

No. S 43

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

RECORD KEEPING (BUSINESS) ORDER, 2015

ARRANGEMENT OF SECTIONS

Section

1. Citation and long title.
 2. Non-derogation.
 3. Interpretation.
 4. Competent Authority.
 5. Duty to keep and maintain records.
 6. Language of records.
 7. Power to require records.
 8. Power to call for further records, books etc.
 9. Power to access information.
 10. Penalties.
 11. Admissibility of evidence.
 12. Disclosure of information.
 13. General penalty.
 14. Composition of offences.
 15. Exemption.
 16. Regulations.
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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

RECORD KEEPING (BUSINESS) ORDER, 2015

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 long title.

1. (1) This Order may be cited as the Record Keeping (Business) Order, 2015.

(2) The long title of the Order is “An Order to provide for the keeping of records for businesses and for other purposes relating thereto or connected therewith”.

Non-derogation.

2. The provisions of this Order are in addition to and not in derogation of any provision of any other written law.

Interpretation.

3. In this Order, unless the context otherwise require —

“business” includes every form of trade, commerce, craftsmanship, calling, profession, vocation and any activity carried on for the purposes of gain;

“Competent Authority” means the Competent Authority appointed under section 4;

“Minister” means the Minister of Finance.

Competent Authority.

4. The Minister shall appoint such person as he thinks fit to be the Competent Authority responsible for the general administration and supervision of all matters to which this Order relates.

Duty to keep and maintain records.

5. (1) Every person carrying on or exercising any business shall —

(a) keep and maintain records of every transaction carried out in respect of the business; and

(b) issue a printed receipt serially numbered for every sum received in respect of goods sold or services performed in the course of or in connection with such business and shall retain a duplicate of every such receipt.

(2) Such person shall retain the records for a period of at least 5 years from the date the transaction takes place on or after the commencement of this Order.

(3) Where a machine is used for recording sales, a receipt may be dispensed with if —

(a) such machine automatically records all sales made; and

(b) the total of all sales made in each day is transferred at the end of the day to a record of sales.

(4) Any person who without reasonable excuse fails to comply with subsection (1) is guilty of an offence.

(5) In this section, “records” includes —

(a) books of account recording receipts, payments, income and expenditure;

(b) invoices, vouchers, receipts and such other documents as in the opinion of the Competent Authority are necessary to verify the entries in any books of account; and

(c) any records relating to any business.

Language of records.

6. The records of transactions referred to in section 5 shall be in the Malay or English language.

Power to require records.

7. (1) The Competent Authority or any officer authorised by the Competent Authority in writing in that behalf may —

(a) by notice in writing to any person carrying on or exercising any business; or

(b) by notice published in the *Gazette* in respect of any class or description of any such person,

require such person or such class or description to submit to the Competent Authority within such time as may be specified in the notice, a record in such

form as may be approved by the Competent Authority, giving the particulars and information specified in the notice.

(2) No person shall be bound to furnish any particulars or information other than such as are accessible to him in the course of or derivable from any business in the conduct or supervision of which he is engaged.

(3) The Competent Authority may waive all or any of the provisions of subsection (1) in respect of any person, class or description of persons, or particulars and information.

(4) Any person who fails to comply with the requirement imposed by subsection (1) is guilty of an offence.

Power to call for further records, books etc.

8. (1) For the purposes of obtaining full information in respect of any records, the Competent Authority or any officer authorised by the Competent Authority in writing in that behalf may by notice in writing to any person carrying on or exercising any business require such person within such time as may be specified in the notice, to deliver to the Competent Authority any record specified in the notice and in addition or alternatively require such person to attend personally before him and to produce for examination any books, documents, accounts and records which the Competent Authority may deem necessary.

(2) Such requisition may specify —

(a) the form in which the particulars and information are to be furnished;

(b) the particulars and information to be furnished;

(c) the place or manner at which or in which the particulars and information are to be delivered.

Power to access information.

9. (1) The Competent Authority and any officer authorised by the Competent Authority in that behalf —

(a) shall at all times have full and free access to all buildings, places documents, computers, computer programs and computer software (whether installed in a computer or otherwise) for any of the purposes of this Order;

(b) shall have access to any information, code or technology which has the capability of retransforming or unscrambling encrypted data contained or available to such computers into readable and comprehensive format or text for any of the purposes of this Order;

(c) shall be entitled —

- (i) without fee or reward, to inspect, copy or make extracts from any such document, computer, computer program, computer software or computer output;
- (ii) at any reasonable time to inspect and check the operation of any computer, device, apparatus or material which is or has been in use in connection with anything to which this section applies;

(d) may take possession of any such document, computer, device, apparatus, material, computer program or computer software where in his opinion —

- (i) the inspection, checking, copying thereof or extraction therefrom cannot reasonably be performed without taking possession;
- (ii) any such items may be interfered with or destroyed unless possession is taken; or
- (iii) any such items may be required as evidence in proceedings for an offence against this Order;

(e) shall be entitled to require —

- (i) the person by whom or on whose behalf the computer is or has been used, or any person having charge of or otherwise concerned with the operation of the computer, device, apparatus or material to provide the officer with such reasonable assistance as he may require for the purposes of this section;
- (ii) any person in possession of decryption information to grant him access to such decryption information necessary to decrypt data required for the purpose of this section.

(2) No person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

(3) In this section, “computer” and “computer output” have the same meanings as in the Computer Misuse Act (Chapter 194).

Penalties.

10. (1) Any person who —

(a) without lawful excuse (the proof of which lies on him), wilfully refuses or neglects to furnish the particulars or information required by a requisition within the time allowed for furnishing them or to furnish them in the form specified or prescribed, or to authenticate them in the prescribed manner, or to deliver them at the place or in the manner specified or prescribed for the delivery thereof;

(b) wilfully furnishes or causes to be furnished any false particulars or information in respect of any matter specified in the notice requiring particulars or information to be furnished; or

(c) refuses to answer, or wilfully gives a false answer to, any question necessary for obtaining any particulars or information required by a requisition to be furnished under this Order,

is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day during which the offence continues after conviction.

(2) A certificate under the hand of the Competent Authority stating that such records have not been furnished or are incorrect shall be *prima facie* evidence of the facts stated in the certificate.

Admissibility of evidence.

11. In any proceedings under this Order —

(a) any record of transaction kept in pursuance of section 5 is admissible as evidence of the facts stated in it;

(b) any copy of entry in the record of transaction which is certified by the person carrying on or exercising any business by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence of the facts stated in the entry; and

(c) any document purporting to be a record of transaction kept under section 5 or purporting to be such a certified copy as is mentioned in paragraph (b), shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

Disclosure of information.

12. (1) No person shall disclose any particulars or information obtained under sections 7 and 9 without the prior consent in writing of the person having the control, management or superintendence of the business.

(2) Notwithstanding subsection (1), the Competent Authority may disclose particulars or information obtained under sections 7 and 9 for the following purposes —

- (a) the collection and preparation of statistics;
- (b) prosecution under this Order or any other written law;
- (c) exchange of information under any arrangements made between the Government and the government of any country or territory outside Brunei Darussalam ; or
- (d) such other purposes as may be prescribed.

(3) The Competent Authority may, in respect of any particulars or information disclosed under subsection (2) to any person, impose conditions as to the use of such particulars or information by notice in writing to that person.

(4) If any person discloses any records or any particulars or information contrary to this section, or fails to comply with any conditions imposed on him under subsection (3), he is guilty of an offence.

General penalty.

13. Any person who commits an offence against this Order, if no other penalty is provided is liable on conviction to a fine not exceeding \$10,000.

Composition of offences.

14. (1) The Competent Authority or any officer authorised by the Competent Authority in writing in that behalf may compound any offence against this Order by collecting from the person reasonably suspected of having committed that offence a sum of money not exceeding \$1,000.

(2) On payment of such sum of money, no further proceedings shall be taken against such person in respect of the offence.

Exemption.

15. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette* and subject to such conditions as he may impose, exempt any person or class of persons from all or any of the provisions of this Order.

Regulations.

16. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient

for giving effect to and carrying out the provisions of this Order, including the prescription of any fees or other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 6th. day of Ramadhan, 1436 Hijriah corresponding to the 23rd. day of June, 2015 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM