

No. S 60

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

PAWNBROKERS ORDER, 2002

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FIRST SCHEDULE

SECOND SCHEDULE

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

PAWNBROKERS ORDER, 2002

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, commencement and long title.

1. (1) This Order may be cited as the Pawnbrokers Order, 2002 and shall commence on such date or dates as to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to regulate the business of pawnbrokers in accordance with *Hukum Syara'*".

Interpretation.

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

"*Hukum Syara'*" means the laws of any sects which the court considers valid;

"licence" means a licence for the business of pawnbroker granted under this Order;

"licensing officer" means the licensing officer appointed under section 7;

"Minister" means the Minister responsible for finance;

"pawnbroker" means any person who, under a valid licence, carries on the business of receiving articles from pawners as security and grants them loans under the provisions of this Order;

"pawner" means a person who delivers an article to a pawnbroker as security for getting loan thereon.

(2) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act (Chapter 4), shall have

the same meanings respectively assigned thereto in that Act to the extent that they do not conflict with *Hukum Syara'*.

(3) If any conflict or doubt arises when interpreting any word or expression relating to *Hukum Syara'*, it shall be the discretion of the Syariah Courts to decide the meaning of such word or expression.

Text in Malay language shall prevail.

3. If any conflict or doubt arises as to the meaning or requirement of any provision under this Order, the text in the Malay language shall prevail.

Saving of prerogative.

4. Nothing contained herein shall derogate from or affect the prerogative rights and powers of His Majesty the Sultan and Yang Di-Pertuan as the Head of the Religion of Brunei Darussalam.

Application.

5. This Order shall apply to all persons whether or not professing the Islamic religion.

Exclusive jurisdiction of Syariah Courts.

6. For the avoidance of doubt, it is hereby declared that no court, other than a court established under Part II of the Syariah Courts Act (Chapter 184), shall hear or determine any claims or proceedings under the jurisdiction of the Syariah Courts.

Appointment of licensing officer.

7. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint a public officer to be the licensing officer for the purposes of this Order.

(2) The licensing officer shall be responsible generally for carrying out the provisions of this Order and for the collection of fees.

Grant of licence.

8. (1) Any person may, on payment of an application fee of \$100, apply to the licensing officer for a licence under this Order.

(2) The licensing officer may grant a licence on such conditions and terms as he thinks fit to carry on the business of a pawnbroker.

(3) Licences shall be granted annually and a fee of \$1,000 shall be charged for every licence.

(4) An appeal shall lie to the Minister from the decision of the licensing officer under this section.

No person to carry on business of pawnbroker without licence.

9. No person shall carry on the business of a pawnbroker unless he is the holder of a licence.

Revocation of licence.

10. (1) The licensing officer may revoke any licence without giving a reason, but such revocation shall not effect the obligations and liabilities of the pawnbroker under this Order prior to the revocation.

(2) Where a revocation has been made, the licensee shall cease to carry on the business of a pawnbroker.

(3) Subsection (2) shall not prejudice the enforcement by any person of any right or claim against or by the pawnbroker of any right or claim against any person arising out of or concerning any matter or thing done prior to the revocation of the licence.

(4) An appeal shall lie to the Minister from the decision of the licensing officer under this section.

Pawn agreement.

11. Any pawnbroker who receives a valuable article from a pawner by way of security and grants him a sum of money as a loan ensuring the repayment of the loan or any part thereof from such article and undertakes to transfer such article to the pawner on the repayment of the loan and other dues shall be deemed to have made an agreement of pawn under this Order.

Pawnbroker to give pawn-ticket.

12. A pawnbroker shall on taking an article in pawn give to the pawner a pawn-ticket, and shall not take an article in pawn unless the pawner takes the pawn-ticket as set out in Form 1 in the Second Schedule.

Amount of loan and redemption period.

13. The amount of the loan shall not exceed \$5,000 in respect of any one article and shall be redeemable within a period of one year from the day of pawning, either in a lump sum or by instalments.

Record of pawn agreements.

14. The pawnbroker shall keep proper record of all agreements relating to the articles pawned with him under this Order.

General obligations of pawnbroker.

15. Every pawnbroker shall —

(a) before taking any articles in pawn, enter clearly and legibly in a book to be kept and signed by him in the form as set out in Form 2 in the Second Schedule;

(b) obtain the signature of the pawner, the owner (if any) and the surety (if any) against the particulars entered under paragraph *(a)*;

(c) on demand by any police officer at any time produce for examination all books kept by him for the purposes of his business.

