

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

EMERGENCY (COPYRIGHT) ORDER, 1999

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No. S 14

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

EMERGENCY (COPYRIGHT) ORDER, 1999

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

PRELIMINARY

1. (1) This Order may be cited as the Emergency (Copyright) Order, 1999 and shall commence on the day to be appointed by the Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

**Citation,
commence-
ment, long
title and
application.**

(2) The long title of this Order is "An Order in respect of copyright and related matters".

(3) This Order applies to things done —

(a) in or on the continental shelf (being the area proclaimed by His Highness the Sultan on 30th. June, 1954 by the Continental Shelf Proclamation 1954) on a structure or vessel which is present there for purposes directly connected with the exploration of the seabed and its subsoil or with the exploitation of their natural resources;

(b) on a Brunei Darussalam ship, as defined in section 2 of the Merchant Shipping Act; and

Cap. 145.

(c) on an aircraft or hovercraft registered in Brunei Darussalam,

as it applies to things done in Brunei Darussalam.

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

**Interpre-
tation.**

"Act" means a law enacted by the Legislative Council;

"acts restricted by copyright" shall be construed in accordance with section 18;

"adaptation", in relation to a literary or dramatic work, or to a musical work, shall be construed in accordance with subsection (3) of section 23;

"architectural work of art", in paragraph (a) of the definition in this subsection of "artistic work", means any building or structure

having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that any protection afforded by any law relating to copyright in force immediately before commencement was confined to such artistic character or design and did not extend to the process or methods of construction;

"article", in the context of an article in a periodical, includes an item of any description;

"artistic work" —

First Schedule.

(a) in the First Schedule, includes works of painting, drawing, sculpture (including casts and models) and artistic craftsmanship, and architectural works of art, and engravings and photographs;

(b) elsewhere in this Order, shall be construed in accordance with section 6,

but does not include a layout design or an integrated circuit as respectively defined in section 2 of the Emergency (Layout Designs) Order, 1999;

"assignment" means assignment by act of the parties;

"author", in relation to a work, shall be construed in accordance with subsection (1) of section 11;

"broadcast" shall be construed in accordance with subsection (1) of section 8;

"building" shall be construed in accordance with section 6;

"business" includes any trade or profession;

"cable programme" shall be construed in accordance with subsection (1) of section 9;

"cable programme service" shall be construed in accordance with section 9;

"claimant", in sections 109, 110, 112, 113 and 116, means a person who has given a notice under subsection (1) of section 109;

"collective work" means —

(a) a work of joint authorship; or

(b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

"commencement" means the day appointed for the commencement of this Order;

"commercial publication", in relation to a literary, dramatic, musical or artistic work, shall be construed in accordance with section 178;

"computer program" means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended, either directly or after either or both of the following —

(a) the conversion to another language, code or notation;

(b) the reproduction in a different material form,

to cause a device having information-processing capabilities to perform a particular function;

"computer-generated", in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

"Controller of Customs" means the Controller of Customs for the purposes of the Customs Act;

Cap. 36.

"copy", in Part I, shall be construed in accordance with section 19;

"copyright owner" shall (depending on the context) be construed in accordance with subsections (4) or (5) of this section, subsection (2) of section 103, or in accordance with such other provision of this Order as the circumstances may require;

"Copyright Tribunal" means the tribunal established by subsection (1) of section 154;

"copyright work" shall be construed in accordance with subsection (2) of section 3;

"country" includes any territory;

- "court" means the High Court or an Intermediate Court;
- Cap. 36.** "customs control" has the same meaning as in subsection (2) of section 2 of the Customs Act;
- "dramatic work" —
- First Schedule.** (a) in the First Schedule, includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;
- (b) elsewhere in this Order, shall be construed in accordance with subsection (1) of section 5;
- "educational establishment" shall be construed in accordance with subsection (1) of section 177;
- "electronic" means actuated by electric, magnetic, electromagnetic, electro-chemical or electro-mechanical energy;
- "employment" refers to employment under a contract of service or of apprenticeship;
- First Schedule.** "engravings", in the First Schedule, includes etchings, lithographs, woodcuts, prints and other similar works, not being photographs;
- "exclusive licence" has the same meaning as in subsection (1) of section 95;
- "exclusive recording contract" shall be construed in accordance with subsection (1) of section 189;
- First Schedule.** "existing work", in the First Schedule, refers to a work made before commencement; and for this purpose a work of which the making extended over a period shall be taken to have been made when its making was completed;
- "facsimile copy" includes a copy which is reduced or enlarged in scale;
- "film" shall be construed in accordance with subsection (1) of section 7;

"future copyright", in Part I, shall be construed in accordance with subsection (2) of section 94;

"Government copyright" shall be construed in accordance with subsection (2) of section 167;

"graphic work" shall be construed in accordance with section 6;

"illicit recording", in relation to a performance, shall be construed in accordance with section 201;

"in electronic form" means in a form usable only by electronic means;

"infringing article" has the same meaning as in section 86;

"infringing copy", in relation to a copyright work, shall be construed in accordance with section 31;

"international organisation" means an organisation of which the government or governments of one or more countries are members;

"judicial proceedings" includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or obligations;

"Legislative Council copyright" shall be construed in accordance with subsection (2) of section 169;

"licence", in sections 129, 130 and 132, means a licence of any of the descriptions mentioned in section 128;

"licensing body" has the same meaning as in subsection (2) of section 120;

"licensing scheme", subject to section 121, has the same meaning as in subsection (1) of section 120;

"literary work" —

(a) in the First Schedule, includes maps, charts, plans, **First Schedule.** tables and compilations;

(b) elsewhere in this Order, shall be construed in accordance with subsection (1) of section 5;

Cap. 36.

"musical work" shall be construed in accordance with subsection (1) of section 5;

"officer of customs" has the same meaning as in subsection (1) of section 2 of the Customs Act;

"owner of copyright" has the same meaning as "copyright owner";

"performance" shall be construed —

(a) in Part I in relation to a work, in accordance with subsection (2) of section 21;

(b) in Part II, in accordance with subsection (2) of section 180;

"photograph" shall be construed in accordance with section 6;

"prospective owner", in Part I, shall be construed in accordance with subsection (2) of section 94;

"publication", in relation to a work, shall be construed in accordance with section 178;

"published edition", in the context of copyright in the typographical arrangement of a published work, shall be construed in accordance with subsection (1) of section 10;

"qualifying performance", in Part II, shall be construed in accordance with section 181;

"qualifying person", in Part II, means a person to whom that Part applies;

"recording", in Part II in relation to a performance, shall be construed in accordance with section 180;

"rental" means any arrangement under which a copy of a work is made available —

(a) for payment in money or money's worth; or

(b) in the course of a business, as part of services or amenities for which payment is made,

on terms that it will or may be returned;

"reprographic copying" refers to copying by means of a reprographic process;

"reprographic process" means a process —

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies;

and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;

"sculpture" shall be construed in accordance with section 6;

"sound recording" —

- (a) in sections 140, 142 and 144, does not include a film sound-track when accompanying a film;
- (b) elsewhere in this Order, shall be construed in accordance with subsection (1) of section 7;

"sufficient acknowledgement" means an acknowledgement identifying a work by its title or other description, and identifying the author, unless —

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

"sufficient disclaimer", in relation to an act capable of infringing the right conferred by subsection (1) of section 83, means a clear and reasonably prominent indication —

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented;

"telecommunications system" means a system for conveying visual images, sounds or other information by electronic means;

"terms of payment", in sections 141, 142, 143 and 146, means terms as to payment for including sound recordings in a broadcast or cable programme service;

"transmission" means transfer by operation of law, devolution on the personal representative of a deceased person, or any other mode of transfer other than an assignment;

"typeface" includes an ornamental motif used in printing;

"unauthorised", as regards anything done in relation to a work, means done otherwise than —

(a) by or with the licence of the copyright owner;

(b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where subsection (2) of section 13 would have applied, the author's employer or, in either case, any person lawfully claiming under him; or

(c) under section 52;

"wireless telegraphy" means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose;

"work of joint authorship" shall be construed in accordance with subsection (1) of section 12;

"work of unknown authorship" shall be construed in accordance with subsection (4) of section 11;

"writing" includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded.

(2) A provision of Part I, which corresponds to a provision of any law relating to copyright in force immediately before commencement, shall not be construed as departing from such a law merely because of a change of expression.

(3) Decisions under any law relating to copyright in force immediately before commencement may be referred to for the purpose of establishing whether a provision of Part I departs from such a law, or otherwise for establishing the true construction of that Part.

(4) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of Part I is the person who is entitled to the aspect of copyright relevant for that purpose.

(5) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in Part I to the copyright owner are to all the owners, so that any requirement of the licence of the copyright owner requires the licence of all of them.

(6) Where reference is made in this Order to an imported article the making of which was carried out without the consent of the owner of the copyright, the reference to the owner of the copyright shall be read as a reference to —

(a) the person entitled to the copyright in respect of its application to the making of an article of that description in the country where it was made; or

(b) if there is no person entitled to the copyright in respect of its application to the making of an article of that description in the country where it was made, the person entitled to the copyright in respect of that application in Brunei Darussalam,

and the making of the article shall be deemed to have been carried out with the consent of that owner if, after disregarding all conditions as to the sale, distribution or other dealings in the article after its making, the article was made with his licence.

PART I

COPYRIGHT

CHAPTER I

SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

3. (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work —

**Copyright
and copy-
right works.**

(a) original literary, dramatic, musical or artistic works;

(b) sound recordings, films, broadcasts or cable pro-grammes;
and

(c) the typographical arrangement of published editions.

(2) In this Order, "copyright work" means a work of any of those descriptions in which copyright subsists.

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection have been met.

**Rights
subsisting in
copyright
works.**

4. (1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description.

(2) In relation to certain descriptions of copyright work, the rights conferred by sections 80, 83 and 88 subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright.

Descriptions of work and related provisions

**Literary,
dramatic and
musical
works.**

5. (1) In this Order —

"dramatic work" includes a work of dance or mime;

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and includes —

(a) a computer program; and

(b) a table or compilation of data or other material, whether in machine readable or other form, original by reason of the selection or arrangement of its contents;

"musical work" means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it has been recorded, in writing or otherwise; and references in this Part to the time at which such a work was made are to the time at which it was so recorded.

(3) It is immaterial for the purpose of subsection (2) whether the work was recorded by or with the permission of the author; and where it was not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

**Artistic
works.**

6. In this Order —

"artistic work" means —

(a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality;

(b) a work of architecture, being a building or a model for a building; or

(c) a work of artistic craftsmanship;

"building" includes any fixed structure, and a part of a building or fixed structure;

"graphic work" includes —

(a) any painting, drawing, diagram, map, chart or plan; and

(b) any engraving, etching, lithograph, woodcut or similar work;

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

"sculpture" includes a cast or model made for purposes of sculpture.

7. (1) In this Order —

Sound recordings and films.

"film" means a recording on any medium from which a moving image may by any means be produced;

"sound recording" means —

(a) a recording of sounds, from which the sounds may be reproduced; or

(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

(2) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.

8. (1) In this Order, a broadcast means a transmission by wireless telegraphy of visual images, sounds or other information which —

Broadcasts.

(a) is capable of being lawfully received by members of the public; or

(b) is transmitted for presentation to members of the public.

(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in a broadcast are —

(a) to the person transmitting the programme, if he has responsibility to any extent for its contents; and

(b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purpose of this Part, the place from which a broadcast is made, in the case of a satellite transmission, is the place from which the signals carrying the broadcast are transmitted to the satellite.

(5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

(6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

Cable programmes.

9. (1) In this Order —

(a) a cable programme means any item included in a cable programme service; and

(b) a cable programme service means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception —

(i) at two or more places (whether for simultaneous reception or at different times in response to requests by different users); or

(ii) for representation to members of the public,

and which is not, or so far as it is not, excepted by or under subsections (2) or (3).

(2) The following are excepted from the definition of "cable programme service" —

(a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;

(b) a service run for the purposes of a business where —

(i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;

(ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for other persons; and

(iii) the system is not connected to any other telecommunications system;

(c) a service run by a single individual where —

(i) all the apparatus comprised in the system is under his control;

(ii) the visual images, sounds or other information conveyed by the system are conveyed solely for his domestic purposes; and

(iii) the system is not connected to any other telecommunications system;

(d) services where —

(i) all the apparatus comprised in the system is situated in, or connects, places which are in single occupation; and

(ii) the system is not connected to any other telecommunications system, other than services

operated as part of the amenities provided for residents or inmates of premises run as a business;

(e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by order amend subsection (2) so as to add or delete exceptions, subject to such transitional provisions as appear to him to be appropriate.

(4) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of that service; and references to the person including it are to the person providing the service.

(5) Copyright does not subsist in a cable programme —

(a) if it is included in a cable programme service by reception and immediate retransmission of a broadcast; or

(b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

Published editions.

10. (1) In this Order, a published edition, in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.

(2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

Authorship and ownership of copyright

Authorship of work.

11. (1) In this Order, "author", in relation to a work, means the person who created it.

(2) That person shall be taken to be —

(a) in the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film were undertaken;

(b) in the case of a broadcast, the person making the broadcast or, in the case of a broadcast which relays another broadcast by

reception and immediate retransmission, the person making that other broadcast;

(c) in the case of a cable programme, the person providing the cable programme service in which the programme was included;

(d) in the case of the typographical arrangement of a published edition, the publisher.

(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work were undertaken.

(4) For the purpose of this Order, a work is of unknown authorship if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(5) For the purpose of this Part, the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

12. (1) In this Order, a work of joint authorship means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

Works of joint authorship.

(2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast.

(3) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

13. (1) The author of a work is the first owner of any copyright in it, subject to subsections (2) and (3).

First ownership of copyright.

(2) Where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work, subject to any agreement to the contrary.

(3) This section does not apply to Government copyright, Legislative Council copyright and copyright which subsists under section 172.

Duration of copyright

Duration of copyright in literary, dramatic, musical or artistic works.

14. (1) Copyright in a literary, dramatic, musical or artistic work will expire at the end of the period of fifty years from the end of the year in which the author dies, subject to the following provisions of this section.

(2) If the work is of unknown authorship, copyright will expire at the end of the period of fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of that period, the provisions of subsection (1) shall apply. For this purpose, making available to the public includes —

(a) in the case of a literary, dramatic or musical work —

- (i) performance in public; or
- (ii) being broadcast or included in a cable programme service;

(b) in the case of an artistic work —

- (i) exhibition in public;
- (ii) a film including the work being shown in public; or
- (iii) being included in a broadcast or cable programme service,

but in determining generally for the purpose of this subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(3) If the work is computer-generated, subsections (1) and (2) do not apply and copyright will expire at the end of the period of fifty years from the end of the year in which it was made.

(4) In relation to a work of joint authorship —

(a) the reference in subsection (1) to the death of the author shall be construed —

- (i) if the identity of all the authors is known, as a reference to the death of the last of them to die; and
- (ii) if the identity of one or more of the authors is known and the identity of one or more others is not

known, as a reference to the death of the last of the authors whose identity is known; and

(b) the reference in subsection (2) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(5) This section does not apply to Government copyright, Legislative Council copyright and copyright which subsists under section 172.

15. (1) Copyright in a sound recording or film will expire —

Duration of copyright in sound recordings and films.

(a) at the end of the period of fifty years from the end of the year in which it was made; or

(b) if it was released before the end of that period, fifty years from the end of the year in which it was released.

(2) A sound recording or film is released when —

(a) it is first published, broadcast or included in a cable programme service; or

(b) in the case of a film or film sound-track, the film is first shown in public;

but in determining whether a work has been released no account shall be taken of any unauthorised act.

16. (1) Copyright in a broadcast or cable programme will expire at the end of the period of fifty years from the end of the year in which the broadcast was made or the programme was included in a cable programme service.

Duration of copyright in broadcasts and cable programmes.

(2) Copyright in a repeat broadcast or cable programme will expire at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright will arise in respect of a repeat broadcast or cable programme broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(3) In this section, a repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

17. Copyright in the typographical arrangement of a published edition will expire at the end of the period of twenty-five years from the end of the year in which the edition was first published.

Duration of copyright in typographical arrangements of published editions.

CHAPTER II

RIGHTS OF COPYRIGHT OWNER

The acts restricted by copyright

**Acts
restricted by
copyright in
work.**

18. (1) The owner of the copyright in a work has, in accordance with this Chapter, the exclusive right in Brunei Darussalam —

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform, show or play the work in public;
- (d) to broadcast the work or include it in a cable programme service;
- (e) to make an adaptation of the work or do any of those acts in relation to an adaptation; and
- (f) to communicate the work to the public,

and all of those acts are referred to in this Order as the acts restricted by the copyright.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.

(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it —

- (a) in relation to the work as a whole or any substantial part of it; and
- (b) either directly or indirectly,

and it is immaterial whether any intervening acts themselves infringe copyright.

(4) This Chapter has effect subject to Chapters III and VII.

**Infringement
of copyright
by copying.**

19. (1) The copying of a work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed in accordance with this section.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form, including the storing of the work in any medium by electronic means.

(3) In relation to an artistic work, copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.

(4) Copying in relation to a film, television broadcast or cable programme includes the making of a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.

(5) Copying in relation to the typographical arrangement of a published edition means the making of a facsimile copy of the arrangement.

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

20. (1) The issue to the public of copies of a work is an act restricted by the copyright in every description of copyright work.

**Infringement
by issue of
copies to
public.**

(2) References in this Part to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation, whether in Brunei Darussalam or elsewhere, and not to —

(a) any subsequent distribution, sale, hire or loan of those copies; or

(b) any subsequent importation of those copies,

except that, in relation to sound recordings, films and computer programs, the restricted act of issuing copies to the public includes any rental of copies to the public.

21. (1) The performance of a work in public is an act restricted by the copyright in a literary, dramatic or musical work.

**Infringement
by
performance,
etc., of work
in public.**

(2) In this Part, a performance, in relation to a work —

(a) includes the delivery in the case of a lecture, address, speech or sermon; and

(b) in general, includes any mode of visual or acoustic presentation, including the presentation by means of a sound recording, film, broadcast or cable programme of the work.

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film, broadcast or cable programme.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds were sent and, in the case of a performance, the performers, shall not be regarded as responsible for the infringement.

**Infringement
by broad-
casting, etc.**

22. The broadcasting of a work or its inclusion in a cable programme service is an act restricted by the copyright in —

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording or film; or
- (c) a broadcast or cable programme.

**Infringement
by making
adaptation,
etc.**

23. (1) The making of an adaptation of a work is an act restricted by the copyright in a literary, dramatic or musical work. For this purpose, an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 19 to 22, or in subsection (1) of this section, in relation to an adaptation of a work, is an act restricted by the copyright in a literary, dramatic or musical work. For this purpose, it is immaterial whether the adaptation had been recorded, in writing or otherwise, at the time the act was done.

(3) In this Order, adaptation —

- (a) in relation to a literary or dramatic work, means —
 - (i) a translation of the work;
 - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work; or
 - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;

(b) in relation to a musical work, means an arrangement or transcription of the work.

(4) In relation to a computer program, a translation includes a version of the program in which it is converted into or out of a computer language, code or notation or into a different computer language, code or notation, otherwise than incidentally in the course of running the program.

(5) No inference shall be drawn from this section as to what does and does not amount to copying a work.

24. The communication to the public of a work is an act restricted by copyright. For this purpose, communication to the public is the transmission, by wire or without wire, of a work, including its being made available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them.

Infringement by communicating to public.

25. (1) Notwithstanding sections 19 and 23, the reproduction in a single copy, or the adaptation of a computer program, by the lawful owner of a copy of that computer program shall be permitted without the authorisation of the author or other owner of copyright, provided that the copy or adaptation is necessary —

Reproduction and adaptation of computer programs.

(a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or

(b) for archival purposes and in order to replace a lawfully owned copy of the computer program which has been lost, destroyed or damaged.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed if the continued possession of the copy of the computer program ceases to be lawful.

Secondary infringement of copyright

26. The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

Secondary infringement: importing infringing copy.

27. The copyright in a work is infringed by a person who, without the licence of the copyright owner —

Secondary infringement: possessing, etc., infringing copy.

(a) possesses in the course of a business;

(b) sells, lets for hire, or offers or exposes for sale or hire;

(c) in the course of a business, exhibits in public or distributes;
or

(d) distributes otherwise than in the course of a business to such an extent as to prejudicially affect the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

Secondary infringement: providing means for making infringing copies.

28. (1) Copyright in a work is infringed by a person who, without the licence of the copyright owner —

(a) makes;

(b) imports;

(c) possesses in the course of a business; or

(d) sells, lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Brunei Darussalam or elsewhere.

Secondary infringement: permitting use of premises for infringing performance.

29. (1) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is liable for the infringement, unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(2) In subsection (1), "place of public entertainment" includes premises which are occupied mainly for any other purpose or purposes, but are from time to time made available for hire for the purpose of public entertainment.

Secondary infringement: provision of apparatus for infringing performance, etc.

30. Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for playing sound recordings, showing films, or receiving visual images or sounds conveyed by electronic means —

(a) the person who supplied the apparatus, or any substantial part of it, if when he supplied it —

- (i) he knew or had reason to believe that it was likely to be so used as to infringe copyright; or
- (ii) in the case of apparatus the normal use of which involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright;

(b) the occupier of premises who gave permission for the apparatus to be brought onto those premises, if when he gave permission he knew or had reason to believe that it was likely to be so used as to infringe copyright; and

(c) the person who supplied a copy of a sound recording or film used to infringe copyright, if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright,

is liable for the infringement.

Infringing copies

31. (1) In this Order, "infringing copy", in relation to a copyright work, shall be construed in accordance with this section.

Meaning of "infringing copy".

(2) An article is an infringing copy if —

(a) its making constituted an infringement of the copyright in the work in question; or

(b) it has been or is proposed to be imported, and its making in Brunei Darussalam would have constituted an infringement of the copyright in the work, or a breach of an exclusive licence agreement relating to that work.

(3) Where in any proceedings the question arises whether an article is an infringing copy and it is shown —

(a) that the article is a copy of the work; and

(b) that copyright subsists in the work or has subsisted at any time,

it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.

(4) In this Order, "infringing copy" includes a copy falling to be treated as an infringing copy under subsection (5) of section 36, subsection (3) of section 39, subsection (5) of section 40, paragraph (b) of subsection (2) of section 41, subsection (2) of section 60, subsection (2) of section 67, subsection (4) of section 71, or under an order made under section 152.

CHAPTER III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory

Introductory provisions.

32. (1) This Chapter specifies acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; it relates only to the question of infringement of copyright and does not affect any other right or obligation restricting the doing of any of the specified acts.

(2) Where it is provided by this Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

(3) No inference shall be drawn from the description of any act which may under this Chapter be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.

(4) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

General

Research and private study.

33. (1) Fair dealing with a literary, dramatic, musical or artistic work for the purpose of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with the typographical arrangement of a published edition for the purpose mentioned in subsection (1) does not infringe any copyright in the arrangement.

(3) Copying by a person, other than the researcher or student himself, is not fair dealing if —

(a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 44 would not permit to be done under sections 42 or 43; or

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

34. (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

**Criticism,
reviews and
news
reporting.**

(2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copy-right in the work provided that, subject to subsection (3), it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

35. (1) Copyright in a work is not infringed —

**Incidental
inclusion of
copyright
material.**

(a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme;

(b) by the issue to the public of copies, or by the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, under paragraph (a), not an infringement of the copyright.

(2) A musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

Education

36. (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction, or of preparation for instruction, provided the copying —

**Things done
for purpose
of instruction
or examina-
tion.**

(a) is done by a person giving or receiving the instruction; and

(b) is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in

the making of films or film sound-tracks, provided the copying is done by a person giving or receiving the instruction.

(3) Copyright is not infringed by anything done for the purpose of an examination by way of setting the questions, communicating the questions to the candidates, or answering the questions.

(4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, "dealt with" means sold, let for hire, or offered or exposed for sale or hire.

**Anthologies
for educa-
tional use.**

37. (1) The inclusion of a short passage from a published literary or dramatic work in a collection which —

(a) is intended for use in an educational establishment and is so described in its title, and in any advertisement issued by or on behalf of the publisher; and

(b) consists mainly of material in which no copyright subsists,

does not infringe the copyright in the work if the work itself is not intended for use in such establishment and the inclusion is accompanied by a sufficient acknowledgement.

(2) Subsection (1) does not authorise the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.

(3) In relation to any given passage, the reference in subsection (2) to excerpts from works by the same author —

(a) shall be taken to include excerpts from works by him in collaboration with another; and

(b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

(4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

38. (1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and students at an educational establishment and other persons directly connected with its activities —

Performing, etc., work in course of activities of educational establishment.

(a) by a teacher or student in the course of the activities of the establishment; or

(b) at the establishment by any person for the purpose of instruction,

is not a public performance for the purpose of infringement of copyright.

(2) The playing or showing of a sound recording, film, broadcast or cable programme before such an audience at an educational establishment for the purpose of instruction is not a playing or showing of the work in public for the purpose of infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational establishment only because he is the parent of a student at the establishment.

39. (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for its educational purposes without thereby infringing the copyright in the broadcast or cable programme, or in any work included in it.

Recording by educational establishments of broadcasts and cable programmes.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purpose of this section under section 153 providing for the grant of licences.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, "dealt with" means sold, let for hire, or offered or exposed for sale or hire.

40. (1) Reprographic copies of passages from a published literary, dramatic or musical work may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purpose of instruction without infringing any copyright in the work, or in the typographical arrangement.

Reprographic copying by educational establishments of passages from published works.

(2) Not more than one per cent of any work may be copied by or on behalf of an establishment under this section in any quarter, that is, in any period 1st. January to 31st. March, 1st. April to 30th. June, 1st. July to 30th. September or 1st. October to 31st. December.

(3) Copying is not authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

(4) The terms of a licence granted to an educational establishment authorising the reprographic copying for the purpose of instruction of passages from published literary, dramatic or musical works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or not) to less than that which would be permitted under this section.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, "dealt with" means sold, let for hire, offered or exposed for sale or hire.

Libraries and archives

Libraries and archives: introductory.

41. (1) In sections 42 to 47, references to a prescribed library or archive are to a library or archive of a prescribed description.

(2) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him —

(a) he is liable for infringement of copyright as if he had made the copy himself; and

(b) the copy shall be treated as an infringing copy.

(3) References in this section, and in sections 42 to 47, to a librarian or archivist include a person acting on his behalf.

Copying by librarians: articles in periodicals.

42. (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying it or in the typographical arrangement.

(2) The prescribed conditions shall include provision —

(a) that copies are supplied only to persons satisfying the librarian that they require them for the purpose of research or private study, and will not use them for any other purpose;

(b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and

(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

43. (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying it or in the typographical arrangement.

Copying by librarians: parts of published works.

(2) The prescribed conditions shall include provision —

(a) that copies are supplied only to persons satisfying the librarian that they require them for the purpose of research or private study, and will not use them for any other purpose;

(b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and

(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

44. (1) Regulations for the purposes of sections 42 and 43 shall contain provision to the effect that a copy shall be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.

Restriction on production of multiple copies of same material.

(2) The regulations may provide —

(a) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and

(b) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

45. (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of —

Copying by librarians: supply of copies to other libraries.

(a) an article in a periodical; or

(b) the whole or part of a published edition of a literary, dramatic or musical work,

without infringing any copyright in the text of the article or, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.

(2) Paragraph (b) of subsection (1) does not apply if at the time the copy was made the librarian making it knew, or could by reasonable inquiry have ascertained, the name and address of a person entitled to authorise the making of the copy.

Copying by librarians or archivists: replacement copies of works.

46. (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive —

(a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it; or

(b) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying it or, in the case of a published edition, in the typographical arrangement.

(2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item to fulfil that purpose.

Copying by librarians or archivists: certain unpublished works.

47. (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.

(2) This section does not apply if —

(a) the work had been published before the document was deposited in the library or archive; or

(b) the copyright owner has prohibited copying of the work,

and at the time the copy was made the librarian or archivist making it was, or ought to have been, aware of that fact.

(3) The prescribed conditions shall include provision —

(a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purpose of research or private study, and will not use them for any other purpose;

(b) that no person is furnished with more than one copy of the same material; and

(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

48. If an article of cultural or historical importance or interest cannot lawfully be exported unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of copyright to make that copy.

Copy of work required to be made as condition of export.

Public administration

49. (1) Copyright is not infringed by anything done for the purpose of proceedings of the Legislative Council or of judicial proceedings.

Legislative Council and judicial proceedings.

(2) Copyright is not infringed by anything done for the purpose of reporting such proceedings; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

50. (1) Copyright is not infringed by anything done for the purpose of the proceedings of a Royal Commission or of a statutory inquiry.

Royal Commissions and statutory inquiries.

(2) Copyright is not infringed by anything done for the purpose of reporting such proceedings held in public; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

(3) Copyright in a work is not infringed by the issue to the public of copies of a report of a Royal Commission or statutory inquiry containing the work or material from it.

(4) In this section, "statutory inquiry" means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under any written law.

51. (1) Where material is open to public inspection under a statutory requirement, or is on a statutory register, copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.

Material open to public inspection or on official register.

(2) Where material is open to public inspection under a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement was imposed.

(3) Where material which is open to public inspection under a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) The Attorney General may by order provide that subsections (1), (2) and (3) shall, in such cases as may be prescribed, apply only to copies marked in such manner as may be so prescribed.

(5) The Attorney General may by order provide that subsections (1), (2) and (3) shall, to such extent and with such modifications as may be prescribed, apply —

(a) to material made open to public inspection by —

(i) a prescribed international organisation; or

(ii) a prescribed person who has functions in Brunei Darussalam under an international agreement to which Brunei Darussalam is a party; or

(b) to a register maintained by a prescribed international organisation,

as they apply in relation to material open to public inspection under a statutory requirement or to a statutory register.

(6) In this section —

"appropriate person" means the person required to make the material open to public inspection or, as the case may be, the person maintaining the statutory register;

"statutory register" means a register maintained under a statutory requirement;

"statutory requirement" means a requirement imposed by or under any written law.

52. (1) This section applies where a literary, dramatic, musical or artistic work has in the course of public business (which expression in this subsection includes any activity carried on by the Government) been communicated to the Government for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Government.

Material communicated to Government in course of public business.

(2) The Government may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work and issue copies of the work to the public without infringing any copyright in the work.

(3) The Government may not copy a work, or issue copies of a work to the public, by virtue of this section if the work has previously been published otherwise than by virtue of this section.

(4) This section has effect subject to any agreement to the contrary between the Government and the copyright owner.

53. Material which is comprised in public archives or public records within the meaning of the Brunei National Archives Act which is available to the public under that Act may be copied, and a copy may be supplied to any person, by or with the authority of the Director appointed under subsection (1) of section 4 of that Act, without infringement of copyright.

Public archives and records. Cap. 116.

54. (1) Where the doing of a particular act is specifically authorised by any written law, whenever it commenced, then, unless that written law provides otherwise, the doing of that act does not infringe copyright.

Acts done under statutory authority.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under any written law.

Designs

55. (1) It is not an infringement of any copyright —

Design documents and models.

(a) in a design document or model recording or embodying a design for anything other than an artistic work or a typeface, to make an article to the design or to copy an article made to the design;

(b) to issue to the public, or include in a film, broadcast or cable programme service, anything the making of which was, under subsection (1), not an infringement of that copyright.

(2) In this section —

"design" means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration;

"design document" means any record of a design, whether in the form of a drawing, written description, photograph, data stored in a computer or otherwise.

Effect of exploitation of design derived from artistic work.

56. (1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by —

(a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work; and

(b) marketing such articles, in Brunei Darussalam or elsewhere.

(2) After the end of the period of twenty-five years from the end of the year in which such articles were first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

(4) The Attorney General may by order make provision —

(a) as to the circumstances in which an article, or any description of article, is to be regarded for the purpose of this section as made by an industrial process;

(b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(5) In this section —

(a) references to articles do not include films;

(b) references to the marketing of an article are to its being sold, let for hire, or offered or exposed for sale or hire.

Things done in reliance on registration of design.

57. (1) The copyright in an artistic work is not infringed by anything done —

(a) under an assignment or licence made or granted by the person registered under any law relating to the registration of designs as the proprietor of a corresponding design; and

(b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation of such registration or for rectifying the relevant entry in any register of designs (by whatsoever name so called) kept or maintained under any such law;

and this is so notwithstanding that the person registered as any such proprietor was not the proprietor of the design for the purpose of that law.

(2) In subsection (1), a corresponding design, in relation to an artistic work, means a design within the meaning of any law relating to the registration of designs which if applied to an article would produce something which would be treated for the purpose of this Part as a copy of the artistic work.

Typefaces

58. (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface —

Use of typeface in ordinary course of printing.

(a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;

(b) to possess an article for the purpose of such use; or

(c) to do anything in relation to material produced by such use,

notwithstanding that an article is used which is an infringing copy of the work.

(2) Notwithstanding subsection (1) of this section, sections 28, 101 and 102, subsection (2) of section 204, and section 209 apply to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface. In this subsection, "dealing with" means selling, letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

59. (1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner. In this section, "marketed" means sold, let for hire, or offered or exposed for sale or hire, whether in Brunei Darussalam or elsewhere.

Articles for producing material in particular typeface.

(2) After the end of the period of twenty-five years from the end of the year in which such articles were first marketed, the work may be copied by making further such articles, or doing anything for the purpose of making

such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.

Works in electronic form

Transfers of copies of works in electronic form.

60. (1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.

(2) If there are no express terms —

(a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence, or terminating any licence on a transfer; or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.

(3) Where the original purchased copy is no longer usable and what is transferred is a further copy used in its place, anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.

(4) On a subsequent transfer this section applies, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

Miscellaneous: literary, dramatic, musical and artistic works

Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author.

61. (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or under arrangements made at a time when —

(a) it was not possible by reasonable inquiry to ascertain the identity of the author; and

(b) it was reasonable to assume —

(i) that copyright had expired; or

- (ii) that the author had died fifty years or more before the beginning of the year in which the act was done or the arrangements were made.

(2) Sub-paragraph (ii) of paragraph (b) of subsection (1) does not apply to —

(a) a work in which Government copyright subsists; or

(b) a work in which copyright originally vested in an international organisation under section 172 and in respect of which an order under that section specifies a copyright period longer than fifty years.

(3) In relation to a work of joint authorship —

(a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and

(b) the reference in sub-paragraph (ii) of paragraph (b) of subsection (1) to the author having died shall be construed as a reference to all the authors having died.

62. (1) Where a record of spoken words is made, in writing or otherwise, for the purpose —

Use of notes or recordings of spoken words in certain cases.

(a) of reporting current events; or

(b) of broadcasting or including in a cable programme service the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, if the conditions mentioned in subsection (2) have been complied with.

(2) The conditions are that —

(a) the record was a direct record of the spoken words and was not taken from a previous record or from a broadcast or cable programme;

(b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;

(c) the use made of the record or material taken from it was not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and

(d) the use was by or with the authority of a person who was lawfully in possession of the record.

Public reading or recitation.

63. (1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which under subsection (1) does not infringe copyright in the work, provided that the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

Abstracts of scientific or technical articles.

64. (1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of it to the public.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 153 providing for the grant of licences.

Recordings of folksongs.

65. (1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any copyright in the words as a literary work or in the accompanying musical work, if the conditions mentioned in subsection (2) have been complied with.

(2) The conditions are that —

(a) the words were unpublished and of unknown authorship at the time the recording was made;

(b) the making of the recording did not infringe any other copyright; and

(c) its making was not prohibited by any performer.

(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist or a person acting on his behalf without infringing copyright in the recording or the works included in it.

(4) The prescribed conditions shall include provision that —

(a) copies are only supplied to a person satisfying the archivist or a person acting on his behalf that he requires them for the purpose of research or private study and will not use them for any other purpose; and

(b) no person is furnished with more than one copy of the same recording.

(5) In this section, "designated body" means a body designated for the purpose of this section by an order of the Attorney General, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

66. (1) This section applies to —

(a) buildings; and

(b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place.

(2) The copyright in such a work is not infringed by —

(a) the making of a graphic work representing it;

(b) the making of a photograph or film of it;

(c) the broadcasting of it, or the inclusion in a cable programme service of a visual image of it; or

(d) the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, under this subsection, not an infringement of the copyright.

**Representa-
tion of certain
artistic works
on public
display.**

67. (1) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.

**Advertise-
ment of sale
of artistic
work.**

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, "dealt with" means sold, let for hire, offered or exposed for sale or hire, exhibited in public or distributed.

Making of subsequent work by same artist.

68. Where the author of an artistic work is not the copyright owner, he does not infringe the copyright by copying the work in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

Reconstruction of buildings.

69. Anything done for the purpose of reconstructing a building does not infringe any copyright —

(a) in the building; or

(b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

Miscellaneous: sound recordings, films and computer programs

Playing of sound recordings for purpose of club, society, etc.

70. (1) It is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other similar organisation if the conditions mentioned in subsection (2) have been complied with.

(2) The conditions are that —

(a) the organisation was not established or conducted for profit and that its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

(b) the proceeds of any charge for admission to the place where the recording was heard were applied solely for the purposes of the organisation.

Miscellaneous: broadcasts and cable programmes

Incidental recording for purpose of broadcast or cable programme.

71. (1) This section applies where under a licence or assignment of copyright a person is authorised to broadcast or include in a cable programme service —

(a) a literary, dramatic or musical work, or an adaptation of such a work;

(b) an artistic work; or

(c) a sound recording or film.

(2) That person shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise for the purpose of the broadcast or cable programme —

(a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, the making of a sound recording or film of the work or adaptation;

(b) in the case of an artistic work, the taking of a photograph or the making of a film of the work;

(c) in the case of a sound recording or film, the making of a copy of it.

(3) That licence is subject to the condition that the sound recording, film, photograph or copy —

(a) shall not be used for any other purpose; and

(b) shall be destroyed within twenty-eight days of being first used for broadcasting the work or, as the case may be, including it in the cable programme service.

(4) A sound recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy —

(a) for the purpose of any use in breach of the condition mentioned in paragraph (a) of subsection (3); and

(b) for all purposes after that condition, or the condition mentioned in paragraph (b) of subsection (3), has been broken.

72. Copyright is not infringed by the making or use by the Government, for the purpose of maintaining supervision and control over programmes broadcast by it, of recordings of those programmes.

Recording for purpose of supervision, etc., of programmes.

73. The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be listened to or viewed at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

Recording for purpose of time-shifting.

74. The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or a copy of such a photograph, does not infringe any copyright in the broadcast or cable programme or in any film included in it.

Photographs of television broadcasts or cable programmes.

75. (1) The playing or showing in public of a broadcast or cable programme to an audience that has not paid for admission to the place where the broadcast or programme is to be heard or seen does not infringe any copyright in —

Free public playing or showing of broadcast or cable programme.

- (a) the broadcast or cable programme; or
 - (b) any sound recording or film included in it.
- (2) The audience shall be treated as having paid for admission to a place —
- (a) if they have paid for admission to a place of which that place forms part; or
 - (b) if goods or services are supplied at that place, or a place of which it forms part —
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid for admission to a place —
- (a) persons admitted as residents or inmates of that place;
 - (b) persons admitted as members of a club, society or other similar organisation where the payment is only for membership thereof and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to its main purposes.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the copyright in a sound recording or film, the fact that it was seen or heard in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.

Reception and re-transmission of broadcast in cable programme service.

76. (1) This section applies where a broadcast made from Brunei Darussalam is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast is not infringed if and to the extent that it was made for reception in the area in which the cable programme service is provided and was not a satellite transmission or an encrypted transmission.

(3) The copyright in any work included in the broadcast is not infringed if and to the extent that it was made for reception in the area in which the cable programme service is provided, but where the making of the

broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

77. (1) A designated body may, for the purpose of providing persons who are physically or mentally handicapped in any way, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them. In this section, "designated body" means a body designated for the purpose of this section by order of the Attorney General, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

Provision of sub-titled copies of broadcast or cable programme.

(2) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purpose of this section under section 153 providing for the grant of licences.

78. A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it. In this section, "designated" means designated for the purpose of this section by order of the Attorney General, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

Recording for archival purposes.

Adaptations

79. An act which under this Chapter may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

Adaptations.

CHAPTER IV

MORAL RIGHTS

Right to be identified as author or director

80. (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 81.

Right to be identified as author or director.

(2) The author of a literary work, other than words intended to be sung or spoken with music, or a dramatic work has the right to be identified whenever —

(a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or

(b) copies of a film or sound recording including the work are issued to the public,

and that right includes the right to be identified, whenever any of those events occur in relation to an adaptation of the work, as the author of the work from which the adaptation was made.

(3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever —

(a) the work is published commercially;

(b) copies of a sound recording of the work are issued to the public; or

(c) a film of which the sound-track includes the work is shown in public or copies of such a film are issued to the public,

and that right includes the right to be identified, whenever any of those events occur in relation to an adaptation of the work, as the author of the work from which the adaptation was made.

(4) The author of an artistic work has the right to be identified whenever —

(a) the work is published commercially or exhibited in public, or a visual image of it is broadcast or included in a cable programme service;

(b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or

(c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.

(5) The author of a work of architecture in the form of a building has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(6) The director of a film has the right to be identified whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued to the public.

(7) The right of the author or director under this section is —

(a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of the person acquiring a copy;

(b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and

(c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme,

and the identification must in each case be clear and reasonably prominent.

(8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(9) This section has effect subject to section 82.

81. (1) A person does not infringe the right conferred by section 80 by doing any of the acts mentioned in that section, unless the right has been asserted in accordance with this section so as to bind him in relation to that act.

**Requirement
that right be
asserted.**

(2) The right may be asserted generally, or in relation to any specified act or description of acts —

(a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or

(b) in writing signed by the author or director.

(3) The right may be asserted in relation to the public exhibition of an artistic work —

(a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or

(b) by including in a licence by which the author or other first owner of copyright authorises the making of copies of the work, a statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made under the licence.

(4) The persons bound by an assertion under subsections (2) or (3) are —

(a) in the case of an assertion under paragraph (a) of subsection (2), the assignee and anyone claiming through him, whether or not he has notice of the assertion;

(b) in the case of an assertion under paragraph (b) of subsection (2), anyone to whose notice the assertion has been brought;

(c) in the case of an assertion under paragraph (a) of subsection (3), anyone into whose hands that original or copy has come, whether or not the identification was still present or visible;

(d) in the case of an assertion under paragraph (b) of subsection (3), the licensee and anyone into whose hands a copy made under the licence has come, whether or not he has notice of the assertion.

(5) In an action for infringement of the right, the court shall, in considering remedies, take into account any delay in asserting that right.

Exceptions to rights.

82. (1) The rights conferred by section 80 are subject to this section.

(2) Such right does not apply to anything done by or with the authority of the copyright owner, where copyright in the work originally vested —

(a) in the author's employer under subsection (2) of section 13;
or

(b) in the director's employer under paragraph (a) of subsection (2) of section 11.

(3) Such rights are not infringed by an act which under section 34, so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme, section 35, subsection (3) of section 36, section 49, subsections (1) and (2) of section 50, or sections 55, 56 and 61 would not infringe copyright in the work.

(4) Such rights do not apply to any work made for the purpose of reporting current events.

- (5) Such rights does not apply to the publication in —
- (a) a newspaper, magazine or similar periodical; or
 - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purpose of such publication or made available with the consent of the author for the purpose of such publication.

- (6) Such rights do not apply to —
- (a) a work in which Government copyright or Legislative Council copyright subsists; or
 - (b) a work in which copyright originally vested in an international organisation under section 172,

unless the author or director has previously been identified as such in or on published copies of the work.

Right to object to derogatory treatment of work

83. (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.

**Right to
object to
derogatory
treatment of
work.**

- (2) In this section —
- (a) the treatment of a work means any addition to, deletion from, alteration to or adaptation of the work, other than —
 - (i) a translation of a literary or dramatic work; or
 - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register;
 - (b) the treatment of a work is derogatory if it amounts to distortion, mutilation or any other modification of the work or is otherwise prejudicial to the honour or reputation of the author or director.

(3) In the case of a literary, dramatic or musical work, the right is infringed by a person who —

(a) publishes commercially, performs in public, broadcasts or includes in a cable programme service a derogatory treatment of the work; or

(b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

(4) In the case of an artistic work, the right is infringed by a person who —

(a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;

(b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or

(c) in the case of —

(i) a work of architecture in the form of a model for a building;

(ii) a sculpture; or

(iii) a work of artistic craftsmanship,

issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.

(6) In the case of a film, the right is infringed by a person who —

(a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or

(b) issues to the public copies of a derogatory treatment of the film,

or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound-track.

(7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

(8) This section has effect subject to sections 84 and 85.

84. (1) The right conferred by section 83 is subject to this section.

Exceptions to right.

(2) Such right does not apply to any work made for the purpose of reporting current events.

(3) Such right does not apply to —

(a) the publication in —

(i) a newspaper, magazine or similar periodical; or

(ii) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purpose of such publication or made available with the consent of the author for the purpose of such publication; or

(b) any subsequent exploitation elsewhere of such a work without any modification of the published version.

(4) Such right is not infringed by an act which under section 61 would not infringe copyright.

(5) Such right is not infringed by anything done for the purpose of —

(a) avoiding the commission of an offence;

(b) complying with a duty imposed by or under any law; or

(c) in the case of the Government, avoiding the inclusion in a programme broadcast by it of anything which offends against good taste or decency, which is likely to encourage or incite to crime or lead to disorder, or which is likely to be offensive to public feeling,

provided, where the author or director was identified at the time of the act or had previously been identified in or on published copies of the work, that there was a sufficient disclaimer.

**Qualification
of right in
certain cases.**

85. (1) This section applies to —

(a) a work in which copyright originally vested in the author's employer under subsection (2) of section 13, or in the director's employer under paragraph (a) of subsection (2) of section 11;

(b) a work in which Government copyright or Legislative Council copyright subsists; and

(c) a work in which copyright originally vested in an international organisation under section 172.

(2) The right conferred by section 83 does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director —

(a) was identified at the time of the act; or

(b) had previously been identified in or on published copies of the work,

and where in such a case the right does apply, it is not infringed if there has been a sufficient disclaimer.

**Infringement
of right by
possessing,
etc.,
infringing
article.**

86. The right conferred by section 83 is infringed by a person who —

(a) possesses in the course of a business;

(b) sells, lets for hire, or offers or exposes for sale or hire;

(c) in the course of a business exhibits in public or distributes;

or

(d) distributes, otherwise than in the course of a business, so as to prejudice the honour or reputation of the author or director,

an article which is, and which he knows or has reason to believe is, an infringing article. In this section, an infringing article means a work or a copy of a work which —

(i) has been subjected to derogatory treatment within the meaning of section 83; and

(ii) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

False attribution of work

87. (1) A person has the right in the circumstances mentioned in this section — **False attribution of work.**

(a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and

(b) not to have a film falsely attributed to him as director.

In this section, an attribution, in relation to such a work, means a statement, whether express or implied, as to who is the author or director.

(2) Such right is infringed by a person who —

(a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or

(b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.

(3) Such right is infringed by a person who —

(a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or

(b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

knowing or having reason to believe that the attribution is false.

(4) Such right is infringed by the issue to the public, or by the public display, of material containing a false attribution in connection with any of the acts mentioned in subsections (2) and (3).

(5) Such right is infringed by a person who in the course of a business —

(a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution; or

(b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is such an attribution and that it is false.

(6) In the case of an artistic work, such right is infringed by a person who in the course of a business —

(a) deals with a work that has been altered after the author parted with possession of it as being the unaltered work of the author; or

(b) deals with a copy of such a work as being a copy of the unaltered work of the author,

knowing or having reason to believe that this was not the case.

(7) In this section, "deals" means sells, lets for hire, offers or exposes for sale or hire, exhibits in public, or distributes.

(8) This section applies where, contrary to the fact —

(a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or

(b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

Right to privacy of certain photographs and films

Right to privacy of certain photographs and films.

88. (1) A person who for private and domestic use commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have —

(a) copies of the work issued to the public;

(b) the work exhibited or shown in public; and

(c) the work broadcast or included in a cable programme service,

and, subject to subsection (2), a person who does or authorises the doing of any of those acts infringes that right.

(2) Such right is not infringed by an act which under sections 35, 49, 50, 54 and 61 would not infringe copyright in the work.

Supplementary

Duration of rights.

89. (1) The rights conferred by sections 80, 83 and 88 continue to subsist so long as copyright subsists in the work.

(2) The right conferred on a person by section 87 continues to subsist for twenty years after his death.

90. (1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.

Consent and waiver of rights.

(2) Any of those rights may be waived in writing signed by the person giving up the right.

(3) A waiver —

(a) may relate to a specific work, works of a specified description or works generally, and may relate to existing or future works; and

(b) may be conditional or unconditional, and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of the copyright in the work to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Chapter shall be construed as excluding the operation of any law relating to contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

91. (1) The right conferred by section 80 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with section 81 by each joint author in relation to himself.

Application of provisions to joint works.

(2) The right conferred by section 83 is, in the case of a work of joint authorship, a right of each joint author, and his right is satisfied if he consents to the treatment in question.

(3) A waiver under section 90 of those rights, or of either of them, by one joint author does not affect the rights of the other joint authors.

(4) The right conferred by section 87 is infringed, in the circumstances mentioned in that section —

(a) by any false statement as to the authorship of a work of joint authorship; and

(b) by the false attribution of joint authorship in relation to a work of sole authorship,

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(5) Subsections (1) to (4) apply, with any necessary modifications, in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship. A film is jointly directed if it is made by the collaboration of two or more directors, and the contribution of each director is not distinct from that of the other director or directors.

(6) The right conferred by section 88 is, in the case of a work made under a joint commission, a right of each person who commissioned the making of the work, so that —

(a) the right of each is satisfied if he consents to the act in question; and

(b) a waiver under section 90 by one of them does not affect the rights of the others.

Application of provisions to parts of works.

92. (1) The rights conferred by sections 80 and 88 apply to the whole or any substantial part of a work.

(2) The rights conferred by sections 83 and 87 apply to the whole or any part of a work.

CHAPTER V

DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

Copyright

Assignments and licences.

93. (1) Copyright is transmissible by assignment, will and operation of law, as movable property.

(2) An assignment of copyright may be limited so as to apply —

(a) to one or more, but not all, of the things the copyright owner has the exclusive right to do; or

(b) to part, but not to the whole, of the period for which the copyright is to subsist.

(3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, except a purchaser in good

faith for valuable consideration and without notice, whether actual or constructive, of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

94. (1) Where by an agreement made in relation to future copyright, and entered into by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright, whether wholly or partly, to another person, then if, on the copyright coming into existence, the assignee or any person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title under this subsection.

Prospective ownership of copyright.

(2) In this Part —

"future copyright" means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event;

"prospective owner" shall be construed accordingly, and includes a person who is prospectively entitled to copyright under such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest or prospective interest in the copyright, except a purchaser in good faith for valuable consideration and without notice, whether actual or constructive, of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

95. (1) In this Order, "exclusive licence" means a licence, whether general or limited, in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise in the manner authorised by the licence any right which would otherwise be exercisable exclusively by the copyright owner.

Exclusive licences.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

96. Where under a bequest in a will a person is entitled, whether beneficially or otherwise, to —

Copyright to pass under will with unpublished work.

(a) an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator; or

(b) an original material thing containing a sound recording or film which was not published before the death of the testator,

the bequest shall, unless a contrary intention is indicated in the will, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Moral rights

Moral rights not assignable.

97. The rights conferred by Chapter IV are not assignable.

Transmission of moral rights on death.

98. (1) On the death of a person entitled to a right conferred by sections 80, 83 or 88 —

(a) the right passes to such person as he may by will specifically direct;

(b) if there is no such direction but the copyright in the work forms part of his estate, the right passes to the person to whom the copyright passes; and

(c) if or to the extent that the right does not pass under paragraphs (a) or (b), it is exercisable by his personal representative.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, including cases where a bequest is limited so as to apply —

(a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorise; or

(b) to part, but not the whole, of the period for which the copyright is to subsist,

any right which passes with the copyright under subsection (1) is correspondingly divided.

(3) Where under paragraphs (a) or (b) of subsection (1) a right becomes exercisable by more than one person —

(a) it may, in the case of the right conferred by section 80, be asserted by any of them;

(b) it is, in the case of the right conferred by sections 83 or 88, a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 90 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes under subsection (1).

(5) Any infringement after a person's death of the right conferred by section 87 is actionable by his personal representative.

(6) Any damages recovered by a personal representative under this section in respect of an infringement after a person's death shall devolve as part of that person's estate as if the right of action had subsisted and been vested in him immediately before his death.

CHAPTER VI

REMEDIES FOR INFRINGEMENT

Rights and remedies of copyright owner

99. (1) An infringement of copyright is actionable by the copyright owner.

Infringement actionable by copyright owner.

(2) In an action for infringement of copyright, all such relief by way of damages, injunction, account or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Chapter.

100. (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

Provisions as to damages in infringement actions.

(2) The court may in an action for infringement of copyright, having regard to all the circumstances including —

(a) The flagrancy of the infringement; and

(b) Any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.

**Order for
delivery up.**

101. (1) Where a person —

(a) in the course of a business, has in his possession, custody or control an infringing copy of a work; or

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as it may direct.

(2) An application shall not be made after the end of the period specified in section 211; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 212.

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 212 is not made, retain it pending the making of an order, or the decision not to make an order, under this section.

(4) Nothing in this section affects any other power of the court.

**Right to seize
infringing
copies.**

102. (1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 101, may be seized and detained by him or a person authorised by him. The right to seize and detain is exercisable subject to the conditions mentioned in this section and is subject to any decision of the court under section 212.

(2) Before anything is seized under this section, notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter any place to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.

(4) At the time when anything is seized under this section, there shall be left at the place where it was seized a notice containing particulars of the person by whom or on whose authority the seizure was made and the grounds on which it was made.

Rights and remedies of exclusive licensee

103. (1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

Rights and remedies of exclusive licensee.

(2) Such rights and remedies are concurrent with those of the copyright owner; and references in this Part to the copyright owner which relate to infringement shall be construed accordingly.

(3) In an action brought by an exclusive licensee under this section, a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

104. (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates, whether wholly or partly, to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other of them is either joined as a plaintiff or added as a defendant.

Exercise of concurrent rights.

(2) A copyright owner or exclusive licensee who is added as a defendant is not liable for any costs in the action unless he has taken part in the proceedings.

(3) Subsections (1) and (2) do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates, whether wholly or partly, to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action —

(a) the court shall in assessing damages take into account —

(i) the terms of the licence; and

(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and

(c) the court shall, if an account of profits is directed, apportion the profits between them as it considers just, subject to any agreement to the contrary.

This subsection applies whether or not the copyright owner and the exclusive licensee are both parties to the action; and if they are not both parties the court may give such directions as it thinks fit as to the extent to which the party to the proceedings is to hold the proceeds of any pecuniary remedy on behalf of the other.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 101 or exercising the right conferred by section 102; and the court may on the application of the licensee make such order under section 101 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 102, as it thinks fit having regard to the terms of the licence.

Remedies for infringement of moral rights

Remedies for infringement of moral rights.

105. (1) In addition to the other rights and remedies available otherwise than under this Part, an infringement of a right conferred by Chapter IV is actionable as a breach of statutory duty owed to the person entitled to that right.

(2) In an action for infringement of the right conferred by section 83, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, disassociating the author or director from the treatment of the work.

Presumptions

Presumptions relevant to literary, dramatic, musical and artistic works.

106. (1) This section applies in proceedings brought under this Chapter with respect to a literary, dramatic, musical or artistic work.

(2) Where a name purporting to be that of the author appears on copies of the work as published or on the work when it was made, the person whose name so appears shall be presumed, until the contrary is proved —

(a) to be the author of the work; and

(b) to have made it in circumstances not falling within subsection (2) of section 13, or sections 167, 169 or 172.

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.

(4) Where no name purporting to be that of the author appears as mentioned in subsection (2), but —

(a) the work qualified for copyright protection under section 164; and

(b) a name purporting to be that of the publisher appears on copies of the work as first published,

the person whose name so appears shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

(5) If the author of the work is dead or his identity cannot be ascertained by reasonable inquiry, it shall be presumed, until the contrary is proved —

(a) that the work is an original work; and

(b) that the plaintiff's allegations as to the first publication of the work and as to the country of first publication are correct.

107. (1) In proceedings brought under this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating —

**Presump-
tions rele-
vant to sound
recordings,
films and
computer
programs.**

(a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or

(b) that the recording was first published in a certain year or in a named country,

that label or other mark shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved.

(2) In proceedings brought under this Chapter with respect to a film, where copies of the film as issued to the public bear a statement —

(a) that a named person was the author or director of the film;

(b) that a named person was the owner of copyright in the film at the date of issue of the copies; or

(c) that the film was first published in a certain year or in a named country,

that statement shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved.

(3) In proceedings brought under this Chapter with respect to a computer program, where copies of that program are issued to the public in electronic form bearing a statement —

(a) that a named person was the owner of copyright in the program at the date of issue of the copies; or

(b) that the program was first published in a named country or that copies of it were first issued to the public in electronic form in a certain year,

that statement shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved.

(4) Subsections (1), (2) and (3) apply, whether or not the infringement was alleged to have occurred before or after the date on which the copies were issued to the public.

(5) In proceedings brought under this Chapter with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement —

(a) that a named person was the author or director of the film; or

(b) that a named person was the owner of copyright in the film immediately after it was made,

that statement shall be admissible as evidence of those facts and shall be presumed to be correct until the contrary is proved. This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in the cable programme service.

**Presump-
tions rele-
vant to works
subject to
Government
copyright.**

108. In proceedings brought under this Chapter with respect to a literary, dramatic or musical work in which Government copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of that fact and shall be presumed to be correct until the contrary is proved.

Border Enforcement Measures

**Infringing
copies may be
treated as
prohibited
good.**

109. (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Controller of Customs —

(a) claiming that he is the owner of the copyright in the work;
and

(b) requesting the Controller of Customs, for the period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies for the purposes of this Order that are or at any time come under customs control.

(2) The period specified in a notice under subsection (1) shall not exceed five years and shall not extend beyond the period for which copyright subsists.

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Controller of Customs —

(a) claiming that he is the owner of the copyright in the work;

(b) claiming that infringing copies of the work are expected to arrive in Brunei Darussalam at the time and place specified in the notice; and

(c) requesting the Controller of Customs to treat as prohibited goods the infringing copies that come under customs control.

(4) When a notice has been given under this section, the goods to which it relates, unless they have been imported for private and domestic use, shall become prohibited goods for the purposes of the Customs Act and shall be deemed to have been included in an order made under section 28 of that Act, and the provisions of that Act relating to the importation of prohibited goods shall apply accordingly, but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

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(5) A notice given under this section remains in force for the period specified in the notice unless —

(a) it is revoked by the claimant in writing; or

(b) the court orders, in proceedings under section 114, that it be discharged.

110. Where —

(a) a notice that has been given under subsection (1) of section 109 is in force; and

(b) an officer of customs forms the opinion that any goods that have been imported and are under customs control may be infringing copies,

**Determina-
tion whether
goods are
infringing
copies.**

he may conduct such investigation as he considers necessary to establish whether or not the goods appear to be infringing copies.

(2) Where an officer of customs conducts an investigation, he may, subject to section 111, require —

(a) the claimant; and

(b) any other person appearing to him to have an interest in the goods,

to supply such information as he may specify within ten days of being required to do so.

(3) Whether or not the officer of customs conducts an investigation, he shall make a determination whether or not the goods appear to be infringing copies.

(4) Nothing in this section applies to any goods that have been imported for private and domestic use.

Limitations on requirement to supply information.

111. (1) An officer of customs shall not require any person to supply any information under subsection (2) of section 110 unless he believes that the information is necessary for the purpose of the investigation.

(2) Every person who is required to supply information shall have the same privilege in relation to the giving of the information as a witness has in any court.

(3) Where any person refuses or fails to supply information, the officer of customs may, subject to subsection (2) of this section, take that refusal or failure into account in making a determination under subsection (3) of section 110.

Notice of determination.

112. (1) An officer of customs who has made a determination under subsection (3) of section 110 shall cause written notice of that determination to be served on —

(a) of claimant; and

(b) any other person appearing to him to have an interest in the goods.

(2) Every notice required to be served under subsection (1) may be served by —

(a) personal delivery; or

(b) posting it to the last-known addresses of the claimant and such other person.

(3) The detention of any goods under section 113 is not rendered illegal by a failure to serve notice under subsection (1) of this section.

Detention of infringing goods.

113. (1) Where an officer of customs has formed an opinion that any goods that have been imported and are under customs control may be goods to

which a notice given under subsection (1) of section 109 relates, those goods shall forthwith be detained by him until —

(a) the Controller of Customs has been served with an order made in proceedings under subsection (1) of section 114 that the notice be discharged;

(b) the Controller of Customs has been served with an order made in proceedings under subsection (2) of section 114 that the goods be released;

(c) any proceedings under subsection (3) of section 114 (including any appeal) have been determined by a decision that the goods are not infringing copies;

(d) any proceedings under subsection (3) of section 114 (including any appeal) have been abandoned; or

(e) ten days have elapsed since notice was served under section 112 and the Controller of Customs has not been served with notice of proceedings brought under subsection (3) of section 114 by any person other than the importer or consignee,

whereupon the goods shall, subject to subsection (5) of this section, be released to the person entitled to them.

(2) An officer of customs may refuse to detain goods under this section unless —

(a) the claimant has deposited with the Collector of Customs a sum of money that, in the opinion of the Collector of Customs, is sufficient to reimburse the Government for any liability or expense it is likely to incur as a result of the detention of the copies; or

(b) the claimant has given security, to the satisfaction of the Collector of Customs, for the reimbursement of the Government for any such liability or expense.

(3) If the reasonable expenses incurred by the Collector of Customs in relation to any action taken by him under this section, or taken in accordance with an order of the court under this Order exceed the amount deposited or the amount of the security given under subsection (2), the amount of the excess is a debt due to the Government by the claimant, or, if there are two or more claimants, by the claimants jointly and severally.

(4) The Controller of Customs may, in any particular case, extend the period referred to in paragraph (e) of subsection (1) of this section to twenty days if he considers it appropriate to do so in all the circumstances.

(5) The Controller of Customs shall not release any goods under subsection (1) of this section unless —

(a) any other legal requirements as to importation of the goods have been met;

(b) any requirements under subsection (2) relating to the deposit of money or the giving of security have been met; and

(c) the release of the goods would not be otherwise contrary to any law.

**Proceedings
in respect of
infringing
copies.**

114. (1) Any person may apply to the court for an order that a notice given under subsection (1) of section 109 be discharged, and the court may make such an order accordingly.

(2) Any person may apply to the court for an order that any goods detained under section 113 be released, and the court may make such an order accordingly.

(3) Any person may apply to the court for a decision whether or not any goods the subject of a determination made under subsection (3) of section 110 are infringing copies imported otherwise than for private and domestic use, and the court shall make such a decision accordingly.

(4) Notice of proceedings under subsection (3) of this section shall be served on the Controller of Customs.

(5) In proceedings under subsection (3) of this section, the court shall issue directions as to the service of notice on any person having an interest in the goods, and any such person is entitled —

(a) to appear in those proceedings, whether or not he was served with notice under section 112; and

(b) to appeal against any order made in those proceedings, whether or not he appeared in the proceedings.

(6) No order made in proceedings under subsection (3) of this section shall take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal has been given, until the final determination or abandonment of the proceedings on the appeal.

**Forfeiture of
goods by
consent.**

115. Where any infringing copies have been detained by the Controller of Customs or an officer of customs, the importer or consignee of the goods may, by notice in writing to the Controller of Customs, consent to the goods being

forfeited and, on the receipt of such notice by the Controller of Customs, the goods shall thereupon be forfeited.

116. (1) Where, in proceedings under subsection (3) of section 114, the court decides that any goods the subject of a determination under subsection (3) of section 110 are infringing copies imported otherwise than for private and domestic use, it shall make an order that the goods be — **Powers of court.**

- (a) forfeited;
- (b) destroyed; or
- (c) otherwise dealt with as it thinks fit.

(2) In considering what order should be made under subsection (1) of this section, the court shall have regard to —

- (a) whether other remedies available in infringement proceedings would be adequate to compensate the claimant and to protect his interests; and
- (b) the need to ensure that no infringing goods are dealt with in a manner that would adversely affect his interests.

(3) Where more than one person is interested in any infringing goods, the court may direct that the goods be sold, or otherwise dealt with, and the proceeds divided, or shall make such other order as it thinks fit.

(4) Where, in proceedings under subsection (3) of section 114, the court decides that any goods the subject of a determination under subsection (3) of section 110 are not infringing copies imported otherwise than for private and domestic use, it may make an order that any person who is a party to the proceedings pay such compensation as it thinks fit to the importer, consignee or owner of those goods.

117. (1) An officer of customs shall, in respect of any goods in customs control that are or may be the subject of — **Inspection of goods.**

- (a) a notice given under subsection (1) of section 109;
- (b) an investigation under section 110; or
- (c) proceedings under section 114,

allow any person claiming to have an interest in those goods or in an investigation under section 110, or in proceedings under section 114, in relation to those goods, to inspect those goods.

(2) The person referred to in subsection (1) may —

(a) inspect the goods; and

(b) with the approval of an officer of customs, remove the goods or a sample thereof to such place, for such period, and on such conditions as the officer of customs may specify, for the purpose of inspecting them.

(3) Any person who wishes to inspect or remove any goods under this section shall give to the Controller of Customs not less than seventy-two hours notice of his intention to do so.

Supplementary

**Power of
Controller of
Customs to
disclose infor-
mation.**

118. Where information relating to infringing copies of any work, sound recording or film mentioned in subsections (1) or (3) of section 109 has been obtained by the Controller of Customs for the purpose of, or in connection with, the exercise of his functions under that section, or under any other law relating to imported goods, he may authorise the disclosure of that information to facilitate the exercise by any person of any function in connection with the investigation or prosecution of an offence under sections 204 or 205 of this Order or under the Merchandise Marks Act.

Cap. 96.

**Protection of
Government
from liability.**

119. (1) In respect of anything done, purported to have been done, or omitted to be done, in the exercise or performance of the functions of the Controller of Customs under sections 109 or 113, the Government shall not be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of the Controller of Customs, unless such loss was caused by the wilful neglect or default of the Controller of Customs or of a person employed by the Government in connection with customs matters.

(2) In respect of anything done, purported to have been done, or omitted to be done, as mentioned in subsection (1), the Controller of Customs and no person employed by the Government in connection with customs matters shall be liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in any customs warehouse or in the lawful custody or control of the Controller of Customs or such other person, unless such loss was caused by his wilful neglect or default.

CHAPTER VII

COPYRIGHT LICENSING

Licensing schemes and licensing bodies

- 120.** (1) In this Order, "licensing scheme" means a scheme setting out — **Licensing schemes and licensing bodies.**
- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences; and
 - (b) the terms on which licences would be granted in those classes of case,

and includes anything in the nature of a scheme, whether described as a scheme, a tariff or any other name.

(2) In this Order, "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only —

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made by, or by employees of or commissioned by, a single individual, firm, company, or a holding company or a subsidiary company within the meaning of sections 125 and 126 of the Companies Act. **Cap. 39.**

(4) In this section, "copyright licence" means a licence to do, or authorise the doing of, any of the acts restricted by copyright.

References and applications with respect to licensing schemes

- 121.** Sections 122 to 127 apply to — **Licensing schemes to which sections 122 to 127 apply.**
- (a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they relate to licences for —

- (i) the copying of the work;
- (ii) the performing, playing or showing of the work in public; or
- (iii) the broadcasting of the work or its inclusion in a cable programme service;

(b) all licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts or cable programmes, or the typographical arrangement of published editions; and

(c) all licensing schemes in relation to the copyright in sound recordings, films or computer programs, so far as they relate to licences for the rental of copies to the public,

and in those sections "licensing scheme" means a licensing scheme of any of those descriptions.

Reference of proposed scheme to Tribunal.

122. (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Copyright Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Copyright Tribunal decides to entertain the reference, it shall consider the matter and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

Reference of scheme to Tribunal.

123. (1) If, while a licensing scheme is in operation, a dispute arises between the operator of the scheme and —

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Copyright Tribunal under this section shall remain in operation until proceedings on the reference have been concluded.

(3) The Copyright Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme in so far as it relates to cases of the description to which the reference relates, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

124. (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under sections 122 or 123, or under this section, made an order with respect to the scheme, then, while the order remains in force —

**Further
reference of
scheme to
Tribunal.**

(a) the operator of the scheme;

(b) a person claiming that he requires a licence in a case of the description to which the order applies; or

(c) an organisation claiming to be representative of such persons,

may refer the scheme again to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the leave of the Copyright Tribunal, be referred again to the Copyright Tribunal in respect of the same description of cases —

(a) within twelve months from the date of the order on the previous reference; or

(b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Copyright Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Copyright Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme in so far as it relates to cases of the description to which the reference relates, as it may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

**Application
for licence
under
scheme.**

125. (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or to procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being so requested, may apply to the Copyright Tribunal.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either —

(a) has refused to grant him or to procure the grant to him of a licence, or has failed to do so within a reasonable time after being so requested, and that in the circumstances it is unreasonable that a licence should not be granted; or

(b) proposes terms for a licence which are unreasonable, may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purpose of subsection (2) if —

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Copyright Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Copyright Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

**Application
for review of
order as to
entitlement to
licence.**

126. (1) Where the Copyright Tribunal has made an order under section 125 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Copyright Tribunal to review its order.

(2) An application shall not be made, except with the leave of the Copyright Tribunal —

(a) within twelve months from the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) The Copyright Tribunal shall on such an application confirm or vary its order as it may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

127. (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal under sections 122, 123 or 124 shall be in force or, as the case may be, remain in force, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

Effect of order of Tribunal as to scheme.

(2) While the order is in force, a person who in a case of a class to which the order applies —

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright in accordance with the scheme.

(3) The Copyright Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before the day on which it was made, but not earlier than the day on which the reference was made or, if later, on which the scheme came into force. If such a direction is made —

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

(b) the reference in paragraph (a) of subsection (2) to charges payable under the scheme shall be construed as a reference to charges so payable under the order.

No such direction may be made where subsection (4) applies.

(4) An order of the Copyright Tribunal under sections 123 or 124 made with respect to a scheme certified for any purpose under section 153 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the day on which the reference was made to the Copyright Tribunal.

(5) Where the Copyright Tribunal has made an order under section 125 and the order remains in force, the person in whose favour the order was made shall, if he —

(a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay them when ascertained; and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

Licences to which sections 129 to 132 apply.

128. Sections 129 to 132 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme —

(a) licences relating to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they authorise —

- (i) the copying of the work;
- (ii) the performing, playing or showing of the work in public;
- (iii) the broadcasting of the work or its inclusion in a cable programme service; or
- (iv) the communication to the public by wire or without wire;

(b) any licence in relation to the copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast or cable programme, or the typographical arrangement of a published edition; and

(c) all licences in relation to the copyright in sound recordings, films, or computer programs, so far as they relate to the rental of copies to the public,

and in those sections a licence means a licence of any of those descriptions.

129. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.

**Reference to
Tribunal of
proposed
licence.**

(2) The Copyright Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Copyright Tribunal decides to entertain the reference, it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

130. (1) A licensee under a licence which is due to expire, by effluxion of time or as the result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

**Reference to
Tribunal of
expiring
licence.**

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Copyright Tribunal shall remain in operation until proceedings on the reference have been concluded.

(4) If the Copyright Tribunal is satisfied that the application is well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as it may determine to be reasonable in the circumstances.

(5) An order may be made so as to be in force indefinitely or for such period as the Copyright Tribunal may determine.

131. (1) Where the Copyright Tribunal has made an order under sections 129 or 130, the licensing body or the person entitled to the benefit of the order may apply to the Copyright Tribunal to review its order.

**Application
for review
of order.**

(2) An application shall not be made, except with the leave of the Copyright Tribunal —

(a) within twelve months from the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) The Copyright Tribunal shall on an application for review confirm or vary its order as it may determine to be reasonable in the circumstances.

Effect of order of Tribunal.

132. (1) Where the Copyright Tribunal has made an order under sections 129 or 130 and the order remains in force, the person entitled to the benefit of the order shall, if he —

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay them when ascertained; and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright on the terms specified in the order.

(2) The benefit of the order may be assigned —

(a) in the case of an order under section 129, if assignment is not prohibited under the terms of the Copyright Tribunal's order; and

(b) in the case of an order under section 130, if assignment is not prohibited under the terms of the original licence.

(3) The Copyright Tribunal may direct that an order under sections 129 or 130, or an order under section 131 varying such an order, so far as it varies the amount of charges payable, has effect from a date before the day on which it was made, but not earlier than the day on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire. If such a direction is made —

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

(b) the reference in paragraph (a) of subsection (1) to charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to charges so payable under the later order.

Factors to be taken into account in certain classes of case

133. In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to —

General considerations: unreasonable discrimination.

(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and

(b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

134. Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, it shall have regard to —

Licences for reprographic copying.

(a) the extent to which published editions of the works in question are otherwise available;

(b) the proportion of the work to be copied; and

(c) the nature of the use to which the copies are likely to be put.

135. (1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

Licences for educational establishments where works included in broadcasts or cable programmes.

(2) The Copyright Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

136. (1) This section applies to references and applications under this Chapter relating to licences in respect of sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

Licences to reflect conditions imposed by promoters of events.

(2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Copyright Tribunal to have regard to any such conditions in so far as they —

(a) purport to regulate the charges to be imposed in respect of the grant of licences; or

(b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

Licences to reflect payments in respect of underlying rights.

137. In considering what charges should be paid for a licence on a reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Copyright Tribunal shall take into account any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

Licences in respect of works included in re-transmissions.

138. (1) This section applies to references or applications under this Chapter relating to licences to include in a broadcast or cable programme service —

(a) literary, dramatic, musical or artistic works; or

(b) sound recordings or films,

where one broadcast or cable programme ("the first transmission") is, by reception and immediate re-transmission, to be further broadcast or included in a cable programme service ("the further transmission").

(2) So far as the further transmission is to the same area as the first transmission, the Copyright Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission was made, the Copyright Tribunal shall leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.

Mention of specific matters not to exclude other relevant considerations.

139. The mention in sections 133 to 138 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect its general obligation in any case to have regard to all relevant considerations.

Use as of right of sound recordings in broadcasts and cable programme services

140. (1) Section 142 applies to the inclusion in a broadcast or cable programme service of any sound recordings if —

Circumstances in which right available.

(a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so;

(b) the condition in subsections (2) or (3) applies; and

(c) the person including those recordings in the broadcast or cable programme service has complied with section 141.

(2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence —

(a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 143 relating to such a licence or any scheme under which it would be granted; and

(b) allowing unlimited needletime or such needletime as he has demanded.

(3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within paragraph (a) of subsection (2).

(4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In this section, "needletime" means the time in any period, whether determined as a number of hours in the period or a proportion of the period, or otherwise, in which any recordings may be included in a broadcast or cable programme service.

**Notice of
intention to
exercise right.**

141. (1) A person intending to avail himself of the right conferred by section 142 shall —

(a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment; and

(b) after receiving such proposal or the expiry of a reasonable time, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under paragraph (b) of subsection (1) must not be sooner than the date of expiry of that licence, except in a case falling within subsection (3) of section 140.

(3) Before the person intending to avail himself of the right begins to exercise it, he must —

(a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so; and

(b) apply to the Copyright Tribunal under section 143 to settle the terms of payment.

**Conditions
for exercise of
right.**

142. (1) A person who, on or after the date specified in a notice under paragraph (b) of subsection (1) of section 141, includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who —

(a) has complied with any reasonable condition, notice of which was given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings;

(b) has provided that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require; and

(c) has made the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of that copyright.

(2) Payments are to be made at not less than quarterly intervals in arrears.

(3) The amount of any payment is that determined in accordance with an order of the Copyright Tribunal under section 143 or, if no such order has been made —

(a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 141; or

(b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under paragraph (b) of subsection (1) of section 141.

(4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

143. (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

Applications to settle payments.

(2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 142 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

144. (1) A person exercising the right conferred by section 142, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Copyright Tribunal —

References, etc., about conditions, information and other terms.

(a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition; or

(b) any question whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this section, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

145. (1) A person exercising the right conferred by section 142 or the licensing body may apply to the Copyright Tribunal to review any order made under sections 143 or 144.

Application for review of order.

(2) An application shall not be made, except with the leave of the Copyright Tribunal —

(a) within twelve months from the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry of the order.

(3) On the application, the Copyright Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An order under this section shall commence on the day on which it was made or on such later day as may be specified therein by the Copyright Tribunal.

Factors to be taken into account.

146. (1) In determining what is reasonable on an application or reference under sections 143 or 144, or on reviewing any order under section 145, the Copyright Tribunal shall —

(a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 142; and

(b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In settling the terms of payment under section 143, the Copyright Tribunal shall not be guided by any order it has made other than an order under that section.

(3) Section 138 applies on an application or reference under sections 143, 144 or 145 as it applies on an application or reference relating to a licence.

Implied indemnity in schemes or licences for reprographic copying

Implied indemnity in certain schemes and licences for reprographic copying.

147. (1) This section applies to —

(a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions; and

(b) licences granted by licensing bodies for such copying,

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work

falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied —

(a) in every scheme to which this section applies, an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and

(b) in every licence to which this section applies, an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

(3) The circumstances of a case are within the apparent scope of a licence if —

(a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and

(b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) A scheme or licence to which this section applies may contain reasonable provision —

(a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made; and

(b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

(5) In this section, "liability" includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.

Reprographic copying by educational establishments

148. (1) This section applies to —

Power to extend coverage of scheme or licence.

(a) a licensing scheme to which sections 122 to 127 apply and which is operated by a licensing body; or

(b) a licence to which sections 129 to 132 apply,

so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purpose of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.

(2) If it appears to the Attorney General with respect to a scheme or licence to which this section applies that —

(a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it; and

(b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

he may by order provide that the scheme or licence shall extend to those works.

(3) Where he proposes to make such an order, the Attorney General shall give notice of the proposal to —

(a) the copyright owners;

(b) the relevant licensing body; and

(c) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Attorney General about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Attorney General shall appoint a person to hear such representations and report to him.

(5) In considering whether to make an order, the Attorney General shall take into account any such representations made to him and such other matters as appear to him to be relevant.

Variation or discharge of order extending scheme or licence.

149. (1) The owner of the copyright in a work in respect of which an order is in force under section 148 may apply to the Attorney General for the variation or discharge of the order, stating his reasons for making the application.

(2) The Attorney General shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.

(3) On considering the reasons for the application, the Attorney General may confirm the order forthwith; if he does not do so, he shall give notice of the application to —

(a) the licensing body in question; and

(b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Attorney General about the application within two months from the date of the notice; and if any of them wishes to make oral representations, the Attorney General shall appoint a person to hear the representations and report to him.

(5) In considering the application, the Attorney General shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

(6) The Attorney General may make such order as he thinks fit confirming or discharging the order or, as the case may be, the order as previously varied; or varying, or further varying, it so as to exclude works from it.

150. (1) The owner of the copyright in a work which is the subject of an order under section 148 may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

**Appeals
against
orders.**

(2) Where the Attorney General has made an order under section 149 —

(a) the person who applied for the order; and

(b) any person or organisation representative of educational establishments given notice of the application for the order and making representations in accordance with subsection (4) of that section,

may appeal to the Copyright Tribunal which may confirm or discharge the order or make any other order which the Attorney General might have made.

(3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Copyright Tribunal may allow.

(4) An order under sections 148 or 149 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings have been disposed of or withdrawn.

(5) If an appeal is brought after the end of that period, any decision of the Copyright Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision took effect.

**Inquiry
whether new
scheme or
general
licence
required.**

151. (1) The Attorney General may appoint a person to inquire into the question whether new provision is required, whether by way of a licensing scheme or general licence, to authorise the making by or on behalf of educational establishments, for the purpose of instruction, of reprographic copies of —

(a) published literary, dramatic, musical or artistic works; or

(b) the typographical arrangement of published editions,

of a description which appears to the Attorney General not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 148.

(2) The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may prescribe rules relating to the procedure to be followed in relation to an inquiry under subsection (1).

(3) The rules shall provide for notice to be given to —

(a) persons or organisations appearing to the Attorney General to represent the owners of copyright in works of that description; and

(b) persons or organisations appearing to the Attorney General to represent educational establishments,

and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

(4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied —

(a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question; and

(b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If he does recommend the making of new provision, he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.

(6) In this section, a general licence means a licence granted by a licensing body which covers all works of the description to which it applies.

152. (1) The Attorney General may, within one year of the making of a recommendation under section 151, by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purpose of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in those works.

Statutory licence where recommendation not implemented.

(2) For that purpose, provision shall be regarded as having been made in accordance with the recommendation if —

(a) a certified licensing scheme (which expression in this section means a licensing scheme certified for the purpose of this section under section 153) has been established under which a licence is available to the establishment in question; or

(b) a general licence (which expression in this section has the same meaning as in subsection (6) of section 151) has been —

- (i) granted to or for the benefit of that establishment;
- (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 129; or
- (iii) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

(3) The order shall also provide that any existing licence authorising the making of such copies, not being a licence granted under a certified licensing scheme or a general licence, shall cease to have effect to the extent

that it is more restricted or more onerous than the licence provided for by the order.

(4) The order shall provide for the licence to be free of royalty, but otherwise subject to any terms specified in the recommendation and to such other terms as the Attorney General may think fit.

(5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright shall be so treated for all subsequent purposes. In this subsection, "dealt with" means sold, let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) The order shall not commence until at least six months after it is made.

Certification of licensing schemes

**Certification
of licensing
schemes.**

153. (1) A person operating or proposing to operate a licensing scheme may apply to the Attorney General to certify the scheme for the purpose of sections 39, 64, 77 or 152.

(2) The Attorney General shall by order certify the scheme if he is satisfied that it —

(a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and

(b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(3) The scheme shall be set out in a schedule to the order, and the certification shall take effect —

(a) on such day, not less than eight weeks after the order was made, as may be specified in the order; or

(b) if the scheme is the subject of a reference under section 122, any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Attorney General shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under sections 122, 123 or 124, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated, and may be revoked if it appears to the Attorney General that it is no longer being operated according to its terms.

CHAPTER VIII

THE COPYRIGHT TRIBUNAL

Copyright Tribunal

154. (1) There is established the Copyright Tribunal, for the purpose of exercising the jurisdiction conferred on it by this Order.

Establishment and jurisdiction.

(2) The Copyright Tribunal shall consist of a chairman, a deputy chairman and not less than two or more than six other members appointed by His Majesty the Sultan and Yang Di-Pertuan.

(3) A person shall not be qualified for appointment as chairman or deputy chairman unless —

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from any such court; or

(b) he is entitled to practise as a legal practitioner in either such a court and has been so entitled for not less than seven years.

155. (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to subsections (2) to (4).

Membership.

(2) A member may resign his office by notice in writing to His Majesty the Sultan and Yang Di-Pertuan.

(3) His Majesty the Sultan and Yang Di-Pertuan may by notice in writing to any member remove him from office if —

(a) he has become bankrupt or made an arrangement with his creditors; or

(b) he has become incapacitated by physical or mental illness,

or if he is, in the opinion of His Majesty the Sultan and Yang Di-Pertuan, otherwise unable or unfit to perform his duties as a member.

(4) If a member is by reason of physical or mental illness, absence or other reasonable cause for the time being unable to perform the duties of his

office, either generally or in relation to particular proceedings, His Majesty the Sultan and Yang Di-Pertuan may appoint any person to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings, and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person whose duties he has been appointed to discharge:

Provided that in the case of an appointment to discharge the duties of the chairman or deputy chairman, a person shall not be appointed unless he is qualified for appointment to that office.

Financial provisions.

156. (1) There shall be paid to the members of the Copyright Tribunal such remuneration and allowances as His Majesty the Sultan and Yang Di-Pertuan may determine.

(2) The Public Service Commission may appoint such staff for the Copyright Tribunal as, with the approval of the Treasury as to numbers and remuneration, it may determine.

Constitution for purpose of proceedings.

157. (1) For the purpose of any proceedings, the Copyright Tribunal shall consist of —

(a) a chairman for those proceedings, who shall be either the chairman or the deputy chairman of the Copyright Tribunal appointed under subsection (3) of section 154; and

(b) two or more other members.

(2) If the members of the Copyright Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.

(3) Where part of any proceedings before the Copyright Tribunal has been heard and one or more members are unable to continue, it shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.

(4) If the chairman for those proceedings is unable to continue, he shall —

(a) appoint one of the remaining members to act as chairman; and

(b) if the member appointed under paragraph (a) is not the deputy chairman of the Copyright Tribunal or a qualified person, appoint a qualified person to attend the proceedings and advise the Copyright Tribunal on any questions of law arising.

(5) A person is qualified for the purpose of paragraph (b) of subsection (4) if he is qualified for appointment as chairman or deputy chairman of the Copyright Tribunal.

Jurisdiction and procedure

158. The functions of the Copyright Tribunal under this Order are to hear and determine proceedings under sections 122, 123, 124, 125, 126, 129, 130, 131, 143, 144, 150 and 194. **Jurisdiction under Order.**

159. (1) The Chief Justice may make rules for regulating proceedings before the Copyright Tribunal and as to the fees chargeable in respect of such proceedings. **Power to make rules.**

(2) The rules may apply in relation to the Copyright Tribunal any of the provisions of the Arbitration Act and any provision so applied shall be set out in the rules. **Cap. 173.**

(3) Provision shall be made by the rules —

(a) prohibiting the Copyright Tribunal from entertaining a reference under sections 122, 123 or 124 by a representative organisation unless it is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;

(b) specifying the parties to any proceedings and enabling the Copyright Tribunal to make a party to the proceedings any person or organisation satisfying it that they have a substantial interest in the matter; and

(c) requiring the Copyright Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The Chief Justice may make rules of court regulating the practice and procedure in relation to appeals from a decision of the Copyright Tribunal to the High Court under section 161, and making provision for the costs of such appeals and for any matters incidental to or consequential upon any such appeal.

160. (1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as it may direct; and may tax or settle the amount of the costs, or direct in what manner they are to be taxed. **Costs, proof of orders, etc.**

(2) A document purporting to be a copy of an order of the Copyright Tribunal and to be certified by the chairman for the proceedings at which it

was made to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

Appeals

Appeal to court on point of law.

161. (1) An appeal lies to the High Court on any point of law arising from a decision of the Copyright Tribunal.

(2) Provision shall be made by rules under section 159 limiting the time within which such an appeal may be brought.

(3) Provision may be made by rules or rules of court under that section —

(a) for suspending, or authorising or requiring the Copyright Tribunal to suspend, the operation of its order in a case where its decision has been appealed against;

(b) for modifying in relation to an order of the Copyright Tribunal whose operation has been suspended the operation of any provision of this Order as to the effect of such an order;

(c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Copyright Tribunal will be informed of its suspension.

CHAPTER IX

QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

Qualification for copyright protection

Qualification for copyright protection.

162. (1) Copyright does not subsist in a work unless the requirements of this Chapter with respect to qualification for copyright protection have been satisfied as regards —

(a) the author;

(b) the country in which the work was first published; or

(c) in the case of a broadcast or cable programme, the country from which the broadcast was made or the cable programme was sent.

(2) Subsection (1) does not apply in relation to Government copyright, Legislative Council copyright and copyright subsisting under section 172.

(3) If the requirements of this Chapter with respect to qualification, or of sections 167, 169 and 172, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

163. (1) A work qualifies for copyright protection if the author was at the material time —

**Qualification
by reference
to author.**

(a) a citizen of Brunei Darussalam;

(b) an individual domiciled or resident in Brunei Darussalam or in any country to which the relevant provisions of this Part have been applied; or

(c) a body incorporated under the law of Brunei Darussalam or of any country to which the relevant provisions of this Part have been applied.

(2) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of subsections (1) and (2) of section 13, subsections (1) and (2) of section 14, subsection (4) of section 11 so far as it applies for the purpose of subsection (2) of section 14, and section 61.

(3) The material time in relation to a literary, dramatic, musical or artistic work is —

(a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(4) The material time in relation to other descriptions of work is —

(a) in the case of a sound recording or film, when it was made;

(b) in the case of a broadcast, when it was made;

(c) in the case of a cable programme, when it was included in a cable programme service;

(d) in the case of the typographical arrangement of a published edition, when the edition was first published.

Qualification by reference to country of first publication.

164. (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it was first published —

(a) in Brunei Darussalam; or

(b) in a country to which the relevant provisions of this Part have been applied.

(2) For the purpose of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous thirty days shall be treated as simultaneous.

Qualification by reference to place of transmission.

165. A broadcast qualifies for copyright protection if it was made from, and a cable programme qualifies for copyright protection if it was sent from —

(a) Brunei Darussalam; or

(b) a country to which the relevant provisions of this Part have been applied.

Application of this Order to other works

Application of this Order to other works.

166. This Order also applies to a work that is eligible for protection in Brunei Darussalam by virtue of an international convention or other international agreement to which Brunei Darussalam is a party.

CHAPTER X

MISCELLANEOUS AND GENERAL

Government and Legislative Council copyright

Government copyright.

167. (1) Where a work has been made by His Majesty the Sultan and Yang Di-Pertuan or by a public officer in the course of his duties —

(a) it qualifies for copyright protection notwithstanding subsection (1) of section 162; and

(b) His Majesty the Sultan and Yang Di-Pertuan is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Part as Government copyright, notwithstanding that it may be, or may have been, assigned to another person.

(3) Government copyright in a literary, dramatic, musical or artistic work continues to subsist —

(a) until the end of the period of one hundred and twenty-five years from the end of the year in which it was made; or

(b) if it was published commercially before the end of the period of seventy-five years from the end of the year in which it was made, until the end of the period of fifty years from the end of the year in which it was first so published.

(4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution of the work.

(5) Except as mentioned in this section, and subject to any express exclusion elsewhere in this Part, this Part applies in relation to Government copyright as to other copyright.

(6) This section does not apply to work if, or to the extent that, Legislative Council copyright subsists in the work.

168. (1) His Majesty the Sultan and Yang Di-Pertuan is entitled to copyright in —

**Copyright in
Acts and
Emergency
Orders.**

(a) every Act; and

(b) every Order made under subsection (3) of section 83 of the Constitution.

(2) Copyright in an Act subsists from the time His Majesty the Sultan and Yang Di-Pertuan assents thereto until the end of the period of fifty years from the end of the year in which such assent was given.

(3) Copyright in any such Order subsists from the time it was made until the end of the period of fifty years from the end of the year in which it was made.

(4) References in this Part to Government copyright (except in section 167) include copyright under this section; and, except as mentioned in subsections (1), (2) or (3), the provisions of this Part apply in relation to copyright under this section as to other Government copyright.

(5) No other copyright, or right in the nature of copyright, subsists in an Act or in any such Order.

**Legislative
Council
copyright.**

169. (1) Where a work has been made by or under the direction or control of the Legislative Council –

(a) it qualifies for copyright protection notwithstanding subsection (1) of section 162; and

(b) the Legislative Council is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Order as Legislative Council copyright, notwithstanding that it may be, or have been, assigned to another person.

(3) Legislative Council copyright in a literary, dramatic, musical or artistic work subsists until the end of the period of fifty years from the end of the year in which it was made.

(4) For the purpose of this section, works made by or under the direction or control of the Legislative Council include —

(a) any work made by an officer or employee of the Legislative Council in the course of his duties; and

(b) any sound recording, film, live broadcast or live cable programme of the proceedings of the Legislative Council;

but a work shall not be regarded as made by or under the direction or control of the Legislative Council by reason only of its being commissioned by or on behalf of the Legislative Council.

(5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the Legislative Council, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned in this section, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Legislative Council copyright as to other copyright.

**Copyright in
Legislative
Council Bills.**

170. (1) Copyright in every Bill introduced into the Legislative Council belongs, in accordance with the following provisions, to the Legislative Council.

(2) Copyright in a public Bill belongs to the Legislative Council and subsists from the time when the text of the Bill was handed in to the Legislative Council.

(3) Copyright in a private Bill belongs to the Legislative Council and subsists from the time when a copy of it was first deposited in the Legislative Council.

(4) Copyright in a personal Bill belongs to the Legislative Council, and subsists from the time when it was given a First Reading.

(5) Copyright under this section ceases —

(a) when His Majesty the Sultan and Yang Di-Pertuan has assented to the Bill;

(b) if the Bill is not assented to, on its withdrawal or rejection or at the end of the session.

(6) References in this Part to Legislative Council copyright, except in section 169, include copyright under this section; and, except as mentioned in this section, the provisions of this Part apply in relation to copyright under this section as to other Legislative Council copyright.

(7) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one session, is re-introduced in a subsequent session.

171. (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Legislative Council shall be deemed to have the legal capacity of a body corporate, which shall not be affected by any prorogation, dissolution or suspension.

Legislative Council: supplementary provisions with respect to copyright.

(2) The functions of the Legislative Council as owner of copyright shall be exercised by the Speaker on its behalf.

(3) For this purpose, a person who on the dissolution of the Legislative Council was Speaker of the Legislative Council may continue to act until the corresponding appointment is made in the next session.

(4) Legal proceedings relating to copyright shall be brought by or against the Legislative Council in the name of the Speaker of the Legislative Council.

Other miscellaneous provisions

Copyright vesting in certain international organisations.

- 172.** (1) Where an original literary, dramatic, musical or artistic work —
- (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies; and
 - (b) does not qualify for copyright protection under sections 163 or 164,

copyright nevertheless subsists in the work by virtue of this section and the organisation is the first owner of that copyright.

(2) The international organisations to which this section applies are those as to which His Majesty the Sultan and Yang Di-Pertuan has by order declared that it is expedient that this section should apply.

(3) Copyright of which an international organisation is the first owner by virtue of this section continues to subsist until the end of the period of fifty years from the end of the year in which the work was made or such longer period as may be specified by His Majesty the Sultan and Yang Di-Pertuan by order for the purpose of complying with the international obligations of Brunei Darussalam.

(4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacity of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.

Folklore, etc.: anonymous unpublished works.

173. (1) Where, in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship, there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside Brunei Darussalam, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to this Part.

(2) If under the law of that country a body is appointed to protect and enforce copyright in such works, His Majesty the Sultan and Yang Di-Pertuan may by order designate that body for the purpose of this section.

(3) A body so designated shall be recognised in Brunei Darussalam as having authority to do in place of the copyright owner anything, other than the assignment of copyright, which it is empowered to do under the law of that country, including the bringing of proceedings in its own name.

(4) In subsection (1), a "qualifying individual" means an individual who at the material time (within the meaning of section 163) was a person whose works qualified under that section for copyright protection.

(5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

Transitional provisions and savings, etc.

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| <p>174. The transitional provisions and savings contained in the First Schedule relating to works made, and acts or events occurring before commencement, and otherwise with respect to the operation of this Part, shall have effect for the purposes of this Order.</p> | <p>Transitional provisions and savings. First Schedule</p> |
| <p>175. The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by order amend the First Schedule.</p> | <p>Amendment of First Schedule.</p> |
| <p>176. (1) Subject to subsection (5) of section 168 and subsection (6) of section 170, nothing in this Part affects —</p> <p style="margin-left: 40px;">(a) any right or privilege of any person under any written law;</p> <p style="margin-left: 40px;">(b) any right or privilege of His Majesty the Sultan and Yang Di-Pertuan subsisting otherwise than under a written law;</p> <p style="margin-left: 40px;">(c) any right or privilege of the Legislative Council;</p> <p style="margin-left: 40px;">(d) the right of any person to sell, use or otherwise deal with articles forfeited under any law relating to customs or excise;</p> <p style="margin-left: 40px;">(e) the operation of any rule of equity relating to breaches of trust or confidence.</p> <p>(2) Subject to subsection (1), no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Part or some other written law in that behalf.</p> <p>(3) Nothing in this Part affects any law preventing or restricting the enforcement of copyright, on the grounds of public interest or otherwise.</p> <p>(4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Chapter IV.</p> | <p>Rights and privileges under any law.</p> |

Interpretation

Meaning of
"educational
establish-
ment", etc.
Cap. 55.

177. (1) In this Order, "educational establishment" means —
- (a) any school, as defined in section 2 of the Education (Non-Government Schools) Act; and
 - (b) any other description of educational establishment specified for the purpose of this Part by order of the Minister responsible for education matters.
- (2) The Attorney General may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified, to teachers who are employed to give instruction to pupils who are unable to attend an educational establishment.
- (3) In relation to an educational establishment, the expressions "teacher" and "pupil" in this Part include, respectively, the person who gives and any person who receives instruction.
- (4) References in this Part to anything being done on behalf of an educational establishment are to its being done for the purpose of that establishment by any person.

Meaning of
"publica-
tion" and
"commercial
publication".

178. (1) In this Order, "publication", in relation to a work —
- (a) means the issue of copies to the public; and
 - (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system.
- (2) In this Order but subject to subsection (4), "commercial publication", in relation to a literary, dramatic, musical or artistic work, means —
- (a) issuing copies to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
 - (b) making it available to the public by means of an electronic retrieval system.
- (3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.

(4) The following do not constitute publication for the purpose of this Part, and references to a commercial publication shall be construed accordingly —

(a) in the case of a literary, dramatic or musical work —

- (i) the performance of the work; or
- (ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purpose of an electronic retrieval system);

(b) in the case of an artistic work —

- (i) the exhibition of the work;
- (ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
- (iii) the issue to the public of copies of a film including the work; or
- (iv) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purpose of an electronic retrieval system);

(c) in the case of a sound recording or film —

- (i) the work being played or shown in public; or
- (ii) the broadcasting of the work or its inclusion in a cable programme service.

(5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account shall be taken for the purpose of this section of any unauthorised act.

179. (1) The requirements in paragraph (b) of subsection (3) of section 81, subsection (3) of section 93, subsection (1) of section 94 and subsection (1) of section 95 that a document be signed by or on behalf of a person are satisfied, in the case of a body corporate, by the affixing of its seal.

Requirement of signature: application in relation to body corporate.

(2) The requirements in paragraph (b) of subsection (2) of section 81 and subsection (2) of section 90 that a document be signed by a person are satisfied, in the case of a body corporate, by signature on behalf of the body or by the affixing of its seal.

PART II

RIGHTS IN PERFORMANCES

Introductory

**Rights
conferred on
performers
and persons
having
recording
rights.**

180. (1) This Part confers rights —

(a) on a performer, by requiring his consent to the exploitation of his performances; and

(b) on a person having recording rights in relation to a performance, in relation to recordings made without his consent or that of the performer,

and creates offences in relation to dealing with or using illicit recordings and certain other related acts.

(2) In this Part —

"performance" means —

(a) a dramatic performance (which includes dance and mime);

(b) a musical performance;

(c) a reading or recitation of a literary work; or

(d) a performance of a variety act or any similar presentation,

which is, or so far as it is, a live performance given by one or more individuals;

"recording", in relation to a performance, means a film or sound recording —

(a) made directly from the live performance;

(b) made from a broadcast of, or cable programme including, the performance; or

(c) made, directly or indirectly, from another recording of the performance.

(3) The rights conferred by this Part apply in relation to performances taking place before commencement; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

(4) Subsections (3), (4) and (5) of section 8, subsection (4) of section 9, and subsection (4) of section 21, apply for the purposes of this Part, in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part I in relation to an infringement of copyright.

(5) The rights conferred by this Part are independent of —

(a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast or cable programme including, the performance; and

(b) any other right or obligation arising otherwise than under this Part.

Performers' rights

181. A performance is a qualifying performance for the purpose of the provisions of this Part relating to performers' rights if it is given by a performer to whom this Part applies.

Qualifying performances.

182. (1) A performer's rights are infringed by a person who, without his consent —

Consent required for recording or live transmission of performance.

(a) makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or

(b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance and communicates his live performance to the public.

(2) In an action for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

183. A performer's rights are infringed by a person who, without his consent —

Infringement of performer's rights by use of recording.

(a) shows or plays in public the whole or any substantial part of a qualifying performance; or

(b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,

by means of a recording which was, and which that person knew or had reason to believe was, made without the performer's consent.

Infringement of performer's rights by importing, etc., illicit recording.

184. (1) A performer's rights are infringed by a person who, without his consent —

(a) imports otherwise than for his private and domestic use; or

(b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes,

a recording of a qualifying performance which is, and which that person knew or had reason to believe was, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought under this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2), "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Rights of person having recording rights

Infringement of performer's rights by rental.

185. A performer's rights are infringed by a person who, without his consent, rents to the public copies of a recording of the whole or a substantial part of a qualifying performance.

Infringement of performer's rights by making fixed performance available to public by wire or wireless.

186. A performer's rights are infringed by a person who, without his consent, makes available to the public his fixed performance, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

187. A performer's rights are infringed by a person who, without his consent, makes available to the public a fixation of his performance, or copies thereof, through sale or other transfer of ownership.

Infringement of performer's rights by making fixed performance available to public by sale, etc.

188. (1) Notwithstanding his economic rights, and even where he is no longer the owner of those rights, a performer has the right as regards a live aural performance and a performance fixed in a sound recording –

Performer's moral rights.

(a) to be identified as the performer of his performance, except where omission is dictated by the manner of the use of the performance; and

(b) to object to any distortion, mutilation or any other modification of his performance which is prejudicial to his honour or reputation.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the performer, but the right to exercise them shall be transmissible by testamentary disposition or by operation of law following his death.

(3) A performer may waive any of the rights mentioned in subsection (1), provided that the waiver is in writing and clearly specifies the right waived and the circumstances in which the waiver applies, and provided further that any waiver of the right mentioned in paragraph (b) of subsection (1) specifies the nature and extent of the modification or other action in respect of which it is waived. On the death of a performer, the person upon whom the moral rights have devolved shall have the right to waive those rights.

189. (1) In this Order, an "exclusive recording contract" means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to their commercial exploitation.

Exclusive recording contracts and persons having recording rights.

(2) References in this Part to a person having recording rights in relation to a performance are, subject to subsection (3), to a person —

(a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject; or

(b) to whom the benefit of such a contract has been assigned,

and who is a qualifying person.

(3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in this Part to a person having recording rights in relation to the performance are to any person —

(a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation; or

(b) to whom the benefit of such a licence has been assigned,

and who is a qualifying person.

In this section, "with a view to commercial exploitation" means with a view to the recordings being sold, let for hire, or shown or played in public.

**Consent
required for
recording
perfor-
mance sub-
ject to
exclusive
contract.**

190. (1) The rights of a person having recording rights in relation to a performance are infringed by a person who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance, otherwise than for his private and domestic use.

(2) In an action for infringement of those rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

**Infringement
of recording
rights by use
of recording
made with-
out consent.**

191. (1) The rights of a person having recording rights in relation to a performance are infringed by a person who, without his consent or, in the case of a qualifying performance, that of the performer —

(a) shows or plays in public the whole or any substantial part of the performance; or

(b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,

by means of a recording which was, and which that person knew or had reason to believe was, made without the appropriate consent.

(2) The reference in subsection (1) to the appropriate consent is to the consent of —

(a) the performer; or

(b) the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

192. (1) The rights of a person having recording rights in relation to a performance are infringed by a person who, without his consent or, in the case of a qualifying performance, that of the performer —

Infringement of recording rights by importing, etc., illicit recording.

(a) imports otherwise than for his private and domestic use; or

(b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes,

a recording of the performance which was, and which that person knew or had reason to believe was, an illicit recording.

(2) Where in an action for infringement of those rights brought under this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2), "innocently acquired" means that the person acquiring the recording did not know, and had no reason to believe, that it was an illicit recording.

Exceptions to rights conferred

193. The Second Schedule specifies acts which may be done notwithstanding the rights conferred by this Part.

Acts permitted notwithstanding rights conferred by this Part. Second Schedule.

194. (1) The Copyright Tribunal may, on the application of a person wishing to make a recording from a previous recording of a performance, give consent in a case where —

Power of Tribunal to give consent on behalf of certain performers.

(a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or

(b) a performer unreasonably withholds his consent.

(2) Consent given by the Copyright Tribunal has effect as consent of the performer for the purpose of —

- (a) the provisions of this Part relating to performers' rights; and
- (b) paragraph (a) of subsection (3) of section 205,

and may be given subject to any conditions specified in the Tribunal's consent.

(3) The Copyright Tribunal shall not give consent under paragraph (a) of subsection (1) except after the service or publication of such notices as may be required by rules made under section 159 or as it may in any particular case direct.

(4) The Copyright Tribunal shall not give consent under paragraph (b) of subsection (1) unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his; but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Copyright Tribunal may draw such inferences as it thinks fit.

(5) In any case, the Copyright Tribunal shall take into account —

(a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;

(b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purpose for which, the original recording was made.

(6) Where the Copyright Tribunal gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

Duration and transmission of rights; consent

Duration of rights. **195.** The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of fifty years from the end of the year in which the performance took place.

Transmission of rights. **196.** (1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible in accordance with this section.

(2) On the death of a person entitled to performer's rights —

(a) the rights pass to such person as he may by will specifically direct; and

(b) if, or to the extent that, there is no such direction, the rights are exercisable by his personal representative,

and references in this Part to the performer, in the context of the person having performers' rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(3) Where under paragraph (a) of subsection (2) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(4) Subsections (1), (2) and (3) do not affect paragraph (b) of subsection (2), or paragraph (b) of subsection (3), of section 189, so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence has been assigned.

(5) Any damages recovered by a personal representative under this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

197. (1) Consent for the purpose of this Part may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances. **Consent.**

(2) A person having recording rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract or a licence, in the same way as if the consent had been given by him.

(3) Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

Remedies for infringement

198. An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty. **Infringement actionable as breach of statutory duty.**

199. (1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance may apply to the court for an order that the recording be delivered up to him or to such other person as it may direct. **Order for delivery up.**

(2) An application shall not be made after the end of the period specified in section 211; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 212.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 212 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

**Right to
seize illicit
recordings.**

200. (1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 199, may be seized and detained by him or a person authorised by him. The right to seize and detain is exercisable subject to subsections (2), (3) and (4) and is subject to any decision of the court under section 212.

(2) Before anything is seized under this section, notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter any place to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.

(4) At the time when anything is seized under this section, there shall be left at the place where it was seized a notice containing particulars as to the person by whom or on whose authority the seizure was made and the grounds on which it was made.

**Meaning of
"illicit
recording".**

201. (1) In this Order, "illicit recording", in relation to a performance, shall be construed in accordance with this section.

(2) For the purpose of a performer's rights, a recording of the whole or any substantial part of a performance of his is an illicit recording if it is made, otherwise than for private purposes, without his consent.

(3) For the purpose of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract is an illicit recording if it is made, otherwise than for private purposes, without his consent or that of the performer.

(4) For the purposes of sections 205 and 209, a recording is an illicit recording if it is an illicit recording for any purpose mentioned in subsections (2) or (3).

(5) In this Part, "illicit recording" includes a recording falling to be treated as an illicit recording under paragraphs 4(3), 6(2), 12(2) or 16(3) of the Second Schedule, but otherwise does not include a recording made under any of the provisions of that Schedule.

**Second
Schedule**

(6) It is immaterial for the purpose of this section where the recording was made.

Application of this Part

202. This Part applies to —

Application of this Part.

(a) a performer who is a citizen of Brunei Darussalam;

(b) a performer who is not a citizen of Brunei Darussalam, but whose performance —

(i) takes place in Brunei Darussalam;

(ii) has been incorporated in a sound recording that is protected under this Order; or

(iii) has not been fixed in a sound recording but is included in a broadcast qualifying for protection under this Order; and

(c) a performer who is eligible for protection in Brunei Darussalam by virtue of an international convention or other international agreement to which Brunei Darussalam is a party.

PART III

MISCELLANEOUS, OFFENCES AND GENERAL PROVISIONS

Devices designed to circumvent copy-protection, etc.

203. (1) This section applies where copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form which is copy-protected.

Provisions relating to abuses in respect of technical means of protection.

(2) The following acts are unlawful and, in the application of any provision of this Order relating to civil or criminal remedies, shall be treated as infringements of the rights protected by this Order —

(a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, sound recording or broadcast, or to impair the quality of any copy thereof;

(b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program broadcast or otherwise communicated to the

public, including by satellite, by any person not entitled to receive that program;

(c) the removal or alteration of any electronic rights management information without authority;

(d) the distribution, importation for distribution, broadcasting, communication or making available to the public, without authority, or a work, performance, sound recording or broadcast, by any person knowing or having reason to believe that electronic rights management information has been removed or altered without authority.

(3) In the application of any provision of this Order relating to civil or criminal remedies, any illicit device and means mentioned in subsection (2) and any copy from which rights management information has been removed or in which such information has been altered, shall be treated as an infringing copy, and any illicit act mentioned in subsection (2) shall be treated as an infringement of copyright to which the provisions of this Order relating to civil and criminal remedies are applicable.

(4) Sections 106, 107 and 108 apply to proceedings under this section as to proceedings under Part I.

(5) Section 212 applies, with the necessary modifications, to the disposal of anything delivered up or seized under subsection (3).

(6) In this section, "rights management information" means any information which identifies the author, work, producer of a sound recording, broadcaster, performer, performance, or any owner of any right under this Order, any information about the terms and conditions of use of a work or performance, and any number or code that represents such information, when any of those items of information is attached to a copy of a work or a fixed performance, or appears in connection with the broadcasting, communication to the public or making available to the public of that work or fixed performance.

Offences

Criminal liability for making or dealing with infringing articles, etc.

204. (1) A person commits an offence who, without the licence of the copyright owner —

(a) makes for sale or hire;

(b) imports otherwise than for his private and domestic use;

(c) communicates the work to the public;

(*d*) in the course of a business, possesses, with a view to committing any act infringing the copyright;

(*e*) in the course of a business —

(i) sells or lets for hire;

(ii) offers or exposes for sale or hire;

(iii) exhibits in public; or

(iv) distributes; or

(*f*) otherwise than in the course of a business, distributes to such an extent as to prejudicially affect the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.

(2) A person commits an offence who —

(*a*) makes an article specifically designed or adapted for making copies of a particular copyright work; or

(*b*) has such an article in his possession,

if he knew or had reason to believe that it was to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) Where copyright is infringed, otherwise than by reception of a broadcast or cable programme —

(*a*) by the public performance of a literary, dramatic or musical work; or

(*b*) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(4) Sections 106, 107 and 108 do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 209.

(5) A person guilty of an offence under paragraphs (a) or (b), subparagraph (iv) of paragraph (e), or paragraph (f), of subsection (1) is liable on conviction to imprisonment for a term not exceeding two years, a fine or both.

(6) A person guilty of any other offence under this section is liable on conviction to imprisonment for a term not exceeding six months, a fine not exceeding five thousand dollars or both.

Criminal liability for making, etc., illicit recordings.

205. (1) A person commits an offence who, without sufficient consent —

(a) makes for sale or hire;

(b) imports otherwise than for his private and domestic use;

(c) makes available to the public;

(d) in the course of a business, possesses, with a view to committing any act infringing the rights conferred by this Part; or

(e) in the course of a business —

(i) sells or lets for hire;

(ii) offers or exposes for sale or hire; or

(iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be —

(a) shown or played in public; or

(b) broadcast or included in a cable programme service,

thereby infringing any of the rights conferred by this Part, if he knew or had reason to believe that those rights are thereby infringed.

(3) In subsections (1) and (2), "sufficient consent" means —

(a) in the case of a qualifying performance, the consent of the performer; and

(b) in the case of a non-qualifying performance subject to an exclusive recording contract —

- (i) for the purpose of paragraph (a) of subsection (1), the consent of the performer or the person having recording rights; and
- (ii) for the purpose of paragraphs (b), (c) and (d) of subsection (1), and of subsection (2), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent was given or, if there is more than one such person, to all of them.

(4) No offence is committed under subsections (1) or (2) by the commission of an act which under any provision of the Second Schedule may be done without infringing the rights conferred by this Part.

**Second
Schedule**

(5) A person guilty of an offence under paragraphs (a) or (b), or subparagraph (iii) of paragraph (e), of subsection (1) is liable on conviction to imprisonment for a term not exceeding two years, a fine or both.

(6) A person guilty of any other offence under this section is liable on conviction to imprisonment for a term not exceeding six months, a fine not exceeding five thousand dollars or both.

206. (1) Section 30 of the Merchandise Marks Act applies to the enforcement of sections 204 and 205 of this Order as to the enforcement of that Act.

**Application
of Chapter 96
in enforce-
ment.**

(2) Any law which authorises the disclosure of information for the purpose of facilitating the enforcement of the Merchandise Marks Act shall apply as if sections 204 and 205 of this Order were contained in that Act, and as if the powers of any person in relation to the enforcement of that section were powers under that Act.

Cap. 96.

207. (1) It is an offence for a person to falsely represent that he is authorised by any person to give consent for the purpose of this Part in relation to a performance, unless he believes on reasonable grounds that he is so authorised.

**False repre-
sentation of
authority to
give consent.**

(2) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding six months, a fine not exceeding five thousand dollars or both.

208. (1) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act

**Offences
committed by
partnerships
and bodies
corporate.**

in any such capacity, he, as well as the body corporate, is also guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where a partnership is guilty of an offence under this Order, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of the body corporate.

**Order for
delivery up in
criminal
proceedings.**

209. (1) The court before which proceedings are brought against a person for an offence under section 204 may, if satisfied that at the time of his arrest or charge —

(a) he had in his possession, custody or control an infringing copy of a copyright work in the course of a business; or

(b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it had been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.

(2) The court before which proceedings are brought against a person for an offence under section 205 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.

(3) An order may be made by the court on its own motion or on the application of the Public Prosecutor, and may be made whether or not the person was convicted of the offence, but shall not be made —

(a) after the end of the period specified in section 211; or

(b) if it appears to the court unlikely that any order will be made under section 212.

(4) A person to whom an infringing copy or other article, or an illicit recording (as the case may be), is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 212.

(5) Nothing in this section affects any other power of the court relating to forfeiture in criminal proceedings.

210. (1) Where a magistrate is satisfied by information given by a police officer that there are reasonable grounds for believing — **Search warrants.**

(a) that an offence —

(i) under paragraphs (a) or (b), sub-paragraph (iv) of paragraph (e), or paragraph (f), of subsection (1) of section 204; or

(ii) under paragraphs (a) or (b), or sub-paragraph (iii) of paragraph (e), of subsection (1) of section 205,

has been or is about to be committed in any place; and

(b) that evidence that such an offence has been or is about to be committed is in that place,

he may issue a warrant authorising a police officer to enter and search that place, using such reasonable force as is necessary.

(2) A warrant under subsection (1) —

(a) may authorise persons to accompany the police officer executing the warrant; and

(b) remains in force for twenty-eight days from the date of its issue.

(3) In executing a warrant issued under this section, the police officer may seize any article if he reasonably believes that it is evidence that an offence under subsection (1) of section 204 or subsection (1) of section 205 has been or is about to be committed.

Supplementary provisions with respect to delivery up and seizure

211. (1) Subject to this section, an application for an order under sections 101 or 199 may not be made after the end of the period of six years from the date on which the infringing copy or article, or the illicit recording (as the case may be) was made. **Period after which remedy of delivery up not available.**

(2) If, during the whole or part of that period, the copyright owner or (as the case may be) a person entitled to apply for an order —

(a) was under a disability; or

(b) was prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under that disability or, as the case may be, could with reasonable diligence have discovered those facts.

S 25/91. (3) In subsection (2), "disability" has the same meaning as in subsection (2) of section 4 of the Emergency (Limitation) Order, 1991.

(4) An order under section 209 shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article, or the illicit recording (as the case may be), was made.

Order as to disposal of infringing copy, etc., or illicit recording.

212. (1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under sections 101 or 209, or seized and detained in pursuance of the right conferred by section 102, shall be —

(a) forfeited to the copyright owner; or

(b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(2) An application may be made to the court for an order that an illicit recording of a performance delivered up in pursuance of an order under sections 199 or 209, or seized and detained in pursuance of the right conferred by section 200, shall be —

(a) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct; or

(b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(3) In considering what order (if any) should be made under this section, the court shall consider whether other remedies available in an action for infringement of copyright, or of the rights conferred by Part II, would be adequate to compensate the copyright owner, or the person or persons entitled to the rights (as the case may be), and to protect their interests.

(4) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules of court relating to the service of notice on persons having an interest in the copy or other articles, or in the recording (as the case may be), and any such person is entitled —

(a) to appear in proceedings for an order under this section, whether or not he was served with notice; and

(b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal has been given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a copy or other article, or in a recording (as the case may be), the court shall make such order as it thinks just and may direct that the article or recording be sold, or otherwise dealt with, and the proceeds divided.

(6) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article, or the recording, was before being delivered up or seized is entitled to its return.

(7) References in this section to a person having an interest in a copy or other article, or in a recording, include any person in whose favour an order could be made in respect of it under this section or under section 21 of the Emergency (Trade Marks) Order, 1999.

General

213. (1) The Attorney General may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing all matters which are required or convenient to be prescribed, including the prescription of fees, and generally for giving effect to the objects and purposes of this Order and for the due administration thereof.

Regulations.

(2) Such regulations may make different provision as respects different classes of case to which they apply, and may include such incidental, consequential and supplementary provisions as the Attorney General considers necessary or expedient.

214. (1) His Majesty the Sultan and Yang Di-Pertuan may by order make such provisions as appear to him to be necessary or expedient —

Enabling powers.

(a) for giving effect to the objects and purposes of this Order; and

(b) for the purpose of bringing any other written law into accord with this Order or with any order made thereunder.

**First
Schedule.**

(2) The Chief Justice may give such directions in either a particular proceeding, in proceedings in any court of a specified class or description, or generally, as he may consider necessary or expedient to meet any difficulty arising from the construction of the First Schedule.

**First
Schedule.**

(3) The Attorney General may give such directions in either a particular proceeding before the Copyright Tribunal, in proceedings before it of a specified class or description, or generally, as he may consider necessary or expedient to meet any difficulty arising from the construction of the First Schedule.

**Order
binding on
Government.**

215. This Order is binding on the Government.

FIRST SCHEDULE

(section 174)

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1. In relation to any law relating to copyright in force immediately before commencement —

(a) references in this Schedule to copyright in a sound recording are to any copyright under any such law in records embodying that recording;

(b) references in this Schedule to copyright in a film are to any copyright under any such law in that film (so far as it constituted a dramatic work for the purpose of any such law) or in photographs forming part of that film.

General principles: continuity of the law

2. This Order applies in relation to things existing at commencement as it applies in relation to things coming into existence after commencement, subject to any express provision to the contrary.

3. (1) This paragraph has effect for securing the continuity of the law so far as this Order re-enacts (whether with or without modification) the provisions of any law relating to copyright in force immediately before commencement.

(2) A reference in any law relating to copyright in force immediately before commencement, or in any document, to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Order would be construed as referring to copyright under any such law shall be construed,

as far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Order or to works in which copyright subsists under this Order.

(3) Anything done, including any subsidiary legislation made, or having effect as done, under or for the purpose of any law relating to copyright in force immediately before commencement has effect as if done under or for the purpose of the corresponding provision of this Order.

(4) A reference, whether express or implied, in this Order or in any other law, or in any document, to a provision of this Order shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to any corresponding provision of any law relating to copyright in force immediately before commencement.

(5) A reference, whether express or implied, in any law, or in any document, to a provision of any law relating to copyright in force immediately before commencement shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Order.

(6) This paragraph has effect subject to any specific transitional provision or saving made by this Order.

Subsistence of copyright

4. (1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Sub-paragraph (1) does not prevent an existing work qualifying for copyright protection after commencement under section 164.

5. (1) Copyright shall not subsist under this Order in an artistic work made before such date as the Attorney General may by order determine, which at the time when it was made constituted a design capable of registration under any law relating to the registration of designs, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

(2) For this purpose, a design shall be deemed to be used as a model or pattern to be multiplied by an industrial process —

(a) when it is reproduced or is intended to be reproduced on more than fifty single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles; or

- (b) when it is to be applied to —
- (i) printed paper hangings;
 - (ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces;
 - (iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces; or
 - (iv) lace, not made by hand.

(3) In sub-paragraph (2), "set of articles" means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied.

6. (1) No copyright subsists in a film, as such, made before such date as the Attorney General may by order determine.

(2) Where a film made before that date was an original dramatic work, this Order has effect in relation to the film as if it was an original dramatic work within the meaning of Part I.

(3) This Order has effect in relation to photographs forming part of a film made before the date determined by the Attorney General under sub-paragraph (1) as they have effect in relation to photographs not forming part of a film.

7. A film sound-track, other than one embodied in a record not being a record derived directly or indirectly from the sound-track, shall be treated for the purposes of this Order not as part of the film, but as a sound recording; but —

(a) copyright subsists in the sound recording only if copyright subsisted in the film immediately before commencement, and it continues to subsist until copyright in the film expires;

(b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and

(c) anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording as in relation to the film.

8. No copyright subsists in —

(a) a broadcast made before the date determined by the Attorney General under sub-paragraph (1) of paragraph 6; or

(b) a cable programme included in a cable programme service before such date as the Attorney General may by order determine,

and any such broadcast or cable programme shall be disregarded for the purpose of subsection (2) of section 16.

Authorship of work

9. The question who was the author of an existing work shall be determined in accordance with this Order for the purpose of the rights conferred by Chapter IV of Part I, and for all other purposes shall be determined in accordance with any law in force at the time the work was made.

First ownership of copyright

10. (1) The question who was the first owner of copyright in an existing work shall be determined in accordance with any law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in such circumstances as the Attorney General may by order determine, those provisions apply to determine first ownership of copyright in any work made under any such commission after commencement.

Duration of copyright in existing works

11. (1) This paragraph has effect with respect to the duration of copyright in existing works. The question which provision applies to a work shall be determined by reference to the facts immediately before commencement.

(2) Subject to sub-paragraphs (3) to (6), any copyright in such description of work or class of work as the Attorney General may by order determine continues to subsist until the date on which it would have expired under any law relating to copyright in force immediately before commencement.

(3) Any copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works, other than photographs, continues to subsist —

(a) if the work has been published, until the date on which it would have expired in accordance with any law relating to copyright in force immediately before commencement;

(b) if the work has not been published, until the end of the period of fifty years from the end of the year of commencement or, if during that period the work was first made available to the public within the meaning of subsection (2) of section 14, the date on which copyright expires in accordance therewith,

unless, in any case, the identity of the author becomes known before that date, in which case subsection (1) of section 14 applies.

(4) Any copyright in such descriptions of work or class of work as the Attorney General may by order determine continues to subsist until the end of the period of fifty years from the end of the year of commencement, except that in the case of such sound recordings or films or class of sound recordings or films as the Attorney General may by order determine published before the end of that period any copyright shall continue until the end of the period of fifty years from the end of the year in which they were published.

(5) Any copyright in any other description of existing work continues to subsist until the day on which copyright in that description of work expires in accordance with sections 14 to 17.

(6) This paragraph does not apply to works subject to Government copyright or Legislative Council copyright.

Acts infringing copyright

12. (1) Chapters II and III of Part I as to the acts constituting an infringement of copyright apply only to acts done after commencement. Any law relating to copyright in force immediately before commencement continues to apply to acts done before commencement.

(2) So much of subsection (2) of section 20 as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs does not apply to a copy of a sound recording, film or computer program acquired by any person before commencement for the purpose of renting it to the public.

(3) For the purpose of section 31, the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in Brunei Darussalam, shall be determined in such manner as the Attorney General may by order determine.

(4) For the purpose of the application of paragraph (a) of subsection (1) of section 35, paragraph (b) of subsection (1) of section 55 and paragraph (d) of subsection (2) of section 66 to things made before commencement, it shall be assumed that this Order was in force at all material times.

(5) Section 59 applies where articles have been marketed as mentioned in subsection (1) of that section before commencement, with the substitution for the period mentioned in subsection (2) of that section of the period of twenty-five years from the end of the year of commencement.

(6) Section 60 does not apply to a copy purchased before commencement.

(7) In section 69, the reference to the owner of the copyright in drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of any copyright in such drawings or plans on such date as the Attorney General may by order determine.

13. (1) Section 61 has effect in relation to existing works, subject to sub-paragraphs (2) and (3).

(2) Sub-paragraph (i) of paragraph (b) of subsection (1) of that section does not apply to photographs.

(3) Sub-paragraph (ii) of paragraph (b) of subsection (1) of that section applies only —

(a) where sub-paragraph (3)(b) of paragraph 12 of this Schedule applies, after the end of the period of fifty years from the end of the year of commencement; or

(b) where sub-paragraph (5) of paragraph 12 of this Schedule applies.

14. Where in the case of a dramatic or musical work made before such date as the Attorney General may by order determine, any right conferred by any law relating to copyright in force immediately before commencement did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including —

(a) the performing of the work in public;

(b) the broadcasting of the work or its inclusion in a cable programme service; and

(c) the doing of any of the acts mentioned in paragraphs (a) or (b) in relation to an adaptation of the work,

and where any such right conferred by any such law consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

13. Where a work made before such date as the Attorney General may by order determine consists of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, any copyright is subject to any right of publishing the essay, article or portion in a separate form to which the author was entitled at that date.

Designs

16. (1) Section 55 does not apply for ten years after commencement to a design recorded or embodied in a design document or model before commencement.

(2) In respect of the period of ten years referred to in sub-paragraph (1), the Attorney General may by order make such provisions as he may consider necessary or expedient to apply to any relevant copyright any provisions relating to design right.

(3) Section 102 does not apply during the period of ten years referred to in sub-paragraph (1) in relation to anything to which it would not apply if the design had been first recorded or embodied in a design document or model after commencement.

(4) Nothing in this paragraph affects the operation of any law preventing or restricting the enforcement of copyright in relation to a design.

17. (1) If, in relation to any artistic work, any provision of any law relating to copyright in force at commencement applied at any time before commencement as to the effect of the industrial application of a design corresponding to artistic work, subsection (2) of section 56 applies with the substitution of fifteen years for any period mentioned in any such law.

(2) Except as provided in sub-paragraph (1), section 56 applies only where articles are marketed as mentioned in paragraph (b) of subsection (1) of that section after commencement.

Moral rights

18. No act done before commencement is actionable under Chapter IV of Part I.

19. (1) This paragraph has effect with respect to the rights conferred by sections 80 and 83.

(2) Those rights do not apply —

(a) to a literary, dramatic, musical or artistic work of which the author died before commencement; and

(b) to a film made before commencement.

(3) Those rights, in relation to an existing literary, dramatic, musical and artistic work, do not apply —

(a) where copyright first vested in the author, to anything which under an assignment made or licence granted before commencement may be done without infringing copyright;

(b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

20. The right conferred by section 88 does not apply to photographs taken and films made before commencement.

Assignments and licences

21. (1) Any document made or event occurring before commencement which had any operation —

(a) affecting the ownership of the copyright in an existing work;
or

(b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,

has the corresponding operation in relation to copyright in the work under this Order:

Provided that if the operation of any such document was or would have been limited to a period therein specified, it shall not have any operation in relation to the copyright under this Order, except in so far as that period extends beyond commencement.

(2) Expressions used in any such document shall be construed in accordance with their effect immediately before commencement.

22. (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) between such dates as the Attorney General may by order determine shall operate to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his personal representative as part of his estate.

(3) Nothing in this paragraph affects —

(a) an assignment of the reversionary interest by a person to whom it had been assigned;

(b) an assignment of the reversionary interest after the death of the author by his personal representative or any person becoming entitled to it; and

(c) an assignment of the copyright after the reversionary interest has fallen in.

(4) Nothing in this paragraph applies to the assignment of the copyright in a collective work, or a licence to publish a work or part of a work as part of a collective work. In this sub-paragraph, "collective work" means —

(a) an encyclopaedia, dictionary, yearbook or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

23. Subsection (2) of section 95 does not apply to an exclusive licence granted before commencement.

Bequests

24. (1) Section 96 —

(a) does not apply where the testator died before such date as the Attorney General may by order determine;

(b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before the date determined by the Attorney General under sub-paragraph (a) of paragraph (1), the ownership after his death of a manuscript of his, where such ownership has been acquired under his will and the manuscript is of a work which has not been published or performed in public, is *prima facie* proof of the copyright being with the owner of the manuscript.

Remedies for infringement

25. (1) Sections 99 and 100 apply only to an infringement of copyright committed after commencement. The corresponding provisions of any law

relating to copyright in force immediately before commencement continue to apply to any infringement committed before commencement.

(2) Sections 101 and 102 apply to infringing copies and other articles made before or after commencement. The corresponding provisions of any law relating to copyright in force immediately before commencement do not apply after commencement, except for the purpose of proceedings begun before commencement.

(3) Sections 103 and 104 apply where sections 99 to 102 apply. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply where the corresponding provisions mentioned in sub-paragraphs (1) or (2) apply.

(4) Sections 106 to 108 apply only in proceedings brought under this Order. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply in proceedings brought under any such law.

26. Sections 103 and 104 do not apply to a licence granted before such date as the Attorney General may by order determine.

27. (1) Section 204 applies only to acts done after commencement. The corresponding provisions of any law relating to copyright in force immediately before commencement continue to apply to acts done before commencement.

(2) Section 210 applies to offences committed before commencement in relation to which such provisions of any law relating to copyright in force immediately before commencement as the Attorney General may by order determine applied. Any such provisions so determined continue to apply to any warrant issued before commencement.

Qualification for copyright protection

28. Every work in which copyright subsisted under any law relating to copyright in force immediately before commencement shall be deemed to satisfy the requirements of Part I as to qualification for copyright protection.

Continental shelf

29. Paragraph (a) of subsection (3) of section 1 does not apply to anything done before commencement.

Brunei Darussalam ships, aircraft and hovercraft

30. Paragraphs (b) and (c) of subsection (3) of section 1 do not apply to anything done before commencement.

Government copyright

31. (1) Section 167 applies to an existing work prepared or published by or under the direction or control of His Majesty the Sultan and Yang Di-Pertuan or any department of Government if —

(a) any law relating to copyright applied to it immediately before commencement; and

(b) it is not one to which sections 168, 169 or 170 apply.

(2) Paragraph (b) of subsection (1) of section 167 has effect subject to any agreement entered into under any such law before commencement.

32. (1) This paragraph has effect with respect to the duration of copyright in existing works, prepared or published by or under the direction or control of His Majesty the Sultan and Yang Di-Pertuan or any department of Government, to which section 167 applies. The question which provision applies to a work shall be determined by reference to the facts immediately before commencement.

(2) Copyright in —

(a) published literary, dramatic and musical works;

(b) artistic works, other than engravings and photographs;

(c) published engravings;

(d) published photographs, and photographs taken before such date as the Attorney General may determine;

(e) published sound recordings, and sound recordings made before such date as the Attorney General may determine; and

(f) published films,

continues to subsist until the date on which it would have expired in accordance with any law relating to copyright in force immediately before commencement.

(3) Copyright in unpublished literary, dramatic and musical works continues to subsist until —

(a) the date on which it expires under subsection (3) of section 167; or

(b) the end of the period of fifty years from the end of the year of commencement,

whichever is the later.

(4) Copyright in —

(a) unpublished engravings; and

(b) unpublished photographs taken on or after such date as the Attorney General may determine,

continues to subsist until the end of the period of fifty years from the end of the year of commencement.

(5) Copyright in a film or sound recording not falling within subparagraph (2) continues to subsist until the end of the period of fifty years from the end of the year of commencement, unless the film or recording was published before the end of that period, in which case it expires fifty years from the end of the year in which it was published.

33. Section 168 applies to Acts of the Legislative Council enacted before commencement, and to Orders under subsection (3) of section 83 of the Constitution made before commencement.

Legislative Council copyright

34. (1) Section 169 applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

(2) Section 170 does not apply —

(a) to a public Bill which was introduced into the Legislative Council and published before commencement;

(b) to a private Bill of which a copy was deposited in the Legislative Council before commencement; and

(c) to a personal Bill which was given a First Reading in the Legislative Council before commencement.

Copyright vesting in certain international organisations

35. (1) Any work in which immediately before commencement any copyright subsisted under any law relating to copyright in force at that time shall be deemed to satisfy the requirements of subsection (1) of section 172. Otherwise, section 172 does not apply to any works made or, as the case may be, published before commencement.

(2) Any copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with any law relating to copyright in force immediately before commencement, or at the end of the period of fifty years from the end of the year of commencement, whichever is the earlier.

Meaning of "publication"

36. Subsection (3) of section 178 applies only where the construction of the building began after commencement.

Meaning of "unauthorised"

37. For the purpose of the application of the definition in subsection (1) of section 2 of the word "unauthorised" to things done before commencement —

(a) paragraph (a) applies to things done before such date as the Attorney General may by order determine as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;

(b) paragraph (b) applies with the substitution of "or any person lawfully claiming under him" for "or, in a case where subsection (2) of section 13 would have applied, the author's employer or, in either case, any person lawfully claiming under him";

(c) paragraph (c) shall be disregarded.

SECOND SCHEDULE

(section 193)

RIGHTS IN PERFORMANCES: PERMITTED ACTS

Introductory

1. (1) This Schedule specifies acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; it relates only to the question of infringement of those rights and does not affect any other right or obligation restricting the doing of any of the specified acts.

(2) No inference shall be drawn from the description of any act which may under this Schedule be done without infringing the rights conferred by Part II as to the scope of those rights.

(3) The provisions of this Schedule are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

Criticism, reviews and news reporting

2. Fair dealing with a performance or recording —

(a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or

(b) for the purpose of reporting current events,

does not infringe any of the rights conferred by Part II.

Incidental inclusion of performance or recording

3. (1) The rights conferred by Part II are not infringed by the incidental inclusion of a performance or recording in a sound recording, film, broadcast or cable programme.

(2) Nor are those rights infringed by anything done in relation to copies, or to the playing, showing, broadcasting or inclusion in a cable programme service, of anything whose making was, under sub-paragraph (1), not an infringement of those rights.

(3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.

Things done for purpose of instruction or examination

4. (1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving the instruction.

(2) The rights conferred by Part II are not infringed —

(a) by the copying of a recording of a performance for the purpose of setting or answering the questions in an examination; or

(b) by anything done for the purpose of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purpose of that dealing, and if that dealing infringes any right conferred by Part II shall be so treated for all subsequent purposes. In this sub-paragraph, "dealt with" means sold, let for hire, or offered or exposed for sale or hire.

Playing or showing sound recording, film, broadcast or cable programme in course of activities of educational establishments

5. (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purpose of instruction before an audience consisting of teachers and students at the establishment and other persons directly connected with its activities is not a playing or showing of a performance in public for the purpose of infringement of the rights conferred by Part II.

(2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a student at that establishment.

(3) Any order made under subsection (2) of section 177 with respect to the application of that section also applies for the purpose of this paragraph.

Recording by educational establishments of broadcasts and cable programmes

6. (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for its educational purposes without thereby infringing any of the rights conferred by Part II in relation to any performance or recording included in it.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purpose of that dealing, and if that dealing infringes any right conferred by Part II shall be so treated for all subsequent purposes. In this sub-paragraph, "dealt with" means sold, let for hire, or offered or exposed for sale or hire.

(3) Any order made under subsection (2) of section 177 with respect to the application of that section also applies for the purpose of this paragraph.

Copy of work required to be made as a condition of export

7. If an article of cultural or historical importance or interest cannot lawfully be exported unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by Part II to make that copy.

Legislative Council and judicial proceedings

8. The rights conferred by Part II are not infringed by anything done for the purpose of proceedings of the Legislative Council or of judicial proceedings, or for the purpose of reporting any such proceedings.

Royal Commissions and statutory inquiries

9. The rights conferred by Part II are not infringed by anything done for the purpose of the proceedings of a Royal Commission or of a statutory inquiry, or for the purpose of reporting any such proceedings held in public.

Public archives and public records

10. Material which is comprised in public archives or public records within the meaning of the Brunei National Archives Act which is available to the public under that Act may be copied, and a copy may be supplied to any person, by or with the authority of the Director appointed under subsection (1) of section 4 of that Act, without infringing any right conferred by Part II.

Acts done under statutory authority

11. (1) Where the doing of a particular act is specifically authorised by any written law, whenever it commenced, then, unless that written law provides otherwise, the doing of that act does not infringe the rights conferred by Part II.

(2) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under any written law.

Transfer of copies of works in electronic form

12. (1) This paragraph applies where a recording of a performance in electronic form has been sold on terms which, expressly or impliedly or by virtue of any law, allow the purchaser to make further recordings in connection with his use of the recording.

(2) If there are no express terms —

(a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent, or terminating any consent on a transfer; or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by Part II; but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(3) The same applies where the recording originally sold is no longer usable and what is transferred is a further copy used in its place.

(4) On a subsequent transfer this paragraph applies, with the substitution for references in sub-paragraph (2) to the purchaser by references to the subsequent transferor.

(5) This paragraph does not apply to a recording sold before commencement.

Use of recordings of spoken works in certain cases

13. (1) Where a recording of the reading or recitation of a literary work is made for the purpose —

(a) of reporting current events; or

(b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by Part II to use the recording, or to copy the recording and use the copy, for that purpose, provided the conditions in sub-paragraph (2) are met.

(2) The conditions are that —

(a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;

(b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;

(c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and

(d) the use is by or with the authority of a person who is lawfully in possession of the recording.

Recordings of folksongs

14. (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by Part II, provided the conditions in sub-paragraph (2) are met.

(2) The conditions are that —

(a) the words were unpublished and of unknown authorship at the time the recording was made;

(b) the making of the recording did not infringe any copyright;
and

(c) its making was not prohibited by any performer.

(3) Copies of a recording made in reliance on sub-paragraph (1) and included in an archive maintained by a designated body may, provided the conditions in sub-paragraph (2) are met, be made and supplied by the archivist or a person acting on his behalf without infringing any of the rights conferred by Part II.

(4) In this paragraph, "designated body" means a body designated for the purpose of section 65.

Playing of sound recordings for purposes of club, society, etc.

15. (1) It is not an infringement of any right conferred by Part II to play a sound recording as part of the activities of, or for the benefit of, a club, society or other similar organisation, provided the conditions in sub-paragraph (2) are met.

(2) The conditions are that —

(a) the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and

(b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.

Incidental recording for purpose of broadcast or cable programme

16. (1) A person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by Part II, shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) That consent is subject to the condition that the further recording —

(a) will not be used for any other purpose; and

(b) will be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording —

(a) for the purpose of any use in breach of the condition mentioned in sub-paragraph (2)(a);

(b) for all purposes, after that condition, or the condition mentioned in sub-paragraph (2)(b), has been broken.

Recordings, for purpose of supervision and control, of broadcasts and cable programmes

17. The rights conferred by Part II are not infringed by the making or use by the Government, for the purpose of maintaining supervision and control over programmes broadcast by it, of recordings of those programmes.

Free public showing or playing of broadcast or cable programme

18. (1) The showing or playing in public of a broadcast or cable programme to an audience that has not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in —

(a) the broadcast or cable programme; or

(b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.

(2) The audience shall be treated as having paid for admission to a place —

(a) if it has paid for admission to a place of which that place forms part; or

(b) if goods or services are supplied at that place, or a place of which it forms part —

(i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme; or

(ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following shall not be regarded as having paid for admission to a place —

(a) persons admitted as residents or inmates of that place;

(b) persons admitted as members of a club, society or other similar organisation where the payment is only for membership thereof and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to its main purposes.

(4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.

(5) Expressions used in this paragraph have the same meaning as in section 75.

Reception and re-transmission of broadcasts in cable programme service

19. (1) This paragraph applies where a broadcast made from Brunei Darussalam is, by reception and immediate re-transmission, included in a cable programme service.

(2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast was made for reception in the area in which the cable programme service is provided, but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

Provision of sub-titled copies of broadcast or cable programme

20. (1) A designated body may, for the purpose of providing persons who are physically or mentally handicapped in any way, with copies which are sub-titled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

(2) In this paragraph, "designated body" means a body designated for the purpose of section 77.

Recording of broadcast or cable programme for archival purposes

21. (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

(2) In this paragraph, "designated class" and "designated body" means a class or body designated for the purpose of section 78.

Made this 10th. day of Ramadan, 1420 Hijriah corresponding to the 18th. day of December, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

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

INTERNATIONAL BANKING ORDER, 2000

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No. S 53

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

INTERNATIONAL BANKING ORDER, 2000

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

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the International Banking Order, 2000 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the regulation and licensing of bodies carrying on the business of international banking, and for connected purposes".

Interpretation.

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

"the Authority" means such person or body as is appointed by His Majesty the Sultan and Yang Di-Pertuan to be the Authority for the purposes of this Order;

"bank" means an institution which carries on banking business; and for the purposes of this Order includes all branches and offices in Brunei Darussalam of such an institution;

"banking business", in relation to an institution, includes the taking of deposits from the public in the form of current or savings accounts and the granting of credits, and without limitation includes the issue of credit cards, money collections and transmissions, foreign exchange transactions, the issue of guarantees, trade finance, development finance and sectoral credits, consumer credit, investment banking and Islamic banking business, broking and risk management services whether such business is in any case conducted by

conventional practices or using Internet or other electronic technology and includes electronic banking;

"broking and risk management services" means on own or customers account in, from or within Brunei Darussalam trading in stocks, shares and securities undertaking money market, financial futures and options and foreign exchange transactions, interest rate transactions dealings in transferable securities of any description derivative instruments or derivative financial instruments or any risk management activities;

"capital funds" means paid-up capital and reserves and any other sources of capital as may be prescribed;

"controller" and references to different descriptions of controller shall be construed in accordance with Part I of the First Schedule;

"deposit" shall be construed in accordance with subsections (2) and (3), "deposit liability" means liability in respect of a deposit (as so construed), and "depositor" and related expressions shall be construed accordingly;

"director" includes any person occupying the position of director of a company, by whatever name called, and includes an alternate or substitute director;

"foreign international company" means a body corporate, however constituted, under the law of a country or territory outside Brunei Darussalam and duly registered under Part XI of the International Business Companies Order, 2000;

"full", "investment", "Islamic" and "restricted", in relation to a licence, shall be construed in accordance with section 7;

"institution" means a company incorporated or registered under the Companies Act (Chapter 39), an international business company or a foreign international company;

"international banking business" shall be construed in accordance with subsection (4);

"international business company" has the same meaning as in the International Business Companies Order, 2000;

"international investment banking business" means the business of —

- (a) providing consultancy and advisory services relating to corporate and investment matters, industrial strategy and related questions, and advice and services relating to mergers and restructuring and acquisitions, or making and managing investments on behalf of any person;
- (b) providing credit facilities including guarantees and commitments;

- (c) participation in stock, or share issues and the provision of services relating thereto; or
- (d) the arrangement and underwriting of debt and equity issues.

"international Islamic banking business" shall be construed in accordance with subsection (5);

"international limited partnership" has the same meaning as in the International Limited Partnerships Order, 2000;

"international trust" has the same meaning as in the International Trusts Order, 2000;

"Islamic banking business" means banking business whose aims and operations do not involve any element which is not approved by the Islamic Religion;

"licence" means a licence granted under section 6;

"licensee" means a bank which is for the time being the holder of a licence;

"minimum amount" means such amount of capital funds to be maintained by licensee as may be prescribed;

"the Minister" means the Minister of Finance;

"place of business", in relation to an institution, includes a head or main office, a branch, an agency, a representative office and any other office or place used by the institution (including one used only for a limited period) for the conduct of banking business;

"prescribed" means prescribed by regulations under section 31;

"written law" includes all Acts, Enactments and Proclamations, and subsidiary legislation, or any part thereof, but does not include any Act of Parliament not any Order of Her Britannic Majesty in Council, Royal Charter or Royal Letter Patent nor any law which no authority in Brunei Darussalam is empowered to amend;

(2) Subject to subsection (3), in this Order a "deposit" is a sum of money paid on terms under which it will be repaid (with or without interest margin, yield, mark-up or premium), and either on demand or on such terms at such time or in such circumstances agreed by or on behalf of the person making the payment and the person receiving it.

(3) Notwithstanding subsection (2), a sum of money is not a deposit if —

- (a) it is paid by way of advance or part payment for the sale, hire or other provision of property or services and is repayable only in the event that the property or those services is or are not in fact sold, hired or otherwise provided;

- (b) it is paid by way of security for payment for the provision of property or services provided or to be provided by the person by whom or on whose behalf the money is accepted;
- (c) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or in any other manner;
- (d) it is a sum of money that is a loan made by a person in the course of a business of lending money carried on by him, to any other person, except a licensee or a bank which is licensed under the Banking Act (Chapter 95) or the Islamic Banking Act (Chapter 168); or
- (e) it is a sum of money that is paid by one institution to another at a time when one of them is a subsidiary or affiliate of the other or both are subsidiaries or affiliation of another institution in terms of the definition of subsidiary, parent, holding an affiliate institutions set forth in Part II of the First Schedule.

(4) For the purposes of this Order, "international banking business" is banking business which does not (except with the prior written consent of the Minister in each case given on such conditions as he considers desirable) involve —

- (a) taking deposits from, leading money to or otherwise conducting banking business with any person resident in Brunei Darussalam, other than —
 - (i) a licensee;
 - (ii) an international business company;
 - (iii) a foreign international company;
 - (iv) an international limited partnership;
 - (v) an international trust; or
 - (vi) a person licensed under the Registered Agents and Trustees Licensing Order, 2000; or
- (b) making available accounts denominated in, lending money in or otherwise conducting banking business in the currency of Brunei Darussalam.

(5) (a) For the purposes of this Order, "international Islamic banking business" is international banking business conducted by an institution which may be foreign-owned or controlled but whose aims or operations shall not be detrimental to the interests of Islamic banking business.

PART II

LICENSING OF INTERNATIONAL BANKING BUSINESS

International banking business restricted to licensees.

3. (1) Subject to Part VI no person shall provide, carry on, or purport to carry on, in or from within Brunei Darussalam, whether or not such business is carried on, or purports to be carried on, within or outside Brunei Darussalam, international banking business unless —

- (a) he holds for the time being a valid licence granted by the Authority under this Order authorising him to carry on such business; or
- (b) he is an exempt person under section 34(1); or
- (c) the business is an exempt activity under section 34(1).

(2) Without prejudice to the generality of subsection (1) and in addition to the prohibition set out there, no person other than a licensee shall, without the written consent of the Authority —

- (a) use any word, either in English or in any other language, in the name, description or title under which such person carried on business in or from within Brunei Darussalam or otherwise that, in the opinion of the Authority, connotes the business of international banking business as described in Order; or
- (b) make or continue to make any representation in any billhead, circular, letter, letterhead, paper, notice, advertisement or in any other manner that is likely to suggest that such person is licensed to carry on the business international banking business as described in this Order.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding eighteen months and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars for every day on which the offence continues after conviction.

Application for a licence.

4. (1) An institution which desires to carry on international banking business or international Islamic banking business in or from within Brunei Darussalam shall, in the prescribed form, make an application to the Authority for a licence, such application to contain or be accompanied by the prescribed application fee and —

- (a) the name of the institution, the names and home addresses of the directors and a copy of the Memorandum of Association and Articles of Association

or other instrument under which the institution is incorporated or constituted;

- (b) the identities of every person (if not referred to above) who is to be a director or controller of the institution or a manager of its business;
- (c) a copy of the audited financial statements and annual report of the institution for the three years preceding the application or such lesser period as the Authority may agree to where such accounts and reports are unavailable;
- (d) particulars of any name (other than that of the institution itself) under which it proposes to carry on its business;
- (e) an undertaking appropriate to the class of licence sought in a form acceptable to the Authority which may impose different undertakings for different circumstances as to the persons or description of persons (subject to section 2(5) of this Order being in either case persons not resident in Brunei Darussalam) to or for whom the institution proposes to provide international banking business, and as to the service and activities proposed to be offered to and with such persons;
- (f) a business plan in respect of the first three years of activities proposed under the license sought;
- (g) where applicable, the written approval of the home authority;
- (h) such other documents, if any, as may be prescribed.

(2) After receiving an application under subsection (1), the Authority may require the applicant to submit such further information as the Authority reasonably considers necessary or desirable to enable the application to be fully assessed for the purposes of this Order.

(3) Any person who, in connection with an application for a licence, wilfully knowingly or recklessly furnishes any document or information which is false in a material particular shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars, imprisonment for a term not exceeding two years or both.

Criteria for granting or refusing licences.

5. (1) In considering whether to grant a licence, the Authority shall have regard to —
- (a) the need to protect the interests of depositor, customers, other creditors, and potential depositors, customers and other creditors; and
 - (b) the need to protect the security, reputation and economic interests of Brunei Darussalam in relation to financial matters.

(2) Without prejudice to the generality of subsection (1), the Authority shall not grant a licence unless the Authority is satisfied that —

- (a) the applicant institution either enjoys a high reputation in the community or will be able to do so if a licence is granted;
- (b) in the case of an international Islamic bank, that the institution will comply with the doctrines of the Islamic Religion, and that proper provision is made in the institutions constituting documents for the appointment of and provision of advice by the appropriate Shari'ah Council;
- (c) the capital funds unimpaired by losses or otherwise of an applicant institution are such and will be maintained as may be prescribed;
- (d) every person who is or is to be a director, controller, of the institution or a manager, senior officer or financial controller of its business is a fit and proper person to hold that position;
- (e) the institution will maintain a place of business within Brunei Darussalam and that place of business will be managed by a person resident in Brunei Darussalam who is a director of the institution;
- (f) except as permitted by this Order the institution will conduct no banking business other than international banking business;
- (g) the institution has demonstrated it will be able to meet such minimum capital requirements as may be prescribed;
- (h) at least two of the persons referred to in paragraph (d) will effectively direct the business of the institution in Brunei Darussalam; and
- (i) the name of the institution and any other such name as is referred to in section 4(1)(d) is not such that it may in any respect mislead potential depositors or other creditors, that it is not for any other reason undesirable and that neither the Registrar of Companies nor the Registrar of International Business Companies objects to such name.

(3) In determining for the purposes of subsection (2)(d) whether a person is a fit and proper person to hold a position, regard shall be had to —

- (a) his probity;
- (b) his competence and soundness of judgment for fulfilling the responsibilities of the position;
- (c) leave in responsibilities including, without limitation, the due diligence he is likely to conduct and fulfil

- (i) in respect of customers, based on the principle of "know the client", and
- (ii) in respect of the sources, destination and application of customer funds; and
- (d) whether the interests of potential depositors, investors, customers and parties to transactions or the reputation of Brunei Darussalam are, or are likely to be, in any way prejudiced by his holding that position;

and, without prejudice to the generality of paragraphs (a) to (d), regard may be had to his previous experience, record, conduct and activities in business or financial matters.

(4) without prejudice to the generality of subsections (1) and (2), the Authority shall not grant a licence to an applicant institution if it appears to the Authority that —

- (a) the institution is closely linked with any person; and
- (b) those close links with that person or any matter relating to any laws of a jurisdiction outside Brunei Darussalam or administrative provisions to which that person is subject are such as would (were a licence to be granted to the institution) prevent the effective exercise by the Authority of the Authority's supervisory functions, whether exercisable within Brunei Darussalam or elsewhere in relation to the institution.

(5) For the purposes of subsection (4), an institution is closely linked with —

- (a) any person who is or, if he were an undertaking, would be its parent undertaking;
- (b) any undertaking which is a subsidiary undertaking of the institution;
- (c) any undertaking which is or, if any person falling within paragraph (a) were an undertaking, would be a fellow subsidiary undertaking (as defined in Part II of the First Schedule); and
- (b) any person in accordance with whose directions or instructions the directors of the institution are accustomed to act;

and any reference to the institution's close links with any person shall be construed accordingly.

Determination of application for a licence.

6. (1) On receipt of an application under section 4(1), the Authority shall within a period of three months issue a decision granting or refusing the licence applied for.

(2) A decision under subsection (1) shall be final and, where the decision is to refuse a licence —

- (a) no reason need be given for the refusal; and
- (b) no appeal shall lie against the refusal nor shall the decision be subject to proceedings by way of judicial review.

(3) Notwithstanding subsection (2) no refusal shall prejudice the ability of an applicant to make a fresh application, provided that no such fresh application is made within three months of the date of refusal.

Categories of licences and fees.

7. (1) A licence shall be one of the following four types —

- (a) a full international license for the purpose of carrying on international banking business generally;
- (b) an international investment banking licence for the purpose of carrying on international investment banking business,
- (c) an international Islamic banking licence for the purpose of carrying on international Islamic banking business, granted in respect of international banking business in terms of subsections (1)(a), (1)(b) or (1)(d) of this section.
- (d) a restricted international banking licence for the purpose of carrying on international banking business subject to the restriction that the licensee may not offer, conduct or provide such business except to or for persons named or described in the undertaking accompanying the application for the licence, as mentioned in section 4(1)(e).

(2) Subject to this Order, the grant of a licence under paragraphs (a), (b), (c) or (d) of subsection (1) shall in each case be subject to the restriction that the licensee may not offer, conduct or provide international banking business except in respect of the services named or described in the undertaking accompanying the application for the licence, as mentioned in section 4(1)(e).

(3) Every licensee shall pay such annual licence fee or fees as may be prescribed;

(4) The manner of payment of a licence fee shall be as specified by the Authority.

(5) Where a provision of this Order conflicts with Shari'ah law in relation to an Islamic Banking Licence of whatever class, the principles of Shari'ah specified by the appropriate Shari'ah Council shall, subject to sound banking practice, prevail.

Conditions of licences.

8. (1) In granting a licence, the Authority may impose such conditions as he thinks fit.
- (2) It shall be a condition of every licence —
- (a) that the Authority shall continue to be satisfied as to the matters in section 5;
 - (b) that the licensee shall obtain the written consent of the Authority in writing of any change in the licensee's place of business or of any director or manager respectively resident in Brunei Darussalam and directing or managing the business, as mentioned in section 5(2)(d);
 - (c) that the licensee will not open any account for any person without first conducting due diligence in respect of persons with whom the licensee is dealing and satisfying itself on a best endeavours basis that funds received or to be received are clear funds originating from a reputable source;
 - (d) that, in carrying on its business, the licensee will at all times maintain within Brunei Darussalam adequate accounting and other records of its business and adequate systems of control of its business and records; and
 - (e) that the licensee will comply with such requirements as may be prescribed with respect to such matters as the Authority may from time to time consider to be appropriate for the purposes of this Order.
- (3) Every undertaking given pursuant to section 4(1)(e) shall be deemed to be a condition of the licence to which it refers.
- (4) The Authority may at any time vary or revoke any conditions of a licence imposed under subsection (1) or impose conditions or additional conditions thereon.
- (5) Prior to taking action under subsection (4), the Authority shall notify this intention to take action to the licensee concerned and shall give the licensee an opportunity to submit within such period, being not less than fourteen days, as may be specified in the notification reasons why the conditions of the licence should not be so varied or revoked or, as the case may be, why conditions or additional conditions should not be so imposed.
- (6) A licensee which is aggrieved by any action taken by the Authority under subsection (4) may appeal to the High Court against the variation, revocation or, as the case may be, the imposition of the conditions or additional conditions.
- (7) A licensee which fails to comply with any of the conditions of its licence shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine of not exceeding one thousand dollars for every day on which the offence continues after conviction.

Notice of change of relevant particulars.

9. (1) Whenever, after a licence is granted, a material change occurs in the particulars which were contained or supplied in either case pursuant to section 4 in the application for the licence, the licensee shall, as soon as practicable, give notice in writing to the Authority specifying the nature and circumstances of the change.

(2) A licensee which contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars for every day on which the offence continues after conviction.

Notification of becoming new or increased controller.

10. (1) Where the licensee is an international business company or is incorporated under the Companies Act (Chapter 39), no person shall become an indirect ten per cent, twenty per cent, thirty-three per cent, or majority controller of a licensee unless he has served on the Authority a written notice that he intends to become such a controller and the Authority has given its prior written approval.

(2) Where the licensee is a foreign international company or is registered under Part IX of the Companies Act (Chapter 39), a person who becomes, or ceases to be an indirect ten per cent, twenty per cent, thirty-three per cent, or a majority controller of a licensee shall prior to, or within thirty-one days of acquiring, disposes of such an interest, notify the Authority in writing of such acquisition or disposal, giving in every case the percentage of shares (if any) retained by him.

(3) In any case to which subsection (2) applies, the Authority may consider whether the criteria set forth in section 5 have been materially adversely affected. In the event that the Authority determines that such criteria have been so materially adversely affected, the Authority may exercise the powers set forth under subsection (2) of section 23, subject to the terms of subsections (3) to (7) inclusive of that section, and notwithstanding that none of the events referred to in subsection (1) of section 23 has occurred.

Contravention of section 10.

11. (1) A person shall be guilty of an offence if he knowingly contravenes section 10 by —

- (a) failing to seek the consent of the Authority or, as the case may be, failing to serve notice on the Authority as required by that section; or
- (b) becoming a controller of a description falling within that section without the consent of the Authority under section 10(1) or notifying the Authority in accordance with section 10(2).

(2) A person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding two years.

Notification of controllers, etc., by licensee.

12. (1) At least once in each calendar year, every licensee shall give to the Authority written notice of the name of every person who, to the knowledge of the licensee, is, at the date of the notice, a controller of the licensee.

(2) In relation to each person named in a notice under subsection (1) as a controller of a licensee, the licensee shall state to the best of its knowledge —

- (a) whether he is an indirect ten per cent, twenty per cent, thirty-three per cent or majority controller;
- (b) what percentage of shares of the licensee he holds, either alone or with any associate or associates; and
- (c) what percentage of the voting power at a general meeting of the licensee he is entitled to exercise, or control the exercise of, either alone or with any associate.

(3) The Authority may at any time by notice in writing require a licensee —

- (a) to give such a notice as is referred to in subsection (1); or
- (b) to obtain from any shareholder of the licensee and to transmit to the Authority information —
 - (i) as to whether that shareholder holds voting shares in the licensee as beneficial owner or as trustee; and
 - (ii) if he holds them as trustee, to indicate as far as it can the person for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest.

(4) A licensee which fails to comply with subsection (1) or with a notice under subsection (3) shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars.

Surrender of licence.

13. (1) if a licensee ceases to carry on the business in respect of which its licence was granted, the licensee may apply to the Authority to surrender its licence.

(2) On an application under subsection (1), the Authority may approve the surrender of the licence if —

- (a) it is satisfied, on evidence produced by the licensee or otherwise, that the licensee has repaid, assigned or otherwise disposed of (as may be appropriate) all deposits or other funds which it held or administered and has likewise appropriately diversified itself of any other property held other than in its own right; or
- (b) the licensee is being wound up voluntarily and the Authority is satisfied, on evidence produced by the licensee or otherwise, that the licensee is solvent and is able on demand to repay all deposits held by it and all its other creditors.

(3) If an application is made under subsection (1) in a case where the licensee is being wound up voluntarily, the Authority may stay that application and request the Attorney General to apply to the High Court for an order that the licensee be wound up in accordance with Part V of the Companies Act (Chapter 39), either by the Court or subject to the supervision of the Court (and in this subsection "the Court" has the same meaning as in that Act).

(4) In the case of a licensee which is an international business company, the reference in subsection (3) to Part V of the Companies Act is a reference to that Part as it applies to such a company by virtue of the International Business Companies Order, 2000.

PART III

ADMINISTRATIVE PROVISIONS

General functions of the Minister and the Authority.

14. (1) Under the supervision of the Minister, the Authority shall be responsible for ensuring the proper administration of this Order.

(2) In addition to any functions conferred on it by or under any other provisions of this Order, the Authority shall have the following functions —

- (a) where it thinks fit or when required to do so by or under this Order or any other written law, the Authority shall examine by way of the receipt of regular returns or in such other way as it thinks fit the affairs or business of any licensee for the purpose of determining that all the requirements of this Order are being met and that the licensee is carrying on its business in a satisfactory manner;
- (b) where it has reasonable grounds to believe that a licensee or any director or other officer of a licensee has or may have contravened any of the provisions

of this Order or any other of the laws of Brunei Darussalam, the Authority shall conduct or assist in the investigation of that contravention;

- (c) the Authority may examine the accounts of licensees of which copies are required to be sent to it under this Order,

(3) Subject to section 17, nothing in this Order authorises the Authority to inquire specifically into the identity, accounts or affairs of any specific customer of a licensee, and the following provisions of this Part shall be construed accordingly.

Powers to obtain information and documents, etc.

15. (1) The Authority may be notice served on a licensee —

- (a) require the licensee to provide the Authority, at such times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the Authority may reasonably require for the performance of his functions under this Order;
- (b) require the licensee to provide the Authority with a report by a nominated or approved accountant, legal counsel or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the licensee to provide information under paragraph (a);

and a notice under this subsection may require the information or report to be in such form as is specified in the notice.

(2) In subsection (1)(b) "nominated or approved" means nominated or approved by the Authority.

(3) The Authority may —

- (a) by notice in writing served on a licensee, a director or other officer require the licensee or such director or officer to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise a person appointed by the Authority (in this section referred to as "the appointee"), on production of his authority, to require the licensee to provide the appointee forthwith with such information or to produce to the appointee forthwith such documents as he may specify,

being such information or documents as the Authority may reasonably require for the performance of his functions under this Order.

(4) Where, by virtue of subsection (1), the Authority or any appointee has power to require the production of any documents from a licensee, the Authority or appointee shall have the same power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom production of any documents is required under this section claims a lien on documents produced by him, the production shall be without prejudice to that lien.

(5) Any power under this section to require a person to produce documents includes power —

- (a) if the documents are produced, to take copies of them or extracts from them and to require the person in question or, where that person is an institution, any other person who is a present or past director, controller or manager of, or is or was at any time employed by or acting as an employee of, that institution, to provide an explanation of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) The Authority may by notice in writing served on any person who is or is to be a director, controller or manager of a licensee, require him to provide to the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the position which he holds or is to hold.

(7) A statement made by a person in compliance with a requirement imposed by this section may be used in evidence against him.

(8) Nothing in this section entitles the Authority to require any person to furnish information in circumstances which would give rise to a contravention by him of section 18(1).

Assistance to designated supervisory authority.

16. (1) The Authority may exercise any of the powers conferred by section 15 for the purpose of assisting a designated supervisory authority in the performance of any of its material supervisory function.

(2) Where subsection (1) applies —

- (a) any reference in section 15 to the functions of the Authority under this Order includes a reference to the material supervisory functions of the designated supervisory authority; and
- (b) the references in section 15(1)(a) to the Authority include a reference to a duly appointed senior officer or agent of a designated supervisory authority.

(3) Any reference in this Part to a designated supervisory authority is a reference to that authority which, in a country or territory designated by the Minister for the purposes of this Order, exercises in that country or territory functions corresponding to those of the Authority under this Order or the Minister under the Banking Act (Chapter 95) or the Islamic Banking Act (Chapter 168) and, in relation to such an authority, "material supervisory functions" means functions which so correspond.

(4) The Minister shall not designate any country or territory for the purposes of this Order unless he is satisfied that the supervisory authority there is subject to provisions of confidentiality which are at least equivalent to those which apply to the Authority, whether under this Order or otherwise.

(5) Any reference in section 15 to a licensee includes a reference to —

- (a) any institution which has been a licensee;
- (b) any person who is or was an associate, director, manager, officer or a controller of a licensee or former licensee;
- (c) any undertaking which is a parent or subsidiary undertaking of a licensee or former licensee; and
- (d) any undertaking with which a licensee or former licensee is closely linked.

Contravention of Order, serious crime, money-laundering.

17. (1) If it appears to the Authority that there are reasonable grounds for suspecting that there is or is likely to be a contravention of any provision of this Order, or of any other written law or if there is likely to be an offence in Brunei Darussalam to which the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S12/96) or the Criminal Conduct (Recovery of Proceeds) Order, 2000 applies, or the Money-Laundering Order, 2000, he may apply to the High Court for an order under this section.

(2) An order under this section may confer on the Authority such powers as the High Court considers appropriate in the circumstances in order to protect the interests of depositors or other creditors, customers, investors and parties to transactions respectively of and with a licensee or to protect the reputation of Brunei Darussalam in relation to financial and security matters, or for any other reason.

(3) The High Court may make the exercise by the Authority of any powers conferred under this section subject to such conditions as the Court thinks fit, including conditions as to confidentiality, the making of reports or further applications to the Court.

(4) Any person who obstructs the exercise of any power conferred on the Authority under this section shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars and to imprisonment for a term not exceeding three years.

- (5) A person who knows or suspects that —
- (a) an investigation or search is being or is likely to be carried out under this section; or
 - (b) that information or documents are being or are likely to be required under sections 15 and 16 or otherwise,

shall be guilty of an offence if —

- (i) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction of or disposal of, information or documents which he knows or suspects are or would be relevant to such an investigation or are or would be required or,
- (ii) knowing or suspecting that an investigation or requirement to require information documents to be produced as set forth in either (a) or (b) of this subsections, warns or advises, or attempts to warn or advise, any person who has any knowledge or information, or has access thereto, of an impending investigation or the seeking of documents or information,

unless he proves that he had no intention of concealing facts disclosed by the information or documents from persons carrying out such an investigation or requiring such information or documents. A person guilty of an offence under this subsection shall be liable on conviction to a fine not exceeding two hundred thousand dollars imprisonment for a term not exceeding two years or both.

Confidentiality of customer accounts.

18. (1) Except as provided by subsection (5) and section 19, not official of a licensee (including a director or an employee) and no person who, by reason of his professional relationship with a licensee, has by any means access to the records of a licensee or any registers or correspondence or material with regard to the account of an individual customer of that licensee shall, at any time (whether while he continues as such an official or while his professional relationship continues or thereafter) give, divulge or reveal any information whatsoever regarding the moneys or other relevant particulars of the account of that customer.

(2) In subsection (1), "professional relationship" includes a relationship between a bank and a computer bureau, being a relationship which has been approved by the Authority, and such other relationship with a bank as the Authority may from time to time decide.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred thousand dollars and to imprisonment for a term not exceeding two years, and any such contravention shall constitute

a breach of statutory duty actionable at the suit of any person who suffers loss or damage by virtue of the contravention.

(4) The provisions of this section and of sections 17 and 19 shall have effect in place of any rule, whether arising under the common law or otherwise, with respect to banking secrecy or confidentiality and the exceptions thereto.

(5) Subsection (1) does not apply where the information relates to credit facilities granted by a licensee incorporated outside Brunei Darussalam and is required by the Authority for the exercise of his functions under this Order in relation to the licensee.

Exceptions from confidentiality requirements.

19. (1) Section 18 does not apply to any information relating to the account of a customer of a licensee if —

- (a) the customer or his personal representative gives written permission to the disclosure of the information;
- (b) the customer is declared bankrupt or, if the customer is a company, is being wound up;
- (c) the disclosure of the information is ordered by the Court for the purposes of civil proceedings within Brunei Darussalam;
- (d) the officials of a licensee by compulsion of this Order or any relevant written law are required to give information to the Authority, or to a police officer or a public officer who is duly authorised under that law to obtain that information, or to a court in the investigation or prosecution of a criminal offence under any such law;
- (e) the licensee has been served with a garnishee order attaching moneys in the account of the customer;
- (f) the licensee is incorporated outside Brunei Darussalam and the information relates solely to —
 - (i) credit facilities granted by the licensee; or
 - (ii) foreign exchange, money market or any other transaction between the licensee and other banks, whether in or outside Brunei Darussalam, or such other financial institutions as may be determined by the Authority from time to time,

and the information is required by the head office of the licensee;

- (g) the information is required to assess the credit worthiness of a customer in connection with or relating to a *bona fide* commercial transaction or a

prospective commercial transaction so long as the information is of a general nature and in no way related to the details of the customer's account;

- (h) the customer has died, whether testate or intestate, and the information is required by his appointed personal representative or and person entitled to letters of administration, solely in connection with an application for a grant of probate or letters of administration;
- (i) a customer who has been issued with a credit or charge card by a bank has his card suspended or cancelled by the bank by reason of his default in payment and the bank discloses information relating to the customer's name and identity, the amount of his indebtedness and the date suspension or cancellation of his credit or charge card to other banks and financial institutions issuing credit or charge cards in Brunei Darussalam;
- (j) the information relates solely to credit facilities granted by a bank licensed hereunder or otherwise licensed in Brunei Darussalam and the information is required by another such bank; or
- (k) in accordance with such conditions as the Authority may determine, information of such class or classes as the Authority may from time to time approve is transmitted from the licensee to a parent undertaking incorporated under the law of a country or territory outside Brunei Darussalam, solely for the purposes of carrying out collation, synthesis or processing of the information by the parent undertaking for the licensee.

(2) In any such proceedings as are referred to in paragraphs (b), (c) or (e) of subsection (1) where information is likely to be disclosed in relation to a customer's bank account, the proceedings may, if the Court, of its own motion or on the application of any party to the proceedings, so orders, be held in camera and the information shall be confidential as between the Court and the parties thereto.

(3) Where an order is made under subsection (2) in relation to any proceedings, no person shall publish the name, address or photograph of any parties to the proceedings or any information likely to lead to the identification of the parties thereto either during the currency of the proceedings or at any time thereafter.

(4) A bank or other institution or any of its officers or employees, receiving any information pursuant to subsections 1(i) or 1(j) shall not disclose the information to any person.

(5) Any person who contravenes subsections (3) or (4) shall be guilty of an offence and liable on conviction to a fine not exceeding twenty thousand dollars and to imprisonment for a term not exceeding two years.

(6) Every decision of the Court in respect of any proceedings concerning the application or interpretation of this Order may be published or reported for the purposes of affording a record of those proceedings, provided that in every case —

- (a) the written decision of the Court shall be edited to such extent as shall be necessary to preserve confidentiality in respect of the identity of every interested party and of the subject matter of the proceedings; and
- (b) no such decision shall be reported or published unless or until a judge of the Court shall have ascertained the views of the parties to the proceedings as to the adequacy of any editing undertaken, and certified in writing to the Registrar of the Court that the decision as edited may be released for publication or reporting.

Administrative notices.

20. (1) The Authority shall cause to be published in the form of administrative notices statements setting out the criteria from time to time by reference to which the Authority proposes to exercise his functions under this Order, including, in particular, its powers to grant, refuse or revoke licences or to impose conditions of general application on licences.

(2) The Authority may also publish in the form of administrative notices criteria to facilitate compliance with any requirements prescribed under section 8(2)(e).

(3) An administrative notice published under this section shall be admissible in evidence in any proceedings arising out of or otherwise in connection with the operation or application of this Order.

Audited accounts to be sent to the Authority.

21. (1) Not later than the appropriate interval after the end of each of its financial years, every licensee shall send to the Authority a copy of its audited accounts for that year.

(2) In subsection (1) —

- (a) "the appropriate interval" means three months or such longer period as the Authority may allow in any particular case; and
- (b) "audited accounts" means the audited accounts required to be prepared for the purposes of the International Business Companies Order, 2000 or the Companies Act (Chapter 39) or, in the case of an institution incorporated otherwise than under that Act, accounts audited in a manner acceptable to the Authority.

(3) If the auditor of the accounts of a licensee for any financial year is different from the auditor of those accounts for the preceding financial year, the Authority may require the licensee to provide an explanation of the change together (if so required) with a statement by the former auditor or his representative of the circumstances of the change; and if such an explanation or statement is not produced, the licensee shall be regarded as having failed to comply with subsection (1).

Communications to the Authority by auditors.

22. (1) In the circumstances specified in subsection (2), an auditor of a licensee shall notify the Authority of any information which relates to the business or affairs of the licensee and of which he becomes aware —

- (a) in his capacity as auditor of the licensee or of a body with which it is closely linked; or
- (b) in preparing any report under this Order.

(2) The circumstances referred to in subsection (1) are those in which the information referred to in that subsection is —

- (a) such as to give the auditor reasonable cause to believe, as regards the licensee concerned —
 - (i) that there is or has been or may have been a failure to fulfil any of the criteria in section 5 and that the failure is likely to be of material significance;
 - (ii) that its licence should be revoked, or the Authority should take any other action under section 23;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of this Order and that the contravention is likely to be of material significance; or
 - (iv) that the continuous functioning of the licensee may be affected; or
- (b) in a case where the auditor is the auditor of the licensee concerned, such as to lead to his refusal to certify the accounts or to the expression of reservations.

(3) In subsection (2), "of material significance" means of material significance for the exercise of the Authority's functions under this Order.

(4) No duty to which an auditor of a licensee may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information of which he becomes aware or opinion that he may form in his capacity as auditor and which —

- (a) relates to the business or affairs of the licensee or of a body with which the licensee is closely linked; and
- (b) is relevant to any function of the Authority under this Order.

(5) Subsection (5) of section 5 shall have effect for the construction of references in this section to a body with which a licensee is closely linked.

Regulatory powers of the Authority.

23. (1) If the Authority is satisfied that a licensee —
- (a) has ceased to carry on international banking business;
 - (b) has gone into liquidation, is wound up or in the process of being wound up or is otherwise dissolved;
 - (c) has made an arrangement or composition with its creditors;
 - (d) is unable or appears likely to become unable to meet its obligations as they fall due;
 - (e) is carrying on business in a manner detrimental to the public interest, the interests of its depositors or other creditors its customers or persons conducting transactions with it;
 - (f) has failed to comply with any condition of its licence;
 - (g) has failed to pay any fee due under this Order or has otherwise contravened any provision of this Order; or
 - (h) has surrendered, had revoked or had suspended a banking licence in any other jurisdiction in circumstances which affect, or are likely to affect, the licensee's compliance with the criteria specified in section 5,

the Authority may take any one or more of the courses of action specified in subsection (2).

- (2) The courses of action referred to in subsection (1) are —
- (a) the revocation of the licence;
 - (b) the imposition of varied or additional conditions on the licence;
 - (c) the substitution of any director or officer of the licensee;
 - (d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within three months of his appointment;
 - (e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs, being a person who shall have, *mutatis mutandis*, all the powers of a person appointed as a receiver or manager of a company

under the International Business Companies Order, 2000 of the Companies Act (Chapter 39);

- (f) where the licensee is incorporated under the laws of jurisdiction other than Brunei Darussalam, at the expense of the licensee to take such advice and steps in such jurisdiction as may be appropriate having regard to the needs specified in subsections 5(1)(a) and 5(1)(b), including the investigation of winding-up liquidation or analogous procedures or proceedings; and
- (g) to require the licensee to take such other action as the Authority considers necessary.

(3) Before taking any of the courses of action specified in subsection (2), the Authority shall give the licensee an opportunity to make representations why the course of action in question should not be taken; and, whether or not such representations are made, if the Authority does take a course of action under subsection (2), the licensee may appeal to the High Court against the taking of the action.

(4) A person appointed under paragraph (d) or paragraph (e) of subsection (2) (in the following provisions of this section referred to an "appointee") shall from time to time and in any case within three months of his appointment or, as the case may be, the extension of his appointment under subsection (5), prepare and furnish a report to the Authority on the affairs of the licensee and may make recommendations therein.

(5) On receipt of a report under subsection (4), the Authority may —

- (a) revoke the appointment of the appointee;
- (b) extend the period of the appointee's appointment;
- (c) subject to any condition which the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority;
- (d) revoke the licence and request the Attorney General to apply to the High Court for an order that the licensee be wound up in accordance with Part V of the Companies Act (Chapter 39), either by the Court or subject to the supervision of the Court (and in this subsection "the Court" has the same meaning as in that Act).

(6) In the case of a licensee which is an international business company, the reference in subsection (5)(d) to Part V of the Companies Act (Chapter 39), is a reference to that Part as it applies to such a company by virtue of the International Business Companies Order, 2000.

(7) Whenever the Authority revokes a licence under subsection (2)(a) or subsection (5)(d), it shall cause notice of the revocation to be published in the *Gazette* and may also cause notice to be published, whether within Brunei Darussalam or elsewhere, in such newspaper or other publication as he may think fit in the circumstances.

Confidentiality of information received under this Order, etc.

24. (1) This section applies to information which —

- (a) the Authority or a person who works or has worked for the Authority; or
- (b) an auditor or expert instructed by the Authority,

has received in the course of discharging functions under this Order or otherwise pursuant to instructions from the Authority.

(2) Information to which this section applies shall not be disclosed either by any person referred to in subsection (1) or by any person receiving it directly or indirectly from such a person except —

- (a) with the consent of the person or, as the case may be, every person to who it relates;
- (b) where it is information that is a matter of public record or knowledge; or
- (c) in accordance with the following provisions of this section.

(3) Information to which this section applies may be disclosed in the following circumstances —

- (a) where the disclosure is to any person concerned with the administration of this Order or for the purpose of carrying this Order into effect;
- (b) where the disclosure is to any person qualified in law, accountancy or valuation or any other matter requiring the exercise of professional skill, in order to take advice from that qualified person for the purposes of this Order;
- (c) where the disclosure is with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Order or otherwise;
- (d) where the disclosure is in relation to any other proceedings arising out of this Order or any winding-up or administration proceedings in respect of a licensee or former licensee; or
- (e) where the disclosure is in the form of a summary of information in such a manner as not to enable information relating to any particular licensee or other person to be ascertained from it.

(4) The Authority may provide information on the operations of a licensee which is incorporated in a country or territory outside Brunei Darussalam (including any report under section 15(1)(b)) to a designated supervisory authority in the country of incorporation for the purpose of its material supervisory functions.

(5) Subsection 22(3) applies in relation to this section as it applies to that.

(6) Any person who discloses information contrary to the provisions of this section shall be guilty of an offence and liable on conviction to a fine and to imprisonment for a term not exceeding five years.

PART IV

EXEMPTIONS FROM TAXATION AND DUTIES

Exemptions from taxes and duties.

25. (1) No income tax, tax on capital gains or other direct tax shall be levied, withheld or collected in respect of international banking business conducted under this Order —

(a) on or in respect of any dividends or earnings attributable to any share, debt or securities of a licensee; or

(b) on or in respect of any dividends, interest or other returns from any shares, securities, deposits or other borrowings of a licensee or any assets managed by a licensee, if the dividends, interest or other returns are shown to be in respect of shares, securities, deposits, borrowings or other assets beneficially owned by a person who either is not a resident or is a person falling within any of subparagraph (i) to (v) of section 2(5)(a).

(2) No estate, inheritance, succession or similar tax shall be levied in respect of any shares, securities or assets of a licensee or in respect of the transfer of any such shares, securities or assets.

(3) Notwithstanding anything in the Stamp Act (Chapter 34), duty shall not be chargeable on any of the following descriptions of instruments —

(a) instruments relating to transfers of any property to or by a licensee;

(b) instruments relating to transactions in respect of the shares, debt obligations or other securities of a licensee;

(c) instruments relating in any way to the assets or activities of a licensee.

(4) No filing or presentation of documents with or to any taxing or other analogous authority in Brunei Darussalam shall be required, notwithstanding any other law of Brunei Darussalam.

(5) If, with respect to any goods imported or to be imported by a licensee, the Minister is satisfied —

(a) that the goods are not being made or manufactured in Brunei Darussalam;

- (b) that the goods are essential as equipment or fixtures for the purposes of conducting international banking business in Brunei Darussalam and will be used exclusively for those purposes; and
- (c) that the licensee will notify the Minister prior to the sale transfer or disposal of the goods (whether within or outside Brunei Darussalam),

the Minister may be order exempt the licensee from all, or so much as he consider appropriate, of any customs duty which would otherwise be levied in respect of the goods.

(6) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34) and expressions used in subsection (4) have the same meaning as in the Customs Act (Chapter 36).

(7) No filing return or financial information shall be required from a licensee in relation to any taxation, duty or other levy in respect of which relief is granted under this section.

PART V

MISCELLANEOUS AND GENERAL

Recovery of fees, etc.

26. There shall be recoverable as a civil debt due to the Authority from the institution concerned —

- (a) the amount of any fee payable under this Order;
- (b) any remuneration and expenses payable to any person nominated or approved under section 29(1)(b); and
- (c) any remuneration and expenses payable to any person appointed under section 23(2)(d) or (e).

Indemnity.

27. Neither the Authority nor any of the following —

- (a) any member of the Authority;
- (b) any person nominated, approved or authorised by the Authority under subsection 19(2);
- (c) a person appointed under section 23(2)(d) or (e),

shall be liable, in damages or otherwise, as a result of anything done *bona fide* in the exercise of any power or the performance of any function or duty conferred or imposed by or under this Order.

Offences in relation to false statements.

28. (1) A person is guilty of an offence if, in connection with any application or any document required or made for the purpose of this Order, or in compliance or purported compliance with any requirement of this Order or otherwise for the purposes of this Order —

- (a) he wilfully makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) he recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) he wilfully produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (d) he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding two hundred thousand dollars and to imprisonment for a term not exceeding three years.

Offences by bodies corporate.

29. Where an offence under this Order committed by a licensee or other 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 —

- (a) any director, manager, secretary or other similar officer of that body, or any person who was purporting to act in that capacity; or
- (b) any other person who holds a controlling interest in that body,

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

Power of Authority to compound.

30. The Authority may, without instituting proceedings against any person for any offence under this Order, or the regulations which is punishable only by a fine, demand and receive

the amount of the fine or such reduced amount as he thinks fit from that person, whereupon —

- (a) if that person pays the amount to the Authority within fourteen days after the demand, no proceedings shall be taken against him in relation to the offence;
- (b) if that person does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to the offence.

Regulations.

31. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient for carrying into effect the provisions of this Order.

Consequential amendments.

32. (1) The Banking Act (Chapter 95) shall have effect subject to the amendments in the Second Schedule.

(2) In the Moneylenders Act (Chapter 62), in section 2(1) (interpretation) immediately after the words "Banking Act", there shall be added "or a licensee within the meaning of the International Banking Order, 2000".

(3) In the Finance Companies Act (Chapter 89), in section 38 (exemptions) in subsection (1)(a) immediately after the words "Islamic Banking Act", there shall be added "or the International Banking Order, 2000".

PART VI

TRANSITIONAL PROVISIONS, SAVINGS AND EXEMPTIONS

Transitional provisions.

33. Subject to section 34, any person who is at the commencement of this Order carrying on any business for which a licence is required under the provisions of this Order shall within a period of three months from the date of its commencement comply with the provisions of this Order.

Exemptions.

34. (1) Subject to the issue by the Authority of a letter of confirmation on such terms as the Authority may consider desirable and subject to compliance with any other Order or requirement relating to the licensing of entities or activities conducted in or from within

Brunei Darussalam the persons and activities specified in the Third Schedule are not required to be licensed under this Order.

(2) The Authority may in such manner and on such terms as it considers fit exempt any person, business or profession or class of persons or class of business or profession from any of the provisions of this Order.

(3) Any exemption given under subsection (2) may contain different provisions for different classes of person, business or profession, or international banking business, or with respect to any provisions of this Order.

Saving of private rights.

35. Nothing in this Order shall prejudice any right that a person interested or any other person may have to take civil proceedings or obtain relief against a licensee, former licensee, associate, director or employee of any licensee or former licensee or any other person connected in any way with international business.

FIRST SCHEDULE

Section 2

INTERPRETATION OF "CONTROLLER" ETC., AND "PARENT AND SUBSIDIARY" ETC.

PART I

CONTROLLERS

1. In this Order, "controller", in relation to an institution, means a person who, either alone or together with any associate or associates —

- (a) holds ten per cent or more of the shares in the institution or in another body of which the institution is a subsidiary undertaking;
- (b) is entitled to exercise or control the exercise of ten per cent or more of the voting power at any general meeting of the institution or of another body of which the institution is a subsidiary undertaking; or
- (c) is able to exercise a significant influence over the management of the institution or of another body of which the institution is a subsidiary undertaking by virtue either of a holding of shares in the institution or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the institution or the other body.

2. In this Order, an "indirect controller" means a controller falling within paragraph 3(c) and references to other descriptions of controller shall be construed as follows —

- (a) a "ten per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is ten or more but less than twenty;
- (b) a "twenty per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is twenty or more but less than thirty three;
- (c) a "thirty-three per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is thirty-three or more but less than fifty; and
- (d) a "majority controller" means a controller in whose case the percentage referred to in the relevant paragraph is fifty or more.

PART II

PARENT, SUBSIDIARY AND HOLDING INSTITUTIONS

Definition of subsidiary holding an affiliate companies, etc.

1. For the purposes of this Order, a company is a subsidiary of another company if —
 - (a) it is controlled by —
 - (i) that other company; or
 - (ii) that other company and one or more companies each of which is controlled by that other company; or
 - (iii) two or more companies, each of which is controlled by that other company; or
 - (b) it is a subsidiary of a subsidiary of that other company.
2. For the purposes of this Order, a company is the holding company of another only if that other company is its subsidiary.
3. For the purposes of this Order, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.
4. For the purposes of this Order, a company is controlled by another company or person or by two or more companies only if —
 - (a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only,

by or for the benefit of that other company or person or by for the benefit of those other companies; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

5. For the purposes of this Schedule "company" means a body corporate however constituted in any part of the world and includes an institution.

SECOND SCHEDULE

Section 32(1)

CONSEQUENTIAL AMENDMENTS TO THE BANKING ACT

1. In section 2 (interpretation), in subsection (1), immediately after the definition of "Islamic bank", there shall be inserted the following definition —

"international bank" means a licensee within the meaning of the International Banking Order, 2000".

2. In section 3 (Banking business to be transacted only by a company), in subsection (1) immediately after the words "a company", there shall be added the words "or an international bank".

3. In section 4 (Banking business to be transacted only by a company licensed for each purpose), in subsection (1), immediately after the words "no company", there shall be inserted the words "other than an international bank".

4. At the end of section 5 (Minima for authorised capital) there shall be added the following new subsection —

"(6) Nothing in the foregoing provisions of this section applies to an international bank".

5. In section 6 (Reserve Fund), in subsection (1) immediately after the word "Brunei", there shall be inserted the words "other than an international bank".

6. In section 6A (Minimum Cash Balances), in subsection (1) immediately after the words "banks" in the second line, there shall be inserted "other than international banks".

7. In section 6B (Liquid Assets), in subsection (1) immediately after the word "bank" in the second line, there shall be inserted "other than an international bank".

8. In section 7 (Restriction on use of word "bank") immediately after the word "Islamic Bank" there shall be inserted the words "and an international bank".

THIRD SCHEDULE

Section 34(1)

EXEMPT PERSONS AND EXEMPT ACTIVITIES

Introducers of business.

1. Persons who make arrangements or introductions, or who act an intermediary with a view to persons carrying on international banking business.

Brokers and Risk Managers.

2. Person who conduct broking and risk management services which are not conducted for any person resident in Brunei Darussalam other than those persons referred to in section 2(4)(a)(i) to (iv) of the Order, but only as regards the activities permitted by any written law regulating them.

Holders of a Mutual Funds licence.

3. Persons who hold a valid Mutual Funds licence granted under any law relating to mutual funds, but only as regards the activities permitted by such a licence.

Trust Companies.

4. Persons who hold a valid license granted under the Registered Agents and Trustees Licensing Order, 2000, but only as regards the activities permitted by such a licence.

Holders of advances, deposits, etc., by persons who hold a Banking licence, or by persons in connection with the supply of agents and services.

5. Persons who hold a valid banking licence granted under the Banking Act (Chapter 95) or under the Islamic Banking Act (Chapter 168), but only as regards the activities permitted by such a licence.

6. Person who hold money on trust in the course of a business of supplying goods or services by way of sale, or hire or other provision of goods and services which does not otherwise constitute international business.

7. For the purpose of paragraph 6, money is held on trust in the course of business of the description referred to if it is paid —

(a) by way of advance or part payment for the goods or services provided;

- (b) by way of security for performance by the customer of the agreement between the customer and the supplier or provider, or in respect of loss which may result from the non-performance of a contract by a customer; or
- (c) by way security for the delivery or return of any property by or from the customer, whether in a particular state of repair or otherwise.

8. (1) Entering into a transaction which would otherwise amount to the a carrying on of international banking business by one person with another person, if —

- (a) the persons are companies and the transaction is undertaken for the benefit of that other person in connection with its own business and not that of any third party;
- (b) the persons participate together in a joint enterprise and the transaction is undertaken for the benefit of that enterprise and not that of any third party; or
- (c) one of the persons is a director, other officer or employee of a licensee acting in that capacity and the other is that licensee or a connected company in relation to that company,

unless either person carries on international banking business or holds himself out as doing so.

(2) (a) For the purposes of sub-paragraphs 1(a) and 1(c), a company is connected with another company if it is a subsidiary, holding of the First Schedule or if they are in the same group.

- (b) For the purposes of sub-paragraph 1(b), "joint enterprise" means an enterprise into which the persons participating enter for commercial purposes related to a business other than international business carried on by such person; and where a person participating is a company, each company with which is connected shall also be regarded as a person participating in the enterprise.

Made this 21st. day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

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

CHILDREN ORDER, 2000

ARRANGEMENT OF SECTIONS

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No. S 64

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

CHILDREN ORDER, 2000

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

**PART I
PRELIMINARY**

Citation, long title and commencement.

1. (1) This Order may be cited as the Children Order, 2000.
- (2) The long title of this Order is an Order to provide for the care and protection of children in matters incidental thereto or connected therewith.
- (3) This Order shall commence on such date as the Minister may be notification in the *Gazette* appoint; and the Minister may appoint different dates for the commencement of different provisions of this Order or for different purposes of the same provision.

Interpretation.

2. (1) In this Order, unless the context otherwise requires —
 - "Action Team on Child Abuse" means a team established in accordance with section 9 of this Order;
 - "child" means a person under the age of eighteen years;
 - "Court" means a Court of law in Brunei Darussalam.;
 - "guardian" of a child means a parent of the child, or any person lawfully appointed by deed or will or by the order of a competent Court to be the guardian of the child, or a person who has lawfully adopted the child, and includes any person who has lawful custody of the child;
 - "hospital" means any government hospital and clinic or any private hospital or clinic;

"medical officer" means a registered medical practitioner in the service of the government and includes a registered medical practitioner in any private hospital or clinic;

"Minister" means the Minister responsible for childrens' matters;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for childrens' matters;

"police officer" has the meaning assigned thereto in the Royal Brunei Police Force Act (Chapter 50);

"place of safety" means any place or institution declared to be such under section 44, or such other place or home as the protector deems suitable, the occupier of which is willing temporarily to receive a child;

"premises" includes any dwelling house, building, shop, room, conveyance or any place whether open or enclosed;

"protector" means the unit head of the social affairs services unit and such person as His Majesty may by notification in the *Gazette*, declare to be vested with all or any of the duties imposed upon a protector by this Order and any public officer appointed under section 3;

"Register" means the Register kept and maintained under section 5;

"registered medical practitioner" means a medical practitioner registered under the Medical Practitioners and Dentists Act (Chapter 112);

"Registrar" means the Registrar appointed under section 4;

"school" means any government and non-government educational institution;

"senior police officer" means a police officer of any rank from and including the Commissioner down to and including a probationary assistant superintendent;

"social affairs services officer" means any social officer in the social affairs services unit;

"supervisor" means the officer in charge of a welfare home;

"unit head" means the head of the social affairs services unit;

"welfare home" means any welfare home gazetted by the government.

- (2) For the purpose of this Order, a child is in need of protection if —

- (a) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused by his guardian;
- (b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and his guardian, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse;
- (c) the guardian of the child is unfit, or has neglected or is unable, to exercise proper supervision and control over the child and the child is falling into bad association, or is exposed to moral danger, or is beyond control;
- (d) the guardian of the child has neglected or is unwilling to provide for him adequate care, food, clothing and shelter;
- (e) the child has no guardian, or has been abandoned by his guardian and after reasonable inquiries the guardian cannot be found, and no other suitable person is willing and able to care for the child;
- (f) the child 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;
- (g) the child behaved 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 fail;
- (h) there is such conflict between the child and his guardian, or between his guardians, that family relationships are seriously disrupted, thereby causing him emotional injury;
- (i) the child is a person in respect of whom any of the offences mentioned in the Penal Code (Chapter 22) or any offence of the nature described in this Order has been or is believed to have been committed and his guardian is the person who committed such offence or is believed to have committed such offence or has not protected or is unlikely to protect him from such offence;
- (j) the child is —
 - (i) a member of the same household as the child referred to in paragraph (i); or
 - (ii) a member of the same house hold of the person who has been convicted of any of the offences referred to in paragraph (i), 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 the offence or his guardian is unable or unwilling to protect him from such offence;

(k) the child is found begging.

(3) For the purposes of this Order —

(a) a child is physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, haemorrhaging, the rupture of a viscous, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of the hair or any teeth;

(b) a child is emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;

(c) a child is sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance or for the purpose of sexual exploitation by any person for that person's or another person's sexual gratification.

(4) In the interpretation and application of this Order, when any question arises with respect to the welfare of a child in any particular circumstances, the best interests of the child shall always be the paramount consideration.

PART II

PROTECTORS, REGISTRARS AND REGISTERS

Appointment of protectors.

3. The Minister may appoint, by notification published in the *Gazette*, any officer in the public service to exercise the powers and perform the duties of a protector under this Order, subject to such conditions as may be specified in the notification.

Appointment of Registrars.

4. The Minister may appoint a supervisor to be the Registrar of Children in need of protection.

Register.

5. The Registrar shall cause to be kept and maintained, in such forms as he thinks fit, a register to be known as the Register of Children in Need of Protection.

Contents of Register.

6. The Register shall contain details of every case or suspected case of a child in need of protection and such other matters in relation to such case or suspected case as the Permanent Secretary may from time to time determine.

Access to Register.

7. (1) Details entered in the Register shall be furnished to any Court, when so requested by the Court, and to —

- (a) the Permanent Secretary;
- (b) a protector;
- (c) any police officer; and
- (d) any member of the action team on child abuse,

when any of these persons requires such details for the purpose of any proceedings under this Order or for the purpose of taking action in respect of, or providing assistance to, a child in need of protection.

(2) Details contained in the Register may be furnished to —

- (a) persons engaged in *bona fide* research whose access to the Register is authorised by the Permanent Secretary for that purpose; or
- (b) persons or classes of persons authorised by the Permanent Secretary to have access to the Register on the grounds that their access to the Register will promote the protection of a child or children.

(3) Details furnished under this section shall not include any information which discloses or is likely to lead to the disclosure of the identity of any person who has made a notification that a child is in need of protection.

Offences in respect of Register.

8. Any person who furnishes to any other person any details contained in the Register other than pursuant to section 7 shall be guilty of an offence.

PART III

ACTION TEAM ON CHILD ABUSE

Establishment of Action Team on Child Abuse.

9. There shall be established groups of persons and each group shall be known as an "Action Team on Child Abuse", for the purposes of coordinating locally based services to families and children where children are or are suspected of being in need of protection.

Membership of Action Team on Child Abuse.

10. Each Action Team on Child Abuse shall consist of the following members —

- (a) a chairman, who shall be the Permanent Secretary;
- (b) an officer from the Ministry of Education;
- (c) an officer from the Ministry of Religious Affairs;
- (d) an officer from the Attorney General's Chambers;
- (e) a medical officer;
- (f) a senior police officer; and
- (g) an officer from the Social Affairs Services Unit.

Sitting and conduct of proceedings of Action Team on Child Abuse.

11. Each Action Team on Child Abuse shall have the authority to utilise from time to time such other persons as it may reasonably require to enable it to adequately perform its functions and duties or as the circumstances may require, including any person qualified to advise on relevant indigenous, ethnic, cultural or religious factors.

Coordination.

12. The Action Team on Child Abuse shall be coordinated by the Social Affairs Services Unit.

PART IV

TEMPORARY CUSTODY, MEDICAL EXAMINATION AND TREATMENT

Taking a child into custody.

13. (1) Any protector or police officer who is satisfied on reasonable grounds that a child is in need of protection may take the child into temporary custody, unless such protector or police officer is satisfied that the taking of proceedings in relation to such child is undesirable in the best interests of such child or that proceedings are about to be taken by some other person.

(2) Subject to section 14, every child taken into temporary custody under subsection (1) shall be placed in a place of safety until such time as he can be brought before a Court.

(3) If a child is placed in a place of safety under subsection (2), the person in charge of the place of safety shall have the like control of the child as the parent of the child and shall be responsible for the maintenance of the child, and the child shall continue in the care of such person notwithstanding that the child is claimed by his guardian or any other person.

(4) Any person who takes a child into temporary custody under this section shall forthwith upon such taking —

- (a) cause the guardian of the child to be notified of such taking; and
- (b) if such person is a police officer, notify a protector of such taking.

Child in need of medical examination or treatment.

14. (1) If a protector or police officer who takes a child into temporary custody under section 13(1) is of the opinion that such child is in need of medical examination or treatment, such protector or police officer may, instead of taking a child to a place of safety, present the child before a medical officer.

(2) If at the time of being taken into custody under section 13(1) a child is a patient in a hospital, the protector or police officer who takes the child into custody may leave the child in the hospital.

(3) If a protector or police officer does not take a child into temporary custody under section 13(1) but he is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct in writing the person who appears to have the care of the child for the time being to forthwith take the child to a medical officer.

(4) If the person referred to in subsection (3) fails to comply within forty-eight hours with a direction made under that subsection, a protector or police officer may take the child into temporary custody for the purpose of presenting the child before a medical officer.

Medical examination and treatment.

15. (1) A medical officer before whom a child is presented under section 14(1) or section 14(4) —

- (a) shall conduct or cause to be conducted an examination of the child;
- (b) may, in examining the child and if so authorised by a protector or police officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the child's condition; and
- (c) may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

(2) If the medical officer who examines a child under subsection (1) is of the opinion that the hospitalisation of the child is necessary for the purposes of medical care or treatment of the child, a protector or police officer may authorise the hospitalisation of the child.

Authorisation of medical treatment.

16. (1) If, in the opinion of a medical officer, the child referred to in section 13 requires treatment for a minor illness, injury or condition, a protector or police officer may authorise such treatment.

(2) If, in the opinion of a medical officer, the child referred to in section 13 is suffering from a serious illness, injury or condition or requires surgery or psychiatric treatment, a protector or police officer shall immediately notify or attempt to notify and consult the guardian of the child or any person having the authority to consent to such treatment, and may with the written consent to such treatment, authorise such medical, surgical or psychiatric treatment as may be considered necessary by a medical officer.

(3) If the consent referred to in subsection (2) cannot be obtained or if there is immediate risk to the health of the child, a protector may authorise such treatment as may be considered necessary by a medical officer.

No liability incurred for giving authorisation.

17. (1) If a child is examined or treated pursuant to sections 15 and 16, the protector or police officer who authorises such examination or treatment, the medical officer who examines or treats such child, and all persons acting in aid of such medical officer, shall not incur any liability at law by reason only that a child is examined or treated pursuant to these sections.

(2) Nothing contained in subsection (1) shall relieve a medical officer from liability in respect of the examination or treatment of a child which liability he would have been subject to had the examination or treatment been carried out or administered with the consent of the guardian of the child or person having authority to consent to the examination or treatment.

Control of hospitalised children.

18. If a child who is taken into temporary custody under section 13(1) or section 14(4) is hospitalised, the Permanent Secretary shall have the like control over, and responsibility for the maintenance of, that child as a person in charge of a place of safety would have had if the child had been placed in that place of safety.

Duty of medical practitioner and power of medical officer.

19. (1) If a registered medical practitioner including a medical officer, believes on reasonable grounds that a child he is examining or treating is physically or emotionally injured as a result of being ill treated, neglected, abandoned or exposed, he shall immediately notify a protector or police officer.

(2) Any registered medical practitioner who fails to comply with subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$10,000.

(3) For the purposes of subsection (1), the referral of a child examined by a private medical practitioner to a government medical practitioner on the grounds stated in subsection (1), shall be sufficient to satisfy the duty of notification under subsection (1).

(4) If the registered medical practitioner referred to in subsection (1) is a medical officer, he may take the child referred to in that subsection into temporary custody until such time as the temporary custody of the child is assumed by a protector or police officer.

(5) Any conviction under subsection (2) shall for the purposes of section 20 of the Medical Practitioners and Dentists Act (Chapter 112), be deemed to be infamous conduct and be dealt with as provided for in that section.

Steps to be taken in respect of child after medical examination or treatment.

20. (1) A child who is taken into custody under section 13(1) and who subsequently undergoes medical examination or treatment shall, upon the completion of such examination or treatment, or if such child is hospitalised, upon his discharge from the hospital be placed in a place of safety until such time as he can be brought before a Court.

(2) A child who is taken into custody under section 14(4) and who subsequently undergoes medical examination or treatment shall, upon the completion of such examination or treatment, or if such child is hospitalised, upon his discharge from the hospital, be returned to the person from whose care the child was taken.

PART V

COURT PROCEDURE

Production of children before Court.

21. (1) Subject to subsections (2) and (3), every child who is taken into custody under section 13(1) shall within twenty-four hours of being so taken into custody, be brought before a Court.

(2) Notwithstanding subsection (1), a child who is taken into custody under section 13(1) and is medically examined or treated under Part IV shall be produced before a Court within twenty-four hours of the completion of such examination or treatment or, if such child is hospitalised, upon his discharge from the hospital.

(3) Notwithstanding subsections (1) and (2), where it is not possible to bring a child who is taken into custody under section 13(1) before a Court within the time prescribed in subsections (1) and (2), such child shall be brought before a Magistrate who may direct that he be placed in a place of safety or, notwithstanding section 13(2), be committed to the care of a fit person until such time as he can be brought before a Court.

Powers of a Court.

22. (1) If a Court is satisfied that any child brought before it under section 21 is a child in need of protection, the Court may —

- (a) order his guardian to enter into a bond to exercise proper care and guardianship for a period specified by the Court, but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (b) make an order placing the child in the custody of a fit person for a period specified by the Court but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (c) without making any other order or in addition to an order under paragraphs (a) or (b), make an order placing the child under the supervision of a protector, or some other person appointed for the purpose by the Court, for a period specified by the Court, but that period shall not extend beyond the date on which the child attains the age of eighteen years;
- (d) make an order placing the child in a place of safety for a period of three years from the date of the order or until he attains the age of eighteen years, whichever is the longer; or
- (e) make an order placing the child in the custody of a foster parent found to be suitable by the Permanent Secretary and pending such time, place the child in a place of safety.

(2) A Court may, in making any order under subsection (1), impose such conditions or give such directions as it may deem fit for the purpose of ensuring the safety and well being of the child in respect of whom such order is made, and every person upon whom such conditions are imposed or to whom such directions are given shall comply with such conditions or directions.

(3) No order subsection (1) shall be made without giving the guardian of the child an opportunity to attend and be heard.

(4) Notwithstanding subsection (3), an order under subsection (1) may be made if the guardian of the child, having been required to attend, has failed to do so or cannot be found within a reasonable time.

(5) Before making an order under subsection (1), the Court shall endeavour to obtain such information as to the family background, religion, general conduct, home surroundings, school records and medical history of the child as may enable it to deal with the case in the best interests of the child, may, for the purpose of obtaining such information or for any special medical examination or observation, from time to time adjourn the case for a period or periods not exceeding two months at a time and may make in respect of the child, as an *interim* order having effect only during the period of the adjournment, any order which it could have made under subsection (1).

(6) In determining what order is to be made under subsection (1), the Court shall treat the welfare and best interests of the child as the paramount considerations.

(7) If the Court is not satisfied that the child brought before it under section 21 is in need of protection, the Court may order that the child be returned to the care and custody of his guardian.

Contribution Order.

23. (1) Where an order is made under section 22 placing a child in a place of safety or in the custody of a fit person, the Court making the order may, at the same time or subsequently, make a contribution order requiring the guardian of the child to make such monthly contributions as the Court, having regard to the means of the guardian, thinks fit and it shall be the duty of the guardian to comply with the order.

(2) All sums payable under a contribution order shall be paid into such Court as the Court making the order shall direct and the Court making any such order may from time to time, on proof of any change in circumstances of the person against whom the order is made or for other good cause being shown to the satisfaction of the Court, rescind, make anew, or vary the order as to it seems fit.

(3) No contribution order shall be made without giving the guardian of the child an opportunity to be heard, but a contribution order may be made against a guardian who having been required to attend, has failed to do so.

(4) A contribution order shall remain in force so long as the order placing the child in a place of safety or in the custody of a fit person remains in force.

(5) If any person wilfully neglects to comply with a contribution order, a Magistrate may, for every breach of the order by warrant direct the amount due to be levied in the manner provided by law for levying fines imposed by Magistrates, or may sentence the person to imprisonment for a term not exceeding one month for each month's contribution or part thereof remaining unpaid.

Revocation or variation.

24. A Court may on the application of a protector, or the person in charge of a place of safety or the guardian of a child in respect of whom an order is made under section 22, revoke or vary such order upon proof that the circumstances under which the order was made have changed after the making of the order.

Control of children placed in custody of a fit person or a place of safety.

25. If an order is made under section 22 placing a child in a place of safety or in the custody of a fit person or in the charge of a foster parent, then the person in charge of the place of safety, such fit person or such foster parent shall have the like control of the child as the parent and shall be responsible for his maintenance, and the child shall continue in the care of such person notwithstanding that the child is claimed by his guardian or any other person.

PART VI

OFFENCES IN RELATION TO THE HEALTH AND WELFARE OF CHILDREN

Ill-treatment, neglect, exposure or abandonment of children.

26. (1) Any person who, being a person having the care of a child, abuses, assaults, neglects, abandons or exposes the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, assaulted, neglected, abandoned or exposed, shall be punished with imprisonment which may extend to 7 years with 10 strokes of whipping or to a fine not exceeding \$20,000 or both.

(2) The Court may, in *lieu* of or in addition to any punishment specified in subsection (1), order the person guilty of an offence under that subsection to execute a bond, with or without sureties, as the Court may determine, to be of good behaviour for such period as the Court thinks fit, and may include in such bond a condition requiring such person to undergo such counselling and psychotherapy as may be specified therein.

(3) If a person who is ordered to execute a bond of good behaviour under subsection (2) fails to comply with any of the conditions of such bonds, he shall —

- (a) if such bond is in *lieu* of a penalty under subsection (1), be liable to the penalty provided for in that subsection; or
- (b) if such bond is in addition to a penalty under subsection (1), be punished with imprisonment which may extend to 7 years with 10 strokes of whipping or to a fine not exceeding \$20,000 or both.

(4) A parent, guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury if, being able to provide from his own resources, he fails to provide adequate food, clothing, medical or dental treatment, lodging, or care for such child.

- (5) A person may be convicted of an offence against this section notwithstanding —
- (a) that suffering or injury to the health of the child in question or the likelihood of suffering or injury to the health of the child in question was avoided by the action of another person; or
 - (b) that the child in question has died.

Children not to be used for begging or any illegal activities.

27. Any person who causes or procures any child or, being a person having the care of a child, allows that child to be on any street, premises or place for the purposes of —

- (a) begging or receiving alms, or of inducing the giving of alms; or
- (b) any illegal activity or activity detrimental to the health or welfare of the child,

shall be punished with imprisonment which may extend to 5 years with 8 strokes of whipping or to a fine not exceeding \$10,000 or both.

Offence to leave child without reasonable supervision.

28. Any person who, being a guardian or a person for the time being having the care of a child, leaves that child, without making reasonable provision for the supervision and care of the child, for a period which is unreasonable or under unreasonable circumstances shall be punished with imprisonment which may extend to 5 years with 10 strokes of whipping or to a fine not exceeding \$10,000 or both.

PART VII

NOTIFICATION ON TAKING A CHILD INTO CARE, CUSTODY OR CONTROL

Application and interpretation.

29. (1) This Part shall not apply to —

- (a) the taking of a child into the care, custody or control of his grandparent, or a brother or sister by the whole or half blood or either of his parents;
- (b) the taking of a child into the care, custody or control of his guardian;
- (c) the taking of a child into the care, custody or control of any person in pursuance of an order of a Court of competent jurisdiction or in pursuance of an order under the Women and Girls Protection Act (Chapter 120);
- (d) the taking in of a child as an inmate of a place of safety or school or hospital, home or institution maintained by the Government of Brunei Darussalam;
- (e) the taking in of a child as a boarder at a school registered under any written law relating to education;
- (f) the taking of a child who is regularly attending a school registered under any written law relating to education into the custody of a friend or relative of his guardian with the consent of his guardian.

(2) In this Part, "guardian" of a child means a parent of the child, or any person lawfully appointed by deed or will or by the order of a competent Court to be the guardian of the child, or a person who has lawfully adopted the child.

Notification of taking into care, custody or control.

30. (1) Where a person takes a child into his care, custody or control —

- (a) that person; and
- (b) the person in whose care the child was at the time of such taking,

shall, not later than one week thereafter, notify the protector of such taking.

(2) On receiving any notification under this section, the protector may make such inquiry as he thinks fit as to the reasons for the taking and as to the suitability for that purpose of the person who had taken the child into his care, custody or control and if, after such inquiry, the protector deems it expedient in the best interests of the child, he may either —

- (a) order that the child be returned to the care, custody or control of his guardian or the person in whose care he was at the time of such taking; or
- (b) permit the taking of the child.

(3) A protector, on receiving any notification under this section, shall record the particulars thereof in a register to be kept for that purpose.

(4) Any person who fails to comply with the provisions of subsection (1) shall be punished with imprisonment which may extend to 3 years with 5 strokes of whipping or to a fine not exceeding \$5,000 or both.

Subsequent obligations.

31. (1) Where the taking of a child has been notified to and permitted by a protector under section 30, the person who has taken such child shall, if at any subsequent time —

- (a) he intends to return the child to the care, custody or control of the guardian of the child or any other person from whom the child was taken; or
- (b) without his knowledge or consent, the child has left his care, custody or control,

report in person to a protector and shall, whenever practicable, bring or cause to be brought before such protector the child and the guardian of the child or any other person from whom the child was taken.

(2) On receiving a report under subsection (1), the protector shall make a note thereof and shall —

- (a) if the child and the guardian of the child or any other person from whom the child was taken are present at the time such report is received, return the child to the guardian or such person, as the case may be; or
- (b) if the guardian of the child or any other person from whom the child was taken is not present at the time such report is received —
 - (i) take the child into temporary custody until he can be returned to his guardian or such person; and
 - (ii) forthwith send written information to the last known place of abode of his guardian or such person.

(3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence.

Power of protector to require child to be produced before him.

32. (1) Whenever a protector has reason to believe that there is, within the area within which he exercises jurisdiction, a child in respect of whose taking no notification has been made within one week after the taking, he may, by summons under his hand addressed to the person who has or is believed to have the care, custody or control of such child, require such person to appear and to produce the child before him at the time and place specified in the summons.

(2) If a person on whom a summons has been served under subsection (1) fails to produce the child at the time and place specified therein, the protector may issue a warrant authorising any person named therein to search for such child and produce him before the protector.

(3) Any child named or described in such warrant may be removed to a place of safety and there temporarily detained until the protector has completed his inquiry under this Part or may, for the like period, be temporarily committed to the custody of a relative or other fit person on such terms and conditions as the protector may require.

(4) The protector may make such inquiry as he thinks fit as to the circumstances and the reasons for the taking of the child referred to in subsection (1) and as to the suitability of the person who has taken the child into his care, custody or control.

(5) If, after the inquiry mentioned in subsection (1), the protector deems it expedient in the best interests of the child, he may either —

- (a) order that the child be returned to the care, custody or control of his guardian or any other person from whom he was taken; or
- (b) permit the taking of the child on such terms and conditions as the protector may require.

(6) If the taking of a child by any person has been permitted under paragraph (b) of subsection (5) subject to any term or condition and default is made in complying with such term or condition, the protector may by warrant under his hand order that the child be taken out of the care, custody or control of such person and committed to a place of safety or to the custody of a relative or other fit person on such terms and conditions as the protector may require until the child attains the age of eighteen years or for any shorter period.

PART VIII

TRAFFICKING IN CHILDREN

Unlawful transfer of possession, custody or control of child.

33. (1) Every person who takes any part in any transaction the object or one of the objects of which is to transfer or confer, wholly, partly, temporarily or permanently, the possession,

custody or control of a child for any valuable consideration shall be guilty of an offence and shall be punished with imprisonment which may extend to 7 years with 10 strokes of whipping or to a fine not exceeding \$20,000 or both.

(2) Every person who without lawful authority or excuse harbours or has in his possession, custody or control of any child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person within or out of Brunei Darussalam shall be punished with imprisonment which may extend to 7 years with 10 strokes of whipping or to a fine not exceeding \$20,000 or both.

(3) For the purposes of subsection (2), if any person harbours or has in his possession, custody or control of any child without any lawful authority or excuse, such child shall, until the contrary is proved, be presumed to be a child with respect to whom the temporary or permanent, possession, custody or control has been transferred or conferred for valuable consideration.

(4) It shall be a defence in any prosecution under this section to prove that the transfer took place in contemplation of or pursuant to a *bona fide* marriage or adoption and that at least one of the natural parents of the child or the guardian of the child was a consenting party to the marriage or to the adoption by the adopting party, and has expressly consented to the particular marriage or adoption.

Importation of child by false pretences.

34. Any person who by or under any false pretence or representation or fraudulent or deceitful means, made or used either within or out of Brunei Darussalam, brings or assists in bringing any child into or out of Brunei Darussalam shall be guilty of an offence and shall be punished with imprisonment which may extend to 7 years with 10 strokes of whipping or to a fine not exceeding \$20,000 or both.

Power to examine children and person in charge.

35. A protector or any person authorised in that behalf in writing by a protector may require any child who has entered Brunei Darussalam or been brought into Brunei Darussalam and any person who may appear to have the custody or control of such child to appear before the protector at any reasonable time and at any convenient place, and the protector may examine such child as to his reasons for entering or being in Brunei Darussalam and may examine such person with respects to such child, and such person shall legally be bound to answer such questions truthfully and to the best of his ability.

Power of protector to require security.

36. If a protector has reasonable cause to suspect that any child —

- (a) has been brought into Brunei Darussalam either after having been transferred for valuable consideration, or by fraud, misrepresentation or any false pretence;
- (b) has been transferred to the custody or control of any person for valuable consideration either within or out of Brunei Darussalam; or
- (c) is being detained against his will by some person other than his parent or guardian;

he may either —

- (i) require any person in whose custody or under whose control the child appears to be to furnish with copies of such child's and such person's own photographs, and to furnish security to the satisfaction of the protector that such child will not leave the District in which he then is without the previous consent in writing of the protector, and will not be transferred to the care or custody of any other person without the previous consent in writing of the protector, and that he will be produced before the protector whenever he requires it; or
- (ii) in the first instance, or if default be made in complying with any order made under paragraph (i), make an order that the child be taken out of the custody or control of the person having custody or control of the child and committed to a place of safety or, on such security and on such conditions as the protector may require, to the custody of a relative or other fit person until the child attains the age of eighteen years or for any shorter period.

Inspection.

37. (1) A protector or any social welfare officer generally or specially authorised in that behalf in writing by the protector, may at any time visit and inspect the place where any child in respect of whom security has been furnished under section 36 lives or is believed to live or to be.

(2) A protector or any officer authorised under subsection (1), may inquire into the condition and circumstances of the child referred to in subsection (1) and, for the purposes of such inquiry, the protector or such officer may require any person to answer any questions he may think proper to ask and such person shall be legally bound to answer such questions truthfully and to the best of his ability.

PART IX

MISCELLANEOUS

Power to search premises.

38. (1) Subject to subsection (2), any protector or police officer may enter and search any premises for the purpose of ascertaining whether there is therein any child who is in need of protection or whether any offence under this Order is being, or has been committed.

(2) A protector or police officer shall not enter any premises by the use of force unless he has first obtained a warrant issued by a Magistrate.

(3) A Magistrate may issue a warrant to a protector or police officer to enter by the use of force if necessary any premises for the purposes mentioned in subsection (1) if that Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that —

- (a) there is in such premises a child who is in need of protection; or
- (b) any offence under this Order or any other written law is being or has been, committed,

and that the entry can only be effected by the use of force.

(4) Notwithstanding subsection (2), if a protector or police officer has reasonable grounds for believing that the object of the search mentioned in subsection (1) is likely to be frustrated by reason of the delay in obtaining a warrant under subsections (2) and (3), he may without the warrant, enter by the use of force as may be necessary any premises for the purposes mentioned in subsection (1).

(5) Any protector or police officer who enters any premises under this section shall —

- (a) if so required, produced evidence of his identity; and
- (b) if a warrant has been issued under subsection (3) —
 - (i) produce the warrant or a copy thereof; and
 - (ii) use only such force as is reasonably necessary to effect entry.

(6) A protector or police officer may, during or after any such search as is referred to in subsection (1), arrest or cause to be arrested any person reasonably suspected of having committed an offence against this Order, and may seize and detain any articles, books, documents or accounts which he may have reason to relate to any offence against this Order.

(7) In carrying out any search under this section a protector or police officer shall have power to put questions and to give any such order or direction as may be necessary to the occupants of any premises for the purpose of carrying out such search.

(8) The occupant of any premises being searched under this section shall answer truthfully all questions put to them by the protector or police officer, and shall obey any order or direction given by him touching any matter or any person connected with such search.

(9) No person shall by force, restraint, threats, inducement or other means cause any child who is in need of protection to conceal himself on or to leave any premises being searched or about to be searched a protector or police officer under this section, with the intent that such protector or police officer may thereby be evaded or obstructed.

Obstructing protector or police officer in performing his functions.

39. Any person who —

- (a) assaults, obstructs, hinders or delays any protector or police officer in effecting any entry which he is entitled to effect under this Order or in the execution of any duty imposed or power conferred by this Order;
- (b) refuses to answer to the best of his knowledge and belief any questions which he is legally bound to answer and which is asked of him by any protector or police officer or any other person authorised under this Order;
- (c) contravenes or fails to comply with any order, direction, summons or warrant lawfully issued or any condition lawfully imposed by any protector, police officer or Court under this Order,

shall be punished with imprisonment which may extend to 3 years or to a fine not exceeding \$5,000 or both.

Removing or helping child to escape from custody.

40. (1) If a child is placed in a place of safety or in the custody of any person under this Order, any person who —

- (a) removes the child from such place of safety or such custody without lawful authority;
- (b) knowingly assists or induces, directly or indirectly, a child to escape from such place of safety or such custody; or
- (c) knowing harbours, conceals, or prevents from returning to such place or safety or such custody, a child who has so escaped, or knowingly assists in so doing,

shall be punished with imprisonment which may extend to 3 years or to a fine not exceeding \$5,000 or both.

(2) If any child who is placed in a place of safety or in the custody of any person under this Order is removed without lawful authority, or escaped, from such place of safety or such custody, such child may be retaken by any protector or police officer and returned to such place of safety or such custody.

Protection of identity of child.

41. (1) No person shall publish or cause to be published any material which —

- (a) reveals the name, address, or school; or
- (b) includes any particulars which may lead to the identification.

of any child concerned in any proceedings in any Court, either, as being the person by or against, or in respect of whom the proceedings are taken, or as being a witness therein except in so far as (if at all) as may be permitted by the Court.

(2) Any person who contravenes subsection (1) shall be punished with imprisonment which may extend to 2 years or to a fine not exceeding \$5,000 or both.

(3) Subsections (1) and (2) shall not apply if such person —

- (a) is a protector; or
- (b) was requested, directed or authorised by a protector to publish or cause to be published such material.

(4) For the purposes of this section —

- (a) "publish" includes broadcast by radio or television;
- (b) "material" includes any picture or representation.

General penalty.

42. Any person found guilty of an offence under this Order for which no punishment is expressly provided shall be punished with imprisonment which may extend to 3 years or to a fine not exceeding \$5,000 or both.

Power to arrest without warrant.

43. (1) Any police officer may arrest without a warrant any person whom he reasonably believed to have committed or to be committing an offence against this Order.

(2) Any person arrested under subsection (1) shall, after such arrest, be dealt with as provided for the Criminal Procedure Code (Chapter 7).

Place of safety.

44. (1) The Minister may, by notification in the *Gazette* declare any place or institution, to be a place of safety for the purposes of this Order.

(2) The Minister may at any time direct the closing of any place of safety established under this Order.

(3) The Permanent Secretary may order the transfer of children from one place of safety to another as and when the need arises.

Power of Court to determine and declare age of child.

45. If in any proceeding under this Order a person is alleged to be a child, the Court, after making such inquiry as it thinks fit as to the age of that person, may determine and declare his age, and for the purpose of this Order the age so declared by the Court shall be deemed to be the true age of that person, unless and until the contrary is proved.

Protection of informants.

46. (1) No person who makes any notification that a child is in need of protection shall incur any liability for defamation or otherwise in respect of the making of such notification.

(2) The making of any notification that a child is in need of protection shall not, in any proceedings before any Court or in any other respect, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct.

(3) Any person appearing as a witness in any proceedings in any Court or tribunal or before a person authorised by law to hear evidence —

(a) shall not be compelled to disclose the identity of, or any information likely to lead to the disclosure of the identity of, any person who has made a notification that a child is in need of protection; and

(b) shall not be compelled to produce, and shall not produce, any report or document which identifies, or is likely to identify, any person who has made a notification that a child is in need of protection.

(4) Subsection (3) does not apply where a notification that a child is in need of protection is tendered in evidence, or evidence in respect of such notification is given, by the person who made such notification.

(5) The provisions of this section shall apply to a registered medical practitioner who makes a notification under section 19(1) in the same manner as they apply to a person who makes a notification that a child is in need of protection.

(6) If in any proceedings before a court for an offence under this Order the Court, after full inquiry into the case, is satisfied that an informer wilfully made a statement which he knew or believed to be false or did not believe to be true, or if in any proceedings the Court is of the opinion that justice cannot be fully done between the parties thereto without the disclosure of the name of an informer the Court may permit inquiry and require full disclosure concerning the informer.

Protection of Permanent Secretary and others.

47. No action or prosecution shall be brought, instituted or maintained in any Court against —

- (a) the Permanent Secretary;
- (b) any protector;
- (c) any social affairs services officers and supervisors of welfare homes;
- (d) any police officer; or
- (e) any medical officer empowered to take a child into temporary custody under section 19(4),

in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties under this Order.

Certificate of Registrar to be evidence.

48. A certificate purporting to be under the hand of the Registrar as to any entry in the Register, or as to any matter or thing, which he is authorised by this Order or any regulation made under this Order to do or to make, shall be *prima facie* evidence of the entry having been done or made, and of the contents such entry, and of the matter or thing having been done or made.

Power to make regulations.

49. The Minister may make such regulations as appear to him to be necessary or expedient for carrying out to the provisions of this Order and in particular, but without prejudice to the generality of the foregoing provisions, such regulations may —

- (a) provide for the care, maintenance and education of children —

- (i) placed in the custody or under the care or control; or
- (ii) taken into the care, custody or control,
of any person under the provisions of this Order, and the duties of such person;
- (b) provide for the control, care, detention, temporary absence, maintenance and education of children in places of safety;
- (c) regulate the management, visitation and inspection of places of safety;
- (d) require the person in charge of a place of safety to submit to the Permanent Secretary returns, reports and information in respect of children placed therein;
- (e) regulate the procedure of admission to or discharge from a place of safety;
- (f) prescribe the particulars, photographs or other means of identification, to be furnished in relation to a child in need of protection;
- (g) prescribe the form of orders, warrants, summonses and bonds;
- (h) prescribe the records required to be kept in respect of a child in need of protection and the manner in which they shall be kept;
- (i) require the furnishing of information as to changes of address of every child in need of protection and of the person having custody of the child, and the transfer of records and registers in such cases;
- (j) regulate the procedures and practice of the Action team on Child Abuse.

Made this 2nd. day of Rabiulawal, 1421 Hijriah corresponding to the 5th. day of June, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 65

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

COMPUTER MISUSE ORDER, 2000

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

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Computer Misuse Order, 2000.
- (2) The long title of this Order is "An Order to make provision for securing computer material against unauthorised access or modification and for matters related thereto".

Interpretation.

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

"computer" means an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include —

- (a) a similar device which is non-programmable or which does not contain any data storage facility; or
- (b) such other device as the Minister may, by notification in the *Gazette*, prescribe;

"computer output" means a statement or representation (whether in written, printed, pictorial, graphical or other form) purporting to be a statement or representation of fact —

- (a) produced by a computer; or
- (b) accurately translated from a statement or representation so produced;

"computer program" means data representing instructions or statements that, when executed in a computer, causes the computer to perform a function;

"computer service" includes computer time, data processing and the storage or retrieval of data;

"damage" means, except for the purposes of section 13, any impairment to a computer or the integrity or availability of data, a program or system, or information, that —

- (a) causes loss aggregating at least ten thousand dollars in value, or such other amount as the Minister may by notification in the *Gazette* prescribe, except that any loss incurred or accrued more than one year after the date of the offence in question shall not be taken into account;
- (b) modifies or impairs, or potentially modifies or impairs, the medical examination, diagnosis, treatment or care of one or more persons;
- (c) causes or threatens physical injury or death to any person; or
- (d) threatens public health or public safety;

"data" means representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer;

"electronic, acoustic, mechanical or other device" means any device or apparatus that is used or is capable of being used to intercept any function of a computer;

"function" includes logic, control, arithmetic, deletion, storage and retrieval, read and write, and communication or telecommunication to, from or within a computer;

"intercept", in relation to a function of a computer, includes listening to or recording a function of a computer, or acquiring the substance, meaning or purport thereof;

"Minister" means the Minister of Finance;

"output" has the same meaning as "computer output";

"program" has the same meaning as "computer program".

(2) For the purposes of this Order, a person secures access to any program or data held in a computer if by causing a computer to perform any function he —

- (a) alters or erases the program or data;

- (b) copies or moves it to any storage medium other than that in which it is held or to a different location in the storage medium in which it is held;
- (c) uses it; or
- (d) causes it to be output from the computer in which it is held (whether by having it displayed or in any other manner),

and references to access to a program or data (and to an intent to secure such access) shall be read accordingly.

(3) For the purposes of paragraph (c) of subsection (2), a person uses a program if the function he causes the computer to perform —

- (a) causes the program to be executed; or
- (b) is itself a function of the program.

(4) For the purposes of paragraph (d) of subsection (2), the form in which any program or data is output (and in particular whether or not it represents a form in which, in the case of a program, it is capable of being executed or, in the case of data, it is capable of being processed by a computer) is immaterial.

(5) For the purposes of this Order, access of any kind by any person to any program or data held in a computer is unauthorised or done without authority if —

- (a) he is not himself entitled to control access of the kind in question to the program or data; and
- (b) he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled.

(6) A reference in this Order to any program or data held in a computer includes a reference to any program or data held in any removable storage medium which is for the time being in the computer; and a computer is to be regarded as containing any program or data held in any such medium.

(7) For the purposes of this Order, a modification of the contents of any computer takes place if, by the operation of any function of that computer or any other computer —

- (a) any program or data held in that computer is altered or erased;
- (b) any program or data is added to its contents; or
- (c) any act which impairs the normal operation of any computer,

and any act which contributes towards causing such a modification shall be regarded as causing it.

- (8) Any modification referred to in subsection (7) is unauthorised if —
- (a) the person whose act causes it is not himself entitled to determine whether the modification should be made; and
 - (b) he does not have consent to the modification from any person who is so entitled.
- (9) A reference in this Order to a program includes a reference to part of a program.

PART II

OFFENCES

Unauthorised access to computer material.

3. (1) Subject to subsection (2), any person who knowingly causes a computer to perform any function for the purpose of securing access without authority to any program or data held in any computer is guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars, imprisonment for a term not exceeding two years or both and in the case of a second or subsequent conviction, to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding three years or both.

(2) If any damage is caused as a result of an offence under this section, the person convicted of the offence is liable to a fine not exceeding fifty thousand dollars, imprisonment for a term not exceeding seven years or both.

(3) For the purposes of this section, it is immaterial that the act in question was not directed at —

- (a) any particular program or data;
- (b) a program or data of any kind; or
- (c) a program or data held in any particular computer.

Access with intent to commit or facilitate commission of offence.

4. (1) Any person who causes a computer to perform any function for the purpose of securing access to any program or data held in a computer with intent to commit an offence to which this section applies is guilty of an offence.

(2) This section applies to an offence involving property, fraud, dishonesty or which causes bodily harm and which is punishable on conviction with imprisonment for a term of not less than two years.

(3) Any person guilty of an offence under this section is liable on conviction to a fine not exceeding fifty thousand dollars, imprisonment for a term not exceeding ten years or both.

(4) For the purposes of this section, it is immaterial whether —

- (a) the access referred to in subsection (1) was authorised or unauthorised;
- (b) the offence to which this section applies was committed at the same time when the access was secured or at any other time.

Unauthorised modification of computer material.

5. (1) Subject to subsection (2), any person who does any act which he knows will cause an unauthorised modification of the contents of any computer is guilty of an offence and is liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding three years or both, and in the case of a second or subsequent conviction, to a fine not exceeding twenty thousand dollars, imprisonment for a term not exceeding five years or both.

(2) If any damage is caused as a result of an offence under this section, the person convicted of the offence is liable to a fine not exceeding fifty thousand dollars, imprisonment for a term not exceeding seven years or both.

(3) For the purposes of this section, it is immaterial that the act in question was not directed at —

- (a) any particular program or data;
- (b) a program or data of any kind; or
- (c) a program or data held in any particular computer.

(4) For the purposes of this section, it is immaterial whether an unauthorised modification is, or is intended to be, permanent or temporary.

Unauthorised use or interception of computer service.

6. (1) Subject to subsection (2), any person who knowingly —

- (a) secures access without authority to any computer for the purpose of obtaining, directly or indirectly, any computer service;
- (b) intercepts or causes to be intercepted without authority, directly or indirectly, any function of a computer by means of an electromagnetic, acoustic, mechanical or other device; or

- (c) uses or causes to be used, directly or indirectly, the computer or any other device for the purpose of committing an offence under paragraph (a) or (b),

is guilty of an offence and is liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding three years or both, and in the case of a second or subsequent conviction, to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding five years or both.

(2) If any damage is caused as a result of an offence under this section, the person convicted of the offence is liable to a fine not exceeding fifty thousand dollars, imprisonment for a term not exceeding seven years or both.

(3) For the purposes of this section, it is immaterial that an unauthorised access or interception was not directed at —

- (a) any particular program or data;
- (b) a program or data of any kind; or
- (c) a program or data held in any particular computer.

Unauthorised obstruction of use of computer.

7. (1) Any person who knowingly and without authority or lawful excuse —

- (a) interferes with, or interrupts or obstructs the lawful use of, a computer; or
- (b) impedes or prevents access to, or impairs the usefulness or effectiveness of, any program or data stored in a computer,

is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding three years or both, and in the case of a second or subsequent conviction, to a fine not exceeding twenty thousand dollars, imprisonment for a term not exceeding five years or both.

(2) If any damage is caused as a result of an offence under this section, the person convicted of the offence is liable to a fine not exceeding fifty thousand dollars, imprisonment for a term not exceeding seven years or both.

Unauthorised disclosure of access code.

8. (1) Any person who knowingly and without authority discloses any password, access code or other means of gaining access to any program or data held in any computer is guilty of an offence if he did so —

- (a) for any wrongful gain;

- (b) for any unlawful purpose; or
- (c) knowing that it is likely to cause wrongful loss to any person.

(2) Any person guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding three years or both, and in the case of a second or subsequent conviction, to a fine not exceeding twenty thousand dollars, imprisonment for a term not exceeding five years or both.

Enhanced punishment for offences involving protected computers.

9. (1) Where access to any protected computer is obtained in the course of the commission of an offence under section 3, 5, 6 or 7, the person convicted of such offence is in lieu of the punishments respectively prescribed in those sections, liable on conviction to a fine not exceeding one hundred thousand dollars, imprisonment for a term not exceeding twenty years or both.

(2) For the purposes of subsection (1), a computer shall be treated as a "protected computer" if the person committing the offence knew, or ought reasonably to have known, that the computer, program or data was used directly in connection with or necessary for —

- (a) the security, defence or international relations of Brunei Darussalam;
- (b) the existence or identity of a confidential source of information relating to the enforcement of a criminal law;
- (c) the provision of services directly related to communications infrastructure, banking and financial services, public utilities, public transportation or public key infrastructure; or
- (d) the protection of public safety, including systems related to essential emergency services, such as police and medical services.

(3) For the purposes of any prosecution under this section, it shall be presumed, until the contrary is proved, that the accused had the requisite knowledge referred to in subsection (2) if there was, in respect of the computer, program or data, an electronic or other warning exhibited to the accused stating that unauthorised access to that computer program or data will attract an enhanced penalty under this section.

Abetments and attempts punishable as offences.

10. (1) 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 under this Order is shall be guilty of that offence and liable on conviction to the punishment provided for the offence.

(2) For an offence to be committed under this section, it is immaterial where the act in question took place.

PART III

MISCELLANEOUS AND GENERAL

Territorial scope of offences under this Order.

11. (1) Subject to subsection (2), this Order shall have effect in relation to any person, whatever his nationality, whether within or outside Brunei Darussalam; and where an offence under this Order has been committed by any person outside Brunei Darussalam, he may be dealt with as if the offence had been committed within Brunei Darussalam.

(2) For the purposes of subsection (1), this Order shall apply if, for the offence in question —

- (a) the accused was in Brunei Darussalam at the material time; or
- (b) the computer, program or data was in Brunei Darussalam at the material time.

Court of Magistrate to have full jurisdiction.

12. Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate shall have jurisdiction to try any offence under this Order and to award the full punishment for any offence.

Order for payment of compensation.

13. (1) The court before which a person has been convicted of any offence under this Order may make an order against him for the payment by him of a sum to be fixed by the court by way of compensation to any person for any damage caused to his computer, program or data by the offence for which the sentence has been passed.

(2) Any claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to him under an order for compensation, but the order shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation paid under the order.

(3) An order of compensation under this section shall be recoverable as a civil debt.

Saving for investigations by police and law enforcement officers.

14. Nothing in this Order shall prohibit a police officer, any person authorised in writing by the Commissioner of Police under subsection (1) of section 18 or any other duly authorised law enforcement officer from lawfully conducting investigations pursuant to his powers conferred under any written law.

Evidence from computer records.

15. (1) Notwithstanding sections 35A and 35B of the Evidence Act (Chapter 108), in any proceedings under this Order any relevant computer output shall be admissible as evidence of any fact stated therein if it is shown —

- (a) that there is no reasonable ground for believing that the output is inaccurate because of improper use of the computer and that no reason exists to doubt the truth or reliability of the output; or
- (b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the output or the accuracy of its contents.

(2) For the purpose of deciding whether or not such output is admissible, the court may draw any reasonable inference from the circumstances in which the output was made or otherwise came into being.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules requiring that, in any proceedings where it is desired to give a statement in evidence by virtue of this section, such information concerning the statement shall be provided in such form and at such time as may be so required.

Supplementary provisions on evidence.

16. (1) In any proceedings where it is desired to admit computer output in evidence in accordance with section 15, a certificate —

- (a) identifying the computer output and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that computer output as may be appropriate for the purpose of showing that the output was produced by a computer;
- (c) dealing with any of the matters mentioned in subsection (1) of section 15; and
- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the computer at all relevant times,

shall be admitted in those proceedings as evidence of anything stated in the certificate.

(2) If the person referred to in paragraph (d) of subsection (1) who occupies a responsible position in relation to the operation of the computer did not have control or access over any relevant records and facts in relation to the production by the computer of the

computer output, a supplementary certificate signed by another person who had such control or access and made in accordance with paragraphs (a) to (c) of subsection (1) shall be evidence of anything stated in the certificate.

(3) For the purposes of subsections (1) and (2), it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(4) Notwithstanding subsections (1) and (2), a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that subsection.

(5) Any person who in a certificate tendered in a court under subsection (1) or (2) makes a statement which he knows to be false or does not believe to be true is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding two years or both.

(6) In estimating the weight, if any, of any admissible computer output, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the output and, in particular —

- (a) to the question whether the information which the output reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and
- (b) to the question whether any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the admissible computer output was produced by it, had any incentive to conceal or misrepresent the facts.

(7) For the purposes of subsection (6), information shall be taken to be supplied to a computer whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment.

Proof of document or copy thereof.

17. Notwithstanding the provisions of the Evidence Act (Chapter 108), where in any proceedings any computer output is admissible in evidence in accordance with section 15, it may be proved —

- (a) by the production of that computer output; or
- (b) (whether or not that computer output is still in evidence) by the production of a copy of that output, or the material part of it,

authenticated in such manner as the court may approve.

Power of police officer to access computer and data.

18. (1) A police officer or any person authorised in writing by the Commissioner of Police shall —

- (a) be entitled at any time to —
 - (i) have access to and inspect and check the operation of any computer to which this section applies;
 - (ii) use or cause to be used any such computer to search any data contained in or available to such computer; or
 - (iii) have access to any information, code or technology which has the capability of retransforming or unscrambling encrypted data contained or available to such computer into readable and comprehensible format or text for the purpose of investigating any offence under this Order or any other offence which has been disclosed in the course of the lawful exercise of the powers under this section;
- (b) be entitled to require —
 - (i) the person by who or on whose behalf the police officer or investigation officer has reasonable cause to suspect any computer to which this section applies is or has been used; or
 - (ii) any person having charge of, or otherwise concerned with the operation of, such computer,

to provide him with such reasonable technical and other assistance as he may require for the purposes of paragraph (a); or

- (c) be entitled to require any person in possession of decryption information to grant him access to such decryption information necessary to decrypt data required for the purpose of investigating any such offence.

(2) This section applies to a computer which a police officer or any person authorised in writing by the Commissioner of Police has reasonable cause to suspect is or has been in use in connection with any offence under this Order or any other offence which has been disclosed in the course of the lawful exercise of the powers under this section.

(3) The powers referred to in sub-paragraphs (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (1) shall not be exercised except with the consent of the Public Prosecutor.

(4) Any person who obstructs the lawful exercise of the powers under paragraph (a) of subsection (1) or who fails to comply with a request under paragraph (b) or (c) of

subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars, imprisonment for a term not exceeding three years or both.

(5) For the purposes of this section —

"decryption information" means information or technology that enables a person to readily retransform or unscramble encrypted data from its unreadable and incomprehensible format to its plain text version;

"encrypted data" means data which has been transformed or scrambled from its plain text version to an unreadable or incomprehensible format, regardless of the technique utilised for such transformation or scrambling and irrespective of the medium in which such data occurs or can be found for the purposes of protecting the content of such data;

"plain text version" means original data before it has been transformed or scrambled to an unreadable or incomprehensible format.

Arrest by police without warrant.

19. Any police officer may arrest without warrant any person reasonably suspected of committing an offence under this Order.

Made this 18th. day of Rabiulawal, 1421 Hijriah corresponding to the 21st. day of June, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 67

INTERNATIONAL LIMITED PARTNERSHIPS ORDER, 2000

**INTERNATIONAL LIMITED PARTNERSHIPS
(FEES, FORMS AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2000**

In exercise of the power conferred by section 19 of the International Limited Partnerships Order, 2000, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the International Limited Partnerships (Fees, Forms and Miscellaneous Provisions) Regulations, 2000 and shall commence on the day appointed for the commencement of the International Limited Partnerships Order, 2000.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

"authorised officer" means an officer of a registered agent approved in writing notified to the Registrar and authorised to sign on behalf of the registered agent;

"prescribed form" means a form prescribed by these Regulations.

PART II

FEES

Fees and penalties.

3. (1) The fees and penalties set out in the third column of the First Schedule are prescribed as the fees and penalties applicable to the items respectively set forth in the second column of the First Schedule.

(2) An ILP registered under the Order continues to be liable for all fees and penalties payable under the Order, notwithstanding that the name of the ILP has been struck off the Register, and all those fees and penalties have priority to all other claims against the assets of the ILP. The ILP Registrar may refuse to take any action required of him under the Order for which a fee is prescribed until all fees and penalties have been paid.

PART III

FORMS

Forms.

4. (1) The forms set out in the Second Schedule are prescribed as the forms to be used for the purposes of the Order.

(2) Unless the ILP Registrar specifically so requires, strict compliance with the prescribed forms is not required and substantial compliance is sufficient.

Particulars prescribed by forms.

5. Where a prescribed form requires completion by insertion, or attachment referred to in the form, the content of those insertions and attachments are prescribed as the particulars or other matters required under the provisions of the Order for the purposes for which the form is prescribed.

Directions in forms.

6. A prescribed form shall be completed in accordance with such directions as are specified in the form.

PART IV

GENERAL PROVISIONS RELATING TO FORMS AND OTHER DOCUMENTS

General requirements for documents lodged with ILP Registrar.

7. (1) A document to be lodged with the ILP Registrar shall —

(a) be on paper of medium weight, good quality and of international sheet A4 size;

(b) be clearly printed or otherwise produced in a manner that is permanent;

and may with the ILP Registrar's consent be a facsimile or electronically reproduced.

(2) The prescribed fee payable to the ILP Registrar in respect of the lodgement of a document with the ILP Registrar shall be paid at the time the document is lodged.

(3) A document with the ILP Registrar and the document is submitted for lodgement without payment of the fee, the document is deemed not to have been lodged until the fee has been paid.

Verification and certification of documents.

8. For the purposes of the Order and these Regulations, a copy of any document which requires verification shall be verified by a certificate by a partner or trust company director of the authorised officer certifying that he has compared the copy with the original document and that it is a true copy of the document of which it purports to be a copy.

Time for lodging documents.

9. Where a document is required by the Order to be lodged with the ILP Registrar, and no time period within which the document is to be lodged is prescribed, the document shall be lodged within one month or, in the case of a document required to be lodged by a foreign international company, within such further period as the ILP Registrar may in special circumstances allow after the happening of the event to which the document relates.

Affidavit and statutory declaration.

10. (1) Except as otherwise provided in the Order or these Regulations, an affidavit or statutory declaration sworn or declared for the purposes of the Order or these Regulations on behalf of an ILP, shall be made by or on behalf of a partner of the company.

(2) Where an affidavit or a statutory declaration prescribed by the Order or these Regulations purports to be sworn or declared at a place outside Brunei Darussalam, the affidavit or statutory declaration shall be sufficient for the purposes of the Order and these Regulations if it purports to be sworn or declared in accordance with the requirements of the law of that place.

Signature of documents lodged with ILP Registrar.

11. Except as otherwise provided in the Order or these Regulations, a document to be lodged with the ILP Registrar under the Order or these Regulations shall, in relation to an ILP, be signed or authenticated by a partner of the ILP an authorised officer or a resident secretary of the company.

FIRST SCHEDULE
(regulation 3)

All fees and penalties are stated in United States dollars.

The ILP Registrar may withhold any action in case any fee or penalty is outstanding.

NO.	ITEM	FEE/PENALTY (United States dollars)
1.	for the registration by the ILP Registrar of an ILP under section 13 of the Order	\$500
2.	for the registration of an amendment to the particulars of a limited partnership	\$100
3.	for the issue of a certificate of limited partnership or good standing, other than at the time of registration of a limited partnership	\$50
4.	for the issue of a copy or extract of a document or a part of a document, whether certified by the ILP Registrar or not, per A4 sheet	\$1
5.	for the inspection of the documents kept by the ILP Registrar pursuant to this Order, on each occasion	\$25
6.	for the approval of a name as provided for in section 5	\$25
7.	for the annual licence fee on every anniversary of registration under the Order	\$400
8.	for failure to pay the amount due as the annual fee under item 7 within 60 days of the due date, penalty	\$200
9.	for any other service provided by the ILP Registrar for which no fee is prescribed, with power to the ILP Registrar to reduce at his discretion	\$75

**SECOND SCHEDULE
(regulation 4)**

**INTERNATIONAL LIMITED PARTNERSHIPS
(FEES, FORMS AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2000**

FORM 1

**INTERNATIONAL LIMITED PARTNERSHIPS ORDER, 2000
(section 13(1))**

ILP No.:

APPLICATION FOR REGISTRATION

To:
The Registrar of International Limited Partnerships
Brunei Darussalam.

1. I, Director/authorised officer of (name of trust company) being a licensee under the Registered Agents and Trustees Licensing Order, 2000 whose principal place of business in Brunei Darussalam is, hereby apply for registration of an international limited partnership.

2. The required particulars are as follows:

(i) Proposed name:

.....

(ii) The registered office is:

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

(iii) The full name and address/es of each of the general partner are as follows (in the case of a body corporate, state place of incorporation and its registered or principal office) (please use separate sheet, as necessary, signed and identified):

.....
.....

.....
.....

(iv) The proposed term for which the ILP is entered into is:

.....
.....or, if entered into for a limited time, this should be stated, giving the commencement date.
.....
.....

(v) The general nature of the business of the ILP is:

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

3. I, hereby certify pursuant to section 13(2) of the Order that due diligence —

(i) in relation to the identity, and probity of the proposed partners of the ILP; and

(ii) in relation to the proposed transactions of the ILP,

has been conducted, and the requirements of the Money-Laundering Order, 2000 have been met;

(iii) the requirements of the Order in respect of registration have been complied with in respect of the proposed ILP; and

(iv) one of the partners of the proposed ILP is (full name and address)

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

being:

a licensee under the Registered Agents and Trustees Licensing Order, 2000;

an IBC under the International Business Companies Order, 2000; or

a registered ILP under the International Limited Partnerships Order, 2000,

acting on own account/as trustee (delete one)

Dated this day of, 200

.....
Director/Authorised Office
for General Partner (name)

NOTE: Where space is insufficient, please attach annexure(s) identified as such and signed by the signatory to this application.

Filed in the office of the Authority, For Registry's Use Limited Partnerships Order by —

Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked by:
Facsimile No.:	

**INTERNATIONAL LIMITED PARTNERSHIPS
(FEES, FORMS AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2000**

FORM 2

**INTERNATIONAL LIMITED PARTNERSHIPS ORDER, 2000
(section 13(4))**

ILP No.:

**CERTIFICATE OF REGISTRATION OF INTERNATIONAL
LIMITED PARTNERSHIP**

THIS IS TO CERTIFY THAT
..... (name of ILP) having its
registered office at
.....
..... was registered under the
International Limited Partnerships Order, 2000 on the day
of, 200

Signed in Brunei Darussalam this day of, 200

.....
Registrar of International
Limited Partnerships

**INTERNATIONAL LIMITED PARTNERSHIPS
(FEES, FORMS AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2000**

FORM 3

**INTERNATIONAL LIMITED PARTNERSHIPS ORDER, 2000
(subsections 14(1) and 14(2))**

ILP No.:

**NOTICE OF CHANGES OF REGISTERED PARTICULARS OR
REGISTERED OFFICE**

(please continue as necessary on separate sheet(s) signed and identified)

To:
The Registrar of International Limited Partnerships
Brunei Darussalam.

The ILP registered under the name of
..... hereby gives
notice of the change(s) specified below:

1. Change in the name of the partnership:
 Previous name:
 New name:

2. Change in the nature of the business:
 Nature of business as previously carried on:
 Nature of
 business as carried on now:

3. Change of address in Brunei Darussalam:
 Previous place of business:
 New place of
 business:

4. Change in general partners, or change the name of any general partner:

(i) Partners added:
.....
.....

(ii) Partners retired:
.....
.....

(iii) Change(s) of name of partner:
.....
.....

(iv) Change of registered office:
.....

5. Change in the term or character of the partnership:

Previous term (if any):
.....
.....

New term:
.....
.....

6. I hereby certify pursuant to section 13(2) of the Order that due diligence —

(i) in relation to the identity and probity of the proposed partners of the ILP; and

(ii) in relation to the proposed transactions of the ILP,

has been conducted, and the requirements of the Money-Laundering Order, 2000
have been met;

(iii) the requirements of the Order in respect of registration have been complied with in
respect of the proposed ILP; and

(iv) one of the partners of the proposed ILP is (full name and address)

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

being:

a licensee under the Registered Agents and Trustees Licensing Order, 2000;

an IBC under the International Business Companies Order, 2000; or

a registered ILP under the International Limited Partnerships Order, 2000,

acting on own account/as trustee (delete one)

Dated this day of, 200

.....
Director/Authorised Officer
for General Partner (name)

Filed in the office of Registrar of For Registry's Use International Limited Partnerships
by —

Name of Trust Corporation:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked by:
Facsimile No.:	

**INTERNATIONAL LIMITED PARTNERSHIPS
(FEES, FORMS AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2000**

FORM 4

**INTERNATIONAL LIMITED PARTNERSHIPS ORDER, 2000
(section 17(1))**

ILP No.:

APPLICATION FOR RENEWAL OF REGISTRATION

To:
The Registrar of International Limited Partnerships
Brunei Darussalam.

..... (name of international limited partnership) hereby applies to renew its registration, which is due to expire on day of, 200

It is hereby certified as required by section 17(1) of the Order that the international limited partnership has complied with section 14(1) relating to filing notice of any change in particulars filed and that other than as specified by Notice of Change the particulars filed under section 13(1) remain correct and complete.

Dated this day of, 200

.....
*Signature of General Partner/Director
or Authorised Officer of Trust Corporation

Filed in the office of Registrar of, For Registry's Use International Limited Partnerships by —

Name of Trust Corporation:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked by:
Facsimile No.:	

**INTERNATIONAL LIMITED PARTNERSHIPS
(FEES, FORMS AND MISCELLANEOUS PROVISIONS) REGULATIONS, 2000**

FORM 5

**INTERNATIONAL LIMITED PARTNERSHIPS ORDER, 2000
(section 12(4))**

ILP No.:

NOTICE OF DISSOLUTION

To:
The Registrar of International Limited Partnerships
Brunei Darussalam.

NOTICE IS HEREBY GIVEN THAT the international limited partnership registered as and having its registered office address at is dissolved with the effect from the day of, 200

Dated this day of, 200

.....
*Signature of General Partner/Director or
Authorised Officer of Trust Corporation

Filed in the office of Registrar of, For Registry's Use International Limited Partnerships
by —

Name of Trust Corporation:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked by:
Facsimile No.:	

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Made this 22nd. day of Rabiulawal, 1421 Hijriah corresponding to the 25th. day of June, 2000.

AWANG HAJI ABDUL HAMID BIN HAJI JANUDIN
Acting Permanent Secretary,
Ministry of Finance,
Brunei Darussalam.

No. S 69

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

In exercise of the power conferred by section 164 of the International Business Companies Order, 2000, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the International Business Companies Regulations, 2000 and shall commence on the day appointed for the commencement of the International Business Companies Order, 2000.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

"authorised officer" means an officer of a registered agent approved in writing notified to the Registrar and authorised to sign on behalf of the registered agent;

"prescribed form" means a form prescribed by these Regulations.

PART II

FEES

Fees and penalties.

3. (1) The fees and penalties set out in the third column of the First Schedule are prescribed as the fees and penalties applicable to the items respectively set forth in the second column of the First Schedule.

(2) A company incorporated, registered or continued under the Order continues to be liable for all fees, and penalties payable under this Order, notwithstanding that the name of the company has been struck off the Register and all those fees and penalties have priority to all other claims against the assets of the company. The Registrar may refuse to take any action required of him under this Order for which a fee is prescribed until all fees and penalties have been paid.

PART III

FORMS

Forms.

4. (1) The forms set out in the Second Schedule are prescribed as the forms to be used for the purposes of the Order.

(2) Unless the Registrar specifically so requires, strict compliance with the prescribed forms is not required and substantial compliance is sufficient.

Particulars prescribed by forms.

5. Where a prescribed form requires completion by insertion or attachment referred to in the form, the content of those insertions and attachments are prescribed as the particulars or other matters required under the provisions of the Order for the purposes for which the form is prescribed.

Directions in forms.

6. A prescribed form shall be completed in accordance with such directions as are specified in the form.

PART IV

GENERAL PROVISIONS RELATING TO FORMS AND OTHER DOCUMENTS

General requirements for documents lodged with Registrar.

7. (1) A document to be lodged with the Registrar shall —

(a) be on paper of medium weight, good quality and of international sheet A4 size;

(b) be clearly printed or otherwise produced in a manner that is permanent;

and may with Registrar's consent be a facsimile or electronically reproduced.

(2) The prescribed fee payable to the Registrar in respect of the lodgement of a document with the Registrar shall be paid at the time the document is lodged.

(3) Where a fee is payable for or in respect of the lodgement of document with the Registrar and the document is submitted for lodgement without payment of the fee, the document is deemed not to have been lodged until the fee has been paid.

Verification and certification of documents.

8. (1) For the purposes of the Order and these Regulations, a copy of any document which requires verification shall be verified by a certificate by a person certifying that he has compared the copy with the original document and that it is a true copy of the document of which it purports to be a copy.

(2) For the purposes of section 27(1)(c) of the Order, a memorandum giving particulars of a material contract not reduced into writing shall be verified by a certificate by a director, manager or secretary of the corporation concerned declaring —

(a) that he is familiar with the particulars of the contract; and

(b) that the memorandum contains full and correct particulars of the contract.

(3) For the purposes of section 134(2)(a) of the Order, a certified copy of a document referred to in that paragraph is a copy that has, within the period of three months immediately preceding the day on which it is lodged with the Registrar or within such longer period as the Registrar permits, been certified to be a true copy by an official holding or purporting to hold an office corresponding to that of the Registrar in the country or part thereof in which the foreign company concerned is formed or incorporated.

(4) For the purposes of section 134(2)(b) of the Order, a certified copy of a document referred to in that paragraph is a copy that has, within the period of three months immediately preceding the day on which it is lodged with the Registrar or within such longer period as the Registrar permits, been certified to be a true copy —

(a) by an official holding or purporting to hold an office corresponding to that of the Registrar in the country or part thereof in which the foreign company concerned is formed or incorporated;

(b) by a notary public; or

(c) by a director, manager or secretary of the foreign company by affidavit or, in the case of a foreign company formed or incorporated within the Commonwealth, by statutory declaration made by a director, manager or secretary of the foreign company.

(5) For the purposes of section 134(2)(e) of the Order, the manner of verification of a memorandum of appointment or power of attorney is by affidavit or, in the case of a foreign company formed or incorporated within the Commonwealth by statutory declaration, by a person verifying that he was present and did see —

(a) the seal of the foreign company duly affixed to the memorandum of appointment or power of attorney; or

- (b) the memorandum of appointment or power of attorney duly executed on behalf of the foreign company in such manner as to be binding on the company.

(6) For the purposes of section 134(4) of the Order, the manner of verification by statutory declaration of a copy of the deed or document referred to in that subsection is by statutory declaration by a director, manager or secretary of, or by the agent of, the foreign company declaring that he has compared the copy with the original deed or document and that it is a true copy of the deed or document of which it purports to be a copy.

Agents' authorities to be lodged.

9. (1) Where a copy of a prospectus registered with the Registrar under section 27(1) of the Order is signed by an agent of a director or proposed director authorised in writing, the authority or a verified copy of the authority shall be annexed to the copy of the prospectus lodged with the Registrar.

(2) Where a consent of a person to act as a director is signed by an agent of that person authorised in writing for the purpose, the authority or a verified copy of the authority shall be annexed to the consent and be held at the registered office.

Forms for receivership and winding-up.

10. Where an IBC is placed under receivership or is to be wound-up, the forms prescribed pursuant to the Companies Act (Chapter 39) in relation to receivership and winding-up of a company limited by shares shall, subject to such modification and adaptation as may be necessary, apply to the receivership or winding-up of such IBC.

Documents to be lodged where change or alteration made in foreign international company.

11. For the purposes of section 137(1) of the Order, the documents which a foreign international company is required to lodge with the Registrar are as follows —

- (a) where any change or alteration is made in the charter, statute, memorandum or articles of the foreign company or other instrument relating to the company, a copy of the instrument effecting the change or alteration or a copy of the charter, statute, memorandum, articles or other instrument as changed or altered, in either case being a copy certified to be a true copy in the same manner as a certified copy referred to in section 134(2)(b) of the Order is certified under regulation 8(4) of these Regulations to be a true copy;
- (b) where any change or alteration is made in the name of the foreign international company, a copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar

effect (being a certificate or document evidencing the change or alteration) or where there is no such certificate or document, a copy of the instrument effecting the change or alteration, in either case being a copy certified to be a true copy in the same manner as a certified copy referred to in section 134(2)(a) of the Order is certified under regulation 8(3) of these Regulations to be a true copy;

- (c) where any change or alteration is made in the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of the foreign international company, a memorandum duly executed by or on behalf of the foreign international company stating the powers of the local directors as changed or altered; and
- (d) where the change is of the registered agent, a copy of the memorandum of appointment or power of attorney appointing a new registered agent under the seal of the foreign company verified in accordance with regulation 8(1) of these Regulations.

Time for lodging documents.

12. Where a document is required by the Order to be lodged with the Registrar, and no time period within which the document is to be lodged is prescribed, the document shall be lodged within one month or, in the case of a document required to be lodged by a foreign company, within such further period as the Registrar may in special circumstances allow after the happening of the event to which the document relates.

Affidavit and statutory declaration.

13. (1) Except as otherwise provided in the Order or these Regulations, an affidavit or statutory declaration sworn or declared for the purposes of the Order or these Regulations shall —

- (a) on behalf of an IBC, be made by a director or a resident secretary of the company; and
- (b) on behalf of a foreign company, be made by a director or secretary of the company, or an officer of the registered agent which is appointed as agent of the company.

(2) Where an affidavit or a statutory declaration prescribed by the Order or these Regulations purports to be sworn or declared at a place outside Brunei Darussalam, the affidavit or statutory declaration shall be sufficient for the purposes of the Order and these Regulations if it purports to be sworn or declared in accordance with the requirements of the law of that place.

Signature of documents lodged with Registrar.

14. Except as otherwise provided in the Order or these Regulations, a document to be lodged with the Registrar under the Order or these Regulations shall —

- (a) in relation to an IBC, be signed or authenticated by a director, authorised officer or resident secretary of the company; and
- (b) in relation to a foreign company, be signed or authenticated by a director or secretary of the company, or an officer of the registered agent which is appointed as agent of the company.

**FIRST SCHEDULE
(regulation 3)**

**FEEES AND PENALTIES
UNDER THE INTERNATIONAL BUSINESS COMPANIES ORDER, 2000**

All fees and penalties are stated in United States dollars.

NO.	ITEM	FEE/PENALTY (United States dollars)
1.	upon the registration by the Registrar of a company incorporated under Part III of the Order	\$500
2.	on or before the first anniversary of the incorporation under Part III, registration under Part XI, or conversion under Part XII of a company under the Order, and on or before each succeeding such anniversary, a renewal fee of	\$400
3.	where any renewal fee referred to in paragraph (b) is paid after the expiry of sixty days from any such anniversary (without prejudice to any other fee chargeable or any other action which may be taken by the Registrar), penalty	\$200
4.	upon registration of any copy of a resolution of members or a resolution of directors required to be filed under the Order	\$75
5.	upon the registration of articles of merger or consolidation	\$1,000
6.	upon the registration of articles of arrangement	\$1,000

FIRST SCHEDULE (Continued)

NO.	ITEM	FEE/PENALTY (United States dollars)
7.	upon the issue by the Registrar of a duplicate, or certified copy of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution, discontinuance or good standing	\$30
8.	upon the issue by the Registrar of a copy or extract, whether or not certified, of a document or apart of a document, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution, discontinuance or good standing, per A4 sheet	\$1
9.	for an inspection of the documents kept by the Registrar pursuant to this Order, on each occasion	\$25
10.	upon restoration by the Registrar to the Register of a company incorporated under this Order, the name of which was struck off the Register —	
	(i) if the restoration is applied for within six months immediately following the striking of the name off the Register	\$500
	(ii) if the restoration is applied for more than six months immediately following the striking of the name off the Register	\$1,000
11.	for the reservation of a name under section 14 of the Order	\$25
12.	upon submission to the Registrar of documents referred to in section 144 of the Order in relation to conversion of a foreign company into an IBC	\$250
13.	upon filing for the registration of a foreign company under Part XI of the Order	\$500
14.	upon the registration by the Registrar of a notice of increase or decrease of authorised capital of a company incorporated or registered under this Order	\$75

FIRST SCHEDULE (Continued)

NO.	ITEM	FEE/PENALTY (United States dollars)
15.	upon a company incorporated under this Order continuing its incorporation under the laws of another jurisdiction	\$500
16.	on a company newly or already incorporated, registered or converted under the Order becoming a Dedicated Cell Company	\$250
17.	upon filing any document referred to in Part IX Division 3 of the Order	\$100
18.	for a certificate of good standing under section 163 of the Order	\$75
19.	for determining any matter in relation to creditors and issuing any direction required under sections 43(4) and (5) of the Order, per application/direction	\$150
20.	for any application or document not mentioned above, save as the Registrar at his discretion may require a lesser payment where the circumstances so justify	\$75

SECOND SCHEDULE
(regulation 4)

Section No.	Description of Form	Form No.
Section 95(4)	Application for approval as approved auditor	1
Section 95(4)	Approval of an approved auditor	2
Section 95(3)	Particulars of change in particulars of approved auditor	3
Sections 10 and 11	Certificate of due diligence and compliance	4
Section 11(3)	Certificate of incorporation of international business company	5
Section 145(3)	Certificate of conversion of foreign company into an IBC in Brunei Darussalam	6
Section 134(3)	Certificate of registration of foreign international company	7
Sections 13(1) and 14(1)	Application for approval [and reservation] of name	8
Section 13(6)	Certificate of incorporation on change of name of IBC	9
Sections 15(2), 43(3) and 62(5)	Notice of resolution	10
Section 27	Certificate of registration of prospectus	11
Section 35(1)	Return of allotment of shares	12
Section 43(8)	Notice of increase in share capital	13
Section 43(8)	Notice of reduction in share capital	14
Section 43(9)	Certificate of Registrar confirming reduction of share capital	14A
Section 115(1)(b)	Statement of particulars in respect of charge	15
Section 120(1)	Memorandum of satisfaction of charge	16
Section 19(4)	Annual return of International Business Company	17
Section 94(3)	Notice of appointment of auditor	18

SECOND SCHEDULE (Continued)
(regulation 4)

Section No.	Description of Form	Form No.
Section 95(3)	Notice of change of auditor	19
Section 125(7)	Certificate of registration of articles of arrangement	20
Sections 134(2)(f) and (g)	Certificate by registered agent of foreign company	21
Section 137(1)	Notice of change relating to foreign international company	22
Section 139	Notice by foreign international company of cessation of business	23
Section 140(1)(a)	Notice by registered agent of foreign international company of liquidation or dissolution	24
Section 142(1)	Annual return of foreign international company	25
Sections 136(1) and (2)	Notice of situation of registered office and of changes	26

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 1

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 95(4))**

APPLICATION FOR APPROVAL AS APPROVED AUDITOR

(NOTE – If space is insufficient to provide details, please attach annexure(s). Any such annexure(s) should be identified as such and signed by the signatory to this application).

To:
The Authority,
International Business Companies Order,
Brunei Darussalam.

Application is made for approval as an approved auditor pursuant to section 95(4) of the International Business Companies Order, 2000 and the following statements are made in respect thereof:

1. (a) Name of firm:
- (b) Date constituted:
- (c) Address:
.....
- (d) Telephone No.:
- (e) Fax No.:
- (f) E-mail:
- (g) The full names, addresses and qualifications of all the partners of the firm are as follows attached as Schedule I

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Full Name	
Residential Address	
Qualification(s)	

Full Name	
Residential Address	
Qualification(s)	

Full Name	
Residential Address	
Qualification(s)	

2. Has the applicant or any partner of the applicant been —

- (a) licensed, registered or otherwise authorised to carry on any trade, business or profession in Brunei Darussalam or elsewhere?
(Answer “Yes” or “No”. If “Yes”, give details):

.....

(b) refused the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required in Brunei Darussalam or elsewhere?
(Answer "Yes" or "No". If "Yes", give details):

.....
.....

(c) subjected to any form of disciplinary-action by a professional body of which he is or was a member?
(Answer "Yes" or "No". If "Yes", give details):

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

3. If the head office of the applicant is not in Brunei Darussalam, give details relating to address telephone and fax numbers and e-mail of office in Brunei Darussalam (if any):

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

4. Has any partner of the applicant ever —

(a) been convicted of any offence, other than a traffic offence, in Brunei Darussalam or elsewhere?
(Answer "Yes" or "No". If "Yes", give details):

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

(b) had judgement given against him in any civil proceedings, where in fraud was alleged, in Brunei Darussalam or elsewhere?
(Answer "Yes" or "No". If "Yes", give details):

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

(c) at any time been declared bankrupt, or compounded with or made an assignment for the benefit of his creditors in Brunei Darussalam or elsewhere?
(Answer "Yes" or "No". If "Yes", give details):

.....

.....
.....

5. Is the applicant or any partner of the applicant covered by any professional indemnity insurance?
(Answer “Yes” or “No”. If “Yes”, give details):

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

6. Does the applicant have any affiliation with any accounting firm in Brunei Darussalam or elsewhere?
(Answer “Yes” or “No”. If “Yes”, give details):

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

7. Any additional information considered relevant to this application:

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

I declare that all information given in this application and in the attached annexure(s) (if any) is true and correct.

Dated this day of, 200

.....
Principal Partner

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 2

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 95(4))**

APPROVAL OF AN APPROVED AUDITOR

The Authority, International Business Companies Order, in exercise of his powers under section 95(4) of the Order, approves
of.....
to be an approved auditor for the purposes of the Order.

The approval number for the firm is :

Given under my hand this day of, 200.....

.....
Authority,
International Business Companies Order

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 3

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 95(3))**

Company No.:

NBD/

PARTICULARS OF CHANGE IN PARTICULARS OF APPROVED AUDITOR

Name of firm:

Address of principal place of business:

.....

.....

Telephone No.:

Facsimile No.:

Address of place of business in Brunei Darussalam (if any):

.....

.....

The full names and addresses of all partners of the firm with relevant dates are:

Full Name	
Residential Address	
*Qualification	
*Change and/Relevant Dates	

29th. JULY, 2000

Dated this day of, 200

.....
Signature of a
Partner of the firm

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 4

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(sections 10,11)**

CERTIFICATE OF DUE DILIGENCE AND COMPLIANCE

.....
(NAME OF COMPANY)

I,
of*NRIC/Passport No.

*resident director/resident secretary named in articles of the above-named proposed company do hereby certify pursuant to sections 10(1) and 11(2) of the Order that due diligence —

- (i) in relation to the identity and probity of the beneficial owners and officers of the proposed IBC; and
- (ii) in relation to the proposed transactions of the IBC,

has (a) been conducted and that the requirements of the Money-Laundering Order, 2000* have been met **or** (b) will, prior to the commencement of business by the company be so conducted and met respectively; and

- (iii) that all the requirements of the International Business Companies Order, 2000 and of all regulations made thereunder in respect of the registration of the above-named proposed company have been complied with.

I am aware that it is an offence under section 158 of the Order to make any statement which is false, deceptive or misleading in a material particular.

.....
Director/Officer
(name of Registered Agent)

* delete one as appropriate

29th. JULY, 2000

<p>Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —</p> <p>Name:</p> <p>Address:</p> <p>Telephone No.:</p> <p>Facsimile No.:</p>	<p>For Registry's Use</p> <p>Date of Registration:</p> <p>Receipt No.:</p> <p>Checked By:</p>
---	---

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 5

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 11(3))**

Company No.:

NBD/

**CERTIFICATE OF INCORPORATION
OF INTERNATIONAL BUSINESS COMPANY**

This is to certify that

.....

.....

.....

.....

is incorporated under the International Business Companies Order, 2000 on and from the day of 200..... and that the company is a company limited by shares.

Given under my hand and seal this day of, 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 6

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 145(3))**

Company No.:

NBD/

**CERTIFICATE OF CONVERSION OF FOREIGN COMPANY
INTO AN IBC IN BRUNEI DARUSSALAM**

This is to certify that a company called

(Name of company) which was formed or incorporated in

has this day been registered as being continued in Brunei Darussalam as an international business company and shall be deemed to be an international business company incorporated under the International Business Companies Order, 2000 by the name of

Given under my hand and seal this day of, 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 7

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 134(3))**

Company No. :

NBD/

**CERTIFICATE OF REGISTRATION OF FOREIGN INTERNATIONAL
COMPANY**

This is to certify that

.....

a foreign company which was formed or incorporated in,

was on the day, 200.....

duly registered as a foreign international company pursuant to sectionn 134 of the
International Business Companies Order, 2000.

Given under my hand and seal this day of 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 8

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(sections 13(1) and 14(1))

APPLICATION FOR APPROVAL [AND RESERVATION]* OF NAME
(*delete if reservation not sought)

(Leave Blank)

Our Ref:

Reference No.:

SECTION A : TO BE COMPLETED BY APPLICANT IN BLOCK LETTERS

+ PROPOSED NAME	
+ ALTERNATIVE	
PURPOSE	INTENDED OBJECTS —
N – NEW INCORPORATION	(i)
F – REGISTRATION OF FOREIGN COMPANY	(ii)
C -- CHANGE OF NAME	
NAME OF APPLICANT:	
ADDRESS OF APPLICANT:	
.....	
TELEPHONE NO.:	
FACSIMILE NO.:	
APPLICATION DATE:	

IS FOREIGN VERSION SOUGHT? IF SO, ATTACH VERSION AND CERTIFIED TRANSLATION.

.....
Signature of applicant

+ If proposed name requires further clarification, the applicant is required to fill up Section C.

SECTION B: FOR THE REGISTRY'S USE ONLY

SEARCH RESULT	
AVAILABILITY:	RECEIVED:
	Date:
	Time:
A — AVAILABLE	DATE PROCESSED:
R — REJECTED	PROCESSED BY:
S — SUBJECT TO QUERY	DATE ENTERED:
	APPLICANT INFORMED:
REMARKS:	ENTERED BY:

SECTION C : TO BE COMPLETED BY APPLICANT

CLARIFICATION	
1. Single letters included in the name stand for:	
2. If the proposed name is not in English, please clarify:	
3. If the proposed name contains a proper name, state justification for use:	
4. If the proposed name is similar to that of a *related company, state whether written consent has been obtained (please attach consent):	
5. If the proposed name is a trade mark, state whether written consent has been obtained from the owner (please attach consent):	
6. If the proposed name is to be used for change of name of an existing corporation, state the following:	
Existing name:	
.....	
Company No.:	
7. Other comments:	

NOTES:

* For definition of "related company" and "associated corporation", please see International Business Companies Order, 2000 and International Accounting Standards respectively.

Use additional sheets if necessary.

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 9

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 13(6))**

Company No.:

NBD/

CERTIFICATE OF INCORPORATION ON CHANGE OF NAME OF IBC

This is to certify that
..... which was incorporated as an
international business company under the International Business Companies Order, 2000 on
the day of, 200..... resolved to
change its name in accordance with its Memorandum and Articles to
..... and
that the company is now known by its new name with effect from the
..... day of, 200.....

Given under my hand and seal this day of 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 10

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(sections 15(2), 43(3), 62(5))¹

Company No.:

NBD/

NOTICE OF RESOLUTION

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

By resolution of the members of the above-named company duly passed in accordance with its Memorandum and Articles on the day of , 200....., the ²special/ordinary resolution set out ²below/in the ³annexure marked with the letter “A” and signed by me for purposes of identification was ³duly passed.

(Set out resolution here if a copy thereof is not annexed),

Dated this day of , 200.....

.....
Resident Secretary/Secretary

¹ Delete whichever reference to section is inapplicable.

² Delete whichever is inapplicable.

³ Where a copy of the resolution is annexed, the annexure is to be endorsed as follows:—
This is the annexure marked “A” referred to in the notice of resolution signed by me on the
day of , 200.....

29th. JULY, 2000

NOTE: Where a resolution is passed by a meeting of members through the participation of all members attending the meeting by telephone or other electronic means or where a resolution is passed by the consent of all members in writing or by telex, telegram etc., the meeting shall be deemed to be held or the written resolution passed at the registered office of the company.

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 11

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 27)

Company No.:

NBD/

CERTIFICATE OF REGISTRATION OF PROSPECTUS

.....
(NAME OF COMPANY)

This is to certify that a prospectus dated the day of
..... 200....., issued by has this day been registered
with me.

Given under my hand and seal this day of, 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000**FORM 12****INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 35(1))**

Company No.:

NBD/

RETURN OF ALLOTMENT OF SHARES.....
(NAME OF COMPANY)

The shares referred to in this return were allotted on the
day of, 200.....

Shares allotted	Details of Shares
(a) Number of shares	
(b) Nominal amount of each share	
(c) Amount (if any) paid on each share	
(d) Amount (if any) due and payable	
(e) Amount to be treated as paid on each Share so allotted	
(f) Amount of premium paid or payable on each share	
(g) Consideration other than cash	
(h) Class of shares	

CERTIFICATE

I certify in relation to
..... (name of company) that

- (a) the shares so allotted do not exceed the authorised capital of the company which is divided into¹ shares ofeach;
- (b) the total issued capital of the company now stands at ² shares of each and the paid-up capital is;
- (c) no person resident in Brunei Darussalam (other than those permitted by section 6(2) of the Order has any beneficial interest in the share allotted,

Dated this day of, 200.....

.....
³Resident Secretary/Secretary

¹ Please specify if class of shares is other than ordinary shares (e.g. preference/others).

²Where the capital of the company is divided into shares of difference classes, the division of the authorised capital into shares of various classes must be specifically stated.

³Delete whichever is inapplicable.

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 13

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 43(8))**

Company No.:

NBD/

NOTICE OF INCREASE IN SHARE CAPITAL

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

1. The above-named company gives notice that the authorised share capital of the company was increased on:
2. Authorised share capital before increase:
3. Additional authorised share capital:
4. Authorised share capital after increase:
5. The additional share capital is divided as follows:
 - (a) Number of shares:
 - (b) Class of shares:
 - (c) Nominal value of each share:
6. A copy of the resolution approving the increase is filed herewith, on Form 10.

Dated this day of, 200.....

.....
*Director/Secretary

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

<p>Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —</p> <p>Name:</p> <p>Address:</p> <p>Telephone No.:</p> <p>Facsimile No.:</p>	<p>For Registry's Use</p> <p>Date of Registration:</p> <p>Receipt No.:</p> <p>Checked By:</p>
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INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 14

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 43(8))**

Company No.:

NBD/

NOTICE OF REDUCTION IN SHARE CAPITAL

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

1. The above-named company gives notice that a 75 per cent resolution whereby the share capital of the company was resolved to be reduced was passed on:
.....
2. Authorised share capital before reduction:
3. Amount by which share capital is reduced:
4. Share capital after reduction:
5. Brief particulars of the manner in which the reduction was effected in accordance with section 43(3) of the Order:
.....
.....
.....
6. (a) Every creditor of the IBC in terms of subsection 43(4)(a) of the Order has consented in writing to the reduction; or

(b) The directors have certified that there are no such creditors; or

(c) The directors have settled a list of creditors entitled to object to the reduction, have ascertained the nature and amount of their debts or claims, published at least into

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

notices in a local newspaper not less than seven days apart fixing a final day for creditors not entered on the list may claim to be entered; and

- (d) Where the creditors or any one of them have refused or neglected to give consent, the directions of the Registrar pursuant to subsection 43(4) or 43(5) of the Order are hereby sought.

(Provide a letter from an advocate and solicitor giving details of circumstances and directions sought).

7. A copy of the 75 per cent resolution approving the reduction is filed herewith, on Form 10.

Dated this day of, 200.....

.....
*Director/Secretary

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 14A

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 43(9))**

Company No.:

NBD/

**CERTIFICATE OF REGISTRAR CONFIRMING REDUCTION OF SHARE
CAPITAL**

.....
(NAME OF COMPANY)

This is to certify that a resolution of the company dated the
day of, 200..... effecting a reduction of the share capital of the above-
named company has been lodged with me, and any directions required to be given by me
under section 43 of the Order have been discharged.

Given under my hand and seal this day of, 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 15

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 115(1)(b))**

Company No.:

NBD/

STATEMENT OF PARTICULARS IN RESPECT OF CHARGE

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

1. Charge created by:
2. Date of creation of charge:
3. Name(s) and address(ess) of the person(s) entitled to charge:
.....
.....
.....
4. Description of the instrument creating or evidencing the charge:
.....
.....
.....
5. Amount secured by the charge⁽¹⁾:
.....
.....
.....

6. Short description of the property charged:

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

Dated this day of, 200.....

(1) where advance are secured, please state this

.....
*Director/Secretary/
Agent for Chargee

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 16

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 120(1))**

Company No.:

NBD/

MEMORANDUM OF SATISFACTION OF CHARGE

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

The above-named international company gives notice that the¹.....
..... dated the
day of, 200..... created by the company in favour of
for securing was on the day of
....., 200..... paid or satisfied² in full/to the extent of³
.....

Dated this day of, 200.....

.....
*Director/Secretary/
Registered Agent

¹ Insert description of instruction creating or evidencing the charge, e.g. "mortgage", "debenture".

² Delete whichever is inapplicable.

³ Insert the amount paid or satisfied.

29th. JULY, 2000

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 17

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 19(4))

Company No.:

NBD/

ANNUAL RETURN OF INTERNATIONAL BUSINESS COMPANY

.....
(NAME OF COMPANY)

Annual return of the above-named international company made up to the
..... day of, 200..... being a date not earlier
than thirty days before the date of lodgement.

1. Date of incorporation:
2. Authorised share capital: divided into
shares of each.
3. Issued capital:shares of each.
4. Address of the registered office in Brunei Darussalam:
.....
.....
5. Address of place of business in Brunei Darussalam:
.....
.....
6. General nature of business

Certificate of Registered Agent

I, of
..... Director/Resident Secretary
(delete one) of the Company hereby certify to the best of my knowledge and belief —

1. that the records and accounts required to be kept by the company pursuant to the Order have been properly so kept;
2. no person resident in Brunei Darussalam (other than those permitted by section 6(2) of the Order) is a shareholder or beneficial owner of any interest in the company;
3. the requirements of section 6 of the Order have been and continue to be observed;
4. no person has become a beneficial owner of the company without the conduct of due diligence by the registered agent.

Dated this day of, 200.....

.....
Director/Resident Secretary
(name of registered agent)

If any statement cannot be given without qualification, set out the respects in which it is qualified.

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 18

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 95(3))**

Company No.:

NBD/

NOTICE OF APPOINTMENT OF AUDITOR

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

The above-named international company gives notice that
.....
was on the day of, 200..... appointed as auditor of the
company.

Dated this day of, 200.....

.....
*Director/Secretary

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 19

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 95(3))**

Company No.:

NBD/

NOTICE OF CHANGE OF AUDITOR

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

The above-named international company gives notice that —

.....
¹has resigned/was removed as auditor of the company on the day of
....., 200..... and²
was appointed as auditor in its place on the day of
....., 200.....

Dated this day of, 200.....

.....
*Director/Secretary

¹Name of auditor who has resigned.

²Insert name, address of new auditor.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 20

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 125(7))**

Company No.:

NBD/

CERTIFICATE OF REGISTRATION OF ARTICLES OF ARRANGEMENT

This is to certify that the articles of arrangement dated the
day of, 200..... executed by
(name of company) have this day been registered with me.

Given under my hand and seal this day of, 200.....

.....
Registrar of International
Business Companies

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 21

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(sections 134(2)(f) and (g))

Company No.:

NBD/

CERTIFICATE BY REGISTERED AGENT OF FOREIGN COMPANY

.....
(NAME OF COMPANY)

I of

NRIC/Passport No.: do solemnly and sincerely declare that —

1. I am an officer of
(Name of trust company), a trust company duly appointed as agent of the above-named foreign company in Brunei Darussalam pursuant to a *memorandum of appointment/power of attorney dated the day of, 200.....
2. The above-named foreign company was formed or incorporated in and the full address of its registered office in the place of incorporation is
- *3. The amount of the authorised capital of the company is and its paid-up capital is
- *3. The company does not have a share capital and its registered number of members is
4. No person resident in Brunei Darussalam (other than those permitted by section 6(2) of the Order) has any beneficial interest in the shares of the company.
5. Due diligence.

29th. JULY, 2000

- (i) in relation to the identity of the beneficial owners and officers of the company;
and
- (ii) in relation to the proposed transactions of the company,
- has been conducted and the requirements of the Money-Laundering Order,
2000 have been met.

.....
Director/Officer
(name of registered agent)

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 22

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 137(1))**

Company No.:

NBD/

NOTICE OF CHANGE RELATING TO FOREIGN INTERNATIONAL COMPANY

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

The above-named foreign international company gives notice that on the
..... day of, 200..... a change or alteration
was made in —

- *1. the charter, statute, memorandum of articles of the company or other instrument relating to the company.
- *1. the name of the company.
- *1. the powers of any directors resident in Brunei Darussalam who are members of the local board of directors of the company.
- *1. the registered agent or the name or address of the registered agent.
- *2. Particulars of the change or alteration are as follows:
- *3. The following documents are lodged with this form:

29th. JULY, 2000

Dated this day of....., 200.....

.....
*Director/Officer
Registered Agent in Brunei Darussalam

*Delete whichever is inapplicable.

NOTE : Refer to regulation 11 for documents required to be launched.

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 23

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 139)**

Company No.:

NBD/

**NOTICE BY FOREIGN INTERNATIONAL COMPANY
OF CESSATION OF BUSINESS**

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

The above-named foreign international company gives notice that as from the
..... day of, 200..... the company has not had a place of
business in Brunei Darussalam and has ceased to carry on business in Brunei Darussalam
within the meaning of section 139 of the International Business Companies Order, 2000.

Dated this day of, 200.....

.....
Director/Officer
Registered Agent in Brunei Darussalam

29th. JULY, 2000

<p>Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —</p> <p>Name:</p> <p>Address:</p> <p>Telephone No.:</p> <p>Facsimile No.:</p>	<p>For Registry's Use</p> <p>Date of Registration:</p> <p>Receipt No.:</p> <p>Checked By:</p>
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INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 24

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 140(1)(a))

Company No. :

NBD/

**NOTICE BY REGISTERED AGENT OF FOREIGN INTERNATIONAL
COMPANY OF LIQUIDATION OR DISSOLUTION**

.....
(NAME OF COMPANY)

To:
The Registrar of International Business Companies,
Brunei Darussalam.

..... (name of
registered agent), gives notice that on the day of,
200..... the above-named foreign international company ¹went into liquidation/was dissolved
in²

We were the agent of the company in Brunei Darussalam immediately prior to the
commencement of the ²liquidation/dissolution proceedings.

.....
*Director/Secretary/Authorised Officer
(name of registered agent)

¹Insert name of place of incorporation of company.

²Delete whichever is inapplicable.

29th. JULY, 2000

<p>Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —</p> <p>Name:</p> <p>Address:</p> <p>Telephone No.:</p> <p>Facsimile No.:</p>	<p>For Registry's Use</p> <p>Date of Registration:</p> <p>Receipt No.:</p> <p>Checked By:</p>
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INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 25

**INTERNATIONAL BUSINESS COMPANIES ORDER, 2000
(section 142(1))**

Company No.:

NBD/

ANNUAL RETURN OF FOREIGN INTERNATIONAL COMPANY

.....
(NAME OF COMPANY)

Annual return of the above-named foreign international company made up to the day of, 200..... being a date not earlier than thirty days before the date of lodgement.

1. Date of incorporation:
2. Authorised share capital: divided into shares of each.
3. Issued capital: shares of each.
4. Address of the registered office in Brunei Darussalam:
.....
.....
5. Address of place of business in Brunei Darussalam:
.....
.....
6. General nature of business

Certificate of Registered Agent

I, of
..... Director/Resident Secretary
(delete one) of the Company hereby certify to the best of my knowledge and belief —

1. that the records and accounts required to be kept by the company pursuant to the Order have been properly so kept;
2. no person resident in Brunei Darussalam (other than those permitted by section 6(2) of the Order) is a shareholder or beneficial owner of any interest in the company;
3. the requirements of section 6 of the Order have been and continue to be observed;
4. no person has become a beneficial owner of the company without the conduct of due diligence by the registered agent.

Dated this day of, 200.....

.....
Director/Resident Secretary
(name of registered agent)

If any statement cannot be given without qualification, set out the respects in which it is qualified.

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2000

FORM 26

INTERNATIONAL BUSINESS COMPANIES ORDER, 2000

(sections¹ 136(1), (2))

Company No.:

NBD/

NOTICE OF SITUATION OF REGISTERED OFFICE AND OF CHANGES

.....
(NAME OF COMPANY)

To :
The Registrar of International Business Companies,
Brunei Darussalam.

The above-named ¹IBC/foreign international company gives notice that with effect from the day of, 200.....

¹(a) its registered office will be situated at:
.....
.....

¹(b) its registered office has changed from:
.....
to
.....

Dated this day of, 200.....

.....
Director/Secretary/
Registered Agent

¹ Delete whichever is inapplicable

29th. JULY, 2000

Lodged in the office of the Registrar of International Business Companies in Brunei Darussalam by —	For Registry's Use
Name:	Date of Registration:
Address:	Receipt No.:
Telephone No.:	Checked By:
Facsimile No.:	

Made this 22nd. day of Rabiulawal, 1421 Hijriah corresponding to the 25th. day of June, 2000.

AWANG HAJI ABDUL HAMID BIN HAJI JANUDIN
Acting Permanent Secretary,
Ministry of Finance,
Brunei Darussalam.

No. S 70

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

EXCHANGE CONTROL (REPEAL) ORDER, 2000

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

Citation and commencement.

1. This Order may be cited as Exchange Control (Repeal) Order, 2000 and shall commence on a day to be appointed by the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.

Repeal of Chapter 141.

2. The Exchange Control Act (Chapter 141) is hereby repealed.

Made this 30th. day of Safar, 1421 Hijriah corresponding to the 3rd. day of June, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 92

**SUPREME COURT ACT
(CHAPTER 5)**

**RULES OF THE SUPREME COURT
(AMENDMENT) (NO. 3) RULES, 2000**

In exercise of the power conferred by section 12 of the Supreme Court Act, the Judges of the Supreme Court, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby make the following Rules of Court —

Citation and application.

1. (1) These Rules may be cited as the Rules of the Supreme Court (Amendment) (No. 3) Rules, 2000.

(2) These Rules shall apply to every action in the Court on or after the date of commencement of these Rules, whether or not such action was instituted before that date.

Amendment of Order 60 of S 5/90.

2. Order 60 of the Rules of the Supreme Court is amended —

(a) in rule 4(1)(c), by inserting ", which shall not be required in the case of an advocate and solicitor," immediately after "Registrar"; and

(b) in rule 4(2), by inserting "and his advocate and solicitor" immediately after "party" in the second line.

Made this 25th. day of Syaaban, 1421 Hijriah corresponding to the 22nd. day of November, 2000.

DATO SERI PADUKA SIR DENYS ROBERTS
CHIEF JUSTICE
BRUNEI DARUSSALAM.

No. S 93

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

ELECTRONIC TRANSACTIONS ORDER, 2000

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation, commencement and long title.
2. Interpretation.
3. Purposes and construction.
4. Application.
5. Variation by agreement.

PART II

ELECTRONIC RECORDS AND SIGNATURES GENERALLY

6. Legal recognition of electronic records.
7. Requirement for writing.
8. Electronic signatures.
9. Retention of electronic records.

PART III

LIABILITY OF NETWORK SERVICE PROVIDERS

10. Liability of network service providers.

PART IV

ELECTRONIC CONTRACTS

11. Formation and validity.
12. Effectiveness between parties.
13. Attribution.
14. Acknowledgement of receipt.
15. Time and place of despatch and receipt.

PART V

SECURE ELECTRONIC RECORDS AND SIGNATURES

16. Secure electronic record.
17. Secure electronic signature.
18. Presumptions relating to secure electronic records and signatures.

PART VI

EFFECT OF DIGITAL SIGNATURES

19. Secure electronic record with digital signature.
20. Secure digital signature.
21. Presumptions regarding certificates.
22. Unreliable digital signatures.

PART VII

GENERAL DUTIES RELATING TO DIGITAL SIGNATURES

23. Reliance on certificates foreseeable.
24. Prerequisites to publication of certificate.
25. Publication for fraudulent purpose.

26. False or unauthorised request.

PART VIII

DUTIES OF CERTIFICATION AUTHORITIES

27. Trustworthy system.
28. Disclosure.
29. Issuing of certificate.
30. Representations upon issuance of certificate.
31. Suspension of certificate.
32. Revocation of certificate.
33. Revocation without subscriber's consent.
34. Notice of suspension.
35. Notice of revocation.

PART IX

DUTIES OF SUBSCRIBERS

36. Generating key pair.
37. Obtaining certificate.
38. Acceptance of certificate.
39. Control of private key.
40. Initiating suspension or revocation.

PART X

REGULATION OF CERTIFICATION AUTHORITIES

41. Appointment of Controller and other officers.
42. Regulation of certification authorities.

- 43. Recognition of foreign certification authorities.
- 44. Recommended reliance limit.
- 45. Liability limits for licensed certification authorities.
- 46. Regulation of repositories.

PART XI

GOVERNMENT USE OF ELECTRONIC RECORDS AND SIGNATURES

- 47. Acceptance of electronic filing and issue of documents.

PART XII

GENERAL

- 48. Obligation of confidentiality.
- 49. Offences by bodies corporate.
- 50. Authorised officer or employees.
- 51. Controller may give directions for compliance.
- 52. Power to investigate.
- 53. Access to computers and data.
- 54. Obstruction of authorised officer or employee.
- 55. Production of documents, data etc.
- 56. General penalties.
- 57. Sanction of Public Prosecutor.
- 58. Jurisdiction of Courts.
- 59. Composition of offences.
- 60. Power to exempt.
- 61. Regulations.
- 62. Savings and transitional.

- 63.** Amendment of Law Revision Act, (Chapter 1).
- 64.** Amendment of Interpretation and General Clauses Act, (Chapter 4).
- 65.** Amendment of Evidence Act, (Chapter 108).

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

ELECTRONIC TRANSACTIONS ORDER, 2000

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

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Electronic Transactions Order, 2000 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The Minister may appoint different dates for the commencement of different provisions of this Order and for different purposes of the same provision.

(3) The long title of this Order is "An Order to make provision for the security and use of electronic transactions and for connected purposes".

Interpretation.

2. In this Order, unless the context otherwise requires —

"asymmetric cryptosystem" means a system capable of generating a secure key pair, consisting of a private key for creating a digital signature, and a public key to verify the digital signature;

"certification authority" means a person who or an organisation that issues a certificate;

"certification practice statement" means a statement issued by a certification authority to specify the practices that the certification authority employs in issuing certificates;

"Controller" means the Controller of Certification Authorities appointed under section 41(1) and includes a Deputy or an Assistant Controller of Certification Authorities appointed under section 41(2);

"correspond", in relation to private or public keys, means to belong to the same key pair;

"data message" means information generated, sent, received or stored by electronic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

"digital signature" means an electronic signature consisting of a transformation of an electronic record using an asymmetric cryptosystem and a hash function such that a person having the initial untransformed electronic record and the signer's public key can accurately determine —

- (a) whether the transformation was created using the private key that corresponds to the signer's public key; and
- (b) whether the initial electronic record has been altered since the transformation was made;

"electronic record" means a record generated, communicated, received or stored by electronic, magnetic, optical or other means in an information system or for transmission from one information system to another;

"electronic signature" means any letters, characters, numbers or other symbols in digital form attached to or logically associated with an electronic record, and executed or adopted with the intention of authenticating or approving the electronic record;

"hash function" means an algorithm mapping or translating one sequence of bits into another, generally smaller, set (the hash result) such that —

- (a) a record yields the same hash result every time the algorithm is executed using the same record as input;
- (b) it is computationally infeasible that a record can be derived or reconstituted from the hash result produced by the algorithm; and
- (c) it is computationally infeasible that 2 records can be found that produce the same hash result using the algorithm;

"information" includes data, text, images, sound, codes, computer programs, software and databases;

"information system" means a system for generating, sending, receiving, storing or otherwise processing data messages;

"key pair", in an asymmetric cryptosystem, means a private key and its mathematically related public key, having the property that the public key can verify a digital signature that the private key creates;

"licensed certification authority" means a certification authority licensed by the Controller pursuant to regulations made under section 42;

"Minister" means the Minister of Finance;

"operational period of a certificate" begins on the date and time the certificate is issued by a certification authority (or on any later date and time stated in the certificate), and ends on the date and time it expires as stated in the certificate or when it is earlier revoked or suspended;

"private key" means the key of a key pair used to create a digital signature;

"public key" means the key of a key pair used to verify a digital signature;

"record" means information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

"repository" means a system for storing and retrieving certificates or other information relevant to certificates;

"revoke a certificate" means to permanently end the operational period of a certificate from a specified time;

"rule of law" includes a written law;

"security procedure" means a procedure for the purpose of —

- (a) verifying that an electronic record is that of a specific person; or
- (b) detecting error or alteration in the communication, content or storage of an electronic record since a specific point in time,

which may require the use of algorithms or codes, identifying words or numbers, encryption, answerback or acknowledgement procedures, or similar security devices;

"signed" or "signature" includes any symbol executed or adopted, or any methodology or procedure employed or adopted, by a person with the intention of authenticating a record, including electronic or digital methods;

"subscriber" means a person who is the subject named or identified in a certificate issued to him and who holds a private key that corresponds to a public key listed in that certificate;

"suspend a certificate" means to temporarily suspend the operational period of a certificate from a specified time;

"transaction" includes a transaction of a non-commercial nature;

"trustworthy system" means computer hardware, software and procedures that —

- (a) are reasonably secure from intrusion and misuse;
- (b) provide a reasonable level of availability, reliability and correct operation;
- (c) are reasonably suited to performing their intended functions; and
- (d) adhere to generally accepted security procedures;

"valid certificate" means a certificate that a certification authority has issued and which the subscriber listed in it has accepted;

"verify a digital signature", in relation to a given digital signature, record and public key, means to determine accurately —

- (a) that the digital signature was created using the private key corresponding to the public key listed in the certificate; and
- (b) the record has not been altered since its digital signature was created.

Purposes and construction.

3. (1) This Order shall be construed consistently with what is commercially reasonable under the circumstances and to give effect to the following purposes —

- (a) to facilitate electronic communications by means of reliable electronic records;
- (b) to facilitate electronic commerce, eliminate barriers to electronic commerce resulting from uncertainties over writing and signature requirements, and to promote the development of the legal and business infrastructure necessary to implement secure electronic commerce;
- (c) to facilitate electronic filing of documents with government agencies and statutory corporations, and to promote efficient delivery of government services by means of reliable electronic records;
- (d) to minimise the incidence of forged electronic records, intentional and unintentional alteration of records, and fraud in electronic commerce and other electronic transactions;
- (e) to help to establish uniformity of rules, regulations and standards regarding the authentication and integrity of electronic records; and
- (f) to promote public confidence in the integrity and reliability of electronic records and electronic commerce, and to foster the development of electronic commerce through the use of electronic signatures to lend authenticity and integrity to correspondence in any electronic medium.

(2) In the interpretation of this Order, regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith.

(3) Questions concerning matters governed by this Order which are not expressly settled in it are to be settled in conformity with the general principles on which this Order is based.

Application.

4. (1) Parts II or IV shall not apply to any rule of law requiring writing or signatures in any of the following matters —

- (a) the creation of any legal instrument or document under any written law relating to Islamic law;
- (b) the creation or execution of a will under any written law relating wills;
- (c) negotiable instruments;
- (d) the creation, performance or enforcement of an indenture, declaration of trust or power of attorney with the exception of constructive and resulting trusts;
- (e) any contract for the sale or other disposition of immovable property, or any interest in such property;
- (f) the conveyance of immovable property or the transfer of any interest in such property;
- (g) documents of title relating to immovable property.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order in the *Gazette* modify the provisions of subsection (1) by adding, deleting or amending any class of transactions or matters mentioned therein.

Variation by agreement.

5. As between parties involved in generating, sending, receiving, storing or otherwise processing electronic records, any provision of Parts II or IV may be varied by agreement.

PART II

ELECTRONIC RECORDS AND SIGNATURES GENERALLY

Legal recognition of electronic records.

6. For the avoidance of doubt, it is hereby declared that information shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Requirement for writing.

7. Where any rule of law requires information to be written, in writing, to be presented in writing or provides for certain consequences if it is not, an electronic record satisfies that rule of law if the information contained therein is accessible so as to be usable for subsequent reference.

Electronic signatures.

8. (1) Where any rule of law requires a signature, or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law.

(2) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a party, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of such party.

Retention of electronic records.

9. (1) Where any rule of law requires that certain documents, records or information be retained, that requirement is satisfied by retaining them in the form of electronic records if the following conditions are satisfied —

- (a) the information contained therein remains accessible so as to be usable for subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- (c) such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained; and

(d) the consent of the department or ministry of the Government, organ of State, or the statutory corporation which has supervision over the requirement for the retention of such records has been obtained.

(2) An obligation to retain documents, records or information in accordance with subsection (1)(c) shall not extend to any information necessarily and automatically generated solely for the purpose of enabling a record to be sent or received.

(3) A person may satisfy the requirement referred to in subsection (1) by using the services of any other person, if the conditions in paragraphs (a) to (d) of that subsection are complied with.

(4) Nothing in this section shall —

(a) apply to any rule of law which expressly provides for the retention of documents, records or information in the form of electronic records;

(b) preclude any department or ministry of the Government, organ of State or a statutory corporation from specifying additional requirements for the retention of electronic records that are subject to the jurisdiction of such department, ministry, organ of State or statutory corporation.

PART III

LIABILITY OF NETWORK SERVICE PROVIDERS

Liability of network service providers.

10. (1) A network service provider shall not be subject to any civil or criminal liability under any rule of law in respect of third-party material in the form of electronic records to which he merely provides access if such liability is founded on —

(a) the making, publication, dissemination or distribution of such materials or any statement made in such material; or

(b) the infringement of any rights subsisting in or in relation to such material.

(2) Nothing in this section shall affect —

(a) any obligation founded on contract;

(b) the obligation of a network service provider as such under a licensing or other regulatory regime established under any written law; or

(c) any obligation imposed under any written law or by a court to remove, block or deny access to any material.

- (3) For the purposes of this section —

"providing access", in relation to third-party material, means the provision of the necessary technical means by which third-party material may be accessed and includes the automatic and temporary storage of the third-party material for the purpose of providing access;

"third-party", in relation to a network service provider, means a person over whom the provider has no effective control.

PART IV

ELECTRONIC CONTRACTS

Formation and validity.

11. (1) For the avoidance of doubt, it is hereby declared that in the context of the formation of contracts, unless otherwise agreed by the parties, and offer and the acceptance of an offer may be expressed by means of electronic records.

(2) Where an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that an electronic record was used for that purpose.

Effectiveness between parties.

12. As between the originator and the addressee of an electronic record, a declaration of intent or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Attribution.

13. (1) An electronic record is that of the originator if it was sent by the originator himself.

(2) As between the originator and the addressee, an electronic record is deemed to be that of the originator if it was sent —

(a) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or

(b) by an information system programmed by or on behalf of the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic record as being that of the originator and to act on that assumption if —

- (a) in order to ascertain whether the electronic record was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
- (b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify electronic records as its own.

(4) Subsection (3) shall not apply —

- (a) from the time when the addressee has both received notice from the originator that the electronic record is not that of the originator, and had reasonable time to act accordingly;
- (b) in a case within subsection (3)(b), at any time when the addressee knew or ought to have known, had it exercised reasonable care or used any agreed procedure, that the electronic record was not that of the originator; or
- (c) if in all the circumstances of the case, it is unconscionable for the addressee to regard the electronic record as that of the originator or to act on that assumption.

(5) Where an electronic record is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the electronic record received as being what the originator intended to send, and to act on that assumption.

(6) The addressee is not so entitled when the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic record as received.

(7) The addressee is entitled to regard each electronic record received as a separate electronic record and to act on that assumption, except to the extent that the addressee duplicates another electronic record and the addressee knew or should have known, had the addressee exercised reasonable care or used any agreed procedure, that the electronic record was a duplicate.

(8) Nothing in this section shall affect the law of agency or the law on the formation of contracts.

Acknowledgement of receipt.

14. (1) Subsections (2), (3) and (4) shall apply where, on or before sending an electronic record, or by means of that electronic record, the originator has requested or has agreed with the addressee that receipt of the electronic record be acknowledged.

(2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by —

- (a) any communication by the addressee, automated or otherwise; or
- (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(3) Where the originator has stated that the electronic record is conditional on receipt of the acknowledgement, the electronic record shall be treated as though it had never been sent, until the acknowledgement is received.

(4) Where the originator has not stated that the electronic record is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time, specified or agreed or, if no time has been specified or agreed within a reasonable time, the originator —

- (a) may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and
- (b) if the acknowledgement is not received within the time specified in paragraph (a), may, upon notice to the addressee, treat the electronic record as though it has never been sent, or exercise any other rights it may have.

(5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed, unless evidence to the contrary is adduced, that the related electronic record was received by the addressee, but that presumption does not imply that the content of the electronic record corresponds to the content of the record received.

(6) Where the received acknowledgement states that the related electronic record met technical requirements, either agreed upon or set forth in applicable standards, it is presumed, unless evidence to the contrary is adduced, that those requirements have been met.

(7) Except in so far as it relates to the sending or receipt of the electronic record, this Part is not intended to deal with the legal consequences that may flow either from that electronic record or from the acknowledgement of its receipt.

Time and place of despatch and receipt.

15. (1) Unless otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters an information system outside the control of the originator or the person who sent the electronic record on behalf of the originator.

(2) Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic record is determined as follows —

- (a) if the addressee has designated an information system for the purpose of receiving electronic records, receipt occurs —
 - (i) at the time when the electronic record enters the designated information system; or
 - (ii) if the electronic record is sent to an information system of the addressee that is not the designated information system, at the time when the electronic record is retrieved by the addressee;
- (b) if the addressee has not designated such an information system, receipt occurs when the electronic record enters an information system of the addressee.

(3) Subsection (2) shall apply notwithstanding that the place where the information system is located may be different from the place where the electronic record is deemed to be received under subsection (4).

(4) Unless otherwise agreed between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has its place of business, and is deemed to be received at the place where the addressee has its place of business.

(5) For the purposes of this section —

- (a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;
- (b) if the originator or the addressee does not have a place of business, reference is to be made to the usual place of residence; and
- (c) "usual place of residence" in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

(6) This section shall not apply to such circumstances as the Minister may by regulations prescribe.

PART V

SECURE ELECTRONIC RECORDS AND SIGNATURES

Secure electronic record.

16. (1) If a prescribed security procedure or a commercially reasonable security procedure agreed to by the parties involved has been properly applied to an electronic record to verify that the electronic record has not been altered since a specified point in time, such

record shall be treated as a secure electronic record from such specified point in time to the time of verification.

(2) For the purposes of this section and of section 17, whether a security procedure is commercially reasonable shall be determined having regard to the purposes of the procedure and the commercial circumstances at the time the procedure was used, including —

- (a) the nature of the transaction;
- (b) the sophistication of the parties;
- (c) the volume of similar transactions engaged in by either or all parties;
- (d) the availability of alternatives offered to but rejected by any party;
- (e) the cost of alternative procedures; and
- (f) the procedures in general use for similar types of transactions.

Secure electronic signature.

17. If, through the application of a prescribed security procedure or a commercially reasonable security procedure agreed to by the parties involved, it can be verified that all electronic signature was, at the time it was made —

- (a) unique to the person using it;
- (b) capable of identifying such person;
- (c) created in a manner or using a means under the sole control of the person using it; and
- (d) linked to the electronic record to which it relates in a manner such that if the record was changed the electronic signature would be invalidated,

such signature shall be treated as a secure electronic signature.

Presumptions relating to secure electronic records and signatures.

18. (1) In any proceedings involving a secure electronic record, it shall be presumed, unless evidence to the contrary is adduced, that the secure electronic record has not been altered since the specific point in time to which the secure status relates.

(2) In any proceedings involving a secure electronic signature, it shall be presumed, unless evidence to the contrary is adduced, that —

- (a) the secure electronic signature is the signature of the person with whom it correlates; and
- (b) the secure electronic signature was affixed by that person with the intention of signing or approving the electronic record.

(3) In the absence of a secure electronic record or a secure electronic signature, nothing in this Part shall create any presumption relating to the authenticity and integrity of the electronic record or an electronic signature.

(4) For the purposes of this section —

"secure electronic record" means an electronic record treated as a secure electronic record by virtue of sections 16 or 19;

"secure electronic signature" means an electronic signature treated as a secure electronic signature by virtue of sections 17 or 20.

PART VI

EFFECT OF DIGITAL SIGNATURES

Secure electronic record with digital signature.

19. The portion of an electronic record that is signed with a digital signature shall be treated as a secure electronic record if the digital signature is a secure electronic signature by virtue of section 20.

Secure digital signature.

20. When any portion of an electronic record is signed with a digital signature, the digital signature shall be treated as a secure electronic signature with respect to such portion of the record, if —

- (a) the digital signature was created during the operational period of a valid certificate and is verified by reference to the public key listed in such certificate; and
- (b) the certificate is considered trustworthy, in that it is an accurate binding of a public key to a person's identity because —
 - (i) the certificate was issued by a licensed certification authority operating in compliance with the regulations made under section 42;
 - (ii) the certificate was issued by a certification authority outside Brunei Darussalam recognised for this purpose by the Controller pursuant to regulations made under section 43;

- (iii) the certificate was issued by a department or ministry of the Government, an organ of State or a statutory body or corporation approved by the Minister to act as a certification authority on such conditions as he may by regulations impose or specify; or
- (iv) the parties have expressly agreed between themselves (sender and recipient) to use digital signatures as a security procedure, and the digital signature was properly verified by reference to the sender's public key.

Presumptions regarding certificates.

21. It shall be presumed, unless evidence to the contrary is adduced, that the information listed in a certificate issued by a licensed certification authority is correct, except for information identified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Unreliable digital signatures.

22. Unless otherwise provided by any rule of law or by contract, a person relying on a digitally signed electronic record assumes the risk that the digital signature is invalid as a signature or authentication of the signed electronic record, if reliance on the digital signature is not reasonable under the circumstances having regard to the following factors —

- (a) facts which the person relying on the digitally signed electronic record knows or has notice of, including all facts listed in the certificate or incorporated in it by reference;
- (b) the value or importance of the digitally signed record, if known;
- (c) the course of dealing between the person relying on the digitally signed electronic record and the subscriber and any available indicia of reliability or unreliability apart from the digital signature; and
- (d) usage of trade, particularly trade conducted by trustworthy systems or other electronic means.

PART VII

GENERAL DUTIES RELATING TO DIGITAL SIGNATURES

Reliance on certificates foreseeable.

23. It is foreseeable that persons relying on a digital signature will also rely on a valid certificate containing the public key by which the digital signature can be verified.

Prerequisites to publication of certificate.

24. No person shall publish a certificate or otherwise make it available to a person known by that first-mentioned person to be in a position to rely on the certificate or on a digital signature that is verifiable with reference to a public key listed in the certificate, if that first-mentioned person knows that —

- (a) the certification authority listed in the certificate has not issued it;
- (b) the subscriber listed in the certificate has not accepted it; or
- (c) the certificate has been revoked or suspended, unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

Publication for fraudulent purpose.

25. Any person who knowingly creates, publishes or otherwise makes available a certificate for any fraudulent or unlawful purpose shall be guilty of an offence and be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 2 years or both.

False or unauthorised request.

26. Any person who knowingly misrepresents to a certification authority his identity or authorisation for the purpose of requesting for a certificate or for suspension or revocation of a certificate shall be guilty of an offence and be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

PART VIII

DUTIES OF CERTIFICATION AUTHORITIES

Trustworthy system.

27. A certification authority must utilise trustworthy systems in performing its services.

Disclosure.

28. (1) A certification authority shall disclose —

- (a) its certificate that contains the public key corresponding to the private key used by that certification authority to digitally sign another certificate (referred to in this section as a certification authority certificate);

- (b) any relevant certification practice statement;
- (c) notice of the revocation or suspension of its certification authority certificate; and
- (d) any other fact that materially and adversely affects either the reliability of a certificate that the authority has issued or the authority's ability to perform its services.

(2) In the event of an occurrence that materially and adversely affects a certification authority's trustworthy system or its certification authority certificate, the certification authority shall —

- (a) use reasonable efforts to notify any person who is known to be or foreseeably will be affected by that occurrence; or
- (b) act in accordance with procedures governing such an occurrence specified in its certification practice statement.

Issuing of certificate.

29. (1) A certification authority may issue a certificate to a prospective subscriber only after the certification authority —

- (a) has received a request for issuance from the prospective subscriber; and
- (b) has —
 - (i) if it has a certification practice statement, complied with all of the practices and procedures set forth in such certification practice statement including procedures regarding identification of the perspective subscriber; or
 - (ii) in the absence of a certification practice statement, complied with the conditions in subsection (2).

(2) In the absence of a certification practice statement, the certification authority shall confirm by itself or through an authorised agent that —

- (a) the prospective subscriber is the person to be listed in the certificate to be issued;
- (b) if the prospective subscriber is acting through one or more agents, the subscriber authorised the agent to have custody of the subscriber's private key and to request issuance of a certificate listing the corresponding public key;

- (c) the information in the certificate to be issued is accurate;
- (d) the prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate;
- (e) the prospective subscriber holds a private key capable of creating a digital signature; and
- (f) the public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber.

Representations upon issuance of certificate.

30. (1) By issuing a certificate, a certification authority represents, to any person who reasonably relies on the certificate or a digital signature verifiable by the public key listed in the certificate, that the certification authority has issued the certificate in accordance with any applicable certification practice statement incorporated by reference in the certificate, or of which the relying person has notice.

(2) In the absence of such certification practice statement, the certification authority represents that it has confirmed that —

- (a) the certification authority has complied with all applicable requirements of this Order in issuing the certificate, and if the certification authority has published the certificate or otherwise made it available to such relying person, that the subscriber listed in the certificate has accepted it;
- (b) the subscriber identified in the certificate holds the private key corresponding to the public key listed in the certificate;
- (c) the subscriber's public key and private key constitute a functioning key pair;
- (d) all information in the certificate is accurate, unless the certification authority has stated in the certificate or incorporated by reference in the certificate a statement that the accuracy of specified information is not confirmed; and
- (e) that the certification authority has no knowledge of any material fact which if it had been included in the certificate would adversely affect the reliability of the representations in paragraphs (a) to (d).

(3) Where there is an applicable certification practice statement which has been incorporated by reference in the certificate, or of which the relying person has notice, subsection (2) shall apply to the extent that the representations are not inconsistent with the certification practice statement.

Suspension of certificate.

31. Unless the certification authority and the subscriber agree otherwise, the certification authority that issued a certificate shall suspend the certificate as soon as possible after receiving a request by a person whom the certification authority believes to be —

- (a) the subscriber named in the certificate;
- (b) a person duly authorised to act for that subscriber; or
- (c) a person acting on behalf of that subscriber, who is unavailable.

Revocation of certificate.

32. A certification authority shall revoke a certificate that is issued after —

- (a) receiving a request for revocation by the subscriber named in the certificate; and confirming that the person requesting revocation is the subscriber, or is an agent of the subscriber with authority to request the revocation;
- (b) receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or
- (c) upon presentation of documents effecting a dissolution of the subscriber, or upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist.

Revocation without subscriber's consent.

33. (1) A certification authority shall revoke a certificate, regardless of whether the subscriber listed in the certificate consents, if the certification authority confirms that —

- (a) a material fact represented in the certificate is false;
- (b) a requirement for issuance of the certificate was not satisfied;
- (c) the certification authority's private key or trustworthy system was compromised in a manner materially affecting the certificate's reliability;
- (d) an individual subscriber is dead; or
- (e) a subscriber has been dissolved, wound-up or otherwise ceased to exist.

(2) Upon effecting such a revocation, other than under subsection (1)(a) or (e), the certification authority shall immediately notify the subscriber named in the revoked certificate.

Notice of suspension.

34. (1) Immediately upon suspension of a certificate by a certification authority, the certification authority shall publish a signed notice of the suspension in the repository specified in the certificate for publication of notice of suspension.

(2) Where one or more repositories are specified, the certification authority shall publish signed notices of the suspension in all such repositories.

Notice of revocation.

35. (1) Immediately upon revocation of a certificate by a certification authority, the certification authority shall publish a signed notice of the revocation in the repository specified in the certificate for publication of notice of revocation.

(2) Where one or more repositories are specified, the certification authority shall publish signed notices of the revocation in all such repositories.

PART IX

DUTIES OF SUBSCRIBERS

Generating key pair.

36. (1) If the subscriber generates the key pair whose public key is to be listed in a certificate issued by a certification authority and accepted by the subscriber, the subscriber shall generate that key pair using a trustworthy system.

(2) This section shall not apply to a subscriber who generates the key pair using a system approved by the certification authority.

Obtaining certificate.

37. All material representations made by the subscriber to a certification authority for purposes of obtaining a certificate, including all information known to the subscriber and represented in the certificate, shall be accurate and complete to the best of the subscriber's knowledge and belief, regardless of whether such representation are confirmed by the certification authority.

Acceptance of certificate.

38. (1) A subscriber shall be deemed to have accepted a certificate if he —

(a) publishes or authorises the publication of a certificate —

- (i) to one or more persons; or
- (ii) in a repository; or
- (b) otherwise demonstrates approval of a certificate while knowing or having notice of its contents.

(2) By accepting a certificate issued by himself or a certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that —

- (a) the subscriber rightfully holds the private key corresponding to the public key listed in the certificate;
- (b) all representations made by the subscriber to the certification authority and material to the information listed in the certificate are true; and
- (c) all information in the certificate that is within the knowledge of the subscriber is true.

Control of private key.

39. (1) By accepting a certificate issued by a certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key corresponding to the public key listed in such certificate and prevent its disclosure to a person not authorised to create the subscriber's digital signature.

(2) Such duty shall continue during the operational period of the certificate and during any period of suspension of the certificate.

Initiating suspension or revocation.

40. A subscriber who has accepted a certificate shall as soon as possible request the issuing certification authority to suspend or revoke the certificate if the private key corresponding to the public key listed in the certificate has been compromised.

PART X

REGULATION OF CERTIFICATION AUTHORITIES

Appointment of Controller and other officers.

41. (1) The Minister shall be the Controller of Certification Authorities for the purposes of this Order.

(2) The Minister may appoint such number of Deputy and Assistant Controllers of Certification Authorities and officers as he considers necessary to exercise and perform all or any of the powers and duties of the Controller under this Order or any regulations made thereunder.

(3) The Controller, the Deputy and Assistant Controllers and officers appointed under subsection (2) shall exercise, discharge and perform the powers, duties and functions conferred on the Controller under this Order or any regulations made thereunder, subject to such directions as may be issued by the Minister.

(4) The Controller shall maintain a publicly accessible database containing a certification authority disclosure record for each licensed certification authority which shall contain all the particulars required under the regulations made under this Order.

(5) In the application of the provisions of this Order to certificates issued by the Controller and digital signatures verified by reference to those certificates, the Controller shall be deemed to be a licensed certification authority.

Regulation of certification authorities.

42. (1) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make regulations for the regulation and licensing of certification authorities and to define when a digital signature qualifies as a secure electronic signature.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) applications for licences or renewal of licences of certification authorities and their authorised representatives and matters incidental thereto;
- (b) the activities of certification authorities including the manner, method and place of soliciting business, the conduct of such solicitation and the prohibition of such solicitation from members of the public by certification authorities which are not licensed;
- (c) the standards to be maintained by certification authorities;
- (d) prescribing the appropriate standards with respect to the qualifications, experience and training of applicants for any licence or their employees;
- (e) prescribing the conditions for the conduct of business by a certification authority;
- (f) providing for the content and distribution of written, printed or visual material and advertisements that may be distributed or used by a person in respect of a digital certificate or key;

- (g) prescribing the form and content of a digital certificate or key;
- (h) prescribing the particulars to be recorded in, or in respect of, accounts kept by certification authorities;
- (i) providing for the appointment and remuneration of an auditor appointed under the regulations and for the costs of an audit carried out under the regulations;
- (j) providing for the establishment and regulation of any electronic system by a certification authority, whether by itself or in conjunction with other certification authorities, and for the imposition and variation of such requirements, conditions or restrictions as the Controller may think fit;
- (k) the manner in which a holder of a licence conducts its dealings with its customers, conflicts of interest involving the holder of a licence and its customers, and the duties of a holder of a licence to its customers with respect to digital certificates;
- (l) prescribing any forms for the purposes of the regulations; and
- (m) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Order and the regulations.

(3) Regulations made under this section may provide that a contravention of a specified provisions shall be an offence and may provide for penalties for a fine not exceeding \$50,000, imprisonment for a term not exceeding 12 months or both.

Recognition of foreign certification authorities.

43. The Minister may by order published in the *Gazette* recognise certification authorities outside Brunei Darussalam that satisfy the prescribed requirements for any of the following purposes —

- (a) the recommended reliance limit, if any, specified in a certificate issued by the certification authority;
- (b) the presumption referred to in sections 20(b)(ii) and 21.

Recommended reliance limit.

44. (1) A licensed certification authority shall, in issuing a certificate to a subscriber, specify a recommended reliance limit in the certificate.

(2) The licensed certification authority may specify different limits in different certificates as it considers fit.

Liability limits for licensed certification authorities.

45. Unless a licensed certification authority waives the application of this section, a licensed certification authority —

- (a) shall not be liable for any loss caused by reliance on a false or forged digital signature of a subscriber, if, with respect to the false or forged digital signature, the licensed certification authority complied with the requirements of this Order;
- (b) shall not be liable in excess of the amount specified in the certificate as its recommended reliance limit for either —
 - (i) a loss caused by reliance on a misrepresentation in the certificate of any fact that the licensed certification authority is required to confirm; or
 - (ii) failure to comply with sections 29 and 30 in issuing the certificate.

Regulation of repositories.

46. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the purpose of ensuring the quality of repositories and the services they provide, including provisions for the standards, licensing or accreditation of repositories.

PART XI

GOVERNMENT USE OF ELECTRONIC RECORDS AND SIGNATURES

Acceptance of electronic filing and issue of documents.

47. (1) Any department or ministry of the Government, organ of State or statutory body that, pursuant to any written law —

- (a) accepts the filing of documents, or requires that documents be created or retained;
- (b) issues any permit, licence or approval; or
- (c) provides for the method and manner of payment,

may, notwithstanding anything to the contrary in such written law —

- (i) accept the filing of such documents, or the creation or retention of such documents in the form of electronic records;

(ii) issue such permit, licence or approval in the form of electronic records; or

(iii) make such payment in electronic form.

(2) In any case where a department or ministry of the Government, organ of State or statutory body decides to perform any of the functions in subsection (1)(i), (ii) or (iii), it may specify —

(a) the manner and format in which such electronic records shall be filed, created, retained or issued;

(b) where such electronic records have to be signed, the type of electronic signature required including, if applicable, a requirement that the sender use a digital signature or other secure electronic signature;

(c) the manner and format in which such signature shall be affixed to the electronic record, and the identity of or criteria that shall be met by any certification authority used by the person filing the document;

(d) control processes and procedures as appropriate to ensure adequate integrity, security and confidentiality of electronic records or payments; and

(e) any other required attributes for electronic records or payments that are currently specified for corresponding paper documents.

(3) Nothing in this Order shall by itself compel any department or ministry of the Government, organ of State or statutory body to accept or issue any document in the form of electronic records.

PART XII

GENERAL

Obligation of confidentiality.

48. (1) Except for the purposes of this Order or for any prosecution for an offence under any written law or pursuant to any order of court, no person who has, pursuant to any powers conferred under this Part, obtained access to any electronic record, book, register, correspondence, information, document or other material shall disclose such electronic record, book, register, correspondence, information, document or other material to any other person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Offences by bodies corporate.

49. Where an offence under this Order or any regulations made thereunder committed by a body corporate is proved to have committed with the consent or connivance of, or to be attributable to any act or default on the part of, any director, manager, secretary or other similar officer of that body corporate, or of any person purporting to act in any such capacity, he, as well as the body corporate, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

Authorised officers or employees.

50. (1) The Controller may in writing authorise any officer or employee to exercise any of the powers of the Controller under this Part.

(2) Any such officer or employee shall be deemed to be a public servant for the purposes of the Penal Code (Chapter 22).

(3) In exercising any of the powers of enforcement under this Order, an authorised officer or employee shall on demand produce to the person against whom he is acting the authority issued to him by the Controller.

Controller may give directions for compliance.

51. (1) The Controller may by notice in writing direct a certification authority or any officer or employee thereof to take such measures or stop carrying on such activities as are specified in the notice if they are necessary to ensure compliance with the provisions of this Order or any regulations made thereunder.

(2) Any person who fails to comply with any direction specified in a notice issued under subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 12 months or both.

Power to investigate.

52. (1) The Controller or an authorised officer or employee may investigate the activities of a certification authority in relation to its compliance with this Order and any regulations made thereunder.

(2) For the purposes of subsection (1), the Controller may in writing issue an order to a certification authority to further its investigation or to secure compliance with this Order or any regulations made thereunder.

Access to computers and data.

53. (1) The Controller or an authorised officer or employee shall —

- (a) be entitled at any time to —
 - (i) have access to and inspect and check the operation of any computer system and any associated apparatus or material which he has reasonable cause to suspect is or has been in use in connection with any offence under this Order;
 - (ii) use or caused to be used any such computer system to search any data contained in or available to such computer system; or
- (b) be entitled to require —
 - (i) the person by whom or on whose behalf the Controller or authorised officer has reasonable cause to suspect the computer is or has been so used; or
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to provide him with such reasonable technical and other assistance as he may require for the purposes of paragraph (a).

(2) Any person who obstructs the lawful exercise of the powers under subsection (1)(a) or who fails to comply with a request under subsection (1)(b) shall be guilty of an offence and be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 12 months or both.

Obstruction of authorised officer or employee.

54. Any person who obstructs, impedes, assaults or interferes with the Controller or any authorised officer or employee in the performance of his functions under this Order shall be guilty of an offence.

Production of documents, data etc.

55. The Controller or an authorised officer or employee shall, for the purposes of the execution of this Order, have power to do all or any of the following —

- (a) require the production of records, accounts, data and documents kept by a licensed certification authority and to inspect, examine and copy any of them;
- (b) require the production of any identification document from any person in relation to any offence under this Order or any regulations made thereunder;
- (c) make such inquiry as may be necessary to ascertain whether the provisions of this Order or any regulations made thereunder have been complied with.

General penalties.

56. Any person guilty of an offence under this Order or any regulations made thereunder for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 6 months or both.

Sanction of Public Prosecutor.

57. No prosecution in respect of any offence under this Order or any regulations made thereunder shall be instituted except by or with the sanction of the Public Prosecutor.

Jurisdiction of Courts.

58. A Magistrate's Court shall have jurisdiction to hear and determine all offences under this Order and any regulations made thereunder and, notwithstanding anything to the contrary in any other written law, shall have power to impose the full penalty or punishment in respect of any such offence.

Composition of offences.

59. (1) The Controller may, in his discretion, compound any offence under this Order or any regulations made thereunder which is prescribed as being an offence which may be compounded by collecting from any person reasonably suspected of having committed that offence a sum not exceeding \$5,000.

(2) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may make regulations prescribing the offences which may be compounded under this Order.

Power to exempt.

60. Notwithstanding anything contained in this Order or in any other written law, the Minister may exempt, subject to such terms and conditions as he thinks fit, any person or classes of person from all or any of the provisions of this Order or any regulations made thereunder.

Regulations.

61. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to prescribe anything which is required to be prescribed under this Order and generally for the carrying out of the provisions of this Order.

(2) Any regulations made under this Order may make different provision for different cases or classes of case and for different purposes of the same provision.

Savings and transitional.

62. (1) Where a certification authority has been carrying on or operating as a certification authority before the date of commencement of this Order and it has obtained a licence in accordance with the regulations made under section 42 within 6 months after that date, all certificates issued by such certification authority before the date of commencement of this Order, to the extent that they satisfy the requirements of this Order or any regulations made thereunder, shall be deemed to have been issued under this Order by a licensed certification authority and shall have effect accordingly.

(2) In this section, references to the date of commencement of this Order are to the date of commencement of the main substantive provisions of this Order.

Amendment of Law Revision Act (Chapter 1).

63. The Law Revision Act is amended, in section 4, by inserting "electronic or" immediately after "in" in the first line.

Amendment of Interpretation and General Clauses Act (Chapter 4).

64. The Interpretation and General Clauses Act is amended —

(a) in subsection (1) of section 3, by inserting, in the definition of "*Gazette*" or "*Government Gazette*", "in electronic or other form" immediately after "published" in the second line;

(b) in section 3, by adding the following new subsection —

"(20) Where a *Gazette* is published in more than one form, the date of publication shall be deemed to be the date on which that *Gazette* was first published in any form.";

(c) by adding to paragraph (a) of section 13 the following new sub-paragraph —

"(iv) authority to provide for the manner and method in which any document, record, application, permit, approval or licence may be submitted, issued or served by electronic means, or for the authentication thereof;".

Amendment of Evidence Act (Chapter 108).

65. The Evidence Act is amended by re-numbering section 67 as subsection (1) of that section, and by adding the following new subsection —

"(2) This section shall not apply to any electronic record or electronic signature to which the Electronic Transactions Order, 2000 applies".

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Made this 23rd. day of Syaaban, 1421 Hijriah corresponding to the 20th. day of November, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 94

**LEGAL PROFESSION ACT
(CHAPTER 132)**

LEGAL PROFESSION (PUPILLAGE) RULES, 2000

In exercise of the powers conferred by section 65 of the Legal Profession Act, the Chief Justice, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Rules —

Citation and commencement.

1. These Rules may be cited as the Legal Profession (Pupillage) Rules, 2000 and shall commence on 1st. January, 2001.

Interpretation.

2. In these Rules, unless the context otherwise requires —

"qualified person" means a qualified person, as defined in section 3 of the Act, who became a qualified person on or after 1st. January, 2000.

Period of pupillage.

3. (1) For the purposes of these Rules, a qualified person shall, during his period of pupillage, be known as a pupil. The person with whom a pupil serves his period of pupillage or any part thereof, shall be known as a master.

(2) A qualified person shall, before he is admitted as an advocate and solicitor under the Act, serve a period of pupillage.

(3) Subject to rule 4, the period of pupillage shall be 9 months.

(4) The period of pupillage shall be completed within 18 months of the date of the commencement thereof.

(5) No qualified person shall, without the permission in writing of the Chief Registrar, hold any office or engage in any employment of whatsoever kind, whether full-time or otherwise, during his period of pupillage, other than the pupillage itself.

(6) Notwithstanding sub-rule (5), a pupil may receive remuneration from his master.

Service of pupillage.

4. (1) Subject to sub-rules (3), (4), (5) and (6), a pupil shall serve his period of pupillage with a qualified person who has been in active practice in Brunei Darussalam for an aggregate period of not less than 7 years.

Provided that the Chief Registrar may, in a particular case, allow a pupil to serve his period of pupillage with a master who has been a qualified person for less than 7 years.

(2) A pupil may serve different parts of his period of pupillage with different masters.

(3) The Chief Registrar may exempt a qualified person from any part of his pupillage, not exceeding 6 months, upon application made to him supported by satisfactory evidence that —

- (a) there are special circumstances justifying a shortening of the period of pupillage;
- (b) the applicant has, for a period of not less 6 months, been a pupil of a master who had been a practising barrister-at-law of the England or Northern Ireland, of a member of the Faculty of Advocates of Scotland or of an advocate and solicitor in Singapore or any part of Malaysia, in active practice for a period of more than 7 years;
- (c) the applicant is or has been a solicitor in England or Northern Ireland or a Writer of the Signet, law agent or solicitor in Scotland; or
- (d) the applicant has been engaged for not less 6 months in practice as a legal practitioner, by whatever name called, in any part of any country or territory in the Commonwealth.

(4) A qualified person who has served in the Attorney General's Chambers or in the Judiciary for an aggregate period of 7 years shall be exempt from serving any period of pupillage.

(5) The Chief Registrar may exempt a qualified person who has served in the Attorney General's Chambers or in the Judiciary for an aggregate period of at least 3 years from any period of pupillage not exceeding 6 months.

(6) A qualified person who has been in active practice in any part of the United Kingdom, Singapore, any part of Malaysia or in any part of any country or territory in the Commonwealth for not less 7 years shall be exempt from serving any period of pupillage.

Appeal.

5. An appeal shall lie to the High Court against any refusal of the Chief Registrar to grant an exemption under these Rules.

18th. DECEMBER, 2000

Made this 3rd. day of Ramadan, 1421 Hijriah corresponding to the 30th. day of November, 2000.

DATO SERI PADUKA SIR DENYS ROBERTS
CHIEF JUSTICE
BRUNEI DARUSSALAM.