

No. S 13

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

EVIDENCE ACT (AMENDMENT) (NO. 2) ORDER, 2006

ARRANGEMENT OF SECTIONS

Section

1. Citation.
2. Application.
3. Amendment of section 3 of Chapter 108.
4. Amendment of section 32.
5. Amendment of section 35A.
6. Insertion of new section 35C.
7. Amendment of section 60.
8. Insertion of new section 60A.
9. Amendment of section 62.
10. Amendment of section 63.
11. Insertion of new section 68A.
12. Insertion of new section 78A.
13. Amendment of section 83.
14. Amendment of section 90.
15. Repeal of section 113.
16. Substitution of section 123.
17. Addition of new Chapter XIII.
18. Repeal of Chapter 107.

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

EVIDENCE ACT (AMENDMENT)(NO. 2) ORDER, 2006

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

Citation.

1. This Order may be cited as the Evidence Act (Amendment) (No. 2) Order, 2006.

Application.

2. This Order applies to all proceedings, including proceedings instituted before the commencement of this Order.

Amendment of section 3 of Chapter 108.

3. Section 3 of the Evidence Act, in this Order referred to as the Act, is amended —

(a) by deleting the definition of "document" and by substituting the following new definition therefor —

"document" means any matter expressed, described or howsoever represented upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, soundtrack or other device whatsoever, by means of —

- (a) letters, figures, marks, symbols, signals or other forms of expression, description or representation whatsoever;
- (b) any visual recording (whether of still or moving images);
- (c) any sound recording or any electronic, magnetic, mechanical or other recording, whatsoever and howsoever made, or any sound, electronic impulse or other data whatsoever;
- (d) a recording or transmission of the means mentioned in paragraph (a), (b) or (c), or by more than one of the means mentioned in paragraph (a), (b), (c) or (d), intended to be used or which may be used for the purpose of expressing, describing or howsoever representing that matter;

Illustrations

A writing is a document.

Words printed, lithographed or photographed are documents.

A map, plan, graph or sketch is a document.

An inscription on wood, metal, stone or any other substance, material or thing is a document.

A photograph or a negative is a document.

A tape recording of a telephonic communication, including a recording of such communication transmitted over distance is a document.

A photographic or other visual recording, including a recording of photographic or other visual transmission over a distance is a document.

A matter recorded, stored, processed, retrieved or produced by a computer is a document.";

(b) by adding the following three new definitions —

"film" includes a microfilm and any negative;

"microfilm" means any transparent material bearing a visual image in reduced size either singly or as a series, and includes microfiche;

"negative" means a transparent negative photograph on any substance or material, and includes any transparent negative photograph made from the original negative photograph."

Amendment of section 32.

4. Section 32 of the Act is amended —

(a) by inserting "(1)" immediately before "Statements" in the first line;

(b) by substituting a semicolon for the fullstop at the end of paragraph *(h)* and by inserting the following new paragraph immediately thereafter —

(i) when the statement was made in the course of, or for the purposes of, any investigation or inquiry into an offence under or by virtue of any written law; and such statement was made by a public officer in the discharge of his duties.";

(c) by adding the following new subsection —

"(2) The provisions of paragraph (i) shall apply only in relation to a criminal proceeding."

Amendment of section 35A.

5. Section 35A is amended, in subsection (1), by deleting "computere" from the second line and by substituting "computer" therefor.

Insertion of new section 35C.

6. The Act is amended by inserting the following new section immediately after section 35B —

"Sections 35A and 35B to prevail over the provisions of Act and any written law.

35C. The provisions of sections 35A and 35B shall prevail and have full force and effect notwithstanding anything inconsistent therewith or contrary thereto contained in this Act or in any other written law relating to certification, production, admission or proof of evidence in any criminal or civil proceeding."

Amendment of section 60.

7. Section 60 of the Act is amended, in subsection (3) —

(a) by deleting "other than" from the second line and by substituting "including" therefor;

(b) by inserting "or other document" immediately after "thing" in the last line.

Insertion of new section 60A.

8. The Act is amended by inserting the following new section immediately after section 60 —

"Evidence through live video or live television links.

60A. (1) Notwithstanding any other provision of this Act, a person may, with leave of the court, give evidence through a live video or live television link in any proceedings if the court is satisfied that it is expedient in the interests of justice to do so.

(2) The court may, in granting leave under subsection (1), make an order on all or any of the following matters —

(a) the persons who may be present at the place where the witness is giving evidence;

(b) that a person be excluded from the place while the witness is giving evidence;

(c) the persons in the courtroom who must be able to be heard, or seen and heard, by the witness and by the persons with the witness;

(d) the persons in the courtroom who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;

(e) the persons in the courtroom who must be able to see and hear the witness and the persons with the witness;

(f) the stages in the proceedings during which a specified part of the order is to have effect;

(g) any other order the court considers necessary in the interests of justice.

(3) Evidence given by a witness, whether in Brunei Darussalam or elsewhere, through a live video or live television link by virtue of this section or of any other written law shall be deemed for the purposes of sections 193, 194, 195, 196, 199 and 209 of the Penal Code (Chapter 22) as having been given in the proceedings in which it is given.

(4) Where a witness gives evidence in accordance with this section or any other written law, he shall, for the purposes of this Act, be deemed to be giving evidence in the presence of the court."

Amendment of section 62.

9. Section 62 of the Act is amended by inserting the following new *Explanation* immediately after *Explanation 2* —

"*Explanation 3* — A document produced by a computer is primary evidence."

Amendment of section 63.

10. Section 63 in the Act is amended, in paragraph (e), by deleting "it" and by substituting "or heard it or perceived it by whatever means" therefor.

Insertion of new section 68A.

11. The Act is amended by inserting the following new section immediately after section 68 —

"Manner of giving voluminous or complex evidence.

68A. (1) Evidence may be given in the form of charts, summaries, computer output or other explanatory material if it appears to the court that —

(a) the material would be likely to aid the court's comprehension of other evidence which is relevant and admissible according to the provisions of this Act or any other written law; and

(b) the evidence that is to be given by any party is so voluminous or complex that the court considers it convenient to assess the evidence by reference to such material.

(2) Any fact or opinion asserted in any material referred to in subsection (1) shall be proved by relevant and admissible evidence, and if such fact or opinion is one that is admissible only on the proof of some other fact or opinion, such last-mentioned fact or opinion must be proved before evidence is given of the first-mentioned fact or opinion, unless the party so asserting undertakes to give proof of such fact or opinion and the court is satisfied with such undertaking.

(3) In any proceedings where any material referred to in subsection (1) is adduced in evidence, the court may —

(a) direct the party to provide such material in any form, including the computer output;

(b) require the provision of such material or a copy thereof, including the identity and address of the person who prepared the material, to the other parties; and

(c) specify a period within which such material or a copy thereof shall be provided to all parties to the proceedings."

Insertion of new section 78A.

12. The Act is amended by inserting the following new section immediately after section 78 —

"Certificate in criminal proceedings in respect of foreign documents.

78A. (1) Any document purporting to be signed by the Attorney General certifying that any foreign document attached thereto has been received by him in connection with any criminal proceedings shall be admitted in evidence in those proceedings together with the document attached thereto on production, without further proof, as *prima facie* evidence of the facts contained in such documents.

(2) In this section, "foreign document" means a document purporting to be —

(a) a true copy or extract from —

- (i) any record, book or document of a public nature kept or maintained in any place outside Brunei Darussalam; or
- (ii) any document filed in or issued out of an office kept or maintained in any place outside Brunei Darussalam for the purpose (whether the sole purpose or not) of registering companies or business names or the ownership of property; and

(b) signed and certified as a true copy of or extract from any such record, book or document by a person having custody or control thereof.

(3) In relation to a document tendered in evidence under this section and purporting to be signed and certified as a true copy of or extract from any record, book or document by a person having custody or control thereof, it shall be presumed, unless the contrary is proved, that such record, book or document is —

(a) a record, book or document of a public nature kept or maintained in a place outside Brunei Darussalam; or

(b) a document filed in or issued out of an office kept or maintained in a place outside Brunei Darussalam for the purpose of registering companies or business names or the ownership of property,

if there is endorsed on the document a statement purporting to be signed by that person to that effect.

(4) Unless the court otherwise orders, a document shall not be admitted in evidence under this section unless 14 days notice in writing of the intention to tender such document in evidence, together with a copy

thereof and of the certificate under subsection (1) of the Attorney General in respect thereof, has been served —

(a) where the document is tendered by the prosecution, on the defendant (or, if more than one, on each defendant) or his counsel;

(b) where the document is tendered by a defendant, on the Public Prosecutor,

but nothing in this subsection shall affect the admissibility of a document in respect of which notice has not been served in accordance with the requirements of this subsection if no person entitled to be so served objects to its being so admitted."

Amendment of section 83.

13. Section 83 of the Act is amended by —

(a) deleting (1) immediately before "The" in the first line;

(b) repealing subsection (2).

Amendment of section 90.

14. Section 90 of the Act is amended by deleting "30" from the first line and by substituting "20" therefor.

Repeal of section 113.

15. Section 113 of the Act is repealed.

Substitution of section 123.

16. Section 123 of the Act is repealed and the following new section substituted therefor —

"Evidence as to affairs of State.

123. Notwithstanding any other law on the contrary, no one shall be permitted to produce any unpublished official records relating to affairs of State or any document in the possession of a Ministry or of a department of Government, or to give any evidence derived therefrom, except with the permission of the Permanent Secretary of the Ministry or the head of the department concerned, who shall give or withhold such permission as he

thinks fit, subject however to the control of the Minister concerned, and no court shall order the production of any such record or document until such permission has been obtained."

Addition of new Chapter XIII.

17. The Act is amended by adding the following new Chapter —

"Chapter XIII

Bankers' Records

Interpretation of this Chapter.

176. In this Chapter —

"bank" and "banker" mean any company carrying on the business of banking in Brunei Darussalam under a licence granted under any law relating to banking;

"banker's record" includes —

(a) any document or record received or used in the ordinary business of a bank; and

(b) any record so used which is kept otherwise than in a legible form and is capable of being reproduced in a legible form;

"Minister of Finance" includes the Permanent Secretary of the Ministry of Finance.

Copy of entry in banker's record.

177. (1) Subject to this section, a copy of any entry or matter recorded in a banker's record shall, on its production without further proof, be admitted in any proceedings as *prima facie* evidence of the matters, transactions and accounts therein recorded if —

(a) it is proved —

(i) that such entry was made or matter recorded in the ordinary course of business; and

(ii) that such record is in the custody or control of the bank; and

(b) except in the case of a copy made by any photographic process and subject to subsection (3), it is proved by some person who has examined the copy with the original entry, that the copy has been examined with the original entry and is correct.

(2) A bank or officer of a bank shall not, in any proceedings other than proceedings instituted by or against the bank, be compelled to produce any banker's record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions or accounts therein recorded, except —

(a) in civil proceedings, by order of a judge made for special cause;

(b) in criminal proceedings, by order of the court of trial.

(3) In the case of a banker's record kept by means of a computer, it shall not be necessary to prove the matters referred to in paragraph *(b)* of subsection (1) in relation to a document produced by the computer which is tendered in evidence under this section as a copy of a matter recorded therein if it is proved —

(a) that the document was so produced under the direction of a person having practical knowledge of and experience in the use of computers as a means of storing, processing or retrieving information;

(b) that during the period when the computer was used for the purpose of keeping such record, appropriate measures were in force for preventing unauthorised interference with the computer; and

(c) that during the period, and at the time that the document was produced by the computer, 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 document or the accuracy of its contents.

and in this subsection "computer" has the same meaning as in subsection (8) of section 35A.

(4) In any proceedings, the matters referred to in paragraphs *(a)* and *(b)* of subsection (1) and in paragraphs *(a)*, *(b)* and *(c)* of subsection (3) in relation to a banker's record may be proved, orally or by affidavit, by any officer of the bank, and any such affidavit shall, on its production without further proof, be admitted in evidence and may include an explanation of the contents of the copy of any entry or matter recorded in such banker's record which is tendered in evidence or any abbreviations, symbols or other markings appearing in such copy that may be relevant in the proceedings,

and a description of the banker's record, its nature and use, and the procedures followed in keeping it; and for the purposes of this subsection it shall be sufficient for a matter referred to in paragraph (a)(i) of subsection (1) or in paragraph (c) of subsection (3) to be stated in an affidavit to the best of the knowledge and belief of the person making the affidavit.

(5) In relation to any criminal proceedings, this section shall apply to any document or record used in the ordinary business of a body designated by the Minister of Finance under section 179 for the purposes of such criminal proceedings as it applies to a banker's record, and a reference in this section to a bank shall, in its application to such document or record, be construed as a reference to the body so designated.

Application of section 177 to banks that have ceased business.

178. (1) Section 177 shall apply to a copy of an entry or matter recorded in a record used in the ordinary course of business of a former bank which is tendered in evidence in criminal proceedings as it applies to a copy of an entry or matter recorded in a banker's record, but with the following modifications —

(a) paragraph (a)(ii) of subsection (1) thereof shall be construed as if for "the bank" there were substituted "any person duly authorised in that behalf or otherwise responsible for administering the affairs of the former bank"; and

(b) a reference therein to an officer of a bank shall, in relation to the former bank, be construed as a reference to any person who is, or is an officer of, a person responsible for administering the affairs of the former bank.

(2) Section 177 shall apply to a copy of an entry or matter recorded in a record used in the ordinary course of business of a body designated by the Minister of Finance under section 179 for the purposes of criminal proceedings which is tendered in evidence in those criminal proceedings as it applies to a copy of an entry or matter recorded in a banker's record, but with the following modifications —

(a) a reference therein to a bank shall be construed as a reference to any person responsible for administering the affairs of that body;

(b) a reference therein to an officer of a bank shall be construed as a reference to any person who is, or is an officer of, a person responsible for administering the affairs of that body.

(3) In subsection (1), "former bank" means a bank which is being or has been wound up or dissolved or has otherwise ceased to carry on the business of banking.

Certificate in criminal proceedings of designation of foreign bank.

179. (1) The Minister of Finance may, for the purposes of any criminal proceedings, designate any body formed or established outside Brunei Darussalam which carries on the business of banking outside Brunei Darussalam, and a certificate purporting to be signed by the Minister of Finance and certifying that any such body described therein has been designated by him under this section for the purposes of those proceedings shall, on its production without further proof, be admitted in those proceedings as *prima facie* evidence of the facts contained therein.

(2) The power conferred by subsection (1) may be exercised in respect of any body formed or established outside Brunei Darussalam notwithstanding that it is being or has been wound up or dissolved or has otherwise ceased to carry on the business of banking.

Court or judge may direct copies of entries in banker's record to be taken.

180. (1) On the application of any party to any proceedings, the court or a judge may order that such party be at liberty to inspect and take copies of any entries in a banker's record for any of the purposes of such proceedings.

(2) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank 3 clear days before the same is to be obeyed, unless the court or judge otherwise directs.

(3) The costs of any application to the court or judge under or for the purposes of this section, and the costs of anything done or to be done under an order of the court or judge made under or for the purposes of this section, shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by default or delay on the part of the bank.

(4) Any such order against a bank may be enforced as if the bank were a party to the proceedings."

Repeal of Chapter 107.

18. The Bankers' Books (Evidence) Act is repealed.

16th. FEBRUARY, 2006

Made this 13th. day of Muharam, 1427 Hijriah corresponding to the 12th. day of February, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM