

**THE PRESIDENT OF THE LAW SOCIETY  
Haji Mohamad Rozaiman bin DSLJ Haji Abdul Rahman**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ  
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَابْرَكَاتِهِ

**1. Preamble**

**May it Pleases the Court :**

My Lord, The Chief Justice, The Honourable Chief Syar'ie Judge, The Honourable Attorney General, My Lords and My Lady, Justices of the High Court, The Honourable Justices and Magistrates of the Supreme and Subordinate Courts, My Learned Friends, Members of the Bar and Members of the Attorney General's Chambers, Distinguished Guests, Ladies and Gentlemen.

**2. Universiti Islam Sultan Sharif Ali**

Our beloved country, Brunei Darussalam, had commemorate its 30th National Day celebrations. This also marked 30 years since the Supreme Court and Subordinate Courts moved to their present location from the old building at Jalan James Pearce in Bandar Seri Begawan. The titah of His Majesty the Sultan and Yang Di-Pertuan during the official opening ceremony of this very building, thirty (30) years ago, on the need to adhere and preserve the principle of the "Rule of Law" still reverberates to this very day.

As of 1st January 2014, there are a total number of thirty-two (32) law firms in Brunei Darussalam. A total of one hundred and eleven (111) advocates are currently practicing, Fifty-four (54) of these total advocates and solicitors are Brunei / and or Bruneian Permanent residents. Advocates and Solicitors admitted to the Brunei Bar are from four (4) different Jurisdictions namely United Kingdom, Malaysia, Singapore and Australia. There has also been a steady flow of graduates graduating in the field of Bachelor of Law (LLB) from University Islam Sultan Sharif Ali (UNISSA). I now request My Learned Friend, The Honourable Attorney General to include qualifications from UNISSA in the list of alternative qualifications for purpose of admission under the Legal Profession Act, Chapter 132. This will enable graduates from the Bachelor of Laws of UNISSA to join us in the private practice and be admitted to the Brunei Bar. Hence the market for lawyers graduating from our local university is now open enabling these graduates to have a choice of either working with the Attorney General's Chambers or other governmental posts or joining private practice to sharpen their skills.

**3. Recognition of our Private Practitioners**

Thirty (30) years have now evolved since Brunei Darussalam gained independence. The numbers of law firms throughout these years have increased. The numbers of members of the Brunei Bar including those practicing have also increased. As highlighted earlier, there

are thirty two (32) registration law firms and a total number of one hundred eleven (111) advocates and solicitors practicing in the country. The talent and specialization of my Learned Friends ranges from very able and experienced lawyers, in the field of commercial, conveyance, litigators (both civil and criminal) areas of copyrights, intellectual property and many more. In fact, it is my humble opinion, the Brunei Bar is the only Bar in this region where “Transfer of Knowledge” amongst local and foreign lawyers are adopted and hopefully being practiced. It is now high time, Government Link Companies (GLCs) gives recognition to the local law firms and practitioners of talents are akin and similar to other lawyers practicing in this region and elsewhere. More importantly, the law firms and advocates in Brunei have been duly admitted and are committed to adhere to the provisions of the Legal Profession Act, Chapter 132 and readily adaptable to our local circumstances and customs.

#### **4. Land Matter**

The announcement by the Honourable Minister of Development sometime in March 2012 during the session of Legislative Council with regards, issues on Power of Attorney, Equitable Ownership and Conversion on conditions of land from perpetuity to 60 years lease are all issues, which have not been fully resolved. We abide with the Honourable Minister’s decision of such policy that ownership of lands must only be transferred to Bruneians and such procedure should be in accordance with the requirement of the Land Code, Chapter 40. However it is to be noted that the highest Court of the land, the Court of Appeal, has in numerous cases also recognized the doctrine of equity on equitable ownerships.

Up till today, the Land Office has implemented policies, which seem to contravene the existing laws of the land in particular negating the used of Power of Attorney & Deed of Trusts. We understood that amendments to the Land Code have been drafted pending approval. It is our humble views that until such time the laws are amended, the present status quo in relation to ownerships and transfers of land should be maintained following pre-March 2012. A departmental policy should not override existing laws, which have been applied and recognised by the highest Court in the land, the Court of Appeal. That, My Lord, is the Rule of Law which His Majesty The Sultan and Yang Di-Pertuan reminded us in 1984. We sincerely hope, our pleas could be considered enabling the interests of justice to all parties can be served in accordance with the laws that we know of.

#### **5. Access to Counsel**

The Criminal Procedure Code (CPC) warrants for the detention of an accused for FORTY-EIGHT (48) HOURS before either be released on bail or indicted. During these vital hours, there are times and accused person requires and seeks Counsel’s advice. Presently, there are no provisions in the CPC enabling an accused to have a right to counsel during detention. It is vital and very important for an accused at this stage to know and understand why he / she is being investigated and what rights he can be afforded to. We strongly recommend to My Learned Friend, The Honourable Attorney General, to consider implementing a practice direction or amending the CPC enabling an accused person to have access to counsel for legal advice and representations, if necessary.

Further, detention of an accused for a period of FOURTEEN (14) DAYS before either be released on bail or indicted provided under Section 22A of the Misuse of Drugs Act, Chapter 27 should as far as possible be exercised sparingly in the absence of provisions on access to counsel. We strongly recommend to My Learned Friend, the Honourable Attorney General to consider reviewing this provision and 'aligning' it similar to the CPC where an accused should only be detained for FORTY-EIGHT (48) HOURS and thereafter be released or indicted.

## **6. Criminal Case Negotiations**

The Criminal Case Negotiations (C.C.N) was introduced by the Criminal Justice Division, AGC in January 2013. It is our view that Criminal Case Negotiation is a good medium where both Counsels and DPP are able to assess the evidence in each case and discuss an opportunity for a more expedient disposal of matters before the Courts. If Criminal Case Negotiation is successful, this will save enormous time for all parties from going to trial and adducing witnesses. The advantage for Courts in Brunei Darussalam it frees the court diary from having along and unnecessary trial. To move forward, we opined that the role Counsels and DPP to agree on an aggregate term of sentences. This will give a better leverage to an accused person to know what form of sentence he may receive from the Courts upon on guilty plea.

Another aspect where the CCN may be utilise to better serve the interest of justice are on cases involving the Misuse of Drugs Act. Parties in those cases are experiencing delays to obtain analyst scientific report confirming whether the substance are deemed to be categorised as controlled drugs or otherwise. An accused person who is being remanded in prison may be incarcerated for a long period of time between 2-3 months or even more whilst waiting the outcome of the analyst report. The CCN maybe enhanced to cover these cases where a plea bargain is amenable, priority is given by the analyst to complete the analysis report.

Thus the CCN frees the courts diary and negates for parties from conducting unnecessary trials and / or appeals.

## **7. Legal Aid & Legal Aid Clinic**

The Legal Aid Clinic operated by the Law Society will shortly be resumed and we invite once again active participants by all law firms in Brunei Darussalam. This enables the Law Society to fulfill one of many of their Corporate Social Responsibilities to the Public in Brunei Darussalam. The Legal Aid Clinic covers all aspect of Laws from civil, criminal and syariah matters.

The Supreme Court is currently providing Legal Aid for an accused person that is charged for offence(s), which carries the death penalty. Nevertheless, in the Penal Code and other legislations such as People Smuggling and Trafficking Order, Misuse of Drugs Act, there are offences, which carry a maximum of THIRTY (30) YEARS imprisonment. It is our opinion and humble request for My Lord to consider extending Legal Aid to cases involving these criteria enabling an accused person be represented by counsels.

## **8. Miscellaneous**

- (i) We congratulate My Lord and the Honourable Chief Registrar for implementing the Judicial Case Management System Projects (JCMS). We, in the legal profession are looking forward to begin the training session being organised by the Supreme Court effective 18th March 2014;
- (ii) We wish to express our sincere appreciation to my Lord and the Honourable Chief Registrar for allocating the Law Society with a designated room located at the 1st floor of the Supreme Court Building. This premise will be used as the Law Society's official and registered office;
- (iii) We also wish to congratulate the Honourable Chief Registrar, Pengiran Hajah Rostaina Binti Pengiran Haji Duraman, on her elevation and appointment as a Judicial Commissioner. We also congratulate the Honourable Haji Abdullah Soefri bin Pehin Orang Kaya Saiful Mulok Haji Abidin on his appointment and elevation as an Intermediate Court Judge.
- (iv) The elevation of judges and judicial officers will help reduce back-logs of Subordinate Courts. It is acknowledged that the Supreme Court is experiencing difficulties and struggling to elect and recruit experienced advocates in Brunei Darussalam. It is our humble opinion and recommendation for My Lord to consider selection recruitment / elevation of Bruneian private practitioners from the Brunei Bar to the Judiciary. Commemorating thirty years of Brunei Darussalam's independence, it is high time such opportunity and recognition be given to members of the law fraternity in private practice. The same apply if My Learned Friend, the Honourable Attorney General may wish to engage practitioners in the prosecution of cases should her chambers require assistance.

## **9. Conclusion**

To conclude, I on behalf of the Law Society join your lordship and my Learned Friend Honourable Attorney General's Chambers, Prime Minister's Office and relevant authorities to discuss on any relevant matters involving issues of law. We, being lawyers are created to be "Argumentative". Some may view us as a constant "thorn" in society and some may view us as representing the interest of Justice in society. Let me assure My Lord, we are the latter and not the former as we in the Law Society strive to serve the interest of Justice as required by law and precedence and achieving justice for all.