Safe-keeping of article pawned.

16. The pawnbroker shall keep the article pawned in such manner that it shall not be diminished in value by or through his neglect, default or wilful misbehaviour.

Pawnbroker premises to be conspicuously marked.

17. Every pawnbroker shall keep affixed in a conspicuous place in his premises a board bearing the words "Licensed Pawnbroker" in the Malay and English languages.

Administrative expenses and fees for safe-keeping.

18. (1) The pawnbroker may, in addition to the amount of the loan, receive from the pawner at the rates specified in the First Schedule as administrative expenses and as a fee incurred in respect of the safe-keeping of the article pawned and the matters related thereto, and shall give the pawner a receipt of payment therefor.

{2} Every pawnbroker shall keep affixed in a conspicuous place in his premises, a legible copy in the Malay and English languages of the rates of the administrative expenses and the fees for safe-keeping that he may lawfully receive under this Order.

Responsibilities of pawnbroker.

19. (1) No pawnbroker shall —

(a) take any article in pawn from any person who appears to be intoxicated or incapable;

(b) purchase or take in pawn or exchange a pawn-ticket issued by another pawnbroker;

(c) suffer any article while in pawn with him to be redeemed with the intention of his purchasing it;

(d) make any agreement with any person pawning or offering to pawn any article or with the owner thereof for the purchase, sale or disposition thereof within the time of redemption;

(e) sell, pawn or otherwise dispose of any article pawned with him except at such time and in such manner as authorised by this Order; or

(f) under any pretence, purchase (except at auction) any article while in pawn with him.

{2} In this section, "incapable" includes any child who has not attained the age of *baligh*, any person who is insane or mentally ill and any person who is forbidden to handle his own property in accordance with *Hukum Syara'*.

Articles offered for pawn in suspicious circumstances.

20. If any person in suspicious circumstances offers any article in pawn to a pawnbroker, or if any person without having a valid pawn-ticket attempts to redeem a pledge and the pawnbroker has reason to suspect such attempt, it shall be the duty of such pawnbroker to make reasonable inquiries concerning the person and such articles or pawn-ticket, and such pawnbroker shall thereupon report the matter to the police.

Liabilities of pawnbroker.

21. (1) The pawnbroker shall not be liable for the loss or damage caused to the article pawned unless caused by his neglect, default or wilful behaviour.

(2) The pawnbroker shall be liable for the loss or damage caused to the article pawned due to his neglect, default or wilful misbehaviour, and the pawner has the right to claim the amount of loss from the pawnbroker by deducting it from the amount of the loan and other dues liable to be paid by the pawner under this Order.

(3) The pawnbroker shall return the article pawned to the pawner as soon as he receives the amount of the loan and other dues under this Order.

Application to executors etc. of pawnbrokers.

22. The provisions of this Order relating to pawnbrokers shall extend to and include the executors or administrators of a deceased pawnbroker, except that an executor or administrator of his estate shall not be personally liable for any penalty or forfeiture, unless it was due to his neglect, default or wilful misbehaviour.

Profits and benefits.

23. The pawner is entitled to the profits and benefits derived from the article pawned.

Prohibition on disposal or retaking article pawned.

24. (1) The pawner shall not be entitled to sell or give away the article pawned or retake it or make it *waqaf am* or *waqaf khas* before the repayment of the amount of loan and other dues liable under this Order.

(2) In this section —

"*waqaf am*" means a dedication in perpetuity of the capital or income of property for religious or charitable purpose recognised by *Hukum Syara'*, and the property so dedicated;

"*waqaf khas*" means a dedication in perpetuity of the capital of property for religious or charitable purposes recognised by *Hukum Syara'*, and the property so dedicated, the income of the property being paid to persons or for purposes prescribed in the *waqaf*.

Extension of rights, powers and benefits.

25. The rights, powers and benefits conferred by this Order on a pawner shall be deemed to be conferred on the assignee of a pawner and on the executors and administrators of a deceased pawner:

Provided that any such person shall produce to the pawnbroker the assignment, probate or letters of administration of the estate, or other instrument under which he so claims.

Loss of pawn-ticket.

