof shall notwithstanding such letting be guilty of an offence under this section if the place or any part thereof is used as a brothel, unless he proves that he has no knowledge that the place or such part thereof is used as a brothel.”

³⁸⁸ Section 8 of Women and Girls Protection, 1973.

6.2.3 Consumer protection law

The law relating to consumer protection in Brunei Darussalam is the Consumer Protection (Fair Trading) Order, 2011 which is detailed below.

Consumer Protection (Fair Trading) Order, 2011

1) Main points of the Consumer Protection (Fair Trading) Order, 2011

The Order makes regulations for unfair trading which shall apply only when the supplier or consumer is resident in Brunei Darussalam or the offer or acceptance relating to the consumer transaction is made in or is sent from Brunei Darussalam.³⁸⁹ It shall be considered an unfair practice for a supplier, in relation to a consumer transaction:

1. to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled
2. to make a false claim
3. to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect his own interests or is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction or
4. to do anything specified in the Second Schedule.³⁹⁰

Such an unfair practice may occur before, during or after a consumer transaction and may consist of a single act or omission. In determining whether or not a person has engaged in an unfair practice the reasonableness of the actions of that person in those circumstances is to be considered; and an act or omission by an employee or agent of a person is deemed also to be an act or omission of the

³⁸⁹ Section 3 of Consumer Protection (Fair Trading) Order, 2011.

³⁹⁰ Section 4 of Consumer Protection (Fair Trading) Order, 2011.

person if the act or omission occurred in the course of the employee's employment with the person; or the agent exercising the powers or performing the duties on behalf of the person within the scope of the agent's actual or apparent authority.³⁹¹ A consumer who has entered a consumer transaction involving an unfair practice may commence an action in a court of competent jurisdiction against the supplier.³⁹²

Nevertheless, where there are reasonable grounds for believing that a supplier has engaged in an unfair practice, a specified body may invite the supplier to enter into a voluntary compliance agreement. The voluntary compliance agreement shall be in writing; and include an undertaking that the supplier will not engage in the unfair practice.³⁹³ The voluntary compliance agreement may include that the supplier shall compensate any consumer who has suffered loss or damage as a result of an unfair practice and/or reimburse any costs or expenses incurred by it and/or publicise the voluntary compliance agreement.³⁹⁴

Where a supplier has engaged, is engaging or is likely to engage in an unfair practice, the High Court may make a declaration that it is an unfair practice and grant an injunction restraining the supplier from engaging in the unfair practice.³⁹⁵

1.2) Right to cancel certain contracts within cancellation period

The Minister may make regulations prescribing that a consumer who has entered into a contract may cancel the contract within a cancellation period specified in the regulations.³⁹⁶

³⁹¹ Section 5 of Consumer Protection (Fair Trading) Order, 2011.

³⁹² Section 6 (1) of Consumer Protection (Fair Trading) Order, 2011.

³⁹³ Section 8 (1) (2) of Consumer Protection (Fair Trading) Order, 2011.

³⁹⁴ Section 8 (3) of Consumer Protection (Fair Trading) Order, 2011.

³⁹⁵ Section 9 (1) of Consumer Protection (Fair Trading) Order, 2011 states that "Where a supplier has engaged, is engaging or is likely to engage in an unfair practice, the High Court may, on the application of a specified body

(a) make a declaration that the practice engaged in or about to be engaged in by the supplier is an unfair practice

(b) grant an injunction restraining the supplier from engaging in the unfair practice and

(c) if the Court grants relief under paragraph (a) or (b), make a further order requiring the supplier to advertise to the public in a manner that will ensure prompt and reasonable communication to consumers, on any terms or conditions the Court considers reasonable and just, particulars of any declaration or injunction granted against the supplier under paragraph (a) or (b)."

1.3) Exemption from liability for publishers

A person who, on behalf of a supplier, prints, publishes, distributes, broadcasts or telecasts an advertisement in good faith and in the ordinary course of his business shall not be liable under this Order in respect of any statement, representation or omission in that advertisement.³⁹⁷

1.4) Consumer transaction

The term consumer transaction under this Order does not include acquisition of an estate or interest in any immovable property but not including any lease of residential property service provided under a contract of employment or any transaction or activity that is regulated under the Anti-Money Laundering Act, the Banking Order of 2006, Financial Institution Business Act, and the Insurance Order of 2006.³⁹⁸

1.5) Unfair trading practices

This Order specifies a number of unfair trading practices of suppliers such as representing that goods or services have qualities that they do not have representing that they are of standard, quality, style, origin or method of manufacture if they are not representing that they are new or unused if they are not representing that a person has the authority to negotiate the final terms of an agreement involving goods or services if the representation is different from the fact offering gifts or other free items in connection with the supply of goods or services if the supplier knows that the items will not be provided as offered; or representing goods or services at a discounted price for a particular reason that is different from the fact.³⁹⁹

³⁹⁶ Section 10 (1) of Consumer Protection (Fair Trading) Order, 2011.

³⁹⁷ Section 15 of Consumer Protection (Fair Trading) Order, 2011.

³⁹⁸ Section 1 of First Schedule of Consumer Protection (Fair Trading) Order, 2011.

³⁹⁹ Section 1, 2, 3, 4, 10 and 17 of Second Schedule of Consumer Protection (Fair Trading) Order, 2011.

Chapter 7

Promotion of Science, Technology and Communications

Laws and Regulations

7.1 Introduction

The Ministry of Development established the National Committee on Science and Technology in 1994 to promote science and technology of Brunei Darussalam. The Committee has a key role in ensuring that science and technology can effectively contribute to economy, environment, social and culture through Regulating the development of science and technology in Brunei Darussalam formulating policy and developing physical infrastructure towards expansion of science and technology in Brunei Darussalam. In this respect, research institutes and educational institutions are important in sourcing for human resources with skills and expertise to drive forward development in science and technology in Brunei Darussalam.⁴⁰⁰

Communications is divided into telecommunications and radio communications. The mission of the Authority for Info-Communications Technology Industry of Brunei Darussalam (AITI) is to provide licence and regulate telecommunications and radio communications system and services.⁴⁰¹

7.2 Promotion of science, technology and communications in Brunei Darussalam laws and Regulations

7.2.1 Laws and regulations relating to the promotion of science, technology and communications of Brunei Darussalam

In Brunei Darussalam, there are laws and regulations relating to the promotion of science and technology as follows.

⁴⁰⁰ Zorrah Haji Sulaimani et al, “Science and Technology in Brunei Darussalam”, available at [http://www.sciencedev.net/ Docs/science%20in%20Brunei.pdf](http://www.sciencedev.net/Docs/science%20in%20Brunei.pdf), accessed 23 November 2015.

⁴⁰¹ Authority for Info-Communications Technology Industry of Brunei Darussalam (AITI), Vision and Mission, available at <http://www.aiti.gov.bn/AboutUs/Pages/Vision-Mission.aspx>, accessed 23 November 2015.

1) Patent Order, 2011

Patent Order, 2011 makes provision for an application for protection of inventions under patent law. The main points of the Patent Order are described below.

1.1) Patentable inventions

A patentable invention shall satisfy 3 conditions: the invention is new it involves an inventive step and is capable of industrial application. Such invention shall not encourage offensive, immoral or anti-social behaviour.⁴⁰²

1.2) Right to apply for and obtain patent

Any person may make an application for a patent either alone or jointly with another. The successor in title of any person granted a patent.⁴⁰³

1.3) Manner of application

Every application for a patent shall contain a request form, a fee, a description of the invention, a claim, a specification of an application disclosed in a clear and complete manner, and an abstract giving technical information. An application for a patent may be withdrawn at any time before the patent is granted.⁴⁰⁴

1.4) Term of patent

A patent granted under this Order shall continue in force until the end of the period of 20 years beginning with the date of filing the application for the patent.⁴⁰⁵

⁴⁰² Section 13 of Patent Order, 2011.

⁴⁰³ Section 19 of Patent Act, 2011.

⁴⁰⁴ Section 25 of Patent Order, 2011.

⁴⁰⁵ Section 35 (1) of Patent Order, 2011.

The proprietor of a patent may apply to extend the term of the patent on any grounds specified in the Order.⁴⁰⁶

1.5) Property in patents

Any patent or any such application and rights in or under it may be assigned, mortgaged, or sub-licensed.⁴⁰⁷ Where a patent is granted to 2 or more persons, each of them shall be entitled to an equal undivided share in the patent.⁴⁰⁸

1.6) Right to employees' inventions

A patentable invention made by an employee in the course of the normal duties of the employee shall be taken to belong to his employer.⁴⁰⁹

1.7) Compulsory licences

Any interested person may apply to the court for the grant of a licence under a patent on the ground that the grant of the licence is necessary to remedy an anti-competitive practice. Where a licence is granted to any person, the person shall pay such remuneration to the patentee.⁴¹⁰

1.8) Use of patented inventions by Government

The Government of Brunei Darussalam may do anything in relation to a patented invention for a public non-commercial purpose; or for or during a national emergency or other circumstances of extreme urgency, and shall not amount to an infringement of the patent.⁴¹¹ The Government shall inform the

⁴⁰⁶ Section 36 (1) of Patent Order, 2011

⁴⁰⁷ Section 42 of Patent Order, 2011.

⁴⁰⁸ Section 47 (1) of Patent Order, 2011.

⁴⁰⁹ Section 50 of Patent Order, 2011.

⁴¹⁰ Section 57 of Patent Order, 2011.

⁴¹¹ Section 58 (1) of Patent Order, 2011.

patentee promptly of the doing of the thing⁴¹² and pay such remuneration to the patentee.⁴¹³

1.9) Infringement of patents

A person infringes a patent for an invention when he, without the consent of the proprietor of the patent, makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise.⁴¹⁴

2) Inventions Act, 1925

This Act provides for the grant of exclusive privileges in respect of inventions. Any person who has obtained a grant of a patent in the United Kingdom, Malaysia or Singapore, or any person deriving his right from such grantee may apply to have such grant registered in Brunei Darussalam.⁴¹⁵ Every application shall be accompanied by a certified copy of the specification including drawings, if any, together with a certified copy of the grant of patent rights.⁴¹⁶ If the application for exclusive privileges would not be prejudicial to the public interest, a certificate of registration shall be

⁴¹² Section 62 (1) of Patent Order, 2011.

⁴¹³ Section 63 (1) of Patent Order, 2011.

⁴¹⁴ Section 64 (1) of Patent Order, 2011 states that “(1) Subject to the provisions of this Order, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in Brunei Darussalam in relation to the invention without the consent of the proprietor of the patent

(a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise

(b) where the invention is a process, he uses the process or he offers it for use in Brunei Darussalam when he knows, or it is obvious to a reasonable person in the circumstances, that its use without the consent of the proprietor would be an infringement of the patent

(c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.”

⁴¹⁵ Section 2 (1) of Invention Act, 1984 states that “(1) Any person who has obtained a grant (which word shall include a renewal of a grant) of a patent in the United Kingdom or in Malaysia or of sole and exclusive privileges in an invention in the Republic of Singapore, or any person deriving his right from such grantee by assignment, transmission or other operation of law, may apply to the Minister responsible for inventions matters within 3 years from the date of issue of such grant to have such grant registered in Brunei Darussalam.

⁴¹⁶ Section 3 (1) of Inventions Act, 1984.

issued to the applicant.⁴¹⁷ Such certificate of registration shall confer on the applicant the sole and exclusive privilege of making, using and selling the said invention in Brunei Darussalam.⁴¹⁸ The grant of every such certificate of registration shall be promulgated in some public place.⁴¹⁹

When the specification or drawings relating to an invention has been amended according to the law of the United Kingdom, Malaysia, or Singapore, and the grantee desires such amendment to take effect in Brunei Darussalam, he shall transmit to the Minister responsible for inventions matters a duly certified copy of the amended specification and drawings, if any, together with an application to substitute a copy of the specification and drawings as amended for the specification and drawings originally filed.⁴²⁰

A register shall be kept in the office of the Minister responsible wherein shall be entered particulars of every application and specification and of every certificate of registration and of every order made. Every such specification and certificate of registration shall be numbered according to the order in which it is entered in such book, and every order relating to the invention made subsequent to such certificate of registration shall be entered in an appropriate column of the register.⁴²¹

Every exclusive privilege under this Act shall cease if His Majesty the Sultan and Yang Di-Pertuan declares that the same, or the mode in which it is exercised, is mischievous to Brunei Darussalam or generally prejudicial to the public.⁴²²

An action may be maintained in the High Court by an inventor against any person who without the licence of the said inventor makes, uses, sells or puts in practice the said invention or counterfeits or imitates the same.⁴²³

3) Layout Design Order, 2000

⁴¹⁷ Section 4 (1) of Inventions Act, 1984.

⁴¹⁸ Section 4 (2) of Inventions Act, 1984.

⁴¹⁹ Section 5 of Inventions Act, 1984.

⁴²⁰ Section 7 of Inventions Act, 1984.

⁴²¹ Section 9 of Inventions Act, 1984.

⁴²² Section 11 of Inventions Act, 1984.

⁴²³ Section 12 of Inventions Act, 1984.

This Order provides for the protection of layout designs of integrated circuits and remuneration for owner in case of infringement. The Order is described in detail below.

1.1) Ownership and nature of layout design rights shall belong to the person under the following circumstances.

- The person who makes an eligible layout design⁴²⁴
- Where a layout design is made by a person in the course of his employment or apprenticeship, his employer is the first owner of the layout design rights, subject to any agreement to the contrary⁴²⁵
- Where a person commissions the making of a layout design, the person who commissioned the work is the first owner of the layout design rights, subject to any agreement to the contrary⁴²⁶
- Where an eligible layout design is owned by more than one person, all are the owners of the layout design rights. Any requirement of the consent of an eligible owner requires the consent of all the eligible owners.⁴²⁷

1.2) Nature of layout design rights

The owner of the layout design rights has the following exclusive rights:

- the right to copy, and to authorise the copying of, that layout design in a material form

⁴²⁴ Section 11 (1) of Emergency (Layout Designs) Order, 1999.

⁴²⁵ Section 11 (2) of Emergency (Layout Designs) Order, 1999.

⁴²⁶ Section 11 (3) of Emergency (Layout Designs) Order, 1999.

⁴²⁷ Section 11 (5) of Emergency (Layout Designs) Order, 1999.

- the right to make an integrated circuit in accordance with that layout design
- the right to commercially exploit, and to authorise the commercial exploitation of, the layout design in Brunei Darussalam.⁴²⁸

1.3) The layout design rights of an eligible layout design are not infringed under any of the following circumstances:

- A person who commercially exploits an unauthorised integrated circuit and at the time when he acquired the integrated circuit, he did not know that it was unauthorised⁴²⁹
- The making of a copy of that layout design or an integrated circuit solely for private use of the person who makes the copy or integrated circuit⁴³⁰
- The making of a copy of that layout design or an integrated circuit solely for research or teaching purposes⁴³¹
- The making of a copy of that layout design for the purpose of evaluating or analysing that layout design⁴³²
- An eligible layout design is commercially exploited by, or with the licence of, the owner of the layout design rights in that layout design⁴³³
- An act done by or on behalf of the Government to avoid prejudice to the security or defence of Brunei Darussalam⁴³⁴ in which the right to use such eligible layout design is limited and subject to the terms of any authorisation.⁴³⁵ The Government

⁴²⁸ Section 12 of Emergency (Layout Designs) Order, 1999.

⁴²⁹ Section 14 of Emergency (Layout Designs) Order, 1999.

⁴³⁰ Section 15 (1) of Emergency (Layout Designs) Order, 1999.

⁴³¹ Section 16 of Emergency (Layout Designs) Order, 1999.

⁴³² Section 17 (1) of Emergency (Layout Designs) Order, 1999.

⁴³³ Section 18 of Emergency (Layout Designs) Order, 1999.

⁴³⁴ Section 19 (1) of Emergency (Layout Designs) Order, 1999.

⁴³⁵ Section 20 (1) of Emergency (Layout Designs) Order, 1999 states that “The right to use an eligible layout design under section 19

shall inform the owner of the layout design rights⁴³⁶ and shall pay to the owner of the layout design rights such remuneration.⁴³⁷

7.2.2 Communications Law

The research team has found a number of laws and regulations relating to the promotion of science, technology and communications in Brunei Darussalam. For a purpose of a further in-depth study, the relevant laws and regulations are described as follows.

1) The Broadcasting Act, 2000

This Act regulates the operation of and ownership in broadcasting services and broadcasting licence, and frequency assignment. The main points of this Act include the following.

1.1) Licence

The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, grant the broadcasting licences; and broadcasting apparatus licences.⁴³⁸

-
- (a) is both non-exclusive and non-assignable
 - (b) is limited to the purposes specified in that section
 - (c) is subject to the terms of any authorization under that section
 - (d) does not permit the sale of the layout design to public and
 - (e) is limited to use of the layout design predominantly in Brunei Darussalam.”

⁴³⁶ Section 21 of Emergency (Layout Designs) Order, 1999.

⁴³⁷ Section 22 of Emergency (Layout Designs) Order, 1999 states that “Where an act has been done under section 19 in relation to an eligible layout design, the Government shall pay to the owner of the layout design rights such remuneration as may be agreed or determined by a method agreed between the Government and the owner or, in default of agreement, as may be determined by the court on the application of either of them.”

⁴³⁸ Section 8 (1) of the Broadcasting Act, 2000.

The Minister may determine conditions to regulate the broadcasting of programmes, advertising material, licence fees, languages used in the broadcasting, and the holding or disposal of shares in the licensee or its shareholders.⁴³⁹

1.2) Ownership

- No person shall, without the prior written approval of the Minister, hold more than 3% of the ordinary shares issued by a broadcasting company.⁴⁴⁰
- No company shall, unless the Minister otherwise approves in writing, be granted or hold a relevant licence if 49% or more of its issued and paid-up capital is owned by a foreign source or the company is managed by a foreign government.⁴⁴¹

1.3) Regulator

The Minister designated by His Majesty the Sultan and Yang Di-Pertuan to be responsible for broadcasting matters is the regulator of the broadcasting. The functions of the Minister shall be.⁴⁴²

- to issue broadcasting licence and broadcasting apparatus licence
- to act as representative of Brunei Darussalam in respect of broadcasting matters
- to encourage the development of broadcasting and related services
- to assign specific frequencies in electromagnetic spectrum and satellite orbits
- to regulate the broadcast by broadcasting licensees of public service broadcasting obligations

⁴³⁹ Section 11 of the Broadcasting Act, 2000.

⁴⁴⁰ Section 36 of the Broadcasting Act, 2000.

⁴⁴¹ Section 38 of the Broadcasting Act, 2000.

⁴⁴² Section 3 of the Broadcasting Act, 2000.

- in consult with any licensee, to control any system and equipment or censor any message which the Minister thinks necessary in the interests of the public
- to require a broadcasting licensee to provide for transmission and reception any broadcasting service (must carry).⁴⁴³

The Minister may cancel the broadcasting licence and broadcasting apparatus licence without any compensation or require the payment of a penalty from the licensee in any of the following circumstances:⁴⁴⁴

- a broadcasting licensee is contravening, or has contravened, any of the conditions of his licence
- a broadcasting licensee has gone into compulsory or voluntary liquidation
- a broadcasting licensee has made an assignment to, or composition with, his creditors
- the public interest or the interest of public security so requires

1.4) Advertising

The Minister may issue and review the Codes of Practice relating to standards of programmes and advertisements.⁴⁴⁵

1.5) Subsidy

For the purpose of broadcasting programmes required to be broadcast under the law, such public service programmes shall be broadcast without charge or with subsidy.⁴⁴⁶

1.6) Type of content: Entertainment, News, Language, Local content

⁴⁴³ Section 22 of the Broadcasting Act, 2000.

⁴⁴⁴ Section 15 of the Broadcasting Act, 2000.

⁴⁴⁵ Section 9 of the Broadcasting Act, 2000.

⁴⁴⁶ Section 21 of the Broadcasting Act, 2000.

The Minister may specify the content of the programmes, broadcasting language, and any other conditions, particularly in public service broadcasting programmes. Under the broadcasting licence, the licensee is required to broadcast programmes provided by the Government, including programmes for schools or other educational programmes, news and information programmes and arts and cultural programmes whether or not produced in Brunei Darussalam, and also drama and sports programmes as may be required by the Minister pursuant to the conditions of the licence.⁴⁴⁷

2) Telecommunication Act, 1974

The Act provides for telecommunications in Brunei Darussalam. The main points are described as follows.

2.1) Privileges and powers of the Government

The Government shall have the exclusive privilege of establish, maintaining and working telecommunications within Brunei Darussalam. His Majesty the Sultan and Yang Di-Pertuan in Council has the powers to

- grant a licence⁴⁴⁸
- take temporary possession of any telecommunications, withdraw the use of any telecommunication facility, or order that any message shall not be transmitted in case of a public emergency⁴⁴⁹

⁴⁴⁷ Section 11 of the Broadcasting Act, 2000.

⁴⁴⁸ Section 3 of Telecommunications Act, 1974 states that

“(1) The Government shall have the exclusive privilege of establish, maintaining and working telecommunications within Brunei Darussalam.

(2) The exclusive privilege referred to in subsection (1) shall not extend to a telecommunication, other than a radio-communication as defined in section 35 contained wholly within a building or part of a building when such telecommunication is owned and operated by a person occupying that building or part of a building for his sole use and interest.

(3) His Majesty the Sultan and Yang Di-Pertuan in Council may grant a licence on such conditions and in consideration of such payments as may be prescribed to any person to establish, maintain or work a telecommunication within any part of Brunei Darussalam, and to place, lay, carry or maintain any posts, cables or wires for the purpose of such telecommunication on, along, through, under or across any land.”

- make regulations for the conduct of any telecommunications established, maintained or worked⁴⁵⁰ or
- revoke any licence.⁴⁵¹

2.2) Power to establish and maintain a telecommunication line

The telecommunication authority may enter any property for the purpose of:

- placing and maintaining any telecommunication line⁴⁵²
- examining, repairing, altering or removing any telecommunication.⁴⁵³

2.3) Radio communications

The Government shall have the exclusive privilege of establishing any radio communication station and of installing and working any radio communication apparatus for the purpose of transmitting and receiving messages within Brunei Darussalam or any place, ship or aircraft outside Brunei Darussalam.⁴⁵⁴ His Majesty in Council may license the establishment of any radio communication station or the installation or working of any radio communication apparatus.⁴⁵⁵ No person shall establish any radio communication station or install or work any radio communication apparatus in any place in Brunei Darussalam or on board any local vessel or local aircraft or in any vehicle or offer for sale, sell, or have in his possession with a view to sale radio communication apparatus or material⁴⁵⁶

⁴⁴⁹ Section 5 (1) of Telecommunications Act, 1974.

⁴⁵⁰ Section 7 (1) of Telecommunications Act, 1974.

⁴⁵¹ Section 8 of Telecommunications Act, 1974.

⁴⁵² Section 10 of Telecommunications Act, 1974.

⁴⁵³ Section 11 of Telecommunications Act, 1974.

⁴⁵⁴ Section 35 (1) of Telecommunications Act, 1974.

⁴⁵⁵ Section 36 of Telecommunications Act, 1974.

⁴⁵⁶ Section 37 of Telecommunications Act, 1974.

3) Telecommunications Order, 2001

Telecommunications Order, 2001 regulates the operation and provision of telecommunication systems and services which include granting licences, inspecting equipment and the right of the Government over international business dealings in telecommunication services.

3.1) Exclusive privilege

Exclusive privilege includes the rights of establishing, using, developing, and constructing telecommunication systems and services. Such rights extend to every vessel, aircraft and any vehicle registered in Brunei Darussalam.⁴⁵⁷

The privilege shall not be infringed by the running by a person solely for his own use; or the operation of any telecommunication system in the course of their duties by the officers and men of the Royal Brunei Armed Forces, the Royal Brunei Police and other armed forces.⁴⁵⁸

3.2) Power to license telecommunication systems and services

A licence may, with the consent of, or in accordance with the terms of a general authority given by the Minister, be granted by the Authority to any person, class of persons or a particular person either unconditionally or subject to such terms and conditions as may be determined by the Authority including the payment of a fee or licensee's compliance with codes of practice.⁴⁵⁹

Telecommunication Order provides for the Authority to modify the conditions of a licence granted. Before making modifications to the conditions of a licence, the Authority shall give notice to the licensee.⁴⁶⁰ The Authority may cancel or suspend the licence if the licensee is contravening, or has contravened any

⁴⁵⁷ Section 3 of Telecommunications Order, 2001.

⁴⁵⁸ Section 4 of Telecommunications Order, 2001.

⁴⁵⁹ Section 5 (1) of Telecommunications Order, 2001.

⁴⁶⁰ Section 7 of Telecommunications Order, 2001.

regulations made under this Order.⁴⁶¹ The Authority may also approve any equipment to be used for connection to any telecommunication system or equipment.⁴⁶²

3.3) Maintenance and repair of telecommunication installations

Public telecommunication license shall perform the following acts in respect of the operation and provision of telecommunication systems and services.

- Enter upon any land or building and may do all necessary acts preparatory to the provision of the service, so far as the same may be possible without causing any damage or disturbance⁴⁶³
- Enter upon any land or building for purposes of installation or plant for telecommunications⁴⁶⁴

⁴⁶¹ Section 8 (1) of Telecommunications Order, 2001 states that “If the Authority is satisfied that a person is granted a licence under section 5 or any regulations made under this Order is contravening, or has contravened, whether by act or omission

- (a) any of the conditions of the licence or part thereof
- (b) any provision of any code of practice or standard of performance or
- (c) any direction of the Authority given under section 27,

the Authority may, by notice in writing, do either or both of the following

(i) issue such written order to the person as it considers requisite for the purpose of securing compliance thereof

(ii) require the payment, within a specified period, of a financial penalty of such amount not exceeding

\$1 million as it thinks fit.

Except that where the Authority is satisfied that the person is again likely to so contravene, whether by act or omission, the Authority may (in lieu of an order or financial penalty under paragraph (i) or (ii) or both by notice in writing and without compensation, do all or any of the following

- (A) cancel the licence or part thereof
- (B) suspend the licence or part thereof for such period as it thinks fit
- (C) reduce the period for which the licence is to be in force.”

⁴⁶² Section 9 (1) of Telecommunications Order, 2001.

⁴⁶³ Section 12 (1) of Telecommunications Order, 2001.

⁴⁶⁴ Section 13 of Telecommunications Order, 2001 states that “For the purpose of providing any telecommunication service, a public telecommunication licensee or any person authorized by the Authority in that behalf may, at any reasonable time, enter upon any State land and may, subject to the approval of the Authority and the Commissioner of Land, erect in or upon the State land such installation or plant used for

- Carry out all necessary inspection, maintenance or repair of a public telecommunication installation or plant upon any land, building, or vehicle⁴⁶⁵
- Remove any public telecommunication installation or plant as required.⁴⁶⁶

telecommunications or excavate such trenches as may be necessary or proper for the purpose of providing the telecommunication service, and may carry out all necessary works in connection therewith, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary for the purpose, but

(a) where any such work interferes with improvements, buildings, growing trees or crops the licensee shall pay compensation for any damage or disturbance and

(b) where the land is occupied under a licence for temporary occupation, the compensation shall be paid to the occupant under the licence.”

⁴⁶⁵ Section 16 of Telecommunications Order, 2001 states that “(1) Whenever it is necessary to do so for the purposes of carrying out any functions and duties of the Authority under this Order or any regulations made thereunder the Authority may enter upon any land or building, or stop or board any vessel, aircraft or vehicle and may carry out all necessary inspections or investigations and do all things necessary for such purpose.

(2) Whenever it is necessary to do so for the purpose of inspecting, maintain or repairing a public telecommunication licensee’s installation or plant or for the purpose of carrying out any functions conferred on a public telecommunication licensee under this Order or under any licence granted under section 5, that licensee or any person authorized by that licensee in that behalf may, at any reasonable time, enter upon any land or building, whether or not such installation or plant has been laid, placed, carried or erected on, under, upon or over the land or building, and may carry out all necessary inspection, maintenance or repair, and may in the course thereof, fell or lop trees, remove, vegetation and do all other things necessary for the purpose, causing as little damage as possible and paying compensation to any person adversely affected for any damage that may be caused thereby for which compensation has not already been assessed under section 14.”

⁴⁶⁶ Section 17 of Telecommunications Order, 2001.

Chapter 8

Conservation and environment protection laws and regulations

8.1 Introduction

Brunei Darussalam recognises the importance of environmental protection as the country has participated in a number of international environmental agreements including the Convention on Biological Diversity. There are five categories of land within Brunei's forest reserves: protection forest, conservation area, recreational area, production area and national park. Brunei Darussalam has also become a member of the Basel Convention which is an international treaty designed to reduce the movements of hazardous waste between nations. The national environmental legislations have been issued to comply with such Convention.

8.2 Conservation and environment protection laws and regulations in Brunei Darussalam

8.2.1 Laws and regulations relating to natural resources

Laws and regulations relating to natural resources in Brunei Darussalam include the following.

1) Wild Life Protection Act, 1981

The Act makes provision for the protection of wild life and for the establishment of wild life sanctuaries. Main points of this Act are detailed below.

1.1) Wild Life Sanctuaries

His Majesty in Council may declare any area in Brunei to be a Wild Life Sanctuary and may define or alter the limits of any such area. In a Wild Life Sanctuary, no person shall

- shoot, hunt, kill, capture or take any animal, bird, fish or reptile
- be in possession of the trophy or flesh of any mammal, bird, fish or reptile
- cut or remove any vegetable.⁴⁶⁷

Any area declared to be a sanctuary shall be deemed to be land reserved for public purpose.⁴⁶⁸

1.2) Wild Life Protection

This Act makes provision for wild life protection as follows.

- No person shall hunt, kill, or capture any protected animal⁴⁶⁹
- No person, other than the holder of an appropriate licence shall sell or offer for sale or have in his possession any protected animal or any trophy or flesh thereof⁴⁷⁰
- No person shall export, without an appropriate licence, any animal specified under this Act.⁴⁷¹

2) Fisheries Order, 2009

⁴⁶⁷ Section 4 (1) of Wild Life Protection Act, 1984.

⁴⁶⁸ Section 5 of Wild Life Protection Act, 1984.

⁴⁶⁹ Section 7 of Wild Life Protection Act, 1984 states that “No person shall hunt, kill or capture any protected animal otherwise than under and in accordance with the conditions of a licence issued under this Act: Penalty, imprisonment for one year and a fine of \$2,000.”

⁴⁷⁰ Section 8 (1) of Wild Life Protection Act, 1984 states that “No persons, other than the holder of an appropriate licence issued under this Act shall sell or offer for sale or kept have in his possession any protected animal or any trophy or flesh thereof; unless the same has been lawfully acquired: Penalty, imprisonment for 6 months and a fine of \$1,000.”

⁴⁷¹ Section 9 of Wild Life Protection Act, 1984 states that “No person shall export any animal specified in the wild animals First Schedule, except under and in accordance with the conditions of a licence issued under this Act: Penalty, imprisonment for one year and a fine of \$2,000.”

This Order makes provision for regulating fisheries and matters connected with issue of licences, fishing appliances, and fishing vessels. Main points of this Order include the following.

2.1) Issue of Licence

- An application for a licence shall be made.⁴⁷² Every licence shall be subject to conditions under this Order.⁴⁷³
- The licence may be cancelled or suspended if the licensee has been convicted of any offence against this Order there has been a breach of any of the conditions of the licence or it is necessary to do so for the proper management of fisheries.⁴⁷⁴

2.2) Fishing appliances

A licence is required for the operation of fishing appliances in Brunei Darussalam waters.

Any person who has in his possession any fishing appliance without a licence sets up any fishing appliance without a written approval from the Director or contravenes the conditions of any such licence or written approval, is guilty of an offence.⁴⁷⁵

2.3) Fishing vessels

⁴⁷² Section 7 of Fisheries Order, 2009.

⁴⁷³ Section 8 of Fisheries Order, 2009 states that “

(1) Any condition determined by the Director under section 7 (1) shall be attached to the licence.

(2) Where he is satisfied that it is necessary or expedient for the proper management of fisheries to do so, the Director may vary the conditions of a licence, but due notice of such intended variation shall be given to the licensee

who shall, if he so desires, have the right to be heard within such period as the Director may allow.

(3) A certificate by the Director stating that any condition in a licence was imposed or any variation thereof was made for the proper management of fisheries shall be conclusive proof thereof in any legal proceedings.”

⁴⁷⁴ Section 11 of Fisheries Order, 2009.

⁴⁷⁵ Section 13 of Fisheries Order, 2009.

Any person who operates or allows to be operated any fishing vessel for the purpose of fishing without a licence in contravention of any condition of such a licence or any direction, is guilty of an offence.⁴⁷⁶

2.4) Sports fishing in Brunei Darussalam

Any person who holds or organises in Brunei Darussalam waters a sports fishing event or tournament without a licence is guilty of an offence.⁴⁷⁷

2.5) Lobster fishing

The Minister may, by notification in the Gazette, establish areas in Brunei Darussalam waters as lobster fishing areas. The limits of any such area may be altered. The Minister shall also declare a closed time for lobster fishing.⁴⁷⁸ Any person who in Brunei Darussalam waters fishes for lobsters without a licence is guilty of an offence.⁴⁷⁹

2.6) Marine reserves and marine parks

The Minister may, by notification in the Gazette, establish any area in Brunei Darussalam waters as a marine reserve in order to regulate recreational and other activities.

A marine park may be established in order to protect, preserve and manage the natural breeding grounds and habitat of aquatic life allow for the natural

⁴⁷⁶ Section 15 of Fisheries Order, 2009.

⁴⁷⁷ Section 23 of Fisheries Order, 2009.

⁴⁷⁸ Section 24 of Fisheries Order, 2009.

⁴⁷⁹ Section 25 of Fisheries Order, 2009 states that “(1) Any person who

(a) fishes for or has in his possession any lobster or

(b) subject to subsection (3), operates or allows to be operated, a vessel with lobster traps or any other appliances for lobster fishing on board,

in a lobster fishing area during a closed time declared pursuant to section 24 (2) is guilty of an offence.

(2) Any person who in Brunei Darussalam waters fishes for lobsters without a licence is guilty of an offence.

(3) Any person may transport lobster traps during a closed time for the purposes of the sale, purchase, repair or storage of those traps.”

regeneration of aquatic life and promote scientific study and research in respect of the area.⁴⁸⁰

2.7) Inland fisheries

This Order provides for the promotion of inland fisheries through the conduct or coordination of research the provision and maintenance of fish breeding stations and training centres the provision of advice and technical assistance; and the provision of advice on measures for the prevention of fish diseases.⁴⁸¹

3) The Forest Act, 2013

The Act provides for constitution of reserved forests, licence and use permit, forest development fund and liability in case of an offence against this Act. Main points of this Act are described as follows.

3.1) Reserved forests

His Majesty the Sultan and Yang Di-Pertuan may constitute any land a reserved forest.⁴⁸² The Minister shall publish a public notification specifying the situation and extent of such land and declaring that it is proposed to constitute such land a reserved forest.⁴⁸³ When a notification has been published, the Director shall publish in the vicinity to the land a proclamation specifying the situation and extent of the forest proposed for reservation explaining the consequences which will ensue on the reservation of such forest and fixing a period of not less than 3 months from the date of the publication of such proclamation.⁴⁸⁴ During that interval, no new house shall be built or plantation formed on or in any State land mentioned in such

⁴⁸⁰ Section 26 (1) of Fisheries Order, 2009.

⁴⁸¹ Section 28 of Fisheries Order, 2009.

⁴⁸² Section 4 of Forest Act, 2013.

⁴⁸³ Section 5 of Forest Act, 2013.

⁴⁸⁴ Section 6 of Forest Act, 2013.

proclamation unless it is done with the permission in writing issued before the proclamation was published.⁴⁸⁵

3.2) Licence and Use Permit

The Director may issue a licence with respect to the taking of forest produce from any reserved forest. The use permit may also be issued for the carrying out of some activities such as research, education or training, recreation or cultivation.⁴⁸⁶

In addition, the Act provides that the Minister may establish a Forest Development Fund.⁴⁸⁷ Provision is also made for punishment in case of an offence against this Act.

8.2.2 Laws and regulations relating to the conservation of environmental quality

Legislation relating to the conservation of environmental quality in Brunei Darussalam includes the following.

1) Town and Country Planning Act, 1972

⁴⁸⁵ Section 7 of Forest Act, 2013.

⁴⁸⁶ Section 22c of Forest Act, 2013.

⁴⁸⁷ Section 22m of Forest Act, 2013 states that

“(1) The Minister may establish a fund to be known as the Forest Development Fund.

(2) The Fund shall be administered by the Forest Development Fund Committee consisting of the following members

(a) the Minister, who shall be the Chairman

(b) the Permanent Secretary of the Ministry of Finance or his representative

(c) the Director and

(d) the Director of Environment, Parks and Recreation.

(3) The Forest Development Fund Committee shall be responsible for the due conservation of the Fund.”

The Act stipulates the development of city and rural areas such as the designation of Development Control Areas. Main points of this Act are described in detail below.

The Minister may by notification in the Gazette declare that area or those areas to be Development Control Areas.⁴⁸⁸ He may also make regulations for the purposes of carrying into effect this Act⁴⁸⁹ and approve any Development Planning Scheme as he thinks fit.⁴⁹⁰

Where a notification declaring a Development Control Area has been published, no person shall within the Development Control Area, carry out any development of land, or any construction, demolition, alteration, extension, repair or renewal of any building, or make any vehicular access way onto a public road, or subdivide any land without first obtaining in writing the consent of the Competent Authority. Any person contravenes shall be guilty of an offence.⁴⁹¹

2) Hazardous Waste (Control of Export, Import and Transit) Order, 2013

The Order provides for the regulation of the export, import and transit of hazardous and other waste. Main points of the Order are described as follows.

2.1) Import, Export, and Transit of Hazardous Waste

The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan make regulations to provide for and in relation to giving effect to the Basel Convention which is an international treaty designed to reduce the movements of hazardous waste between nations.⁴⁹² Any regulations made to give effect to the Basel Convention may:

- specify the kinds of import, export and transit proposals that are within the scope of the Basel Convention

⁴⁸⁸ Section 3 of Town and Country Planning, 1984.

⁴⁸⁹Section 5 of Town and Country Planning, 1984.

⁴⁹⁰ Section 7 of Town and Country Planning, 1984.

⁴⁹¹ Section 6 of Town and Country Planning, 1984.

⁴⁹² Section 16 of Hazardous Waste (Control of Export, Import and Transit) Order, 2013.

- provide for the application to the Director for import, export and transit permits of hazardous and other waste, where the permit relates to import, export, and transit proposals within the scope of the Basel Convention⁴⁹³
- Such regulations may provide for conditions of the Basel permits, including the giving of guarantees and security deposits, and for securing compliance with such conditions.⁴⁹⁴

2.2) Regulation of import, export and transit of hazardous and other wastes

A person shall not import, export, and transit hazardous or other waste unless:

- the person is the holder of a permit authorising the person to import, export or transit hazardous or other waste or
- the import, export or transit has been ordered under any regulation made under this Order.⁴⁹⁵

This Order also prohibits any person from bringing hazardous or other waste into Brunei Darussalam in the course of carrying out a transit proposal unless the person is the holder of a transit permit authorising the person to bring the waste into Brunei Darussalam.⁴⁹⁶

⁴⁹³ Section 17 (1) of Hazardous Waste (Control of Export, Import and Transit) Order, 2013.

⁴⁹⁴ Section 17 (2) of Hazardous Waste (Control of Export, Import and Transit) Order, 2013.

⁴⁹⁵ Section 25 of Hazardous Waste (Control of Export, Import and Transit) Order, 2013.

⁴⁹⁶ Section 26 of Hazardous Waste (Control of Export, Import and Transit) Order, 2013.

Chapter 9

Cultural promotion and preservation laws and regulations

9.1 Introduction

Brunei Darussalam is a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO), a specialised agency of the United Nations aiming to promote international collaboration through education, sciences, and culture and to promote cultural diversity and the protection of the World Heritage.⁴⁹⁷ Since becoming a member on 17 March 2005, Brunei Darussalam has ratified a number of Conventions relating to cultural heritage preservation including UNESCO 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage and UNESCO 2003 Convention for the Safeguarding of the Intangible Cultural Heritage.⁴⁹⁸

In addition, Brunei Darussalam has implemented policy for preservation of both tangible and intangible cultural heritage. The role of culture and cultural heritage in national development is also highlighted in the Outline of Strategies and Policies for Development (OSPD) 2007-2017 which sets out the directions for an environmental strategy that ensures the proper conservation of our natural environment and cultural habitat and in the 9th National Development Plan (2007-2012) which also focused on the important role culture can play in strengthening social harmony and national integration.⁴⁹⁹ Agencies responsible for the promotion and preservation of culture and local way of life are Brunei Museums Department, Brunei History Centre, Language and Literature Bureau, Radio Television Brunei and University of Brunei Darussalam.⁵⁰⁰ Key legislation relating to cultural promotion and conservation includes Brunei National Archives Act, 1975, Preservation of Books Act,

⁴⁹⁷ UNESCO Bangkok, available at: <http://www.unescobkk.org/th/about-us/>, accessed on 2 November 2015.

⁴⁹⁸ UNESCO, Brunei Darussalam UNESCO: Country Programing Document 2013-2016, available at: <http://unesdoc.unesco.org/-images/0023/002303/230311E.pdf>, accessed on 2 November 2015.

⁴⁹⁹ *Ibid.*

⁵⁰⁰ Dayangku Norazah binti Pengiran Haji Muhammad, Government Mechanism for Safeguarding Intangible Culture Heritage: Brunei Darussalam, available at http://www.accu.or.jp/ich/en/pdf/c2005subreg_Bru1.pdf, accessed on 2 November 2015.

1975 and Antiquities and Treasure Trove Act, 1967 which are described in detail below.

9.2 Cultural promotion and preservation laws and regulations

9.2.1 Laws and regulations relating to cultural heritage

1) Brunei National Archives Act, 1975, Revised Edition 1983

1.1) Main points of Brunei National Archives Act of 1975, Revised Edition 1983

Brunei National Archives Act provides for the conservation of public archives and public records of Brunei Darussalam. According to this Act, public archives means public records which are more than 25 years old; are specified as being of enduring national or historical value or both; and have been transferred to the Brunei National Archives or any such place as the Director direct. The public record means papers, documents, records, registers, printed material, books, maps, plans, drawings, photographs, microfilms, cinematograph, films and sound recordings of any kind whatsoever, officially received or produced by any public office for the conduct of its affairs or by any officer or employee of a public office in the course of his official duties.⁵⁰¹

Any person having possession of any public records shall on demand in writing by the Director, deposit them in the Brunei National Archives whether it came into his possession before or after the passing of this Act.⁵⁰² No person shall without the consent of the Director destroy or otherwise dispose of, or authorize the destruction or disposal of, any public records which are in his possession or under his control.⁵⁰³ The Director may authorise the destruction of any specified classes of public records which by reason of their number, kind or routine nature do not in his opinion possess any enduring value for preservation as public archives and are not

⁵⁰¹ Section 2 of Brunei National Archives Act, 1975.

⁵⁰² Section 9 of Brunei National Archives Act, 1975.

⁵⁰³ Section 10 (1) of Brunei National Archives Act, 1975.

required for reference purpose in any public office after action on them is completed or after expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Director and the administrative head of that public office.⁵⁰⁴

In addition, no person may publish or reproduce the whole or any part of the contents of any archives or records which have been transferred to the Brunei National Archives except with the written consent of the Director.⁵⁰⁵ No person shall without the written permission of the Director take or send out of Brunei any public record or public archives.⁵⁰⁶

1.2) Authorised agencies under the Brunei National Archives Act, 1975, Revised Edition 1983

The Brunei National Archives Act of 1975, Revised Edition 1983 established the Brunei National Archives⁵⁰⁷ under the management of the Director to store and preserve public archives. The Director shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.⁵⁰⁸ Main tasks of the Director are to manage the national public archives to facilitate access to public archives to make copy or publish any public archives to inspect public records of government agencies and give advice on how to care for such records; and to preserve any public record deposited in the Brunei National Archives. If any government agency requests for any deposited public record to be used from time to time, the Brunei National Archives shall return such record. In addition, the Director may acquire as he deemed to be of national or historical value, any public record or other material through purchase, donation, or inheritance.

However, the Director is not authorised to inspect the contents of any public records that are secret or confidential, except with the consent of the

⁵⁰⁴ Section 11 of Brunei National Archives Act, 1975.

⁵⁰⁵ Section 15 of Brunei National Archives Act, 1975.

⁵⁰⁶ Section 16 of Brunei National Archives Act, 1975.

⁵⁰⁷ Section 3 of Brunei National Archives Act, 1975 states that "There is hereby established the Brunei National Archives wherein shall be stored and preserved public archives."

⁵⁰⁸ Section 4 of Brunei National Archives Act, 1975.

administrative head of the public office having the custody thereof.⁵⁰⁹ For the purpose of advising the Director on the carrying out of his function under this Act, there shall be an Advisory Board consisting of the Director as Chairman and 5 other members to be appointed by the Minister.⁵¹⁰

2) Preservation of Books Act, 1975

2.1) Main points of the Preservation of Books Act, 1975

The Preservation of Books Act of 1975 provides for the purpose of the maintenance and the conservation of books printed and published in Brunei Darussalam. The Act requires the publisher of every book published in Brunei Darussalam (whether for sale or otherwise) shall, within one month after the publication, deliver, at his own expense, 3 copies of the book to the Director of the Museums Department.⁵¹¹ This act shall apply to books printed by the government Printer for or on behalf of the Brunei Government and to books printed by any department of Government.⁵¹² The copies required to be delivered to the Director shall be copies of the whole book with all maps and illustrations belonging thereto, and shall be finished and coloured in the same manner as the best copies of the books are published and shall be bound, sewed or stitched together, and on the best paper on which the book is printed.⁵¹³

The Director shall keep a catalogue of all books delivered⁵¹⁴ and shall as soon as is practicable after each quarter of the year publish the particulars entered in the catalogue in the quarter.⁵¹⁵ The obligations imposed upon a publisher by this Act shall be in addition to and not in substitution for any other obligations

⁵⁰⁹ Section 4 (3) of Brunei National Archives Act, 1975.

⁵¹⁰ Section 5 (1) of Brunei National Archives Act, 1975.

⁵¹¹ Section 3 (1) of Preservation of Books Act, 1975.

⁵¹² Section 7 of Preservation of Books Act, 1975.

⁵¹³ Section 3 (2) of Preservation of Books Act, 1975.

⁵¹⁴ Section 4 (1) of Preservation of Books Act, 1975.

⁵¹⁵ Section 4 (2) of Preservation of Books Act, 1975.

relating to the delivery of books published in Brunei to any other institution, under any other written law for the time being in force.⁵¹⁶

9.2.2 Laws and regulations relating to ancient monuments and antiquities

Antiquities and Treasure Trove Act, 1967, Revised Edition 2002

1) Main points of the Antiquities and Treasure Trove Act of 1967, Revised Edition 2002

The Act provides for the discovery of antiquities, historical objects and ancient monuments excavation regulating of export of antiquities and historical objects and powers of responsible authority to carry into effect provisions made under this Act.

Subject to the provisions of this Act, every antiquity discovered in Brunei Darussalam shall be the absolute property of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.⁵¹⁷ Any person who discovers any object or monument which he has reason to believe to be an antiquity or ancient monument shall forthwith give notice of his discovery to the Penghulu or Ketua Kampung of the area or to the District Officer of the District wherein the antiquity was discovered, and if it is practicable so to do, shall deliver the antiquity to the District Officer.⁵¹⁸ The District Officer shall give notice to the Director who shall forthwith report the discovery to the Museum Committee.⁵¹⁹ If the District Officer has reason to believe that any object discovered in his district is an antiquity he may by notice in writing require the person having possession thereof, to deliver the same forthwith to the District Officer.⁵²⁰

According to this Act, ancient monument means any monument in Brunei Darussalam which dates or may reasonable be believed to date from a period

⁵¹⁶ Section 6 of Preservation of Books Act, 1975.

⁵¹⁷ Section 3 (1) of Antique and Treasure Trove Act, 1967.

⁵¹⁸ Section 4 (1) of Antique and Treasure Trove Act, 1967.

⁵¹⁹ Section 4 (5) of Antique and Treasure Trove Act, 1967.

⁵²⁰ Section 4 (3) of Antique and Treasure Trove Act, 1967.

prior to 1 January 1894 and includes any other monument which has been declared to be an ancient monument by His Majesty in Council to be an ancient monument for the purpose of this Act. Antiquity means any object moveable or immoveable or any part of the soil or of the bed of a river or lake or of the sea, which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency at any date prior to or reasonable believed to be prior to 1 January 1894 and any human, plant or animal remains which date or may reasonable be believed to date from a period prior to 1 January 1894.⁵²¹ For the purpose of deciding whether any object is or is not an antiquity or historical object there shall be established a Museum Committee.⁵²²

1.1) Compensation

When any antiquity is retained by the Museum Committee, there shall, be paid by the Committee reasonable compensations to the finder of the antiquity and to the owner of the land in or on which the same was discovered.⁵²³ If the Museum Committee is of the opinion that the antiquity should be preserved in the place where it was found, then only such reasonable compensation as the Committee shall determine shall be paid to the finder thereof.⁵²⁴ If in any case, in the opinion of the Museum Committee, the amount payable to the finder or to the owner of the land would not be adequate the Committee may pay to such finder or owner a reward of such sum of money as it may think fit provided that no such

⁵²¹ Section 2 (1) of Antiquities and Treasure Trove Act, 1967 states that “antiquity means

(a) any object moveable or immoveable or any part of the soil or of the bed of a river or lake or of the sea, which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency at any date prior to or reasonable believed to be prior to 1st January 1894 and

(b) any part of any such object which has at any later date been added thereto or reconstructed or restored and

(c) any human, plant or animal remains which date or may reasonable be believed to date from a period prior to 1st January 1894 and

(d) any ancient monument.”

⁵²² Section 2 (1) of Antiquities and Treasure Trove Act, 1967.

⁵²³ Section 5 (3) (a) of Antiquities and Treasure Trove Act, 1967.

⁵²⁴ Section 7 of Antiquities and Treasure Trove Act, 1967.

reward shall be paid to the finder where the finder has failed to report the discovery of the same in accordance with the provisions of this Act.⁵²⁵

1.2) Excavations

No person shall excavate for the purpose of discovering antiquities, except under the authority of a licence.⁵²⁶ Every licence granted shall be subject to the following conditions: the holder of the licence shall take all reasonable measures for the preservation of the antiquities discovered by him shall carry out his excavations in a scientific manner shall keep a record of all antiquities discovered in the course of the excavation; shall deposit such photographs, casts, squeezes or other reproductions of any antiquity apportioned to him and shall furnish such plans and photograph of his excavations to the Director.⁵²⁷

1.3) Ancient monuments and historical sites

His Majesty in Council may by order declare by publishing in the Gazette any monument to be an ancient monument and any site to be a historical site and may determine the limits of such monument or site.⁵²⁸ No person shall, without the permission, dig, excavate, build, plant trees, or burn lime on or in the immediate neighbourhood of an ancient monument or a historical site or demolish an ancient monument or make alteration, additions or repairs to any ancient monument or erect buildings or walls abutting upon an ancient monument.⁵²⁹

⁵²⁵ Section 8 of Antiquities and Treasure Trove Act, 1967.

⁵²⁶ Section 11 of Antiquities and Treasure Trove Act, 1967.

⁵²⁷ Section 14 (2) of Antiquities and Treasure Trove Act, 1967.

⁵²⁸ Section 17 of Antiquities and Treasure Trove Act, 1967.

⁵²⁹ Section 18 (1) of Antiquities and Treasure Trove Act, 1967 states that "No person shall, without the permission in writing of the Permanent Secretary and except in accordance with such conditions as he may impose in granting such permission after consultation with the Minister

(a) dig, excavate, build, plant trees, quarry, irrigate, burn lime or do similar work or deposit earth or refuse on or in the immediate neighbourhood of an ancient monument or a historical site included in the schedule published in accordance with section 17, as added to or amended from time to time, or establish or extend a cemetery on a historical site so included or

Where any ancient monument or historical site is on a private property the Government may make arrangements with the owner of the occupier thereof for its preservation, inspection and maintenance purchase or lease the site for a public purpose or in the case of an ancient monument remove making good any damage done to the site or to buildings thereon by such removal and paying compensation therefor.⁵³⁰

1.4) Treasure trove

Any person who discovers any treasure trove shall forthwith give notice of such discovery to the District Officer of the District wherein the treasure trove was discovered and shall deliver the treasure trove to the District Officer. The District Officer shall give notice to the Director.

If the District Officer has reason to believe that any treasure trove has been discovered in his District and the discovery of the same has not been notified to him, he shall by notice in writing require the finder or suspected finder to appear personally before him and to deliver up to him all such treasure trove or suspected treasure trove so discovered.⁵³¹ The Government may in its discretion pay as a reward to the finder of any treasure trove and to the owner of any land in which it was found such sums as it may think fit.⁵³²

1.5) Export of antiquities and historical objects

No person shall export any antiquity unless he has obtained a licence to export the same from the Director. The Director shall not issue a licence if in his opinion the antiquity is of lasting national importance or interest and should be acquired on behalf of the Government or if the Permanent Secretary objects to the

(b) demolish an ancient monument or disturb, obstruct, modify, mark, pull down or remove any such monuments or any part thereof or

(c) make alteration, additions or repairs to any ancient monument or

(d) erect buildings or walls abutting upon an ancient monument.”

⁵³⁰ Section 19 (1) of Antiquities and Treasure Trove Act, 1967.

⁵³¹ Section 23 of Antiquities and Treasure Trove Act, 1967.

⁵³² Section 30 of Antiquities and Treasure Trove Act, 1967.

export thereof on the ground that such antiquity ought to be acquired on behalf of the Government. No licence to export an antiquity shall be issued to any person unless he proves that he is the owner of such antiquity or that he is acting on behalf of and with the authority of such owner.⁵³³

Where a licence to export any antiquity has been refused on the ground that such antiquity should be acquired on behalf of the Government, or where a historical object is of lasting national importance or interest, the Government shall pay to the owner thereof the reasonable compensation for such antiquity and thereupon the said owner shall deliver up the same to the Director.⁵³⁴

1.6) Sale and loan of antiquities

The Government may after consultation with the Director, sell any antiquity or historical object which is the property of the Government.⁵³⁵ Moreover, the Government may make loans or exchanges of any antiquities or historical objects which are the property of the Government to or with learned societies or museums or with any expert specialist.⁵³⁶ Nevertheless, any agreement for a loan shall contain adequate provisions for the preservation, insurance and, the return to the Government of the antiquities or historical objects.⁵³⁷

⁵³³ Section 31 (1) (2) and (4) of Antiquities and Treasure Trove Act, 1967.

⁵³⁴ Section 34 of Antiquities and Treasure Trove Act, 1967.

⁵³⁵ Section 40 (1) of Antiquities and Treasure Trove Act, 1967.

⁵³⁶ Section 41 (1) of Antiquities and Treasure Trove Act, 1967.

⁵³⁷ Section 41 (2) of Antiquities and Treasure Trove Act, 1967.

Chapter 10

Strengthening Capacity of Public Sector Laws and Regulations

10.1 Introduction

The review of laws and regulations relating to strengthening capacity of public sector in Brunei Darussalam could be conducted in comparison with the Thai's Public Sector Development Strategic Plan (B.E. 2556 – B.E. 2561) which puts an emphasis on modernising the organisation and increase its capacity, and developing of public organisation towards excellence. In addition, the restructuring of public organisations focuses on simplicity, creativity, enhancing capacity and professionalism of its personnel, efficiency, creating value in public service, saving operational costs, and promoting social responsibility and sustainable environmental conservation.⁵³⁸

10.2 Strengthening Capacity of Public Sector Laws and Regulations

Based on the Thai's Public Sector Development Strategic Plan, laws and regulations relating to strengthening capacity of public sector in Brunei Darussalam are divided into the following groups: (1) good governance which includes constitutional law, Legislative Council and Council of Ministers (Remuneration and Privileges) Act, and Election Offences Act; (2) civil service which includes Public Service Commission Act, Commission of Inquiry Act and Diplomatic Privilege Act; and (3) local administration which includes Municipal Board Act. Main points of each legislation are described in detail as follows.

10.2.1 Laws and regulations relating to good governance

The Constitution of Brunei Darussalam provides that the supreme executive authority of Brunei Darussalam shall be vested in His Majesty the Sultan and Yang Di-Pertuan.⁵³⁹ In addition, the Constitution makes provision for the Privy Council who shall advise His Majesty the Sultan and Yang Di-Pertuan on any amendment,

⁵³⁸ Office of the Public Sector Development Commission Thailand, Thai's Public Sector Development Strategic Plan, (2013 - 2018), <http://www.opdc.go.th/lite/content0803.html>, accessed on 20 December 2015.

⁵³⁹ Constitution of Brunei Darussalam Part III, Article 4.

addition, or revocation of any provision of the Constitution.⁵⁴⁰ The Constitution establishes a Pardons Board which shall consist of the Attorney General, the Mufti Kerajaan and not more than 3 other members. However, the Pardons Board was suspended (as of December 23, 2015) by the Constitution of Brunei Darussalam (Suspension) Order of 2006.⁵⁴¹ Pursuant to the Constitution of Brunei Darussalam (Suspension) Order of 2006, His Majesty the Sultan and Yang Di-Pertuan may, with advice from the Privy Council, grant to any person convicted of any such offence a pardon either free or subject to conditions.⁵⁴² Moreover, the Constitution of Brunei Darussalam (Suspension) Order of 2006 makes provision for the establishment of Council of Ministers and Legislative Council including its composition and membership, qualifications, disqualification, tenure of office, and summoning and quorum.⁵⁴³

The Constitution of Brunei Darussalam states that His Majesty the Sultan and Yang Di-Pertuan shall have the power to make laws for the peace, order, security and good government of Brunei Darussalam.⁵⁴⁴ With the prior approval of His Majesty the Sultan and Yang Di-Pertuan, a Member of the Legislative Council shall propose any Bill which falls within any of the following classes:

⁵⁴⁰ Constitution of Brunei Darussalam Part IV, Article 6 (1) states “The Privy Council — (a) shall advise His Majesty the Sultan and Yang Di-Pertuan on any amendment, addition or revocation of any provision of this Constitution, in accordance with Article 85 ...”

⁵⁴¹ Constitution of Brunei Darussalam Part IV, Article 8A. (1).

⁵⁴² Constitution of Brunei Darussalam Part IV, Article 9 states “(1) His Majesty the Sultan and Yang Di-Pertuan may exercise in his absolute discretion, in respect of any offence for which an offender may be or has been tried in Brunei Darussalam, such one or more of the following powers —

At the time of this Reprint, His Majesty the Sultan and Yang Di-Pertuan has, pursuant to the Constitution of Brunei Darussalam (Suspension) Order, 2006, conferred on the Privy Council the function to advise His Majesty in connection with the exercise of His Majesty’s powers under Clause (1) of Article 9 of the Constitution of Brunei Darussalam.

(a) grant to any person concerned in, or convicted of, any such offence a pardon either free or subject to conditions.”

⁵⁴³ Constitution of Brunei Darussalam Part V.

⁵⁴⁴ Constitution of Brunei Darussalam Part VII, Article 39.

(1) any Bill, motion, petition or business relating to the issue of Bank Notes or the establishment of any Bank Association or the amendment of the constitution thereof;⁵⁴⁵

(2) any Bill, motion, petition or business which shall appear inconsistent with obligations imposed upon His Majesty the Sultan and Yang Di-Pertuan by Treaty or Agreement with another power or State;⁵⁴⁶

(3) any Bill, motion, petition or business relating to questions of defence or public security;⁵⁴⁷

(4) any Bill, motion, petition or business that may have the effect of lowering or adversely affect directly or indirectly the rights, position, discretion, powers, privileges, sovereignty or prerogatives of His Majesty the Sultan and Yang Di-Pertuan, his Successors, His Consort or other members of the Royal Family;⁵⁴⁸

(5) any Bill, motion, petition or business that may have the effect of lowering or adversely affect directly or indirectly the standing or prominence of the National Philosophy of Malay Islamic Monarchy;⁵⁴⁹

(6) any Bill, motion, petition or business which would provide for or directly or indirectly affect the compounding or remitting of any debt due to Brunei Darussalam;⁵⁵⁰

(7) any Bill, motion, petition or business which would provide for or directly or indirectly affect the custody of the Consolidated Fund, the charging of any money on the Consolidated Fund or the abolition of any such charge;⁵⁵¹

(8) any Bill, motion, petition or business which would provide for or directly or indirectly affect the payment of moneys into the Consolidated Fund or the payment, issue or withdrawal from the Consolidated Fund of any moneys not

⁵⁴⁵ Constitution of Brunei Darussalam Part VIII, Article 42 (1)(a).

⁵⁴⁶ Constitution of Brunei Darussalam Part VIII, Article 42 (1)(b).

⁵⁴⁷ Constitution of Brunei Darussalam Part VIII, Article 42 (1)(c).

⁵⁴⁸ Constitution of Brunei Darussalam Part VIII, Article 42 (1)(d).

⁵⁴⁹ Constitution of Brunei Darussalam Part VIII, Article 42 (1)(e).

⁵⁵⁰ Constitution of Brunei Darussalam Part VIII, Article 42 (1)(g).

⁵⁵¹ Constitution of Brunei Darussalam Part VIII, Article 42 (1) (h).

charged thereon, or any alteration in any such payment, issue or withdrawal otherwise than by reducing it;⁵⁵²

(9) any Bill, motion, petition or business which would provide for or directly or indirectly affect the receipt of moneys on account of the Consolidated Fund or the custody or issue of such moneys, or the audit of the accounts of Brunei Darussalam;⁵⁵³

(10) any Bill, motion, petition or business which would provide for or directly or indirectly affect the borrowing of money, or the giving of any guarantee by Brunei Darussalam, or the amendment of the law relating to the financial obligations of Brunei Darussalam;⁵⁵⁴ or

(11) any Bill, motion, petition or business which would provide for or directly or indirectly affect the assignment of any tax or fee.⁵⁵⁵

The Constitution also makes provision for finance and public service in which no taxation shall be levied unless authorised by law.⁵⁵⁶ Under a Civil List of His Majesty, His Consort and the Royal Family, an allowance shall be provided according to the rank, position and dignity.⁵⁵⁷ The Civil List shall be a charge on the Consolidated Fund which includes all revenues and moneys howsoever raised or received by the Government from whatsoever source, subject to this Constitution and any written law.⁵⁵⁸ His Majesty the Sultan and Yang Di-Pertuan shall, in respect of every financial year, cause to be laid before the Legislative Council a statement of the estimated receipts and expenditure of the Government for that year.⁵⁵⁹

⁵⁵² Constitution of Brunei Darussalam Part VIII, Article 42 (1) (i).

⁵⁵³ Constitution of Brunei Darussalam Part VIII, Article 42 (1) (j).

⁵⁵⁴ Constitution of Brunei Darussalam Part VIII, Article 42 (1) (k).

⁵⁵⁵ Constitution of Brunei Darussalam Part VIII, Article 42 (1) (l).

⁵⁵⁶ Constitution of Brunei Darussalam Part VIII, Article 56.

⁵⁵⁷ Constitution of Brunei Darussalam Part VIII, Article 57.

⁵⁵⁸ Constitution of Brunei Darussalam Part VIII, Article 58 states “All revenues and moneys howsoever raised or received by the Government from whatsoever source shall, subject to this Constitution and any written law, be paid into and form one fund to be known as the ‘Consolidated Fund’.”

⁵⁵⁹ Constitution of Brunei Darussalam Part VIII, Article 60 states “His Majesty the Sultan and Yang Di-Pertuan shall, in respect of every financial year, cause to be laid before the Legislative Council a statement of the estimated receipts and expenditure of the Government for that year and, unless the Legislative Council by written law in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.”

In addition, Brunei Darussalam issued the Legislative Council and Council of Ministers (Remuneration and Privileges) Act of 1965, Revised Edition 1984. The Chapter 134 provides that where there is any doubt as to the interpretation or construction of this Act, the question shall be referred to His Majesty the Sultan and Yang Di-Pertuan whose decision thereon shall be final.⁵⁶⁰ His Majesty the Sultan and Yang Di-Pertuan may by order make provision for the remuneration of Members of the Legislative Council and of the Council of Ministers.⁵⁶¹ The remuneration payable under the provisions of this Act shall commence from the date of appointment or election and shall be paid on the last day of the month or as determined by the Minister.⁵⁶² A Member shall be entitled to an exemption from any annual licence fee payable under the Road Traffic Regulations in respect of one car registered in the Member's name during the tenure of office.⁵⁶³ In addition, a Member shall be entitled to loans to purchase motor vehicle,⁵⁶⁴ mileage allowance and allowance for travelling outside Brunei Darussalam.⁵⁶⁵ A Member, his wife, children and parents shall be entitled to free medical and dental treatments.⁵⁶⁶ Members are each entitled to have a telephone installed free of charge at their place of residence.⁵⁶⁷ A

⁵⁶⁰ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, 1984 Edition, Cap 134 Article 2 (2).

⁵⁶¹ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, 1984 Edition, Cap 134 Article 3.

⁵⁶² Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, 1984 Edition, Cap 134 Article 4.

⁵⁶³ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, Schedule (Section 3) Allowances and privileges of Members Article 3 states "Motor vehicle licence: A Member shall be entitled to an exemption from any annual licence fee payable under the Road Traffic Regulations in respect of one car registered in the Member's name during the tenure of office."

⁵⁶⁴ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, Schedule (Section 3) Allowances and privileges of Members Article 4.

⁵⁶⁵ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, Schedule (Section 3) Allowances and privileges of Members Article 5-7.

⁵⁶⁶ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, Schedule (Section 3) Allowances and privileges of Members Article 9.

⁵⁶⁷ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, Schedule (Section 3) Allowances and privileges of Members Article 10.

Member shall also be entitled to the same privileges in respect of Government Resthouse and Holiday Bungalows.⁵⁶⁸

To maintain peace and order during election, Brunei Darussalam passed the Election Offences Act (Chapter 26) effective since April 28, 1962. Its main purpose is to prevent any election offence and any act in violation of the law; and to establish the Election Commission to prevent election offences and oversee election-related complaints.

This Act makes provision for an offence relating to election. It states that any person who knowingly makes any false statement on or in connection with any application to be placed on any register of electors; forges or fraudulently defaces or fraudulently destroys any nomination paper, forges or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; without due authority supplies any ballot paper to any person; puts into any ballot box anything other than the ballot paper; without due authority prints any ballot paper; or votes at any election when he is not entitled to vote thereat, shall be liable, on conviction, to imprisonment for a term not exceeding 3 years or to a fine not exceeding 10,000 Brunei dollars or to both such imprisonment and fine and, subject to any provision to the contrary in any written law relating to any election, shall until the expiration of 5 years from such conviction or until the end of his imprisonment, be incapable of being elected at any election.⁵⁶⁹

In case of an offence by election officer, the Act provides that any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who makes return or other document which he is required to keep or make, any entry which he knows to be false; permits any person whom he knows not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons; refuses to permit any person whom he knows to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons; wilfully prevents

⁵⁶⁸ Legislative Council and Council of Ministers (Remuneration and Privileges) Act 1965, Schedule (Section 3) Allowances and privileges of Members Article 12.

⁵⁶⁹ Election offences Act Cap 26 Article 3.

any person from voting at the polling station at which he knows such person is entitled to vote; or is guilty of any act or omission in breach of his official duty, shall be liable, on conviction, to imprisonment and fine and, be incapable of being elected at any election.⁵⁷⁰

The Act also provides that any of the following corrupt practices shall be guilty of an offence. Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation.⁵⁷¹

Every person who, directly or indirectly, gives or procures, or agrees to give or procure, or promises to procure any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election, shall be guilty of an offence and liable for a punishment.⁵⁷² The Act stipulates a punishment for any person who, makes any gift, loan, offer, promise, or agreement to or for any person in order to induce such person to procure the election of any person, or the vote of any elector or voter at any election.⁵⁷³ In addition, the Act provides for an offence of bribery which includes paying any money with the intent that such money shall be expended in bribery at any election and receiving such money.⁵⁷⁴ Sanctions include imprisonment as well as fines and offences of personation and bribery shall be seizable offences within the meaning of the Criminal Procedure Code.⁵⁷⁵

⁵⁷⁰ Election offences Act Cap 26 Article 4.

⁵⁷¹ Election offences Act Cap 26 Article 7.

⁵⁷² Election offences Act Cap 26 Article 10 (b).

⁵⁷³ Election offences Act Cap 26 Article 10 (c).

⁵⁷⁴ Election offences Act Cap 26 Article 10.

⁵⁷⁵ Election offences Act Cap 26 Article 11 (2).

10.2.2 Laws and regulations relating to civil service

Law relating to civil service in Brunei Darussalam is the Public Service Commission Act (Revised Edition 1984) which established the Public Service Commission under the Constitution.⁵⁷⁶ The Act provides protection and privileges for the Commission in the case of any legal proceedings. No person shall be permitted or compelled to produce or disclose any communication written or oral which has taken place in the exercise of its functions unless His Majesty the Sultan and Yang Di-Pertuan shall in writing consent to such production or disclosure.⁵⁷⁷ In addition, every member of the Commission shall have such and like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done by him when acting in the execution of his office.⁵⁷⁸ The Act also states that any person who wilfully gives to the Commission or to any member thereof or to any person or body of persons appointed by the Commission any information which is false or misleading in any material particular shall be guilty of an offence: Penalty, a fine of 10,000 Brunei dollars and imprisonment for 2 years.⁵⁷⁹ The Act also stipulates a punishment for an offence when any person publish or disclose to any unauthorised person the contents or any part of the contents of any documents, communication or information whatsoever which has come to his knowledge in the course of his duty.⁵⁸⁰ Every member, officer and servant of the Commission shall be deemed to be a public servant within the meaning of the Penal Code.⁵⁸¹

This Act also makes provision for the remuneration of the members of the Commission which shall consist of:

- (1) The Chairman shall receive a salary provided by the Legislature with the allowances and privileges specified in the Schedule hereto;

⁵⁷⁶ Public Service Commission Act (Revised edition 1984) Cap 83 Article 2.

⁵⁷⁷ Public Service Commission Act (Revised edition 1984) Cap 83 Article 3.

⁵⁷⁸ Public Service Commission Act (Revised edition 1984) Cap 83 Article 4.

⁵⁷⁹ Public Service Commission Act (Revised edition 1984) Cap 83 Article 5.

⁵⁸⁰ Public Service Commission Act (Revised edition 1984) Cap 83 Article 6 (1).

⁵⁸¹ Public Service Commission Act (Revised edition 1984) Cap 83 Article 8.

(2) The Members of the Commission shall receive a salary provided by the Legislature with the allowances and privileges specified in the Schedule hereto.⁵⁸²

The Public Service Commission Act is accompanied by two subsidiary legislation approved by His Majesty the Sultan and Yang Di-Pertuan which are Public Officers (Appointments and Promotions) Regulation and Public Officers (Conduct and Discipline) Regulation.

Public Officers (Appointments and Promotions) Regulation shall apply to all permanent and temporary appointments and promotions to posts and services excluding only such appointments of daily rated officers as may from time to time be delegated by the Commission.⁵⁸³ The Regulation determines procedure, code of conduct, criteria, qualifications of officers selected for consideration, and probation period.⁵⁸⁴ With regard to promotions, the officers shall be selected on the basis of official qualifications, experience and merit. Only where 2 candidates are adjudged of equal merit will preference be given to the senior.⁵⁸⁵

Public Officers (Conduct and Discipline) Regulation shall apply to all officers in the Public Service of Brunei Darussalam, provided that where the conduct, discipline and punishment of an officer is also governed by another written law, the provisions of these Regulations shall apply subject to the provisions of such law.⁵⁸⁶ Unless otherwise prescribed, office hours are normally 7.5 hours a day from Mondays to Thursdays and on Saturdays. Hours of attendance are normally from 7.30 a.m. to 12.30 p.m. and 1.30 p.m. to 4.00 p.m. These are the hours during which the public have access to Government offices and are the minimum hours of duty required of all Government servants. Under the consideration of the Head of Division or Department, or the responsible Minister to use other hours. If any officer has to work outside these hours, he shall not be entitled to any overtime payment or paid leave.⁵⁸⁷ The Regulation states that no officer may:

⁵⁸² Public Service Commission Act (Revised edition 1984) Cap 83 Article 10 (1).

⁵⁸³ Public Officers (Appointments and Promotions) Regulations Article 2.

⁵⁸⁴ Public Officers (Appointments and Promotions) Regulations Article 28.

⁵⁸⁵ Public Officers (Appointments and Promotions) Regulations Article 36.

⁵⁸⁶ Public Officers (Conduct and Discipline) Regulations Article 2.

⁵⁸⁷ Public Officers (Conduct and Discipline) Regulations Article 4.

- (1) take part directly or indirectly in the management or proceedings of any commercial, agricultural or industrial undertaking;
- (2) function as an executor, administrator or receiver;
- (3) as an expert, furnish any report or give expert evidence, whether gratuitously or for reward;
- (4) undertake for reward any work for a company, firm or private individual.⁵⁸⁸

An officer may nonetheless apply for permission from the Prime Minister to undertake specified services of the type mentioned above for the benefit of himself or his close relatives or for any non-profit making body of which he is an office holder.⁵⁸⁹ The Regulations also determine a code of conduct prohibiting an officer from conducting in such a manner as to bring his private interests into conflict with his public duties. Any breach of this Regulation will render the officer liable to disciplinary proceedings.⁵⁹⁰

Commissions of Inquiry Act of 1962 (Revised Edition 2014) makes provision for His Majesty the Sultan and Yang Di-Pertuan in Council to issue a Commission appointing one or more Commissioners and authorising such Commissioners to enquire into the conduct of any officer, the conduct or management of any department of the public service or any public institution of Brunei Darussalam. His Majesty the Sultan and Yang Di-Pertuan in Council may authorise an enquiry into any other matter in which an enquiry would be for the public welfare.⁵⁹¹ His Majesty the Sultan and Yang Di-Pertuan in Council may determine other matters relating to an enquiry including appointing a Chairman of the Commission, deciding on a place,

⁵⁸⁸ Public Officers (Conduct and Discipline) Regulations Article 10 (a).

⁵⁸⁹ Public Officers (Conduct and Discipline) Regulations Article 10 (b).

⁵⁹⁰ Public Officers (Conduct and Discipline) Regulations Article 11 (b) states “(a) No officer shall conduct himself in such a manner as to bring his private interests into conflict with his public duties or in such a manner as he knows or can reasonably be expected to know is likely to cause a reasonable suspicion in the minds of the public that he –

(i) Has allowed his private interests to come into conflict with his public duties and thereby to impair his usefulness as a public officer; or

(ii) Has used his public position for private advantage.

(b) Any breach of this Regulation will render the officer liable to disciplinary proceedings.”

⁵⁹¹ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 2 (1).

date and time of an enquiry and enquiry proceedings. In addition, His Majesty the Sultan and Yang Di-Pertuan in Council may add to the persons named in any such Commission;⁵⁹² or enlarge the time for the enquiry.⁵⁹³ His Majesty the Sultan and Yang Di-Pertuan in Council has an absolute power to change any rule of an enquiry.⁵⁹⁴

The Commissioners shall have the following powers:

- (1) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses as the Commissioners may think it necessary or desirable to procure or examine;⁵⁹⁵
- (2) to require the evidence (whether written or oral) of any witness to be made on oath or affirmation (such oath or affirmation to be that which could be required of the witness if he were giving evidence in the High Court) or by statutory declaration;⁵⁹⁶
- (3) to summon any person in Brunei Darussalam to attend any meeting of the Commissioners to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession;⁵⁹⁷
- (4) to issue a warrant of arrest to compel the attendance of any person who, after having been summoned to attend, fails to do so, and to order him to pay all costs which may have been occasioned in compelling his attendance;⁵⁹⁸
- (5) to fine in a sum not exceeding 500 Brunei dollars any person who, being required by the Commissioners to give evidence on affirmation or to produce a document or other thing, refuses to do so and does not excuse such refusal to the satisfaction of the Commissioners;⁵⁹⁹

⁵⁹² Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 4 (1).

⁵⁹³ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 5.

⁵⁹⁴ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 6.

⁵⁹⁵ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (a).

⁵⁹⁶ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (b).

⁵⁹⁷ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (c).

⁵⁹⁸ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (d).

⁵⁹⁹ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (e).

- (6) notwithstanding any written law relating to evidence, to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;⁶⁰⁰
- (7) subject to any direction contained in the Commission, to admit or exclude the public or the press from the enquiry or any part thereof; and
- (8) to award any person who has attended any meeting of the Commissioners, including any interpreter.⁶⁰¹

No Commissioner shall be liable to any suit or other civil proceeding for any act or thing done by him as such Commissioner. All evidence given for the purposes of any enquiry under this Act shall be absolutely privileged so that the witness giving such evidence shall not be liable to any suit or other civil proceeding in respect of such evidence.⁶⁰²

Diplomatic Privileges (Extension) Act, Chapter 85 is a law declared by an order of His Majesty the Sultan and Yang Di-Pertuan in Council to be an organisation of which His Majesty's Government and the government of one or more foreign sovereign Powers are members. Any organisation to which this section applies shall have the immunities and privileges out in Part I of the Schedule to this Act, and shall also have the legal capacities of a body corporate.⁶⁰³ This Act states that the Minister shall compile a list of the persons entitled to immunities and privileges and shall make a public notification. The Minister may grant or withdraw such immunities and privileges and may revise the list of the persons before making a public notification of such revision.⁶⁰⁴

⁶⁰⁰ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (f).

⁶⁰¹ Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 8 (h).

⁶⁰² Commissions of Inquiry Act, 1962 (Revised Edition 2014) Cap 9 Article 21.

⁶⁰³ Diplomatic Privileges (Extension) Cap 85 Article 2 (1) states " This section shall apply to any organization declared by an order of His Majesty the Sultan and Yang Di-Pertuan in Council to be an organization of which His Majesty's Government and the government or governments of one or more foreign sovereign Powers are members. (2) His Majesty in Council may by order – (a) provide that any organization to which this section applies (hereinafter referred to as "the organization") shall, to such extent as may be specified in the order, have the immunities and privileges out in Part I of the Schedule to this Act, and shall also have the legal capacities of a body corporate ..."

⁶⁰⁴ Diplomatic Privileges (Extension) Cap 85 Article 3.

Immunities and privileges of the Organisation stipulated by this Act include:

- (1) Immunity from suit and legal process;
- (2) The inviolability of official archives and premises occupied as offices;
- (3) Exemption or relief from taxes and rates, other than taxes on the importation of goods;
- (4) Subject to compliance with such conditions as may be prescribed by the Customs, exemption from all duties and taxes on goods imported or exported by the organisation for its official use;
- (5) Exemption from prohibitions and restrictions on the importation or exportation of goods imported or exported by the organisation for its official use;
- (6) The right to avail itself, for telegraph communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Brunei Darussalam), of any reduced rates applicable for the corresponding service in the case of press telegrams.⁶⁰⁵

The Act also makes provisions for immunities and privileges of High Officers, Representatives, Official Staffs and families of High Officers.

Brunei Darussalam may decline to accord immunities or privileges to nationals or representatives of any Power on the ground that that Power is failing to accord corresponding immunities and privileges to Brunei nationals or representatives.⁶⁰⁶

10.2.3 Laws and regulations relating to local administration

The Municipal Board Act (Revised Edition 1984) Chapter 57 is the law pertaining to local administration in Brunei Darussalam. The Act provides for the responsibility of a Municipal Board with regard to local administration which includes regulating the construction of buildings, town planning, preservation of trees, sanitation, water supply, electricity, roads, canals and bridges. The Board may

⁶⁰⁵ Diplomatic Privileges (Extension) Cap 85 Schedule (Section 2 (2)) Part I.

⁶⁰⁶ Diplomatic Privileges (Extension) Cap 85 Article 5.

determine the number of housing estate and the name of the street. This Act is being amended by the Municipal Board (Bandar Seri Begawan) (Amendment) By-Laws, 2015; however, it has not yet come into force.

The Municipal Board Act (Revised Edition 1984) states that His Majesty the Sultan and Yang Di-Pertuan in Council may declare any area to be a Municipal Board area for the purposes of this Act.⁶⁰⁷ His Majesty may also appoint any officers or any person declared to work in the Municipal Board area as members of the Board. His Majesty may appoint any Board members as a Chairman and may appoint such other officers as may be necessary for the purposes of the Act. The boundaries of any Municipal Board area may be declared to be coincident with any town limits or may be separately defined. Any declaration or appointment made under this Act may be added to, varied or revoked.⁶⁰⁸

Members of the Municipal Board shall have the duties to take all lawful measures for the following purposes within the area subject to its control:

- (1) The regulation and control of buildings and building operations;
- (2) Under the approval of the Minister, the laying out and maintenance of reserves for recreation and other purposes; the enclosure and care of unoccupied premises; planting and preservation of trees; watercourse management and water treatment; electricity system; management of roads, canals, bridges, number of housing estates and the name of the streets;
- (3) The regulation and control of public drains, water pipes, water treatment ponds, pools and tanks; the premises for the keeping of animals, such as goats and sheep, and poultry; the butchers and permits for sellers of fresh food and food products;
- (4) The construction and maintenance of drainage system; the laying out of drainage system on public and private land; amendment of water drainage map; status of land ownership for drainage water management;

⁶⁰⁷ Municipal Board Act (Revised edition 1984) Cap 57 Article 3.

⁶⁰⁸ Municipal Board Act (Revised edition 1984) Cap 57 Article 3 (1-5).

- (5) The establishment and control of animal markets and abattoirs including the regulation of fees and permits; and the prohibition of sale within the limits of the market area;
- (6) The regulation of pastry shops, laundries and washing places and street traders through registration and licensing;
- (7) The regulation, inspection and permission of hotels, lodging houses, places of entertainment, and public resort through the control of sanitation system;
- (8) The establishment and regulation of public baths including prescription of its usage and rental fees;
- (9) The management of waste and garbage;
- (10) The management and prevention of the occurrence of nuisance and hazard, and any insanitary occupation or operation;
- (11) The prevention and removal of any obstruction to public places;
- (12) The autopsy and cause-of-death certification in the event that the cause of death is not confirmed by a licensed physician;
- (13) The prevention and control of malaria; the treatment and isolation of the patient; and management of the premises for the prevention and control of diseases;
- (14) The management of announcements, signage, symbols and any display of such symbol with other equipment;
- (15) The management and regulation of traffic of motor and animal vehicles, and pedestrians;
- (16) The management of other matters relating to the aforementioned or to the maintenance and improvement of any Municipal Board area.⁶⁰⁹

In addition, the Act provides that His Majesty the Sultan and Yang Di-Pertuan, with advice from the Municipal Board, may prescribe an annual rate for the general purposes of this Act, including also the purposes of public lighting, public water supply, public sewers, sewage treatment and disposal and protection from fire, may be imposed upon all lands and upon all houses and buildings within any Municipal

⁶⁰⁹ Municipal Board Act (Revised edition 1984) Cap 57 Article 4.

Board area not exceeding 15 per centum of their annual value. Such annual value shall be prescribed by His Majesty the Sultan and Yang Di-Pertuan, with advice from the Municipal Board, and shall be paid in January and July of each year.⁶¹⁰ The Board shall give public notice of a day, not being less than 3 weeks from the date of publication of such notice, when it will proceed to consider complaints against such valuation and assessment. When the valuation and assessment is completed, the Board shall also give notice thereof to the owner or occupier of the property.”⁶¹¹

The study of laws and regulations of Brunei Darussalam on strengthening capacity of public sector showed that the Constitution of Brunei Darussalam, which is the supreme law, makes provision for capacity enhancement of the public sector. Moreover, there are a number of Acts with provisions pertaining to good governance, civil service and local administration to maintain peace and security under the national philosophy of Malay Islamic Monarchy. The Constitution and the Acts relating to the strengthening capacity of public sector in Brunei Darussalam provides the supreme power to His Majesty the Sultan and Yang Di-Pertuan, in his discretion, to determine important national administration matters which include government and public administration; prerogatives of royal pardon; management of Consolidated Fund; inspection of the National Account; assignment of privileges to His Majesty the Sultan and Yang Di-Pertuan, his Successors, other members of the Royal Family and ambassadors; and issuing the laws and regulations.

⁶¹⁰ Municipal Board Act (Revised edition 1984) Cap 57 Article 12.

⁶¹⁰ Municipal Board Act (Revised edition 1984) Cap 57 Article 22.

⁶¹¹ Municipal Board Act (Revised edition 1984) Cap 57 Article 22.

Chapter 11

Liability for Wrongful Act of Public Officers Laws and Regulations

11.1 Introduction

Under the Constitution, the remedy of judicial review is not available in Brunei.⁶¹² Also, there is no administrative law in Brunei and as there is no administrative court. The powers of the government are construed to come from powers of the Sultan under the Constitution. Since the Sultan and his delegating powers are above laws by the Constitution⁶¹³, any person acting on behalf of the Sultan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him in his official capacity.⁶¹⁴ However, a large-scale conflict where a private party accuses public officers of wrongful acts will normally be referred to Attorney General Chambers for consultation rather than litigation.⁶¹⁵

There is a legislation concerning the liability for wrongful act of public officers in Brunei to entrust public officers and police with legal protection once they carry out duties in accordance with the law so that they can carry out their duties effectively. In case of misconduct by public officers that jeopardizes public order and security, a banishment may be imposed if there is a well-founded reason to believe that such banishment would restore public order and security.

11.2 Laws and regulations relating to liability for wrongful act of public officers

There is no regulations about officer's liability in Brunei. However, Brunei government adopt the Public Officers (liabilities) Act, 1984 and the Public Officers (Conduct and Discipline) whose main points are detailed below.

1) Public Officers (Liabilities) Act, Revised Edition 1984

⁶¹² Constitution of Brunei Darussalam, Article 84C (1).

⁶¹³ Constitution of Brunei Darussalam, Article 84B (1).

⁶¹⁴ Constitution of Brunei Darussalam, Article 84B (2).

⁶¹⁵ Interview with Professor Madya DR Haji Abdul Mohaimin Bin Haji Noordin Ayus, Dean of Faculty of Law, Universiti Islam Sultan Sharif Ali (UNISSA), at UNISSA 9 April 2015.

The Act makes provision for the liabilities of public officers and the protection from legal proceedings. Public officer means a person employed in the service of the Government of Brunei, and includes Municipal Board and Police Officers.⁶¹⁶ No action shall be maintained against a public officer upon any promise to repay money paid to him; or upon any bill of exchange or promissory note made by him unless it is the criminal and bankruptcy proceedings.⁶¹⁷

All proceedings and documents in or incidental to an action in contravention of this Act shall be void, and where complaint is made by a public officer or by the head of his department that such public officer is dealt with in contravention of this Act by any process, execution, or order issued out of any court, and is made to the court or any court superior to it, the court shall examine into the complaint and shall, if necessary, discharge such public officer without fee and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in an action in such court.⁶¹⁸

2) Public Officers (Conduct and Discipline) Regulations

The Public Officers (Conduct and Discipline) Regulations are similar to the Public Officers (Liabilities) Act, Revised Edition 1984 in the sense that both legislations intend to regulate the conduct of public officers. The Public Officers (Liabilities) Act, Revised Edition 1984 grants legal immunity to the public officers. No action shall be maintained against a public officer upon any promise to repay money paid to him; or upon any bill of exchange or promissory note made by him unless it is the criminal and bankruptcy proceedings. The Public Officers (Conduct and Discipline) Regulations prohibit conducts of a public officer that would conflict with personal interests.

The Regulations state that no officer shall conduct himself in such a manner as to bring his private interests into conflict with his public duties or in such

⁶¹⁶ Section 2 of Public Officers (Liabilities) Act, 1984.

⁶¹⁷ Section 3(1) of Public Officers (Liabilities) Act, 1984.

⁶¹⁸ Section 4 of Public Officers (Liabilities) Act, 1984.

a manner as he knows or can reasonably be expected to know that he has allowed his private interests to come into conflict with his public duties; or use his public position for private advantage. Any breach of this Regulation will render the officer liable to disciplinary proceedings.⁶¹⁹

⁶¹⁹ Regulation 11 of Public Officers (Conduct and Discipline).

Chapter 12

National peace and order laws and regulations

12.1 Introduction

Similar to its focus on development of the country towards prosperity, Brunei Darussalam gives importance to the maintenance of its national security. Short-term and long-term plans have been developed. Cooperation within the country and with other countries have been implemented to achieve the goal of national security. Policies are designed to handle emerging threats such as terrorism, illegal movement of drugs, finance and weapons. As a result, there is development of advanced defence technologies and military forces including army, navy and air force to prepare for the emerging threats.⁶²⁰

Established by His Majesty the Sultan and Yang Di-Pertuan in 1984, the Ministry of Defence of Brunei Darussalam has a direct role in preserving national security. Its mission is to secure freedom and independence, protect its territorial integrity, promote Malay Islamic Monarchy philosophy, and maintain its defence capacities including the army, navy and air force.⁶²¹

Laws and regulations relating to the maintenance of national peace and order in Brunei Darussalam include revolutionary council order; martial law; emergency law; and laws relating to national security and public assembly which are describe in detail as follows.

12.2 National peace and order laws and regulations

12.2.1 Policec laws and regulations

1) Royal Brunei Police Force Act, 1984

⁶²⁰ Brunei Darussalam Defence White Paper 2004; Defending the Nation's Sovereignty; available at http://www-bruneiresources.com/pdf/e_defenswhitepaper.pdf, accessed 26 December 2015.

⁶²¹ Brunei Ministry of Defense; available at <http://www.globalsecurity.org/military/world/brunei/mod.htm>, accessed 26 December 2015.

1.1) Main points of the Royal Brunei Police Force Act of 1984

The Act makes provision that subject to the orders and control of His Majesty the Sultan and Yang Di-Pertuan the Commissioner of Police of the Royal Brunei Police Force may command and be charged with the direction and administration of the Force.⁶²² The Force shall be employed for the maintenance of law and order, the preservation of the public peace, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.⁶²³ Every police officer shall for the purposes of this Act be deemed to be always on duty when required to act as such and shall perform the duties and exercise the powers granted to him under this Act or any other written law at any and every place where he may be doing duty.⁶²⁴ A police officer may in the performance of his duties carry arms and ammunition.⁶²⁵

1.2) Discipline and duties of the police officer

Every police officer shall obey all lawful orders whether given orally or in writing and shall obey and conform and be subject to Police Regulations and any orders made under this Act.⁶²⁶ Any of the following acts shall be deemed to be guilty of an offence where the Commissioner may order that such subordinate police officer be dismissed or retired from the Force.

- absence from duty without leave or good cause;
- sleeping on duty;
- conduct to the prejudice of good order and discipline;
- discreditable conduct;
- disobedience of Police Regulations, or any Orders made under this Act or any orders of a superior police officer whether written or oral;
- being unfit for duty through intoxication;

⁶²² Section 3(1) of Royal Brunei Police Force Act, 1984.

⁶²³ Section 7 of Royal Brunei Police Force Act, 1984.

⁶²⁴ Section 13 of Royal Brunei Police Force Act, 1984.

⁶²⁵ Section 14 of Royal Brunei Police Force Act, 1984.

⁶²⁶ Section 24 of Royal Brunei Police Force Act, 1984.

- insubordination or oppressive conduct;
- neglect of duty or orders;
- malingering;
- falsehood or prevarication;
- excess of duty resulting in loss or injury to any other person;
- wilful destruction or negligent loss of or injury to property belonging to the Government;
- engaging in trade or other employment without the permission of the Commissioner

Nevertheless, the Commissioner may order that such police officer be punished by reduction in rank, seniority or salary; deferment or stoppage of increment; reprimand; caution, and may impose a fine not exceeding 100 Brunei dollars or forfeiture of not more than one month's pay, except in the case of absence without leave or good cause.⁶²⁷ An inspector may also be punished in the same manner and the fine shall be increased to not exceeding 500 Brunei dollars.⁶²⁸

In addition, any police officer who threatens or insults another police officer when such other officer is on duty shall be guilty of an offence.⁶²⁹ This Act provides that no police officer shall resign from the Force during the pendency of any disciplinary proceedings instituted against him.⁶³⁰ Nothing in this Act shall be deemed to prevent the prosecution, conviction and punishment of any police officer under any other written law.⁶³¹

⁶²⁷ Section 25(2) of Royal Brunei Police Force Act, 1984.

⁶²⁸ Section 26(1) of Royal Brunei Police Force Act, 1984 states that "Where an inspector is found guilty by the Commissioner or an authorised police officer of any offence specified in section 25 (2), the Commissioner may order that such inspector be dismissed or retired from the Force or may punish him."

⁶²⁹ Section 29 of Royal Brunei Police Force Act, 1984.

⁶³⁰ Section 33 of Royal Brunei Police Force Act, 1984 states that "Notwithstanding any other provision of this Act no police officer shall, without the written permission of the Commissioner, resign from the Force during the pendency of any disciplinary proceedings, any offence, an appeal, punishment, conviction or sentence instituted against him."

⁶³¹ Section 34(1) of Royal Brunei Police Force Act, 1984.

1.3) Duties of the Force

The duties of the Force shall be to take lawful measures for⁶³²

- preserving the public peace;
- preventing and detecting crimes and offences;
- collecting and processing security intelligence;
- apprehending all persons whom police officers are legally authorised to apprehend;
- regulating processions and assemblies in public places;
- regulating the traffic upon public thoroughfares, and removing obstructions therefrom;
- preserving order in public places, for which purpose any police officer on duty shall have free admission to all such places while open to any member of the public;
- assisting in carrying out the revenue, excise, health, conservancy, quarantine and immigration laws;
- assisting in preserving order in the ports and harbours and airports of Brunei Darussalam, and in enforcing the laws relating thereto;
- executing summonses, subpoenas, warrants, commitments and other process issued by courts;
- escorting and guarding prisoners.

1.4) Royal Brunei Police Force Commission

No person shall be permitted or compelled to produce or disclose any communication between the Commission or any of its members and the Government or any public officer unless His Majesty shall in writing consent to such production or disclosure.⁶³³ Every member of the Commission shall have such and like protection and privileges in case of any action or suit brought against him, for

⁶³² Section 38 of Royal Brunei Police Force Act, 1984.

⁶³³ Section 45 of Royal Brunei Police Force Act, 1984.

any act done or omitted to be done by him when acting in the execution of his office.⁶³⁴

Nevertheless, the Act stipulates that any person who wilfully gives to the Commission any information which is false or misleading shall be guilty of an offence.⁶³⁵ Any member of the Commission who publish or disclose to any unauthorised person the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under this Act shall be guilty of an offence.⁶³⁶ Moreover, any person who influences or attempts to influence any decision of the Commission shall be guilty of an offence.⁶³⁷

1.5) Offences

Any police officer who, without reasonable cause, the onus of proof whereof shall rest with him, absents himself from duty for a continuous period of 21 days or under circumstances which show that he has the intention of not returning to his duty shall be deemed to have deserted, and shall be guilty of an offence: Penalty, imprisonment for 12 months.⁶³⁸ Any police officer who causes, incites, or joins in any mutiny or disaffection in the Force or conspires with any other person to cause such mutiny or disaffection, or does not use his utmost endeavour to suppress any such mutiny or disaffection, or having knowledge of any mutiny or disaffection or

⁶³⁴ Section 46 of Royal Brunei Police Force Act, 1984.

⁶³⁵ Section 47 of Royal Brunei Police Force Act, 1984 states that “Any person who, in connection with an application by any person for employment or appointment in the Force or with the exercise by the Commission of any of its functions willfully gives to the Commission which is false or misleading in any material particular shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of \$2,000.”

⁶³⁶ Section 48(1) of Royal Brunei Police Force Act, 1984 states that “No member of the Commission shall publish or disclose to any unauthorised person of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under this Act; and any person who knowingly acts in contravention of this subsection shall be guilty of an offence: Penalty, imprisonment for one year and a fine of \$2,000.”

⁶³⁷ Section 49 of Royal Brunei Police Force Act, 1984 states that “Every person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Commission or any member thereof shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of \$5,000 .”

⁶³⁸ Section 55 of Royal Brunei Police Force Act, 1984.

intended mutiny or disaffection, does not, without delay, give information thereof to the police officer to whom he is subordinate, shall be guilty of an offence: Penalty, imprisonment for 15 years.⁶³⁹ Any person who causes or attempts to cause or does any act calculated to cause disaffection amongst the members of the Force or additional police officers or induces or attempts to induce any such member or any additional police officer to withhold his services or to commit a breach of discipline shall be guilty of an offence: Penalty, imprisonment for 2 years and a fine of 5,000 Brunei dollars.⁶⁴⁰

Any person, not being a police officer, who is found in possession of any article which has been supplied to any police officer for the execution of his duty, or any medal or decoration granted to any police officer for gallantry, service or good conduct shall be guilty of an offence under this Act. Additionally, any person who, without the permission of the Commissioner, manufactures, sells or supplies any badge or device used to indicate that a person is a police officer; or wears, uses or displays any uniform of the Force or any badge or device to indicate that he is a police officer shall be guilty of an offence under this Act.⁶⁴¹

Any person who, in a police station, behaves in a riotous, indecent, disorderly or insulting manner shall be guilty of an offence under this Act.⁶⁴² In addition, the Act makes provision that no police officer shall be a member of any trade union or any association affiliated to a trade union; any political party; or any association with political objects.⁶⁴³

2) Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003

2. 1) Main points of the Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

⁶³⁹ Section 56 of Royal Brunei Police Force Act, 1984.

⁶⁴⁰ Section 57(1) of Royal Brunei Police Force Act, 1984.

⁶⁴¹ Section 58 of Royal Brunei Police Force Act, 1984.

⁶⁴² Section 59 of Royal Brunei Police Force Act, 1984.

⁶⁴³ Section 62(1) of Royal Brunei Police Force Act, 1984.

The Royal Brunei Police Force (Disciplinary Proceeding) Regulations of 2003 make provision for where the Commission finds that any senior police officer is guilty of an offence specified in section 25(2) of the Royal Brunei Police Force Act, Revised Edition of 1984: an absence from duty without leave or good cause. If the Commission is of the opinion the subject of the complaint is not serious enough to warrant proceedings, the Commission may order an investigation to be made into the matter in such manner as it thinks fit. The senior police officer shall have a reasonable opportunity of replying in writing of the case against him.

The Commission may, after considering the case made against the senior police officer, his reply thereto and the results of the investigation, if it is of the opinion that the allegation has been proved, recommend to His Majesty the Sultan and Yang Di-Pertuan the imposition of a penalty. If the results of such investigation disclose grounds for so doing, the Commission may recommend His Majesty the Sultan and Yang Di-Pertuan that the senior police officer be required to retire with or without a reduction in retirement benefits.⁶⁴⁴

If the Commission finds that any senior police officer is guilty of any offence specified in section 25(2) of the Royal Brunei Police Force Act, Revised Edition of 1984 including the conduct to the prejudice of good order and discipline; discreditable conduct; or disobedience of Police Regulations, or any Orders made under this Act or any orders of a superior police officer and the Commission is of the opinion that the subject of the complaint warrants proceedings with a view to dismissal or reduction in rank, the Commission may cause proceedings to be taken under this Regulation. The senior police officer shall be informed in writing of the grounds upon which it is intended to dismiss him or to reduce his rank and he shall be able to exculpate himself in writing. If an exculpatory statement is not satisfactory, the Commission shall appoint a Committee to inquire into the matter and to submit a report to the Commission. The senior police officer shall be informed of the date on which the Committee will commence its inquiry and the senior police officer shall attend the inquiry and shall be permitted to cross-examine the witnesses; to give evidence on his own behalf; to have such witnesses as he may wish called on his behalf; and to have access to information contained in any

⁶⁴⁴ Regulation 4 of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

document at a reasonable time before the document is tendered in evidence.

The Commission may, upon considering the report of the Committee, if it is of the opinion that the senior police officer should be dismissed or reduced in rank, recommend to His Majesty the Sultan and Yang Di-Pertuan such punishment; or recommend the imposition of some lesser penalty such as fine or reprimand; or recommend that the senior police officer should retire with or without a reduction in retirement benefits.⁶⁴⁵

Nevertheless, any senior police officer who is aggrieved by a decision of His Majesty the Sultan and Yang Di-Pertuan made on the recommendation of the Commission may appeal against such decision.⁶⁴⁶

2.2) Interdiction

If in any case the Commission considers that the public interest requires that a senior police officer should cease to exercise the powers and functions of his office immediately, the Commission may recommend to His Majesty the Sultan and Yang Di-Pertuan that the senior police officer be interdicted from the exercise of the powers and functions of his office.⁶⁴⁷

2.3) Criminal proceedings

If criminal proceedings are instituted against a senior police officer, proceedings for his dismissal upon any grounds involved in the criminal charge shall not be taken until the criminal proceedings have been determined; or if there is an appeal against conviction, the appeal has been withdrawn or deemed to have been withdrawn or disposed of by the Appellate Court.⁶⁴⁸

⁶⁴⁵ Regulation 5 of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

⁶⁴⁶ Regulation 10 (1) of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003 states that “Any senior police officer who is aggrieved by a decision of His Majesty the Sultan and Yang Di-Pertuan made on the recommendation of the Commission under these Regulations may by petition through the Permanent Secretary appeal against such decision to His Majesty the Sultan and Yang Di-Pertuan within 14 days of being notified thereof or within such further time as His Majesty the Sultan and Yang Di-Pertuan may allow.”

⁶⁴⁷ Regulation 7 (1) of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

⁶⁴⁸ Regulation 8 of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

2. 4) Emoluments withheld and Forfeiture of allowances or other benefits

A senior police officer convicted of a criminal charge shall not, unless the Commission otherwise directs, receive any emoluments from the date of conviction, pending consideration of his case by the Commission.⁶⁴⁹ A senior police officer who is dismissed forfeits all claim to any allowance or other benefit which he would have enjoyed, but for his dismissal.⁶⁵⁰

12.2.2 State of emergency laws and regulations

The Sedition Act of 1948, Revised Edition 2010 is the law relating the state of emergency in Brunei Darussalam. The main points are elaborated below.

1) Seditious intention

A Seditious intention is an intention to:

- bring into hatred or contempt or to excite disaffection against His Majesty the Sultan and Yang Di-Pertuan or the Government,⁶⁵¹ the administration of justice in Brunei Darussalam,⁶⁵² and to directly or indirectly lower or adversely affect, or otherwise bring into derogation, the status of His Majesty the Sultan and Yang Di-Pertuan, his Successors, or other members of the Royal Family;⁶⁵³ or
- raise discontent or disaffection amongst the inhabitants of Brunei Darussalam, or⁶⁵⁴ promote feelings of ill will and hostility between different classes of the population of Brunei Darussalam;⁶⁵⁵ or
- directly or indirectly lower or adversely affect the standing or prominence of the National Philosophy of Malay Islamic Monarchy.⁶⁵⁶

⁶⁴⁹ Regulation 11 (1) of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

⁶⁵⁰ Regulation 13 (1) of Royal Brunei Police Force (Disciplinary Proceeding) Regulations, 2003.

⁶⁵¹ Section 3 (1) (a) of Sedition Act, 1948.

⁶⁵² Section 3 (1) (c) of Sedition Act, 1948.

⁶⁵³ Section 3 (1) (f) of Sedition Act, 1948.

⁶⁵⁴ Section 3 (d) of Sedition Act, 1948.

⁶⁵⁵ Section 3 (1)(e) of Sedition Act, 1948.

⁶⁵⁶ Section 3 (1)(g) of Sedition Act, 1948.

2) Offences of sedition

Any person who does or attempts to do, or makes preparation to do, or conspires with any person to do, any act with a seditious intention; utters any words with a seditious intention; or prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication is guilty of an offence and liable to a penalty under this Act.⁶⁵⁷

3) Offences of seditious publication

Whenever any person is convicted of publishing in any newspaper any matter having a seditious tendency, the court may make orders to prohibit the future publication of that newspaper; or prohibit the publisher or editor of that newspaper from publishing any newspaper for any period not exceeding one year from the date of the order.⁶⁵⁸

When the state of emergency was declared in 1975, His Majesty the Sultan and Yang Di-Pertuan issued an order to establish the Security and Defence Fund Order of 1975 (S63/12) into which a sum of seven million dollars was credited.⁶⁵⁹ The Fund shall be spent for any expenditure incurred for the security and defence of the State.⁶⁶⁰

In 1962, Brunei Darussalam issued the Proclamation Emergency (S28/06) as provided under the Constitution in the occasion of emergency or imminent public danger or whereby the security or economic life of Brunei Darussalam is or may be threatened, whether by war or external aggression or internal disturbance.⁶⁶¹ No Proclamation of Emergency shall be in force for more than 2 years.⁶⁶²

The Emergency Regulation Act of 1984 makes provision for His Majesty the Sultan and Yang Di-Pertuan in Council the power to declare a state of emergency⁶⁶³

⁶⁵⁷ Section 4 (1) of Sedition Act, 1948.

⁶⁵⁸ Section 4A(1) of Sedition Act, 1948.

⁶⁵⁹ Section 3 of The Constitution of the state of Brunei, 1959.

⁶⁶⁰ Section 4 of The Constitution of the state of Brunei, 1959.

⁶⁶¹ Proclamation Emergency, No. 2505.

⁶⁶² Proclamation Emergency, No. 2505.

⁶⁶³ Section 2 (1) of Emergency Regulation Act, 1984 states that “Whenever it appears to His Majesty the Sultan and Yang DiPertuan in Council that an occasion of emergency or public danger has arisen, or that any action has been taken or is immediately threatened by any persons, or body of persons, of such a nature and on so

and make any regulations in an occasion of emergency or public danger.⁶⁶⁴ Such regulations may be made without prejudice to the generality of this Act; for example, on matters relating to arrest, detention, control of the transport, and distribution of food.⁶⁶⁵

In 2004, Brunei Darussalam issued the Emergency (Continuation and Validation of Emergency Provision) Order of 2004 which granted His Majesty the

extensive a scale as to be calculated by interfering with the supply and distribution of food, water, fuel or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life he may declare that a state of emergency exists either in the whole of Brunei Darussalam or in such part of Brunei Darussalam as may be specified in the proclamation.”

⁶⁶⁴ Section 3 (1) of Emergency Regulation Act, 1984 states that “When a proclamation of emergency has been made and so long as such proclamation is in force, it shall be lawful for His Majesty in Council to make any regulations whatsoever which he considers desirable in the public interest; and to prescribe penalties which may be imposed for any offence against any such regulation; and to provide for the trial by courts of summary jurisdiction of persons guilty of such offences; provided that no such regulation shall confer any right to punish by death, fine or imprisonment without trial, and that, except in so far as such procedure may be modified by any such regulation, the existing procedure in criminal cases shall apply in respect of any breach of any such regulation.”

⁶⁶⁵ Section 3 (2) of Emergency Regulation Act, 1984 states that “Without prejudice to the generality of subsection (1), such regulations may be made with regard to any matters coming within the classes of subjects hereinafter enumerated, that is to say —

- (a) censorship, and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
- (b) arrest, detention, exclusion and deportation;
- (c) control of the harbours, ports and territorial waters of Brunei Darussalam, and of the movements of vessels;
- (d) transportation by land, air or water, and the control of the transport and movement of persons, animals and things;
- (e) trading, storage, exportation, importation, production and manufacture;
- (f) supply and distribution of food, water, fuel, light and other necessities;
- (g) appropriation, control, forfeiture and disposition of property and of the use thereof;
- (h) conferring powers on public officers and others;
- (i) requiring persons to do work or render services;
- (j) constituting a special police force;
- (k) formation of tribunals and other bodies for the purpose of deciding any matters specified in any regulations but having no power to inflict fines or imprisonment;
- (l) modification, amendment, supersession or suspension of all or any of the provisions of any written law;
- (m) entry into and search of premises or other places and search and interrogation of persons;
- (n) prescribing fees or other payments.”

Sultan and Yang Di-Pertuan an absolute and unfettered discretion to issue orders desirable in the public interest.⁶⁶⁶

12.2.3 National security laws and regulations

Laws and regulations relating to national security in Brunei Darussalam include the Internal Security Act of 1982, Revised Edition 2008 which is described in detail below.

1) Powers of Prevention Detention

His Majesty the Sultan and Yang Di-Pertuan may order to prevent any person from acting in any manner prejudicial to the security of Brunei Darussalam or to the maintenance of public order. Such order shall not exceed two years and for the purposes provided for by this Act.⁶⁶⁷ Nevertheless, the order may be suspended subject to conditions made under this Act.⁶⁶⁸

⁶⁶⁶ Konrad Adenauer Stiftung Edited by Marc Spitzkatz, Rule of Law: Perspectives from Asia, The Rule of Law Programme Asia, 2013, p. 33, available at http://www.kas.de/wf/doc/kas_35615-1522-2-30.pdf?131004060311 accessed December 24, 2015.

⁶⁶⁷ Section 3 (1) of Internal Security Act, 1982 states that “If His Majesty the Sultan and Yang Di-Pertuan is satisfied with respect to any person that, in order to prevent that person from acting in any manner prejudicial to the security of Brunei Darussalam or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order —

(a) directing that such person be detained for any period not exceeding 2 years; or

(b) for all or any of the following purposes —

(i) for imposing upon that person such restrictions as may be specified in the order in respect of his activities and the places of his residence and employment;

(ii) for prohibiting him from being out of doors between such hours as may be specified in the order, except under the authority of a written permit granted by such authority or person as may be so specified;

(iii) for requiring him to notify his movements in such manner at such times and to such authority or person as may be specified in the order;

(iv) for prohibiting him from addressing public meetings or from holding office in, or taking part in the

activities of or acting as adviser to any organisation or association, or from taking part in any political

activities;

In addition, the Act makes provision for the establishment of an advisory board⁶⁶⁹ who may review every detention order or direction made;⁶⁷⁰ or summon and examine the witnesses.⁶⁷¹ The advisory board member shall be deemed to be a public servant⁶⁷² and shall not be required to disclose facts or produce documents he considers to be against the national interest.⁶⁷³

(v) for prohibiting him from travelling beyond the limits of Brunei Darussalam or any part thereof specified in the order except in accordance with permission given to him by such authority or person as may be specified in such order,

⁶⁶⁸ Section 4 of Internal Security Act, 1982 states that “At any time after an order has been made under section 3(1)(a) or after such an order has been extended by a direction under section 3(2) in respect of any person the Minister may direct that the operation of such order be suspended subject to the execution of a bond and to such conditions —

(a) imposing upon that person such restrictions as may be specified in the direction in respect of his activities and the places of his residence and employment;

(b) prohibiting him from being out of doors between such hours as may be so specified, except under the authority of a written permit granted by such authority or person as may be so specified;

(c) requiring him to notify his movements in such manner at such times and to such authority or person as may be so specified;

(d) prohibiting him from travelling beyond the limits of Brunei Darussalam or any part thereof specified in the direction except in accordance with permission given to him by such authority or person as may be so specified;

(e) prohibiting him from addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to any organisation or association, or from taking part in any political activities;

(f) permitting him to return to the country to which he belongs or to any other place to which he wishes to proceed provided that the Government of such place consents to receive him.”

⁶⁶⁹ Section 6(1) of Internal Security Act, 1982 states that “Whenever an advisory board has been appointed by His Majesty the Sultan and Yang Di-Pertuan to enquire into the grounds of every order made by the Minister under section 3(1)(a), the advisory board shall, within 3 months of the date of such appointment or within such period as may be specified by His Majesty the Sultan and Yang Di-Pertuan, complete its enquiry and forthwith submit its recommendations thereon to His Majesty the Sultan and Yang Di-Pertuan.”

⁶⁷⁰ Section 6A (1) of Internal Security Act, 1982 states that “Every order or direction made or given by the Minister under sections 3 or 4 (including any order extended with the approval of His Majesty the Sultan and Yang Di-Pertuan under section 3(2) shall, so long as it remains in force, be reviewed by an advisory board at intervals of not more than one year.”

⁶⁷¹ Section 7 of Internal Security Act, 1982 states that “Every advisory board shall, for the purposes of this Act, have all the powers of a court for the summoning and examination of witnesses, the administration of oaths or affirmations, and for compelling the production of documents.”

⁶⁷² Section 8 of Internal Security Act, 1982 states that “Every member of an advisory board shall be deemed to be a public servant within the meaning of the Penal Code (Chapter 22), and shall have in case of any action or

2) Power to prohibit certain entertainments or exhibitions

The Minister of Home Affairs may by order prohibit the holding of any entertainment or exhibition if:

- such entertainment or exhibition is or is likely to be in any way detrimental to the national interest;⁶⁷⁴ or
- there has been any refusal of or failure to furnish any information required by the Minister such as information relating to particulars of persons concerned in such entertainment or exhibition and the interests represented by such persons; particulars of the persons who have agreed to participate; the purposes of which any profits from the entertainment or exhibition are intended to be; and such other matters as the Minister may direct;⁶⁷⁵ or
- The Minister may require the promoter of the entertainment or exhibition to observe such conditions relating to the holding of such entertainment or exhibition to ensure that such entertainment or exhibition is not in any way detrimental to the national interest.⁶⁷⁶

The Act provides for the powers of police officer to make an investigation and inspection of any entertainment or exhibition. Any person who obstructs shall be guilty of an offence.⁶⁷⁷

3) Powers for the prevention of subversion

suit brought against him for any act done or omitted to be done in the execution of his duty under this Chapter the like protection and privileges as are by law given to a judge in the execution of his office.”

⁶⁷³ Section 9 of Internal Security Act, 1982 states.

⁶⁷⁴ Section 16 (1) of Internal Security Act, 1982.

⁶⁷⁵ Section 13 (1) of Internal Security Act, 1982.

⁶⁷⁶ Section 14 of Internal Security Act, 1982.

⁶⁷⁷ Section 17 of Internal Security Act, 1982.

The Act also makes provision for other powers of the Minister authorised by His Majesty the Sultan and Yang Di-Pertuan to make order on the following matters.

- Closing of any school or educational institution if it is being used for a purpose detrimental to the interests of Brunei Darussalam;⁶⁷⁸
- Forbidding an applicant to be admitted as a student where there appear to him to be reasonable grounds for believing that he would likely to promote, or otherwise participate in, any action prejudicial to the interests of Brunei Darussalam.⁶⁷⁹

4) Special provisions relating to security areas

If in the opinion of His Majesty public security in any area in Brunei Darussalam is seriously disturbed or threatened by reason of any action taken or threatened by any substantial body of persons, whether inside or outside Brunei Darussalam, to cause a substantial number of citizens to fear organised violence against persons or property, he may proclaim such area as a security area.⁶⁸⁰ The Minister, if he considers it necessary or expedient in the public security so to do, may by order declare any area within a security area to be a danger area.⁶⁸¹ The limits and extent of every danger area shall be demarcated that such area has been

⁶⁷⁸ Section 24(2) of Internal Security Act, 1982 states that “The Minister, if he is satisfied at any time that a school or educational institution is being used –

- (a) for a purpose detrimental to the interests of Brunei Darussalam or of the public;
- (b) for purpose of instruction detrimental to the interests of the public or of the pupils; or
- (c) as a meeting-place of an unlawful society.”

⁶⁷⁹ Section 24A(1) of Internal Security Act, 1982 states that “The Minister, where there appear to him to be reasonable grounds for believing that an applicant to be admitted as a student of an institution of higher education in Brunei Darussalam to which this section applies would be likely to promote, or otherwise participate in, any action prejudicial to the interests or security of Brunei Darussalam or any part thereof, may by order in writing forbid him from being so admitted.”

⁶⁸⁰ Section 30 (1) of Internal Security Act, 1982.

⁶⁸¹ Section 31 (1) of Internal Security Act, 1982.

declared a danger area.⁶⁸² The Minister may also declare any area within a security area to be a controlled area.

The Commissioner of Police may, by order designate the whole or part of a security area, as a curfew area.⁶⁸³ Every person within a curfew area shall remain within doors, or within the curfew area between such hours as may be specified in the order, unless in possession of a written permit in that behalf issued by a police officer of or above the rank of inspector.⁶⁸⁴

The Minister may if it appears to him to be necessary or expedient so to do in the interests of public security, take possession of any land or of any building in any security area. Any police officer may take such steps and use such force as appears to him to be reasonably necessary for securing compliance with directions.⁶⁸⁵

In addition, any police officer or any person duly authorised may regulate, restrict or prohibit the use of any road or waterway in any security area; and may similarly regulate, restrict or prohibit the travelling by any person in any vessel in such area.⁶⁸⁶

Upon the power conferred by this Act, the Internal Security (Detained Persons Advisory Board) Rules (CAP 133 R. 2) were made. The Rules provide for the detention of any person for the purpose of internal security. His Majesty the Sultan and Yang Di-Pertuan may make regulations relating to the detention of a person.⁶⁸⁷ The officer-in-charge shall inform every person in pursuance of a detention order as soon as practicable that he has the right to make representations.⁶⁸⁸

The Internal Security (Place of Detention) Rules were also made to define a place of detention and provided the administration of a place of detention to a Director.⁶⁸⁹ All detained persons are duly committed to the custody of a

⁶⁸² Section 31 (2) of Internal Security Act, 1982.

⁶⁸³ Section 35 (1) of Internal Security Act, 1982.

⁶⁸⁴ Section 35 (2) of Internal Security Act, 1982.

⁶⁸⁵ Section 36 (1)(2) of Internal Security Act, 1982.

⁶⁸⁶ Section 38 (1) of Internal Security Act, 1982.

⁶⁸⁷ Section 38 (1) of Internal Security Act, 1982.

⁶⁸⁸ Section 3 (1) of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁸⁹ Section 3 (1) of Internal Security (Detained Persons Advisory Board) Rules, 2005.

Director.⁶⁹⁰ The control of officers of place of detention throughout Brunei Darussalam shall be vested in the Director.⁶⁹¹ The Director shall supervise and control all matters in connection with any place of detention.⁶⁹² Every officer may use weapons against any detained person escaping or attempting to escape.⁶⁹³ The Director shall inspect the issuing of the detained persons' meals⁶⁹⁴ and shall give immediate notice to the relative upon the dangerous illness or death of any detained person.⁶⁹⁵

12.2.4 Maintenance of public order laws and regulations

Laws and regulations relating to the maintenance of public order in Brunei Darussalam include the Public Order Act of 2013 (CAP. 148) which prohibits quasi military organisation and illegal drilling; or any political promotion. Additionally, the Act makes provision for the Commissioner of Police to impose a curfew or issue an order to detain any person involved in the unrest. Main points of the Public Order Act are described as follows.

1) Control of Uniforms, Flags, Quasi Military Organisations, Illegal Drilling, and Assemblies

The Act stipulates that any of the following acts shall be guilty of an offence under this Act.

- Any person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political organisation or object;⁶⁹⁶

⁶⁹⁰ Section 4 of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁹¹ Section 5(1) of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁹² Section 7 of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁹³ Section 15(1) of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁹⁴ Section 23 of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁹⁵ Section 25 of Internal Security (Detained Persons Advisory Board) Rules, 2005.

⁶⁹⁶ Section 4(1) of Public Order, 1983.

- Any person who displays any society flag which has not been approved by His Majesty the Sultan and Yang Di-Pertuan in Council or in contravention of any conditions imposed by His Majesty the Sultan and Yang Di-Pertuan in Council;⁶⁹⁷
- Where members or adherents of any association of persons are organised, trained or equipped for the purpose of enabling them to be employed in usurping the functions of any security force, or either for the use or display of physical force in promoting any political or other object;⁶⁹⁸
- Any person who attends any assembly for the purpose of training or of drilling for the purpose of practising military exercises, movements or evolutions.⁶⁹⁹

Any person who wishes to organise or convene a meeting or a procession in a public place shall first make an application for a permit in that behalf to the Commissioner of Police.⁷⁰⁰ If the Minister considers it expedient in the interest of public safety and the maintenance of public order at any time, he may prohibit the organising, convening or holding of any assembly in any place.⁷⁰¹

2) Powers for maintenance of public order

The Commissioner of Police may order or give directions to:

- close any road, street, path, waterway or public place to the public⁷⁰² and place barriers in or across any road, street, path, or waterway as he may think fit;⁷⁰³
- by order require every person within the area to remain within doors during such period and between such hours as may be

⁶⁹⁷ Section 5(4) of Public Order, 1983.

⁶⁹⁸ Section 7 (1) of Public Order, 1983.

⁶⁹⁹ Section 8 (1) of Public Order, 1983.

⁷⁰⁰ Section 9 (1) of Public Order, 1983.

⁷⁰¹ Section 10 (1) of Public Order, 1983.

⁷⁰² Section 13 of Public Order, 1983.

⁷⁰³ Section 14 (1) of Public Order, 1983.

specified therein if he considers it expedient in the interests of public safety, in which such order shall remain in force not exceeding 3 days unless confirmed by the Minister;⁷⁰⁴

- by order exclude all persons or any class of persons from the area or from any place or building therein specified in such order;⁷⁰⁵
- detain any person who may cause or provoke a breach of the peace in a special area;⁷⁰⁶
- prohibit the use, possession or custody of firearms and ammunition during the continuance of such order;⁷⁰⁷
- withdraw, by order of the Minister, the use of all or any telecommunication facilities from any person or class of persons in any area within a special area specified in the order;⁷⁰⁸
- arrest and detain any person whom the police officer suspects to have acted or is about to act in any manner prejudicial to the public safety or the maintenance of public order;⁷⁰⁹
- search any person, vehicle or premises for any offensive weapon, subversive article or injurious thing⁷¹⁰ and dispose of such offensive weapon, subversive article or injurious thing;⁷¹¹
- use such force including the use of lethal weapons as may be reasonably necessary and notwithstanding anything to the contrary contained in any other written law.⁷¹²

In addition, the Protected Areas and Protected Places Act, Revised

⁷⁰⁴ Section 15(1) of Public Order, 1983.

⁷⁰⁵ Section 16(1) of Public Order, 1983.

⁷⁰⁶ Section 16A (1) of Public Order, 1983.

⁷⁰⁷ Section 17 (1) of Public Order, 1983.

⁷⁰⁸ Section 15A of Public Order, 1983.

⁷⁰⁹ Section 18(1) of Public Order, 1983.

⁷¹⁰ Section 19 (1) of Public Order, 1983.

⁷¹¹ Section 20 (1) of Public Order, 1983.

⁷¹² Section 21 (1) of Public Order, 1983.

Edition 1984 provides for the protection of areas and places. The main points of the Act are described as follows.

1) Authorisation of guards and watchmen

The Commissioner of Police may authorise any person performing the duties of a guard or watchman in a protected area or a protected place or to exercise the powers of an authorised officer under this Act.⁷¹³

2) Protected areas

The Minister may by order declare any area to be a protected area if it appears to be necessary. Any person who is in any protected area shall comply with such directions for regulating his movement and conduct as may be given by an authorised officer. If any person while in a protected area fails to comply with any direction given then he may be removed from the area.⁷¹⁴

3) Protected places

The Minister may by order declare any place or premises to be a protected place if it appears to be necessary and no person shall be in that place or those premises unless he has received the permission of such authority to enter the same. Where any person is granted permission to be in a protected place, that person shall comply with such directions for regulating his conduct as may be given by the authority granting the permission. If any person while in a protected place fails to comply with any direction given then he may be removed from the place.⁷¹⁵

Any person who attempts to enter or who is in a protected area or a protected place and who fails to stop after being challenged 3 times by an authorised officer so to do may be arrested by force.⁷¹⁶

4) Defensive measures at protected areas and places

⁷¹³ Section 3 of Protected Areas and Protected Places Act, 1984.

⁷¹⁴ Section 4 of Protected Areas and Protected Places Act, 1984.

⁷¹⁵ Section 5 of Protected Areas and Protected Places Act, 1984.

⁷¹⁶ Section 9 of Protected Areas and Protected Places Act, 1984.

It shall be lawful for the Minister to authorise the taking of such steps as he may deem necessary for the protection of any protected area or protected place, and such steps may extend to the taking of defensive measures which involve or may involve danger to the life of any person entering or attempting to enter a protected area or protected place.⁷¹⁷

12.2.5 Military and security unit laws and regulations

Laws and regulations relating to military include the Royal Brunei Armed Forces Act, Revised Edition 1984 which provides for the Armed Forces and the Reserve Regiment operating in land, sea and air where each consists of its own units. Main points of the Act are detailed below.

1) Military forces

- It shall consist of such number of persons as His Majesty the Sultan and Yang Di-Pertuan may determine⁷¹⁸ and shall be under the supreme government, command and disposition of His Majesty.⁷¹⁹
- His Majesty the Sultan and Yang Di-Pertuan in Council may make regulations providing for the temporary enlistment into the Armed Forces or the Reserve Regiment of eligible young persons of including females as cadets.⁷²⁰
- A recruiting officer may enlist such eligible persons who have attained the age of 17 ½ years.⁷²¹

2) Reserve Regiment

- His Majesty the Sultan and Yang Di-Pertuan may by order

⁷¹⁷ Section 10 (1) of Protected Areas and Protected Places Act, 1984.

⁷¹⁸ Section 3 (1) of Royal Brunei Armed Forces Act, 1984.

⁷¹⁹ Section 3 (2) of Royal Brunei Armed Forces Act, 1984.

⁷²⁰ Section 6 of Royal Brunei Armed Forces Act, 1984.

⁷²¹ Section 12 of Royal Brunei Armed Forces Act, 1984.

authorise the calling out of the Reserve Regiment for full-time service as per conditions specified in this Act including where a state of war exists; where national danger is imminent or; or to aid the Government in the preservation of public order.⁷²²

- Any member of the Reserve Regiment may be called out for training in Brunei or abroad.⁷²³

3) Misconduct in action arising out of military service

Certain actions conducted by military forces shall be guilty of an offence under this Act. Such actions include assisting the enemy;⁷²⁴ being captured by the enemy through disobedience to orders;⁷²⁵ neglecting to perform any duty of any description;⁷²⁶ taking part in a mutiny;⁷²⁷ and desertion from military service.⁷²⁸

Additionally, Brunei Darussalam has issued the Royal Brunei Armed Forces Regulation of 2013 which provides for an appointment of a commanding officer and a subordinate officer,⁷²⁹ and a delegation of the power to a subordinate commander.⁷³⁰

Brunei Darussalam has also passed the Security Agencies Act, Revised Edition of 2000 which provides for the licensing and control of those persons who carry on the business of or act as security guard agency. A person who is the holder of a security guard agency's licence may employ persons to be security guards. No person shall carry on the business of a security guard agency without a licence.⁷³¹ An application shall be made to the licensing officer for the grant of a licence. The licensing officer shall consider the application and may refuse to grant a licence if satisfactory evidence has not been produced to show that the applicant is a fit and

⁷²² Section 25 (1) of Royal Brunei Armed Forces Act, 1984.

⁷²³ Section 28 (1) of Royal Brunei Armed Forces Act, 1984.

⁷²⁴ Section 32 of Royal Brunei Armed Forces Act, 1984.

⁷²⁵ Section 34 of Royal Brunei Armed Forces Act, 1984.

⁷²⁶ Section 35 of Royal Brunei Armed Forces Act, 1984.

⁷²⁷ Section 37(1) of Royal Brunei Armed Forces Act, 1984.

⁷²⁸ Section 43 (1) of Royal Brunei Armed Forces Act, 1984.

⁷²⁹ Section 3 of Royal Brunei Armed Forces Regulations, 2006.

⁷³⁰ Section 6(1) of Royal Brunei Armed Forces Regulations, 2006.

⁷³¹ Section 5 (1) of Security Agencies Act, 2000.

proper person to hold a licence.⁷³² Every licensee shall exhibit his licence or a certified copy in a conspicuous place.⁷³³ The licence may be revoked if the licensee improperly obtained his licence; has ceased to carry on the business; or goes into liquidation.⁷³⁴

A person who is the holder of a security guard agency's licence may employ as many persons as he may consider necessary to be security guards and shall at all times during such employment be legally responsible for the good conduct in the business of each and every person so employed.⁷³⁵ Every person to be employed shall submit a statement to the licensing officer.⁷³⁶ Every licensee shall provide and issue to his employees, who are employed to assist in the work of a security guard, identification papers in such form and containing such particulars as may be prescribed.⁷³⁷

12.2.6 Anti-terrorism laws and regulations

Brunei Darussalam has the Anti-Terrorism Order 2011, amended by Anti-Terrorism (Amendment) Order of 2012 which makes provision for measures to be taken against offences under this Order including terrorism, being a member of terrorist groups, providing financial support to terrorist, or supporting any terrorist group to commit any terrorist act. This Order specifies that the following acts shall be guilty of an offence.

- Any person who provide, collects, or makes available any property to be used to commit a terrorist act;⁷³⁸
- Any person who provides or makes available financial or other related services for the purpose of committing a terrorist act;⁷³⁹

⁷³² Section 6 of Security Agencies Act, 2000.

⁷³³ Section 8 (1) of Security Agencies Act, 2000.

⁷³⁴ Section 9 (1) of Security Agencies Act, 2000.

⁷³⁵ Section 11 (1) of Security Agencies Act, 2000.

⁷³⁶ Section 12 (1) of Security Agencies Act, 2000.

⁷³⁷ Section 13 (1) Security Agencies Act, 2000.

⁷³⁸ Section 4 of Anti-Terrorism Order, 2011.

⁷³⁹ Section 5 of Anti-Terrorism Order, 2011.

- Any person who uses or possesses property for the purpose of committing a terrorist act;⁷⁴⁰
- Any person who facilitates the acquisition, retention or control of terrorist property;⁷⁴¹
- Any person who knowingly deals, acquires or possesses terrorist property or provides financial or other services in respect of terrorist property;⁷⁴²
- Any person who solicits support for any terrorist group or the commission of a terrorist act;⁷⁴³
- Any person who harbours or conceals any other person knowing that such other person has committed or is likely to commit a terrorist act;⁷⁴⁴
- Any person who recruits another person to be a member of a terrorist group;⁷⁴⁵
- Any person who provides training or instruction relating to the commission of a terrorist act;⁷⁴⁶
- Any person who abets or promotes the commission of a terrorist act;⁷⁴⁷
- Any person who permits the use of equipment or facility for the purpose of committing a terrorist act;⁷⁴⁸
- Any person who is a member of a terrorist group;⁷⁴⁹
- Any person who arranges a meeting for the purpose of supporting a

⁷⁴⁰ Section 6 of Anti-Terrorism Order, 2011.

⁷⁴¹ Section 7 of Anti-Terrorism Order, 2011.

⁷⁴² Section 8 of Anti-Terrorism Order, 2011.

⁷⁴³ Section 9 (1) of Anti-Terrorism Order, 2011.

⁷⁴⁴ Section 10 of Anti-Terrorism Order, 2011.

⁷⁴⁵ Section 11 of Anti-Terrorism Order, 2011.

⁷⁴⁶ Section 12 of Anti-Terrorism Order, 2011.

⁷⁴⁷ Section 13 of Anti-Terrorism Order, 2011.

⁷⁴⁸ Section 14 of Anti-Terrorism Order, 2011.

⁷⁴⁹ Section 15(1) of Anti-Terrorism Order, 2011.

terrorist act;⁷⁵⁰

- Any person who intentionally detonates an explosive or other lethal device in a place of public use; a State or government facility; an infrastructure facility; or a public transportation system;⁷⁵¹ or
- Any person who fails to disclose the information about the commission of a terrorist act.⁷⁵²

The Order also provides that any police officer may arrest without warrant any person whom he suspects of committing or attempting to commit an offence;⁷⁵³ and detain any person whom he has reason to believe to have committed an offence under this Order.⁷⁵⁴ The Order makes provision for the financial institutions to submit a report after forming a suspicion of any transaction related to terrorism.⁷⁵⁵

12.2.7 Weapons laws and regulations

The laws and regulations relating to weapons in Brunei Darussalam are the Biological Weapons Act of 1983, the Arms and Explosive Act of 2002, the Arms and Explosive Rules of 2002, the Arms and Explosive Act Delegation of Powers, Revised Edition 2002, and the Declaration and Definition of Arms and Explosives Under Section 2, 2002.

1) Biological Weapons Act, 1983

1.1) Main points of the Biological Weapons Act, Revised Edition 1983

The Act prohibits the development, production, acquisition and possession of certain biological agents and toxins and of biological weapons. No person shall develop, produce, stockpile, acquire or retain any biological agent or toxin that has no justification for lawful purpose; or develop, produce, stockpile, acquire or retain any weapon, equipment or means of delivery designed to use

⁷⁵⁰ Section 16 of Anti-Terrorism Order, 2011.

⁷⁵¹ Section 18 (1) of Anti-Terrorism Order, 2011.

⁷⁵² Section 19 (1) of Anti-Terrorism Order, 2011.

⁷⁵³ Section 20 of Anti-Terrorism Order, 2011.

⁷⁵⁴ Section 21 (1) of Anti-Terrorism Order, 2011.

⁷⁵⁵ Section 47 of Anti-Terrorism Order, 2011.

biological agents or toxins for hostile purposes or in armed conflict.⁷⁵⁶ Any person contravening this section shall be guilty of an offence: Penalty, imprisonment for life.⁷⁵⁷

1.2) Prosecution of offences

Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Public Prosecutor.⁷⁵⁸ Nevertheless, if there is reasonable ground for suspecting that an offence under this Act has been committed or is about to be committed, a magistrate may grant a search warrant authorising a person to enter, if necessary by force, and to search any premises or place; to inspect and take copies of any document; or to inspect any equipment or substance found in the premises or place.⁷⁵⁹

2) Arms and Explosives Act, 2002

2.1) Main points of the Arms and Explosives Act, Revised Edition 2002

The Arms and Explosives Act, Revised Edition 2002 makes provision for the power of His Majesty the Sultan and Yang Di-Pertuan to regulate the manufacture, use, sale, storage, transport, importation, exportation and possession of arms and explosives. The Act also regulates the tests of explosive; the officers who issue gun or arm licence; port officers and other officers; the form and the conditions on licences to be granted; and the period for which licences are to remain in force and the fees. The penalty for an offence under this Act shall not exceed imprisonment for a term of 15 years, a fine of 10,000 Brunei dollars and 12 strokes of whipping.⁷⁶⁰

⁷⁵⁶ Section 2(1) of Biological Weapons Act, 1983.

⁷⁵⁷ Section 2(3) of Biological Weapons Act, 1983.

⁷⁵⁸ Section 3 of Biological Weapons Act, 1983.

⁷⁵⁹ Section 5 of Biological Weapons Act, 1983.

⁷⁶⁰ Section 3 of Arms and Explosive Act, 2002 states that "His Majesty may make rules for any of the following purposes

- (a) to regulate the possession of guns or arms;
- (b) to regulate the importation of guns or arms;
- (c) to regulate the exportation of guns, arms, or naval or military stores;

2.2) Jurisdiction of Court of a Magistrate

A Court of a Magistrate shall have jurisdiction to try any offence against this Act and to impose any penalty prescribed therefor not exceeding 7 years imprisonment and a fine of 10,000 Brunei dollars.⁷⁶¹

3) Arms and Explosives Rules, Revised Edition 2002

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- (d) to regulate the manufacture and dealing in guns or arms and the purchase of arms;
 - (e) to regulate the landing and transshipping of guns or arms;
 - (f) to provide for the marking of guns or arms for the possession of which a licence is issued;
 - (g) to regulate or prohibit, except under or in accordance with the conditions of a licence, the manufacture, possession, use, sale, purchase, storage, transport, importation and exportation of explosives or any specified class of explosives;
 - (h) to regulate the tests to which various classes or any particular class of explosive may or shall be subjected before permission is granted to land the same in Brunei Darussalam;
 - (i) to regulate the duties of the licensing or port officers or of any other officer vested with powers under any rules made under this Act;
 - (j) to declare what duties may be carried out by subordinate police officers under the direction and control of the licensing officers, and to regulate the conduct of such duties;
 - (k) to regulate the manner in which application for licences shall be made, and the matters to be specified in such licences;
 - (l) to regulate the form in which, and the conditions on and subject to which, licences shall be granted, and the matters to be specified in such licences, and the issue of licences generally;
 - (m) to regulate the period for which licences are to remain in force;
 - (n) to fix the fees to be charged for any licence which may be issued under this Act and the other sums, if any, to be paid for expenses by applicants for such licences;
 - (o) to fix the fees to be paid for the use of Government magazines or any portion thereof;
 - (p) to direct by whom and in what manner fees payable under this Act shall be collected and accounted for;
 - (q) to authorise any officer, either by name or in virtue of his office
 - (i) to enter, inspect and examine any place, vehicle, aircraft or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a licence granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made thereunder;
 - (iii) to take samples of any explosive found therein, on payment of the value thereof; and
 - (iv) to seize, detain, remove and, if necessary, destroy any explosive found therein;
 - (r) to regulate the disposition, destruction or sale of all articles forfeited under this Act ...”

⁷⁶¹ Section 3 of Arms and Explosive Act, 2002.

3.1) Main points of the Arms and Explosives Rules, Revised Edition 2002

The Arms and Explosives Rules, Revised Edition 2002 prohibits the importation or exportation of any gun or arm except under a licence issued by the Licensing Officer. The provisions of these Rules shall not apply to rifles of a type approved.⁷⁶²

3.2) Importation of guns and arms

Any person desiring to import guns or arms shall apply to the Licensing Officer giving a description of the arms, from whom obtained and to whom consigned.⁷⁶³

3.3) Exportation of guns and arms

Every person desirous of exporting guns or arms shall deliver to the Licensing Officer a list showing the nature, calibre and number of such guns or arms; the country of destination of such guns or arms; the name of the ship or aircraft flight number in which it is intended to export the same; and the probable date of departure of such ship or aircraft.⁷⁶⁴

3.4) Licence to land or transship guns or arms

Any person desiring to land or to transship without landing any guns or arms for the purpose of transshipment on board of any vessel, vehicle or aircraft shall apply in writing to the Licensing Officer for a permit giving the particulars of the guns or arms.⁷⁶⁵

3.5) Manufacture of guns, arms and explosives

Any person desiring to manufacture, deal in, or repair guns or arms shall apply to the Licensing Officer. The licence shall terminate on the 30th day of

⁷⁶² Section 2 of Arms and Explosives Rules, 2002.

⁷⁶³ Section 7(1) of Arms and Explosives Rules, 2002.

⁷⁶⁴ Section 8(1) of Arms and Explosives Rules, 2002.

⁷⁶⁵ Section 9(1) of Arms and Explosives Rules, 2002.

June next following the date of issue.⁷⁶⁶ The Rules also state that no person shall manufacture, possess, use, sell, purchase, store, transport, import or export any explosive except under a licence issued by the Licensing Officer.⁷⁶⁷

The Rules make provision on restriction to import, manufacture, sell or possess any sand crackers or any squibs or crackers which contain an explosive ingredient or mixture other than black gunpowder or any squibs or crackers containing more than one-fifth of an ounce by weight of such black gunpowder.⁷⁶⁸

4) Delegation of Powers, Revised Edition 2002

The Delegation of Powers states that the Prime Minister delegates to the Commissioner of Police the exercise of his power to sign licences issued under the Arms and Explosives Rules which have been approved by the Licensing Officer under those Rules.⁷⁶⁹

5) Declaration and Definition of Arms and Explosives Under Section 2, 2002

The Declaration states that “arms” include firearms, air guns, air pistols, automatic guns, automatic pistols or any other kind of gun or weapon which any shot, bullet or other missile can be discharged, or noxious fumes can be emitted, but does not include a cannon. “Firearms” means a lethal barrelled weapon of any description but does not include a blowpipe of the type in common use in Brunei Darussalam. This Declaration also states that “explosives” include gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powder, fulminate of mercury or of other metals, coloured fires, and every other substance used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect, and any component part of substance of any explosives.⁷⁷⁰

⁷⁶⁶ Section 10 of Arms and Explosives Rules, 2002.

⁷⁶⁷ Section 11 of Arms and Explosives Rules, 2002.

⁷⁶⁸ Section 15 of Arms and Explosives Rules, 2002.

⁷⁶⁹ The Commissioner of Police is conferred the power to sign licences issued under the Arms and Explosives Rules 2002.

⁷⁷⁰ Declaration and Definition of Arms and Explosives Under Section 2, 2002.

12.2.8 Banishment laws and regulations

1) Banishment Act, 1984

1.1) Main points of the Banishment Act, 1984

The Act makes provision for the banishment of certain persons including public officers where there is reasonable cause for believing that the banishment from Brunei Darussalam of any person is necessary for the safety, peace and welfare of Brunei Darussalam. The Minister shall issue a warrant and shall cause such person to be brought before him; and shall examine such person and record in writing any statement that such person may make. The Minister may if he sees fit lay such written information and record before His Majesty the Sultan and Yang Di-Pertuan in Council who may order that such person be banished from Brunei Darussalam. The order of banishment shall be carried into effect after 21 days have elapsed from its date. The banishment may be for the life of the person banished or for such shorter period as His Majesty in Council may think fit.⁷⁷¹

1.2) Punishment

If any person so banished shall be found in Brunei Darussalam before the expiration of the period for which he was banished such person may be arrested by any officer without warrant.⁷⁷² Whoever having been lawfully banished from Brunei Darussalam returns to Brunei Darussalam before the expiration of his term of banishment, or without a remission of punishment, may either be removed from Brunei Darussalam forthwith by order of the Minister or may be prosecuted and on conviction shall be punished with imprisonment for any term not exceeding that for which he has been banished.⁷⁷³ Whoever knowingly conceals or harbours any person whose banishment has been ordered but not yet carried into effect and whoever knowingly conceals any person who has unlawfully returned from banishment shall be guilty of an offence and shall be liable on conviction to a fine of 1,000 Brunei

⁷⁷¹ Section 2 of Banishment Act, 1984.

⁷⁷² Section 4 of Banishment Act, 1984.

⁷⁷³ Section 5 of Banishment Act, 1984.

dollars or to imprisonment for 6 months.⁷⁷⁴

⁷⁷⁴ Section 6 (1) of Banishment Act, 1984.

Chapter 13

Anti-Corruption Laws and Regulations

13.1 Introduction

Similar to other ASEAN nations, Brunei Darussalam prioritises the prevention and combatting of corruption. According to the Corruption Perception Index published by Transparency International, Brunei Darussalam was ranked 38 out of 177 countries in 2013 by the perceived level of public sector transparency.⁷⁷⁵ To enhance and promote a framework for the prevention and combatting of corruption, Brunei Darussalam signed the United Nations Convention against Corruption (UNCAC) on 11 December 2004 and ratified on 2 December 2008.⁷⁷⁶ Brunei Darussalam has also become a member of the Asian Development Bank (ADB) and participated in the Anti-Corruption Initiative of the Organisation for Economic Co-operation and Development (OECD) together with 31 countries in the Asia-Pacific region with a view to creating cooperation in the prevention and curbing of corruption in the Asia-Pacific region.⁷⁷⁷ Moreover, Brunei Darussalam became a member of Asia/Pacific Group on Money Laundering which is an international organisation committed to the cooperation in prevention and combatting money laundering among member countries.

In addition to cooperation with other countries, Brunei Darussalam has established an Anti-Corruption Bureau (ACB) in 1982 to fight against corruption in which ACB has adopted a three-prong approach: 1) Enforcement/ Investigative approach; 2) Preventive approach; and 3) Education approach.⁷⁷⁸

⁷⁷⁵ Transparency International, Corruption Perception Index, Available at <http://www.transparency.org/cpi2013/results>, Accessed on 24 December 2015.

⁷⁷⁶ The United Nations, United Nations Convention against Corruption Signature and Ratification Status as of 1 December 2015, Available at <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>, Accessed on 24 December 2015.

⁷⁷⁷ Organisation for Economic Co-operation and Development (OECD), Supporting the fight against Corruption in Asia and the Pacific: The ADB/OECD Anti-Corruption Initiative, Available at <http://www.oecd.org/site/adboecdanti-corruptioninitiative-/ADB-OECD-Initiative-Information-Sheet.pdf>, Accessed on 24 December 2015.

⁷⁷⁸ Ang Swee Kiang, Anti-Corruption Bureau's Role in Curbing Corruption in Brunei Darussalam, Available at <http://www.icac.org.hk/news/issue33eng/button5.htm>, Accessed on 24 December 2015.

13.2 Anti-corruption Laws and Regulations

13.2.1 Laws and regulations relating to corruption

Laws and regulations in Brunei Darussalam relating to corruption are the Prevention of Corruption Act of Revised Edition 2014 and the Penal Code, Revised Edition 2001.

1) Prevention of Corruption Act, Revised Edition 2014

1.1) Main points of the Prevention of Corruption Act, Revised Edition 2014

The Prevention of Corruption Act, Revised Edition 2014 provides for the prevention of corruption and bribery and establishes an Anti-Corruption Bureau. An offence against this Act is divided into 6 categories as follows.

1. Corruption
2. Corrupt transaction with agents
3. Corruptly procuring withdrawal of tenders
4. Bribery of member of legislature
5. Bribery of member of public body
6. Possession of unexplained property

1.2) Corruption

The Act states that any person who shall corruptly solicit or receive or agree to receive; or corruptly give, promise or offer any gratification as an inducement to or reward for any person including any officer, or servant of a public body shall be guilty of an offence: Penalty, a fine of 30,000 Brunei dollars and imprisonment for 7 years.⁷⁷⁹

⁷⁷⁹ Section 5 of Prevention of Corruption Act, 2014.

1.3) Corrupt transaction with agents

If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person any gratification as an inducement or reward for doing or forbearing to do any act in relation to his principal's affairs or business shall be guilty of an offence.

The person who corruptly gives such gratification shall also be guilty of an offence. In addition, any person knowingly gives to an agent any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence: Penalty, a fine of 30,000 Brunei dollars and to imprisonment for 7 years.⁷⁸⁰

1.4) Corruptly procuring withdrawal of tenders

A person who, with intent to obtain from any public body a contract for performing any work, or doing anything, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing the tender shall be guilty of an offence: Penalty, a fine of 30,000 Brunei dollars and to imprisonment for 7 years. A person who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for such contract, shall be guilty of an offence and liable for the same punishment.⁷⁸¹

1.5) Bribery of member of legislature

Any person who offers to a member of the Legislative Council, the Council of Ministers or the Privy Council, or, being a member thereof solicits or accepts, any gratification as an inducement or reward for his doing or forbearing to do any act in his capacity as member, shall, notwithstanding that the member did not have the power, be guilty of an offence: Penalty, a fine of 30,000 Brunei dollars and imprisonment for 7 years.⁷⁸²

⁷⁸⁰ Section 6 of Prevention of Corruption Act, 2014.

⁷⁸¹ Section 9 of Prevention of Corruption Act, 2014.

⁷⁸² Section 10 of Prevention of Corruption Act, 2014.

1.6) Bribery of member of public body

Any person who offers to a member of any public body, or being a member of any public body solicits or accepts any gratification as an inducement or reward for the following purposes shall be guilty of an offence: Penalty, a fine of 30,000 Brunei dollars and imprisonment for 7 years.

1. The member voting or abstaining from voting at any meeting of the public body;
2. The member performing, or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act;
3. The member aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
4. The member showing or forbearing to show any favour or disfavour in his capacity as a member.⁷⁸³

1.7) Possession of unexplained property

Any public officer who maintains a standard of living above that which is commensurate with his present or past emoluments; or is in control of pecuniary resources or property disproportionate to his present or past emoluments shall be guilty of an offence: Penalty, a fine of 30,000 Brunei dollars and imprisonment for 7 years unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or property.⁷⁸⁴

1.8) Powers of Officers at an Anti-Corruption Bureau

Any Officer of the Bureau may without a warrant arrest any person who has been concerned in any offence under this Act or a reasonable suspicion

⁷⁸³ Section 11 of Prevention of Corruption Act, 2014.

⁷⁸⁴ Section 12(1) of Prevention of Corruption Act, 2014.

exists to his having been so concerned.⁷⁸⁵ The Public Prosecutor may authorise the Director or any Officer of the Bureau to exercise the powers in relation to police investigations.⁷⁸⁶ Every person required by any Officer of the Bureau to give any information on any subject which it is the duty of such officer to inquire into under this Act or any prescribed offence shall be legally bound to give the information.⁷⁸⁷

2) The Penal Code, Revised Edition 2001

2.1 Main points of the Penal Code, Revised Edition 2001 (section relating to corruption)

The Penal Code of Brunei Darussalam makes provision relating to corruption in Chapter 9: Offence by or relating to Public Servants which states that any public servant accepts or attempts to obtain from any person any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act shall be punished with imprisonment for a term which may extend to 7 years and with fine.⁷⁸⁸ In addition, whoever accepts any gratification as a motive or reward for inducing, by corrupt or illegal means, any public servant to show favour or disfavour to any person shall be punished in the same manner.⁷⁸⁹ Any public servant accepts any valuable thing, without consideration, from any person whom he knows to be concerned in any proceeding or business transacted by such public servant shall be punished with imprisonment for a term which may extend to 7 years and with fine.⁷⁹⁰ Whoever, being a public servant, not to engage in trade, engages in trade, shall be punished with imprisonment for a term which may extend to 3 years and with fine.⁷⁹¹ Any public servant who is not to purchase or bid for certain property, purchases, or bids for that property, either in his own name, or in the name of another, shall be punished with imprisonment for a term which may extend to 7

⁷⁸⁵ Section 18(1) of Prevention of Corruption Act, 2014.

⁷⁸⁶ Section 19A of Prevention of Corruption Act, 2014.

⁷⁸⁷ Section 22(1) of Prevention of Corruption Act, 2014.

⁷⁸⁸ Section 161 of Penal Code, 2001.

⁷⁸⁹ Section 162 of Penal Code, 2001.

⁷⁹⁰ Section 165 of Penal Code, 2001.

⁷⁹¹ Section 168 of Penal Code, 2001.

years and with fine; and the property if purchased, may be confiscated.⁷⁹²

13.2.2 Government procurement laws and regulations

The law concerning government procurement in Brunei Darussalam is the Financial Regulations of 1983 which is prescribed in detail as follows.

The Regulations delegate to individual Ministries to make their own procurements of goods and services. However, they must adhere to Financial Regulations and procurement guidelines issued by State Tender Board under the Ministry of Finance.

All government procurements require fairness, openness, competitiveness, integrity and efficiency. Tenders are awarded to the bid that brings the best value for money for the government. To achieve value for money, not only price shall be evaluated, but also whether the goods or services have complied to all the requirements in the tender specification, quality, timeliness in delivery, reliabilities and after sale-service.

A small value purchase for items of goods or services up to 2,000 Brunei dollars may be carried out directly by the Ministries by buying off the shelf or purchasing directly from known sources. For items of goods and services valued above 2,000 Brunei dollars and up to 50,000 Brunei dollars, at least three quotations must be obtained from suppliers or contractors. The Department or Ministry concerned will evaluate offers and make recommendation to the Quotation Committee for consideration.

All government procurements of above 50,000 Brunei dollars must adopt tendering procedures. For the procurement valued above 50,000 Brunei dollars and up to 500,000 Brunei dollars, the selective tender has to be approved by the Mini Tender Board⁷⁹³ appointed at individual Ministries. Nevertheless, for the procurement valued above 500,000 Brunei dollars, the selective tender must be

⁷⁹² Section 169 of Penal Code, 2001.

⁷⁹³ World Trade Organization, Trade Policy Review: Brunei Darussalam, Available at https://www.wto.org/english/tratop_e/tpr_e/s309_e.pdf, Accessed on 25 December 2015.

approved by the State Tender Board under the Ministry of Finance. The overall tender process is three months.⁷⁹⁴

⁷⁹⁴ State Tender Board, Guideline for Government Procurement: Brunei Darussalam Government, Available at <http://www-mof.gov.bn/index.php/general-information-state-tender-board>, Access on 25 December 2015.

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