

No. S 13

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

STAMP ACT (AMENDMENT) ORDER, 2013

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STAMP ACT (AMENDMENT) ORDER, 2013

In exercise of the power conferred by Article 83(3) 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 the Stamp Act (Amendment) Order, 2013 and shall commence on 1st April 2013.

**Application.**

2. This Order shall apply to every instrument which is chargeable with duty on or after the date of commencement of this Order.

**Amendment of section 2 of Chapter 34.**

3. Section 2 of the Stamp Act, in this Order referred to as the Act, is amended —

(a) in the definition of “banker”, by deleting “Banking Act (Chapter 95)” and by substituting “Banking Order, 2006 (S 45/2006) or Islamic Banking Order, 2008 (S 96/2008), as the case may be” therefor;

(b) by deleting the definition of “Chief Revenue Authority” and by substituting the following new definition therefor —

“ “Chief Revenue Authority” means the Permanent Secretary of the Ministry of Finance;”

(c) by deleting the definition of “duly stamped” and by substituting the following new definition therefor —

“ “duly stamped”, as applied to an instrument means —

(a) that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that stamp has been affixed in accordance with the provisions of this Act for the time being in force at the time of stamping; or

(b) that the instrument, if stamped using the E-Stamping system, has attached to it a stamp certificate issued for the instrument by the Collector in accordance with the provisions of this Act for the time being in force at the time of stamping;”;

(d) by inserting the following new definition immediately after the definition of “duty” —

“ “E-Stamping system” means the computer service established under section 4A;”;

(e) by deleting the definition of “impressed stamp” and by substituting the following new definition therefor —

“ “impressed stamp” means a stamp impressed by means of a die over an adhesive label by the proper officer or an impression made by the proper officer by any mechanical means indicating the payment of duty and the date of such impression;”;

(f) by inserting the following new definition immediately after the definition of “property” —

“ “proper officer” means a the Collector and such other officer as may be authorised by him to impress stamps or to issue stamp certificates;”;

(g) by inserting the following new definition immediately after the definition of “receipt” —

“ “registered person” means a person approved under section 4A to be a registered user of the E-Stamping system;”;

(h) by inserting the following new definition immediately after the definition of “ship or chinchew receipt” —

“ “stamp certificate” means a certificate that is issued electronically in respect of any instrument chargeable with duty denoting the amount of duty payable in respect of that instrument or that the duty otherwise chargeable in respect of that instrument is remitted;”.

### **Substitution of section 3.**

4. Section 3 of the Act is repealed and the following new section substituted therefor —

**“Instruments chargeable with duty.**

3. (1) Subject to this Act and any other written law, every instrument mentioned in the First Schedule, being an instrument —

(a) which, not having been previously executed by any person, is executed in Brunei Darussalam; or

(b) which is executed outside Brunei Darussalam, and relates to any property situated, or to any matter or thing done or to be done, in Brunei Darussalam, and is received in Brunei Darussalam,

shall be chargeable with duty of the amount specified in that Schedule as the proper duty for that instrument.

(2) All instruments chargeable with duty shall be duly stamped.”.

**Amendment of section 4.**

5. Section 4 of the Act is amended, in subsection (1), by adding “or by attaching to the instrument a stamp certificate relating to the instrument”.

**Insertion of new sections 4A and 4B.**

6. The Act is amended by inserting the following 2 new sections immediately after section 4 —

**“E-Stamping system.**

4A. (1) The Collector may establish or operate a computer service known as the E-Stamping system that enables a registered person, in accordance with the arrangements made under this section —

(a) to obtain an assessment of stamp duty (and any penalty) on an instrument;

(b) to pay stamp duty (and any penalty) on an instrument by electronic funds transfer in accordance with the assessment; and

(c) to stamp the instrument by attaching a stamp certificate to it which bears an authorisation number issued for the instrument and such other particulars as are determined by the Collector,

without the need for the instrument to be presented to the Collector or a proper officer in charge of the stamp office.

(2) Any person may apply to the Collector to register to use the E-Stamping system.

(3) The Collector may refuse an application made under subsection (2) or approve the registration of the applicant subject to such terms as he thinks fit.

(4) An approval may be amended at any time by agreement between the Collector and the registered person or by written notice given by the Collector to the registered person.

(5) An approval granted under subsection (3) shall remain in force until it is cancelled by the Collector or until the registered person surrenders the approval.

(6) The Collector may, by written notice, cancel an approval at any time for any reason.

(7) The Collector may, with the approval of His Majesty the Sultan and Yang Di-Pertuan —

(a) determine the information and particulars that may be electronically transmitted under the E-Stamping system, including the form and manner they are to be transmitted;

(b) determine the procedure for use of the E-Stamping system, including the procedure in circumstances where there is a breakdown or interruption in the computer service; and

(c) generally do such other things for the better provision of the computer service.

**Electronic assessment and stamping of instruments.**

4B. (1) For the purposes of this Act, the issue, using the E-Stamping system, of a stamp certificate for an instrument shall comprise an assessment of the duty (and any penalty) in relation to the instrument.

(2) A registered person must, on receipt of a stamp certificate issued for the instrument by the Collector, immediately attach the stamp certificate to the instrument.”.

**Substitution of section 31.**

7. Section 31 of the Act is repealed and the following new section substituted therefor —

**“Mode of adjudication as to proper duty.**

31. (1) Where any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector and the person bringing it applies to the Collector as to whether the instrument is chargeable with any duty and, if so, the amount of duty chargeable, the Collector shall adjudicate and assess the duty with which, in his opinion, the instrument is chargeable.

(2) Where the person seeks the opinion of the Collector under subsection (1) as to the amount of duty chargeable, he shall in making the application for adjudication set forth the value upon which in his opinion duty is chargeable.

(3) The person seeking the opinion of the Collector under subsection (1) as to the amount of duty chargeable shall pay an adjudication fee of \$25 and such fee shall remain payable notwithstanding that he subsequently withdraws his application for adjudication.

(4) For the purpose of the adjudication under subsection (1), the Collector may require any of the following —

*(a)* an abstract of the instrument;

*(b)* an affidavit setting out all the facts and circumstances affecting the liability of the instrument to duty or the amount of such duty;

*(c)* any other evidence which he considers necessary for the adjudication or determination of duty;

(5) The Collector may refuse to proceed upon any application under subsection (1) until such abstract and evidence have been furnished accordingly.

(6) No evidence furnished under this section shall be used against any person in any civil proceedings, except in an inquiry as to the duty with which the instrument to which it relates is chargeable.”.

**Amendment of section 32.**

8. Section 32 of the Act is amended —

*(a)* by repealing subsection (1) and by substituting the following new subsection therefor —

“(1) When an instrument brought to the Collector under section 31 is in his opinion one of a description chargeable with duty, and the Collector determines that it is already fully stamped, or the duty assessed by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so assessed, has been paid, the Collector shall certify by —

(a) endorsement on such instrument; or

(b) issuing and attaching to the instrument a certificate of adjudication,

stating that the full duty (stating the amount) with which it is chargeable, has been paid.”;

(b) by repealing subsection (3) and by substituting the following new subsection therefor —

“(3) Any instrument —

(a) upon which an endorsement has been made; or

(b) in respect of and to which a certificate of adjudication has been issued and attached,

under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse —

(a) any instrument executed or first executed in Brunei Darussalam and brought to him after the expiration of 14 days from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of Brunei Darussalam and brought to him after the expiration of 30 days after it has been first received in Brunei Darussalam; or

(c) any instrument chargeable with the duty of 4 cents or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped,

unless he shall be satisfied that the omission or neglect to stamp or to stamp sufficiently did not arise from any intention to evade payment of duty or otherwise to defraud.”.

**Repeal of section 37.**

9. Section 37 of the Act is repealed.

**Substitution of section 39.**

10. Section 39 of the Act is repealed and the following new section substituted therefor —

**“Stamping of instruments after execution.**

39. (1) Except where other express provision is made by this Act or any other written law, any unstamped or insufficiently stamped instrument may be stamped after the first execution thereof, subject to the following —

(a) where the instrument drawn or made within Brunei Darussalam is stamped within 14 days after it has been first executed in Brunei Darussalam or, if first executed outside Brunei Darussalam, within 30 days after it has been first received in Brunei Darussalam, on payment of the duty only;

(b) when the instrument is stamped within 3 months after such execution or receipt as mentioned in paragraph (a), on payment in addition to the duty of a penalty of \$10 or of the amount of deficient duty, whichever penalty is the greater;

(c) when the instrument is not stamped within 3 months after such execution or receipt as mentioned in paragraph (a), on payment in addition to the duty of a penalty of \$25 or 4 times the amount of deficient duty, whichever penalty is the greater.

(2) The Collector may, within 6 months after the execution of any instrument or its first receipt in Brunei Darussalam mitigate or remit any penalty.

**Substitution of section 41.**

11. Section 41 of the Act is repealed and the following new section substituted therefor —



**“Donating penalty.**

41. The payment of any penalty prescribed under section 39 shall be denoted —

(a) on the instrument concerned by an impressed stamp and certification by the Collector;

(b) by receipt issued by the Collector; or

(c) by notation on the stamp certificate relating to the instrument.”.

**Insertion of new section 43A.**

12. The Act is amended by inserting the following new section immediately after section 43 —

**“Examination and impounding of instruments.**

43A. (1) Any person having by law or consent of parties authority to receive evidence, and any person in charge of a public office, except a police officer, before whom any instrument, chargeable in his opinion with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For the purpose of subsection (1), any such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by any written law in force in Brunei Darussalam when such instrument was executed or first executed.

(3) Nothing in this section shall be deemed to require any Magistrate or Judge of a criminal court to examine or impound, if he does not think fit to do so, any instrument coming before him in the course of any criminal proceeding.

(4) In the case of a Judge of the Supreme Court, the duty of examining and impounding any instrument under this section shall be performed by the Registrar or Deputy Registrar of that Court.”.

**Substitution of section 44.**

13. Section 44 of the Act is repealed and the following new section substituted therefor —

**“Instruments not duly stamped inadmissible in evidence.**

44. (1) Subject to this section, no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or

consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless the instrument is duly stamped.

(2) Any instrument referred to in subsection (1) shall, subject to all just exceptions, be admitted in evidence on payment of the duty and the penalty, if any, chargeable in respect thereof under section 39.

(3) When a contract or agreement of any kind is effected by correspondence consisting of 2 or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped.

(4) Nothing in this section shall prevent the admission of any instrument in evidence —

(a) in any criminal court; or

(b) in any court when the instrument has been executed by or on behalf of the Government, or of any other government, country or territory, or where it bears the certificate of the Collector as provided by this Act.”.

**Insertion of new section 44A.**

14. The Act is amended by inserting the following new section immediately after section 44 —

**“Instruments impounded how dealt with.**

44A. (1) When the person impounding an instrument under section 43A has by law or consent of parties authority to receive evidence and admits the instrument in evidence on payment of duty and penalty, if any, he shall, as soon as may be convenient, send the instrument, together with the amount of the duty and penalty, if any, paid in respect thereof, to the Collector.

(2) The Collector shall stamp the instrument in accordance with section 39 and shall return it to the person who sent it to him.

(3) In every other case in which an instrument is impounded under section 43A, the person impounding the instrument shall send it immediately to the Collector.

(4) The Collector, on payment of the duty and penalty, if any, chargeable in respect thereof under section 39, shall stamp the instrument and shall return it to the person who sent it to him, but if such duty and penalty, if any, is not paid, he shall retain the instrument.”.

**Repeal of section 45.**

15. Section 45 of the Act is repealed.

**Insertion of new sections 45A and 45B.**

16. The Act is amended by inserting the following 2 new sections immediately after section 45 —

**“Recovery of duty and penalty.**

45A. (1) When any duty or penalty has been paid in respect of any instrument by any person, and by agreement or under the provisions of this Act or of any other written law in force at the time when the instrument was executed or first executed some other person was liable to pay the duty on the instrument, the first-mentioned person shall be entitled to recover from that other person the amount of the duty or penalty so paid.

(2) For the purpose of any recovery referred to in subsection (1), any certificate granted in respect of the instrument by the Collector shall be conclusive evidence as to the amount of the duty and penalty paid and the person by whom they were paid.

**Liability of any person to pay full duty or penalty unaffected by erroneous assessment.**

45B. The liability of any person to pay the full amount of duty or penalty due on any instrument shall not be affected by any erroneous or under assessment of that duty or penalty or the failure to assess that duty or penalty by the Collector, and the correct amount of duty or penalty due on the instrument shall be recoverable by the Collector.”.

**Amendment of section 49.**

17. Section 49 of the Act is amended —

(a) by inserting “(1)” immediately before “Subject” in the first line;

(b) by adding the following new subsection —

“(2) In this section and section 50, “stamp” includes a stamp certificate.”.

**Insertion of new section 66A.**

18. The Act is amended by inserting the following new section immediately after section 66 —

**“Penalties relating to stamp certificates etc.**

**66A.** Any person who —

*(a)* sells or offers for sale a stamp certificate or certificate of adjudication;

*(b)* fraudulently attaches a stamp certificate or certificate of adjudication to an instrument other than the instrument for which the stamp certificate or certificate of adjudication was issued;

*(c)* fraudulently detaches a stamp certificate or certificate of adjudication or fraudulently causes a stamp certificate or certificate of adjudication to be detached from an instrument;

*(d)* counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp certificate or certificate of adjudication issued by the Collector;

*(e)* sells or offers for sale any certificate which he knows or ought reasonably to know to be a counterfeit of any stamp certificate or certificate of adjudication issued by the Collector;

*(f)* has in his possession any certificate which he knows to be a counterfeit of any stamp certificate or certificate of adjudication, intending to use or dispose of it as a genuine stamp certificate or certificate of adjudication, or in order that it may be used as a genuine stamp certificate or certificate of adjudication; or

*(g)* uses as a genuine stamp certificate or certificate of adjudication, knowing it to be a counterfeit of any stamp certificate or certificate of adjudication,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.”.

**Amendment of section 85.**

19. Section 85 of the Act is amended by deleting “His Majesty in Council may” from the first line and by substituting “The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan,” therefor.

Made this 23rd. day of Rabiulakhir, 1434 Hijriah corresponding to the 6th. day of March, 2013 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM