

**ASEAN Law Association**

**25<sup>th</sup> Anniversary Special Commemorative Session**

**And**

**Meetings of the Governing Council and Standing Committee**

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**Manila, Philippines**

**CROSS-BORDER STATUTES AND OTHER MEASURES TO CURB**

**MONEY-LAUNDERING**

*A presentation by*

**BRUNEI DARUSSALAM**

## **PREAMBLE.**

The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam regards money-laundering , terrorist financing and transnational organized crimes as issues of major concerns both at the national and regional level. The fact that no evidence so far has been detected concerning abuse of its financial systems by money-laundering activities does not mean that Brunei is complacent in its commitment to root out any possible menace which threatens the stability of the domestic financial system. In its efforts to comply with its international commitment, Brunei has enacted several laws and is continuing to enact laws to strengthen its border security against all elements of transnational crimes such as, amongst others, illicit drug trafficking, terrorist financing, money-laundering and human trafficking and smuggling.

## **APPLICABILITY OF THE UNITED NATION CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME.**

In Brunei, International treaty or convention does not automatically become incorporated as law. Enabling legislation is required before such obligations can become domestic law. Although Brunei has yet to ratify the UN Convention Against Transnational Organized Crime, at the policy level,

consideration is being made to accede to the said convention. Towards that end, several legislations have been passed and existing legislations are being reviewed to fill in any legislative gaps which can render our laws falling short of international standards. Legislatively, Brunei Darussalam has already in place several domestic legislation embodying the principles of the said Convention.

## ○ **ANTI-TRAFFICKING AND SMUGGLING OF PERSONS**

### **ORDER 2004**

As one of the steps taken towards ratification of the UN Convention Against Transnational Organized Crime, the 'Anti-Trafficking and Smuggling of Persons Order 2004' came into force in December 2004. This Order, which penalizes the act of people trafficking and people smuggling with harsh punishments, such as maximum fines of B\$1,000,000 and maximum imprisonment of 30 years, is testimonial to Brunei's commitment to combat the crimes of people smuggling and trafficking especially in women and children. In trying to address issues of affording more protection to victims, the Order provide for the setting up of a fund which will assist in paying out compensation that may be sought by victims. A special National Press Conference, hosted by the Ministry of Home Affairs was intended to raise

public awareness of trafficking and smuggling of person offences under the Order. Apart from highlighting Brunei Darussalam's commitment in preventing and suppressing the issues of human trafficking and smuggling, this Order also ensures that Brunei is not a destination or transit point for human trafficking.

Attorney-General's Chambers has also been actively hosting several seminars and workshops as part of its contributing efforts to promote awareness and understanding of this issue.

Prior to the enactment of this relatively new piece of legislation, Brunei Darussalam already has in place several patchwork provisions dealing with trafficking and smuggling of persons in various other legislations such as the Women and Young Girls Protection Act , the Children Order 2000, Minor Offences Act, cap 30 and the Penal Code, cap 22.

#### ○ **MUTUAL LEGAL ASSISTANCE**

Brunei is a party to the Mutual Legal Assistance Treaty (MLAT) which was signed on the 29<sup>th</sup> of November 2004. Under this bilateral treaty, parties

agree to render to each other the widest possible measures of mutual legal assistance in criminal matters.

The enabling legislation, Mutual Assistance in Criminal Matters Order 2005 has been enacted and gazetted in March 2005. This Order enables Brunei Darussalam to facilitate the provision and obtaining of mutual legal assistance to and from other countries in criminal matters and related purposes, including but not restricted to:-

- a) the obtaining of evidence, documents, articles or other things;
- b) the making of arrangements for persons, including detained persons, to give evidence or assist an investigation,
- c) the confiscation of property in respect of an offence,
- d) the service of documents,
- e) the identification and location of persons,
- f) the execution of requests for search and seizure, and
- g) the provisions of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records.

This provisions of the Order is applicable subject to any treaty entered into by Brunei and another Country or parties. It also does not prevent the provision or obtaining of international assistance in criminal matters top or

from the International criminal Police (Interpol) and any other international organization.

For this purpose, the Attorney-General's Chambers has set up within its Chambers, the Mutual Assistance in Criminal Matters Secretariat to consider and deal with requests made from other jurisdictions.

### ○ **EXTRADITION**

The current Extradition Act, cap 8 dates back to 1915, the latest edition being in 1984. Under that Act, extradition is based upon the existence of extradition treaty with foreign states which are specified in the Order whereas the extraditable offences are limited to those listed under Schedule 2 of the Act. Exception to this list are offences found under the Emergency ( Hijacking and Protection of Aircraft) Order 2000 and for offences under the Convention for the Suppression of Unlawful Seizure of Aircraft or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, where these two Conventions are treated as treaty for the purpose of extradition in the absence of a treaty existing between Brunei and another State Party.

Brunei also has the Summons and Warrants (Special Provisions) Act which enables any warrants or summons issued in any courts in Malaysia or Singapore to be simply endorsed by the courts in Brunei.

We are pleased to inform that our new draft Extradition Order is now in its final stages. This new Order has incorporated many suitable recommendations such as those found under the London Harare Scheme and some model legislation from other jurisdictions.

○ **SOCIETIES ORDER 2005**

This relatively new legislation which was enforced in January 2005 replaced the old Societies Act, cap 66. The new Societies Act is intended to regulate non-profit organisations, whose members are not less than 10 and which are not regulated by other legislations. The Act is administered by the Royal Brunei Police Force, the Registrar of Societies being the Commissioner of Police.

The provisions of the Act include the requirement of compulsory registration, powers of Registrar to cancel registration, power to suspend or order dissolution, power to order the disclosure of information and to inspect documents and powers of entry, search, seizure. Society can be

deemed to be unlawful society if it is being used or is likely to be used for any unlawful purpose, or purpose prejudicial to or incompatible with the peace, public order, security or public interest of Brunei Darussalam.

Apart from holding a press-release conference, the Attorney-General's Chambers, in conjunction with the Royal Brunei Police Force, has been actively promoting public awareness concerning the requirements of the new legislation by holding several road shows within the previous few months.

○ **ANTI-TERRORISM ( FINANCIAL AND OTHER MEASURES)  
ORDER 2002 (ATO)**

This Order criminalizes the funding of terrorist acts by providing under section 3, 4 and 5 that it is an offence for any person who provides funds or financing, directly or indirectly, to terrorists. These offences attract a penalty of fines not exceeding B\$100,000 or imprisonment for a term not exceeding 5 years or both.

This Order also provides for the freezing of financial assets or economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts.

The term 'terrorist act' is extensively defined under section 2 of the Order and includes, any act which involves prejudice to public security or national defence or designed to disrupt any public computer system or the provision of services directly related to communications infrastructure, banking , any financial services, public utilities, public transportation or public key infrastructure, where the term 'public' includes a reference to the public of any country or territory outside Brunei.

The prohibition to provide or collect funds, either directly or indirectly, extend to actions done outside Brunei Darussalam by citizens of Brunei Darussalam and any companies incorporated or registered in Brunei Darussalam.

There is a duty imposed to provide information to the Commissioner of Police or any other designated person relating to prohibited transactions, or proposed transactions or suspected properties and such disclosure is afforded legal immunity from any proceedings.

The Minister has the power under section 11 of the Order to declare any person as terrorist for the purpose of the Order and he can issue directions to any financial institutions or class of financial institution as he considers necessary in order to discharge or facilitate the discharge of any obligation binding on Brunei Darussalam by virtue of UNSC relating to terrorism.

Although no persons has yet been declared as a terrorist by the Minister pursuant to his power under the Order, a direction has been issued obliging all financial institutions to perform thorough checking on the UNSCR consolidated list and to report their findings to the Ministry of Finance. A financial institution, which fails or refuse to comply with the directions issued, or which discloses a direction issued is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

#### ○ **OTHER RELEVANT LEGISLATIONS**

Apart from the legislations just described, Brunei already has in place other long-standing and effective legislations dealing with other issues relating to transnational offences, which amongst others, include the followings:-

- Misuse of Drugs Act, Cap 27 – this is the most important statute governing dangerous drugs or otherwise harmful drugs. It penalizes the acts of drug trafficking, possession of controlled drugs for the purpose of trafficking and except as authorized under the Act or its regulations, the importation ,exportation and manufacture of controlled drugs.
- Arms smuggling- Several related legislations are:-

- ✓ legislation Arm and Explosives Act, Cap 58- This Act provides that it is an offence to manufacture, use, sale, store, transport, import, export and possess arms and explosives. The offence is punishable with imprisonment for a term not less than 5 years and not more than 15 years and shall also be punishable with whipping of not less than 3 strokes and not more than 12 strokes.
- ✓ Biological Weapons Act, Cap 87- Provides that it is an offence for any person who develop, produce, stockpile, acquire or retain any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict. This offence attracts a penalty of life imprisonment.
- ✓ Public Order Act, Cap 148- No person shall, without lawful excuse, in any special area, carries or has in his possession or under his control any firearms or any ammunition or explosive without lawful authority . This offence attracts a death penalty.
- ✓ Internal Security Act, Cap 133- It is an offence for any person, who, without lawful excuse, carries or has in his

possession or under his control any firearms, any explosives or any ammunition, without lawful authority.

This offence also carries the death penalty.

## **MONEY LAUNDERING LEGISLATIONS.**

### **o MONEY LAUNDERING ORDER 2000**

The Money Laundering Order (MLO) was introduced in 2000. This Order was introduced by Brunei Darussalam to deter the use of its financial systems for money-laundering activities. It sets out the internal procedures which must be set up and complied by relevant financial businesses to prevent their businesses from being abused by money-launderers. The 'relevant financial businesses' which are bound by the provisions of the MLO are defined under section 4 of the Order and includes, all domestic and international banks, Finance Companies, Insurance Companies and all other financial business companies carrying out any of the activities as set out in the Schedule to the Order such as money lending, financial leasing, money remittance, acceptance of deposits and other repayable funds from the public, money broking, money changer, safekeeping and administration of securities, portfolio management and advice and others.

The preventive measures which are set out in the MLO are customer identification procedures (sections 7 and 9), record keeping procedures (section 12) and internal reporting procedures( section 14).

All relevant financial businesses must take steps to identify the applicant for business ( whether an applicant seeking to form a business relationship or only a one-off transaction), and comply with the Customer Due Dilligence procedures as set out under section 7 and 9 of the MLO. Further, section 12 requires all relevant financial businesses to maintain all the necessary records in relation to customer's identity and all details of the transactions carried out by such customers throughout the business relationship. The period in which such record must be maintained after the customer account or business relationship is terminated is 5 years. And with respect to one-off transaction, the 5 year period commences on the date the transaction is completed.

The MLO also sets out the identification procedures with respect to payment made by post, telephone or any other electronic means and applications transacted on behalf of another.

The relevant financial businesses are also required under section 5 of the Order to take appropriate measures, from time to time, to ensure that employees are aware, by way of training or otherwise, of all the prescribed

procedures under the MLO and all other requirements relating to money-laundering found under the provisions of any other written laws

Failure by the relevant financial businesses to comply with these requirements is an offence under section 6 of the Order, which if convicted, can be penalized for a term not exceeding two years, a fine or both.

Section 15 of the MLO provides for the appointment of any person or department to act as the Supervisory Authority , apart from the Minister of Finance. The Supervisory Authority is under an obligation under section 16, once any information is obtained which indicates any money-laundering activities, to disclose such information to the police, for which such disclosure shall not amount as a breach of any restriction imposed by any written law or otherwise.

Investigation into STRs received are carried out by the Commercial crime Unit of the Royal Brunei Police Force who have extensive powers under the Criminal Procedure Code( CPC). Apart from the general powers under the CPC, the police also have special powers under several other legislations which will be discussed later in the paper.

○ **DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ACT.**

Money Laundering is an offence under the Drug Trafficking (Recovery of Proceeds) Act, cap 178 [DTROP] and the Criminal Conduct (Recovery of Proceeds) Order 2000 [CCROP].

Predicate offence for money-laundering under the DTROP are, whether committed in Brunei or elsewhere, the drug trafficking offences, being defined under the Act as including the possession of controlled drug for the purpose of trafficking, the manufacturing, importing or exporting of controlled drugs and the cultivation of any plant genus cannabis, any plant species papaver somniferum or erythroxylon. This also includes the offence of attempting, abetting, inciting or conspiring to commit those offences.

Under the DTROP money-laundering offences are:-

- Assisting another to retain benefits of drug trafficking (section 20)
- Concealing, disguising, transferring, converting proceeds of drug trafficking (section 22)

In an investigation into any drug trafficking offences as defined under the Act, a police officer or a Narcotics Control Bureau officer may make an application to a magistrate for the disclosure of any document or material, where failure to comply with the magistrate's order, without any reasonable excuse, or providing incorrect or misleading information, is an offence

under section 25, attracting a penalty upon conviction, imprisonment for a term not exceeding 2 years , a fine or both. Except for items subject to legal privilege, this obligation to disclose is irrespective of any obligation as to secrecy or restriction imposed by any written law or otherwise.

○ **CRIMINAL CONDUCT (RECOVERY OF PROCEEDS)**  
**ORDER 2000**

Money laundering offences under the CCROP are:-

- Assisting another to retain the benefit of criminal conduct ( section 21)
- Acquiring, possessing or using property representing proceeds of criminal conduct ( section 22)
- Concealing, transferring or in any other way dealing with proceeds of criminal conduct ( section 24)

All of the above offences brings a penalty upon conviction to imprisonment for a term not exceeding fourteen years, a fine or both.

“criminal conduct” is defined as conduct to which this order relates applies or which would constitute such offence if it had occurred in Brunei.

Section 5(9) then states that references to an offence to which this Order applies are references to any offence, if committed in Brunei Darussalam ,

other than drug trafficking offences, are punishable in Brunei with imprisonment for a term not less than five years or for life or which is a capital offence.

Hence, predicate offence for money-laundering under the CCROP also covers conduct committed elsewhere which would constitute as offence if committed in Brunei Darussalam.

Section 25 of the Order provides for the offence of tipping-off, with a penalty upon conviction to imprisonment for a term not exceeding 5 years , a fine or both.

A police officer also has powers under section 28 of the Order , in conducting an investigation into offences to which the Order applies, to apply to the Court for disclosure of material or document. Failure to comply with the court's order is also an offence with a penalty of imprisonment not exceeding 5 years, a fine or both. This obligation to disclose is also irrespective of any obligation as to secrecy or restriction imposed by any written law or otherwise.

Apart from criminalizing money-laundering activities, just as DTROP, CCROP also provide powers for authorities to confiscate, freeze and seize proceeds of crime.

CCROP provides for the appointment of the Reporting Authority to whom disclosure with respect to suspicion or belief concerning money-laundering activities is made. Under the Order, any disclosure made to the Reporting Authority for an such suspicion or belief shall not be treated as a breach of any restriction upon the disclosure of information imposed by any contract, written law, rules of professional conduct or otherwise and shall not give rise to any civil or criminal liability.

The Reporting Authority is also empowered under section 21 of the Order to disclose any information which it received to any law enforcement agency in Brunei Darussalam and to any law enforcement agency in any other country or territory.

Under CCROP, the Minister is empowered to issue a Code of Practice for the purpose of giving practical guidance with respect to any requirements of this order. This includes the making of directions to Financial Institutions to keep ongoing monitoring of customer's identification, report suspicious , complex and unusual transactions. The Minister is also empowered to issue directions to the Reporting Authority concerning its powers and duties under the Order.

CCROP also provides for the setting up of a Criminal Offences Confiscation Funds which is managed and controlled by the Permanent Secretary of the

Ministry of Finance. The fund is to be used in promoting or supporting measures which may assist , amongst others, in preventing, suppressing or otherwise dealing with criminal conduct and in dealing with consequences of criminal conduct.

### **FINANCIAL INSTITUTIONS AND SECRECY LAWS.**

Brunei's relatively new status as an offshore financial centre has seen the enactment of legislative and regulatory reforms in the last five years. The heightened awareness around the world of the financial systems vulnerability to criminal and terrorist activities require that apart from introducing legislation intended to make Brunei an attractive, cost-effective, tax neutral and well regulated international finance centre, laws intended to prevent the system from being used for money-laundering, financing of terrorism and other serious criminal activities have also been introduced.

There are nine domestic banks in Brunei which are regulated by the Banking Act and supervised by the Financial Institution Division ( FID) of the Ministry of Finance. The International Banks, of which there are currently three, registered under the International Banking Order 2000, are supervised by the Brunei International Finance Centre (BIFC).

Under the current Banking Act, there are no secrecy provisions afforded to domestic banks as customer confidentiality is ensured under the common law. Despite the lack of secrecy provisions under the current Banking Act, disclosure of information by the banks is subject to several provisions under different legislations as follows:-

- i. Under the Criminal Procedure Code, section 56A provides powers to any court or police officers, for the purpose of investigation, to order for the production of banker's books.
- ii. Under the Prevention of Corruption Act, cap 131, section 23 gives special powers of investigation to the Public Prosecutor or the Director of the Anti-Corruption Bureau to authorize, in respect of an investigation into any offences under the Act, the inspection of any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatever description, any banker's books or company's books. The obligation to disclose under this section is notwithstanding any secrecy provisions in any other law or any oath of secrecy. Failing or neglecting to comply with the requirement, without a reasonable

excuse, is an offence attracting a penalty of \$20,000 fine and one year imprisonment.

- iii. Further, the general provision under Section 28 of the Criminal Conduct ( Recovery of Proceeds) Order 2000, provides that for the purpose of an investigation, and upon an application made by a police officer to the Court, a person in possession of any material or document, not subject to a legal privilege, is bound to produce such material or document notwithstanding any obligation as to secrecy or other restriction upon disclosure of information imposed by the law, written or otherwise. Failure to produce or make available such material or document, without reasonable excuse is an offence under section 29 with a penalty of 2 years imprisonment or fine or both.
- iv. Similar provision as section 28 above is also found under section 24 and 25 of the Drug Trafficking ( Recovery of Proceeds) Act 2000.
- v. Under section 8 of the current Banking Act, the Minister has special powers to order the production by any domestic banks to produce books, accounts or any other documents. Failure by any banks to comply is an offence attracting a penalty of fine not exceeding \$10,000,000 or 10 years imprisonment or both. In addition,

the Bank is also subject to a default fine of \$100 for every day the default continues after conviction.

- vi. Under the International Banking Order ( IBO), under section 15, the Authority may, by serving notice, require any international banks to provide any information or produce documents. Further under section 17, 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 provisions of the IBO, or any other written law or the likelihood of offences being committed under the Criminal Conduct(Recovery of Proceeds) Order, 2000, the Drug Trafficking ( Recovery of Proceeds) Act or the Money-Laundering Order 2000, the Authority may apply to the High Court for such appropriate powers in order to protect the interests of depositors or creditors, customers, investors and parties to transactions including the power to require information and documents to be produced. A failure by any person to comply with the requirement under this section is an offence with a penalty of a fine not exceeding \$200,000, imprisonment not exceeding two years or both.

Under the International Banking Act, confidentiality of customers accounts is ensured under section 18 of the Order, which replaces the secrecy or

confidentiality requirement at common law. Under that section, it is an offence to divulge or reveal any information whatsoever regarding the moneys or other relevant particulars of the account of any customers. Any contravention of this section may result in a conviction for which the penalty is a fine not exceeding \$100,00 and to imprisonment for a term not exceeding two years.

However, these confidentiality requirement is subject to several exceptions under section 19 of the same Order. One of these exceptions is when there is a court order made pursuant to the Order itself or by compulsion arising from other written laws requiring for information to be released to the Authority, a public officer , a police officer, or to a court in relation to any investigation or prosecution of a criminal offence.

To ensure that the secrecy provisions applicable to the domestic sector banks are in compliant with set international standards, amendments to the current Banking Act also includes amendments to inter alia, confidentiality of customer information , powers of investigations of the Authority, permitted disclosures and inspections of and access to books, accounts, transactions, documents and other records kept by banks which are under inspection or investigation and confidentiality of the inspection and investigation reports. These amendments have taken into account input from the Brunei Bank

Association and the draft amendment has been looked at by the World Bank and their comments have been incorporated accordingly.

## **OTHER NON-LEGAL MEASURES TO CURB MONEY-LAUNDERING**

### **○ THE NATIONAL ANTI-MONEY LAUNDERING COMMITTEE(NAMLC).**

This committee which was formed in 2004 is made up of 11 members consisting of the Financial Institution Division (FID) of the Ministry of Finance, the Brunei International Financial Centre (BIFC), the Attorney-General's Chambers (AGC), the Internal security Department (ISD), the Narcotics Control Bureau (NCB), the Royal Brunei Police Force (RBPF), the Anti-Corruption Bureau (ACB), the Royal Customs and Excise Department (Customs), the Ministry of Foreign Affairs (MFA), the Immigration Department and National Registration Department and the Brunei Monetary and Currency Board. The objective of NAMLC is to develop anti-money laundering policies and legislative measures, to supervise and coordinate anti-money laundering efforts of different agencies and to act as channel for the sharing of information and intelligence.

NAMLC also works closely with another national committee of which some of the members of NAMLC are also a member of. The National committee on Transnational Crime was established as a task force to deal with, as the name suggest, issues concerning transnational crimes such as terrorism, human trafficking and smuggling and illicit drug trafficking. It is also the designated focal point to coordinate cooperation on combating transnational crime at the regional as well as national level.

○ **THE SETTING UP OF A FINANCIAL INTELLIGENCE UNIT.**

In the absence of a Financial Intelligence Unit, the Financial Institution Division (FID) has been carrying out the functions which would otherwise be carried out by an FIU. As such, the FID has been receiving and collecting all reports of alleged suspicious transactions or transactions which are above the prescribed limits from various financial institutions and in turn hand these over to the Commercial Crime Unit of the Royal Brunei Police Force. Although, the money-laundering legislations have been in place for more than 4 years, so far the investigation carried out by the Royal Brunei police Force reveal no evidence to show that money-laundering offences has in fact been committed attempted to be committed. Legislatively , the FIU is not

empowered to receive suspicious transaction reports although technically FID act as the regulatory body of all financial institutions. In that capacity, FIU has held a number of forums with banks and financial institutions to inform them of their legal responsibilities. These financial institutions have been informed of the requirement to ensure that their Know Your Customer policies should be in line with the requirements of the MLO.

They have been informed, by way of the issuance of regulatory guidelines, of the need to pay special attention to complex, unusually large or unusual patterned transactions which have no apparent or visible economic or lawful purpose.

However, Brunei is aware of the need to prioritize the setting up of an FIU. Towards this end, NAMLC have sought assistance of technical advisors from AUSTRAC and has drawn up a working paper with regards to the setting up of an FIU. Once the FIU has been set up, the FIU will be designated as the Reporting Authority under CCROP and the Supervisory Authority under MLO.

○ **AML MUTUAL EVALUATION REPORT.**

Brunei underwent a rigorous assessment of its AML/CFT regime in January/February of this year based on the revised FATF 40 + 9

recommendations and which report was adopted during the last APG Annual Meeting in July held in Cairns, Australia. Brunei is pleased to inform that it has considered the recommendations made in the report to strengthen its AML/CFT regime and steps are being taken to review and several proposals have been made to amend our current legislations, regulations and procedures, including consideration of enacting a piecemeal legislation consolidating the provisions of CCROP, DTROP and MLO and another piecemeal legislation dealing with issues on terrorism.

#### ○ **EXTRA-REGIONAL COOPERATION**

As part of the efforts to enhance the security forces technical and operational skills, Brunei's law enforcement agencies work closely with their counterparts in neighbouring jurisdictions to safeguard and control the borders by way of exchange of information, providing of logistics support and by conducting joint border patrol. The enforcement agencies continue to attend regional training programmes to improve investigative techniques, intelligence surveillance and other techniques to strengthen their capabilities to curb cross-border crimes.

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