26. Any person claiming to be the owner of a pawned article who is unable to produce the pawn-ticket may make an affirmation and thereupon such person shall have as between himself and the pawnbroker the same rights and remedies as if he produced the pawn-ticket.

Failure to repay loan.

27. (1) Subject to subsection (2), if the pawner fails to repay the loan after the expiry of 6 months from the period of one year mentioned in section 13, the pawnbroker shall, with the approval of the Court, sell or auction the article pawned, on giving the pawner and the public reasonable notice of the sale or auction, or shall dispose of it in such other manner and upon such conditions as the court may approve.

(2) If the proceeds of the sale or auction referred to in subsection (1), are less than the amount due to the pawner, the pawner is still liable to pay the balance. If the proceeds of the sale or auction are greater than the amount so due, the pawnbroker shall pay over surplus to the pawner subject to subsection (1) of section 18.

(3) In this section, "Court" means the Syariah Subordinate Courts, the Syariah High Court or the Syariah Appeal Court, as the case may be, established under subsection (1) of section 6 of the Syariah Courts Act (Chapter 184).

Auctions in respect of unredeemed articles.

28. (1) Auctions in respect of unredeemed articles shall be held not less than 4 times in each year at a place and on a date to be fixed by the Minister or any person authorised by him in writing.

(2) Every pawnbroker shall, at least 7 days before such auction, post in a conspicuous place or advertise in a newspaper circulating in Brunei Darussalam a list of pawned articles which it is intended to auction, and such articles shall be

publicly exhibited for at least 3 days before the auction at a police station or other place appointed by the Minister or any person authorised by him in writing.

(3) Every pawnbroker shall, within 7 days of the date of such auction, send a statement showing the results of such auction to the Commissioner of Police, who shall cause the statement to be displayed in a place easily accessible to the public.

(4) Every pawnbroker shall maintain a book of unredeemed articles, which shall be as set out in Form 3 in the Second Schedule.

Police to give information to pawnbrokers as to stolen property.

29. (1) Information as to property lost, stolen or otherwise fraudulently disposed of shall be given by the Commissioner of Police as soon as possible after such loss or fraud, to all pawnbrokers with lists and descriptions of the same.

(2) If any property answering to such lists and descriptions is in the possession of any pawnbroker or is thereafter offered or shown to any pawnbroker, he shall forthwith give information to that effect to the nearest police station or to any police officer together with the name and address of the person in whose possession such property was last seen.

Power of search.

30. Any police officer may enter any pawnbroker's business place at any time during business hours and may search without warrant the house or business place or premises of such pawnbroker for any articles that he may have reason to suspect to be therein and to have been dishonestly obtained or dishonestly placed there, and to search for and examine the books of the pawnbroker and to take extracts and copies therefrom.

Penalty.

31. (1) Any pawnbroker or pawner who wilfully gives false information, makes any fraudulent statement in any matter relating to the agreement of pawn or contravenes any of the provisions of this Order shall be guilty of an offence.

(2) Any pawnbroker who, contrary to this Order or any rules made hereunder —

(a) does any act or thing which he is forbidden to do; or

(b) fails to do any act or thing which he is directed to do,

shall be guilty of an offence.

(3) Any person guilty of an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding \$10,000 and to imprisonment for a term not exceeding 3 years.

***Hukum Syara'* shall apply if no other provision.**

32. (1) Any provision or the interpretation of any provision in this Order which is inconsistent with *Hukum Syara'* shall be invalid to the extent it is so inconsistent.

(2) On any matter which is not expressly provided for in this Order or in any rule made thereunder, the Court shall follow *Hukum Syara'*.

Amendment of Schedules.

33. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette* amend the First and Second Schedules.

Rules.

34. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules prescribing —

(a) the form and the terms and conditions of granting a licence;

(b) the procedure of the business of pawnbrokers;

(c) the manner in which sales or auctions under this Order are to be conducted;

(d) generally for the carrying into effect of the objects and purposes of this Order, including such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Transitional.

35. (1) Any licence issued to any pawnbroker under the Pawnbrokers Act (Chapter 63) (repealed by this Order) before the date of commencement of the principal provisions of this Order and which is still in force on that date shall have effect as if it has been issued under this Order.

(2) Any pawnbroking transaction entered into before the date of commencement of the principal provisions of this Order shall continue in

accordance with and to be bound by the provisions of the Pawnbrokers Act (Chapter 63) (repealed by this Order).

Amendment of Chapter 106.

36. The Contract Act is amended —

(a) by deleting the heading "BAILMENTS OF PLEDGES" where it appears immediately before section 125;

(b) by repealing sections 125 to 132.

Repeal of Chapter 63.

37. The Pawnbrokers Act (Chapter 63) and all subsidiary legislation made thereunder is hereby repealed.

FIRST SCHEDULE

section 18(1)

Administrative expenses and fees for safe-keeping —

Upon any loan not exceeding \$1,000	-	4% of the amount of the loan
Upon any loan not exceeding \$3,000	-	4½% of the amount of the loan
Upon any loan not exceeding \$5,000	-	5% of the amount of the loan

SECOND SCHEDULE

FORM 1

section 12

PAWN-TICKET

No. surat gadai:	Nama/alamat pemegang pajak gadai:
<i>Pawn ticket no.</i>	<i>Name/address of pawnbroker</i>
Tarikh gadaian:	
<i>Date of pawn</i>	
Tarikh penebusan:	
<i>Date of redemption</i>	
Nama penggadai:	
<i>Name of pawner</i>	
No./warna Kad Pengenalan:	
<i>No./colour of Identity Card</i>	
Jumlah pinjaman:	
<i>Amount of loan</i>	
Jumlah perbelanjaan pentadbiran & bayaran bagi penyimpanan dengan selamat:	
<i>Amount of administrative expenses and fees for safe-keeping</i>	
Barang gadaian & keadaannya:	
<i>Pawned article and its condition</i>	
.....
Tandatangan penggadai	Tandatangan dan cap pemegang pajak gadai
<i>Signature of pawner</i>	<i>Signature and chop of pawnbroker</i>

FORM 2

section 15(a)

PAWN-BOOK

BUTIR-BUTIR PENGADAI PARTICULARS OF PAWNER	
1	Nama <i>Name</i>
2	Nombor/warna Kad Pengenalan <i>Number/colour of Identity Card</i>
3	Alamat <i>Address</i>
4	Tandatangan <i>Signature</i>

FORM 2 – (continued)

BUTIR-BUTIR PEMILIK, JIKA LAIN DARIPADA PENGGADAI <i>PARTICULARS OF OWNER, IF DIFFERENT FROM PAWNER</i>	
5	Nama <i>Name</i>
6	Nombor/warna Kad Pengenalan <i>Number/colour of Identity Card</i>
7	Alamat <i>Address</i>
8	Tandatangan <i>Signature</i>
BUTIR-BUTIR PENJAMIN <i>PARTICULARS OF SURETY</i>	
9	Nama <i>Name</i>
10	Nombor/warna Kad Pengenalan <i>Number/colour of Identity Card</i>
11	Alamat <i>Address</i>
12	Tandatangan <i>Signature</i>
BUTIR-BUTIR BARANG GADAIAN <i>PARTICULARS OF ARTICLES</i>	
13	Nombor gadaian <i>Number of pawn</i>
14	Tarikh gadaian <i>Date of pawn</i>
15	Jumlah pinjaman <i>Amount of loan</i>
16	Keadaan barang gadaian <i>Condition of article</i>
17	Jumlah perbelanjaan pentadbiran dan bayaran bagi penyimpanan dengan selamat <i>Amount of administrative expenses and fees for safe-keeping</i>
18	Tarikh penebusan <i>Date of redemption</i>

FORM 3

section 28(4)

BOOK OF UNREDEEMED ARTICLES

No. gadaian /nama penggadai <i>No. of pawn/ name of pawner</i>	No. KP <i>IC No.</i>	Tarikh gadaian <i>Date of pawning</i>	Keadaan barang gadaian <i>Condition of article</i>	Jumlah pinjaman <i>Amount of loan</i>	Jumlah perbelanjaan pentadbiran dan bayaran bagi penyimpanan dengan selamat <i>Amount of administration, expenses and fees for safe- keeping</i>	Tarikh notis mengenai jualan/lelongan <i>Date of notice of sales/auction</i>	Tarikh jualan/ lelongan <i>Date of sale/ auction</i>	Jumlah barang jualan/ lelongan <i>Amount of article sold/ auctioned</i>	Lebihan jumlah yang terhutang <i>Surplus of amount due</i>

Made this 7th. day of Ramadan, 1423 Hijriah corresponding to the 12th. day of November, 2002 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM