

LAWS OF BRUNEI

CHAPTER 40

LAND CODE

1 of 1909
1 of 1948
(Cap. 40 of 1951)
13 of 1954
4 of 1955
15 of 1958
S 99/59
10 of 1983

LAWS OF BRUNEI

CHAPTER 40

LAND CODE

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SCHEDULE

LAND CODE**Act to consolidate and amend the law relating to land***Commencement: 6th September 1909*

1. (1) This Act may be cited as the Land Code. Short title and
repeal.
1 of 1907.
 - (2) The Land Code 1907 is hereby repealed, but without prejudice to anything lawfully done thereunder.
 2. His Majesty the Sultan and Yang Di-Pertuan in Council may, by public notification, divide Brunei Darussalam into districts. Division of
Brunei
Darussalam
into districts.
 3. His Majesty in Council may alienate Government land for such interest and in such manner as is authorised by this Code. Alienation of
state land.
 4. All forest, waste, unoccupied or uncultivated land shall be presumed, subject to the establishment of any claim thereto registered in accordance with the provisions of the Land Code 1907 to be state land and all cultivated lands which have been abandoned or suffered to lie waste shall be deemed to be forest or waste land within the meaning of this section: Classification
of land.
- Provided that no land to which a claim has been filed in the manner prescribed by the Land Code 1907 shall be alienated by His Majesty in Council in pursuance of section 3 until such claim shall have been determined by competent authority.
5. On the coming into force of this Code the officer in charge of the Land Office shall proceed to inquire into and determine such claims as shall have been filed in accordance with the provisions of the Land Code 1907 and no claim which has not been so filed shall be deemed to entitle any person to receive a new title or compensation or damages in respect of anything lawfully done in accordance with the provisions of this Code or of the Land Code 1907. Inquiry by
officer in
charge of Land
Office.

Issue of new titles to claimants.

6. (1) Any title to land issued by the authority of the Government of Brunei Darussalam prior to the date of the Land Code 1907, the validity of which shall have been proved as provided by section 5 shall be exchanged for a title under this Code, and such title shall embody all the provisions of the previous title unless the holder of such title shall consent to their variation:

Provided that no such previous title shall be deemed to operate to the prejudice of any person claiming land under the provisions of subsection (2) of this section.

(2) The occupier of any land who shall have proved, to the satisfaction of the officer in charge of the Land Office, that the land occupied by him has been under effective cultivation up to the date of the introduction of the Land Code 1907 shall be entitled as against any other claimant to receive a title under this Code in respect of the land proved to have been so occupied and cultivated.

Register.

7. The officer in charge of the Land Office shall keep a Register of all land alienated under the provisions of this Code in the Form A in the Schedule with such variations as circumstances may require. The Register shall contain an entry of the special conditions (if any) imposed in respect of any lands. The officer shall also keep a Journal in the Form B in the Schedule of all transactions with regard to land entered in the Register.

Documents of title.

8. All land shall be held by entry in the Register kept by the officer in charge of the Land Office in pursuance of this Code and the document of title issued to the holder of land shall be an extract from such Register and shall be in the Form C in the Schedule with such variations as circumstances may require.

Conditions on which land shall be held.

9. (1) Every title by entry in the Register shall vest in the person named therein a surface right only to the land specified therein and such person shall have a permanent transmissible and transferable estate, interest and occupancy of his land subject to the provisions of this Act or such lesser estate as shall be specified in the entry.

(2) There shall be implied in the absence of any express provision to the contrary in every such title issued under section 3 or 6 of this Code the following reservations to the Government, that is to say —

(a) the right to all minerals and mineral products (including mineral oil) contained within lands alienated after the commencement of this Code, and all necessary facilities for exercising such right, on payment of compensation of actual damage;

(b) the right to resume for public purposes such portions of the land as His Majesty in Council may determine on payment of compensation;

(c) the right to remove earth, clay, gravel, sand, stone or any other material which may at any time be required for the roads, public buildings or other public purposes of Brunei Darussalam without compensation save for actual damage done to growing crops, fruit trees, or buildings;

(d) the right to control all water courses for irrigation, navigation and mining or industrial purposes and for all purposes of general utility;

(e) the right for the Government, its servants or agents, to make a road upon and over land alienated after the 1st day of July 1955 and to cross and recross such lands on such road on foot or in carriage with or without animals and with or without vehicles of any size or description whatsoever, and to construct and take under upon or over such lands pipelines and telegraph and telephone lines, posts and wires, and to do all things necessary for the carrying out of such making, construction or taking provided that in respect of any one title only one strip of land no more than 150 links wide at any point may be used, and provided further that reasonable compensation be paid by the Government to the registered owner for any damage done to crops or the surface of the land by any exercise of the said right; and

(3) In the absence of any express provision to the contrary the person named in any such title shall have no right to remove beyond the boundaries of the land specified therein any of the articles enumerated in section 31(iv) of the Code.

(4) It shall be a condition in the absence of express provision to the contrary that all land held by entry in the Register shall be used solely for agricultural purposes, and that the Government may on giving 2 months notice resume any land not so used for a period of one year or used for any period for any other purposes:

Provided that a condition that a minimum number of or quantity of certain crop or certain crops shall be grown shall not be such an express provision to the contrary.

(5) Any title issued under section 3 or 6 of this Code may be issued subject to any special conditions which may be entered in the Register and in the case of default in any of such conditions the Land Office may, on behalf of His Majesty, re-enter upon the land specified in the title and resume the whole or any portion thereof in respect of which default has been made:

Provided that no re-entry shall be made in respect of any default which may be capable of being made good unless reasonable notice shall have been given of such intention to re-enter and such default shall have continued during such reasonable period as may have been limited in such notice.

Compensation, how assessed.

10. Any compensation to which any person may be entitled under this Code shall be assessed by the officer in charge of the Land Office subject to appeal to the duly constituted courts of Brunei Darussalam.

Survey or demarcation.

11. An extract may be issued either after survey or after demarcation of boundaries. No extract shall be issued without survey where the land specified therein is 100 acres or more except with the special permission of the Minister.

Reservation along banks or rivers, etc.

12. A belt of land 50 yards wide is reserved to the Government along the banks of all navigable rivers, streams and creeks and along the sea shore above high water marks:

Provided that nothing in this section shall affect the right of His Majesty in Council to alienate such land for such interest and in such manner and is authorised by this Code.

13. Applications for land shall be in writing addressed to the officer in charge of the Land Office and shall be accompanied by a deposit of the fees prescribed by any rules made under this Code.

Applications for land, how made.

14. Premium, when charged, shall be such as His Majesty in Council may from time to time either generally or specially direct.

Premium.

15. (1) In the case of land held by entry in the Register in accordance with the provisions of section 6 of this Code the rent payable shall, in the absence of any previous agreement, be at the rate of 10 cents an acre.

Rent.

(2) In the case of land held by entry in the Register in accordance with the provisions of section 3 of this Code, the rent payable shall be —

(a) In respect of land held by entry in the Register where the area is less than 100 acres at the rate of 25 cents an acre or at such other rate as His Majesty in Council may from time to time prescribe;

(b) In respect of land held by entry in the Register where the area is 100 acres or more at such rate as may be directed by His Majesty in Council.

16. *Repealed.*

Repealed.

17. The rent payable in respect of any land shall be a first charge on the land and shall be due and payable at the Land Office on the 1st day of January in each year in advance and without demand.

Rent to be a first charge on land.

18. (1) When any rent due to Government shall have become due and is unpaid it shall be deemed in arrears and the officer in charge of the Land Office may demand payment of it by a notice in writing and if the same be not paid within 15 days thereafter he may issue an attachment and seize and sell by

Mode of recovery of rent.

virtue thereof any movable property of the defaulter and may also seize and sell any effects or any crops to whomsoever belonging which may be found upon the land in respect of which the arrears is due.

(2) If the arrears cannot be recovered in the manner aforesaid the officer in charge of the Land Office may attach and after due notice sell the land in respect of which the arrears is due.

(3) The purchaser at a sale held under subsection (2) shall be deemed to have acquired the right offered for sale free from all encumbrances created over it and from all subordinate interests derived from it except such as are expressly reserved by the Land Officer at the time of sale, and shall be entitled to have such right registered free of cost.

(4) The proceeds of any sale under this section shall be applied in the first place in satisfaction of the arrears and costs and in the event of there being any surplus remaining the Land Officer shall pay such surplus to any person establishing a claim thereto.

(5) If at any such sale there shall be no bid sufficient to cover the amount due for arrears and costs, the land shall revert to and vest in His Majesty.

Maintenance
of boundary
marks.

19. The registered owner of any land shall be responsible for the maintenance of all boundary marks and lines of the land.

Land Officer
to have right
of entry.

20. Any Land Officer, surveyor or demarcator may at any reasonable time enter upon any land for the purpose of fixing any mark or taking any measurement and may dig up any land or cut down any tree or other growth provided that as little damage as possible be done and may issue a notice calling upon any land owner to assist in demarcation by clearing lines and by providing labour. If it is necessary to employ hired labour for such purposes such Land Officer may assess and recover the cost of the same from the owner as though it were an arrears in rent.

21. If the owner of any land comprised in any entry in the Register is desirous of partitioning or sub-dividing such land the extract shall first be surrendered to Government and the Land Officer on payment of all survey or demarcation fees and all other costs and expenses incidental to such partition shall cause the said land to be sub-divided in parcels, and shall make an entry in the Register and issue an extract in respect of each parcel, provided that all Government dues shall have first been paid and that the rent reserved on each parcel shall not be less than 25 cents.

Partitioning
land.

22. In case the Government shall under the provisions of subsection (4) of section 9 resume any land the original extract shall be cancelled and a new extract shall be issued for the cultivated portion subject to payment of the fees prescribed by any rules made under this Code.

Resumption of
land.

23. (1) Any person wishing to transfer, charge, lease or sub-lease his land shall deliver to the Land Officer an instrument in one of the Forms D, E or F of the Schedule with such variations as approved by the Land Officer as circumstances may require or such other forms as His Majesty in Council may from time to time by rule prescribe together with the extract under which he claims, and the Land Officer, if satisfied as to the transaction, shall register each transfer, charge, lease or sub-lease. Such instrument shall be witnessed by a Land Officer or magistrate or in a territory outside Brunei Darussalam by a duly appointed magistrate, justice of the peace or other equivalent judicial officer of such territory and shall be authenticated by his seal of office unless no such seal attaches to such office:

Transfer,
charges or
leases.

Provided that a transfer, charge, lease or sub-lease of land to any person shall be null and void and shall not be registered except with the prior approval in writing of His Majesty in Council.

(2) The proviso to subsection (1) shall not apply in the case of a lease or sub-lease of land granted for a term not exceeding or liable on the future exercise of any right or the future occurrence of any other event to exceed 7 years to a person who has not previously been entitled to any interest in

such land or any part thereof, whether solely or jointly or in common with another person or other persons.

(3) His Majesty in Council may, to such extent and subject to such restrictions and conditions as he may think proper, delegate his powers under the proviso to subsection (1) to a committee of the Council of Ministers or to any public officer or body of public officers and reference in that proviso to His Majesty be construed accordingly.

Satisfaction of charge.

24. On production of sufficient evidence of the satisfaction of any charge the Land Officer shall record the same in the Register.

Realisation of charge.

25. (1) If any Land Officer is satisfied that default has been made in the payment of any sum whether principal or interest secured by any charge and that 2 months notice demanding payment has been given by the chargee, he may order the sale of the land charged, provided that no such sale shall be carried out until reasonable notice has been given to all persons who would be affected by such sale.

(2) Such sale shall take place either at the Land Office of the district in which the land to be sold is situated or at such place as may be notified either generally or specially by the Minister and the chargee may bid at such sale.

Succession, etc.

26. Any person claiming any land, charge or lease by virtue of any form of succession or under any order of a Court or act of law relating thereto may have such land charge or lease registered on production to a Land Officer of sufficient proof that he is so entitled.

Unregistered claim invalid.

27. No claim to or interest in any land shall be valid unless it has been registered in the Land Office.

Transfers and transmissions to be recorded.

28. (1) When any land, charge or lease shall have been transferred or transmitted by virtue of any form of succession or under any order of Court or act of law a record thereof shall be made in the Register and on the extract.

(2) No record shall be made in the Register unless the extract shall have been delivered to the officer in charge of the Land Office except with the permission of the Minister.

(3) Every entry in the Register shall be taken as conclusive evidence that the person named therein as owner of the land is the absolute and indefeasible owner thereof for the estate specified herein subject to the conditions upon which the original entry was made and the title of such proprietor shall not be subject to challenge except on the ground of fraud or misrepresentation to which he is proved to be a party.

29. Any person claiming that he is entitled to be registered in respect of any land may apply to the High Court for an order that any Register, book or journal kept at the Land Office shall be rectified or that any entry may be made or interpolated in any such Register, book or journal or that any entry therein may be cancelled, and the High Court after giving such notices to the persons in occupation of or interested in such land as it may think fit may refuse the application, or if satisfied as to the justice of the case may make such order in reference thereto as it may think just and the officer in charge of the Land Office shall rectify the Register and the extract of title in accordance with such order.

Rectification
of Register.

30. It shall be lawful for His Majesty in Council by public notification to declare any area to be a township. Such area shall forthwith be demarcated or surveyed. If any proprietor of land within such township is desirous of using his land for the erection of houses for trading purposes, he shall surrender his extract to the officer in charge of the Land Office for cancellation and the Land Officer shall make a fresh entry in the Register and issue a fresh extract subject to such rent as may be prescribed by His Majesty in Council in respect of every 2,400 square feet or less so utilised.

Township.

31. (1) It shall be lawful for His Majesty in Council from time to time to make and publish rules not inconsistent with the general purposes of this Code.

Power to make
rules.

(2) Such rules may provide among other things for —

-
- (i) the fees to be paid in respect of demarcation, survey, sub-division, transfer, registration of title, or other proceedings provided for in this Code;
 - (ii) the appointment of officers under this Code and the definition of their functions;
 - (iii) the sale by auction of state land;
 - (iv) licensing or farming the right to take timber or firewood, nipah, getah, rotan, damar or other jungle produce and of licensing persons to remove gravel, stone, coral, shell, rock, guano, sand or loam and of prescribing the payments to be made in respect thereof;
 - (v) the establishment of reserves and the like;
 - (vi) the maintenance and control of townships in the interests of general convenience and sanitation and the collection of rates and taxes for such purposes;
 - (vii) the fixing of penalties for breaches of any rules made;
 - (viii) the occupation and cultivation of state land by natives of Brunei Darussalam under temporary licences;
 - (ix) the prescribing of anything required to be prescribed under this Act;
 - (x) all other purposes whether similar or not to the above.

Unlawful
occupation,
etc., of state
land.

32. (1) Any person who, without lawful authority —

(a) occupies, or erects any building on, any state land;

(b) clears enclosure or cultivate any such land or part thereof; or

(c) cuts any timbers or produces on any such land.

Shall be guilty of an offence: Penalty, on first conviction \$2,000 and for a second or subsequent conviction \$3,000 or imprisonment for one year or both, and the magistrate may issue a warrant to any police officer requiring him to dispossess and remove such person from the land:

Provided that this section shall not be construed as interfering with the right of natives of Brunei Darussalam to remove timber from state land other than reserved forests, for personal or domestic use and not for purposes of trade. Any person removing timber from state land shall be deemed to remove it for purposes of trade until the contrary is proved.

(2) Any person who abets the commission of an offence in subsection (1) of this section shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for under subsection (1) of this section.

33. His Majesty may from time to time appoint and when appointed remove such and so many Land Officers, Settlement Officers, surveyors, foresters, qualified witnesses and such other officers as he may consider necessary for carrying out the purposes of this Code, and may if he thinks fit define the boundaries within which they shall exercise the powers and perform the duties assigned to them by this Code.

Appointment
of officers.

34. (1) No action shall be brought against any person for anything done or bona fide intended to be done in the exercise or supposed exercise of the powers given by this Act, or by any rules made thereunder —

Protection of
officers.

(a) without giving to such person one month's previous notice in writing of the intended action, and of the cause thereof;

(b) after the expiration of 3 months from the date of the accrual of the cause of action;

(c) after tender of sufficient amends.

(2) If, at the trial of the action the plaintiff shall fail to prove that the defendant acted either maliciously or negligently and without reasonable or probable cause, judgement shall be given for the defendant.

(3) Though judgement shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Court, before whom the action is tried, shall certify its approbation of the action.

SCHEDULE

(Section 7, 8 & 23)

FORM A

Register of the District of Brunei Darussalam

Serial number	Demarcation or Survey Number if different	Number and nature of former title if any	Name of owner	Area	Boundaries	Nature of title whether in perpetuity or for years	Special conditions	Subsequent proceedings	Annual Rent	Remarks
					A.R.P.				\$	

FORM B

Journal of Transactions

Number of Transaction	Date	Hour	LAND AFFECTED		LAND AFFECTED	Nature of instrument	Remarks	Signature of Recipient	Signature of officer in charge of Land Office
			Form	To	Entry Number				

FORM C

GOVERNMENT OF BRUNEI DARUSSALAM

Extract from the Register District of

Serial number	Demarcation or Survey Number if different	Number and nature of former title if any	Name of owner	Area	Boundaries	Nature of title whether in perpetuity or for years	Special conditions	Subsequent proceedings	Annual Rent	Remarks
				A.R.P.					\$	

I hereby certify that the above is a true copy of the entry in the District Register.

Land Office

Date

Officer in charge of the Land Office

FORM D

Memorandum of Transfer

I _____ being registered as the owner of the land described by entry in the Register No. _____ and registered in the Land Office at _____ (subject to the annual rent of _____ and to such charges as are notified by memorandum indorsed hereon):

In consideration of the sum of _____ paid to me by _____ of which sum, I hereby acknowledge receipt do hereby transfer to the said _____ all my right title and interest in the said land.

In witness whereof I have hereunto set my hand this _____ day _____, 19 ____ .

Transferor

I hereby accept this transfer on the terms herein stated.

Transferee

Signed by the abovenamed *(Transferor)*
in the presence of

Signed by the abovenamed *(Transferee)*
in the presence of

Entered in the Register Volume Folio *Land Officer*

FORM E

Memorandum of Charge

I being registered as the owner of land described by entry in the Register No. and registered in the Land Office at (subject to the annual rent of and to such charges as are notified by memorandum indorsed hereon):

In consideration of the sum of lent to me by of (hereinafter called the charge) the receipt of which sum I hereby acknowledge do hereby bind my self of pay to him interest on the said sum of at the rate of per cent per annum by equal annual payments on the 1st day of January in every year and will repay to him the said sum of on

In default of payment of the interest or of any part thereof or of the principal sum hereby secured it shall be lawful for the said charge after the expiration of months notice served upon me or at my usual or last known place of abode within Brunei Darussalam to obtain an order from the Land Officer for the sale of the said land.

If any default be made in payment of the interest due upon this charge the said principal sum shall immediately thereon become due an payable on demand being made by the said chargee by notice served as a abovementioned.

And for the better securing the repayment of the said principal sum and interest I hereby charge the land above described with such principal sum and interest.

In witness whereof I have hereunto set my hand this day of ,
19 .
(Owner)

Signed by the abovenamed *(lessee)*
in the presence of

Entered in the Register Volume Folio *Land Officer*

FORM F

Lease

I being registered as the owner of the land described by entry in the Register No. and registered in the Land Office at subject to the annual rent of and to such charges as are notified by memorandum indorsed hereon do hereby Lease the land comprised in the said Entry [or *describe the land adding "part of the land comprised in the said Entry"*] to of for the term of years from the date of this lease subject to the monthly rent of \$ and subject to the covenants and conditions following that is to say (*here set out conditions*).

In case the rent shall be in arrears for one month or there shall be a breach of any of the covenants and conditions on the part of the lessee then I shall be entitled to re-enter upon the said land and this Lease shall be at an end.

In witness whereof I have hereunto set my hand this day of ,19

Lessor

I accept this Lease on the term herein stated

Lessee

(Owner)

Signed by the abovenamed
in the presence of

(lessee)

Entered in the Register Volume Folio *Land Officer*

SUBSIDIARY LEGISLATION

Rules under section 23 and 31

LAND CODE (FORM OR MEMORANDUM OF CHARGE) RULES

ARRANGEMENT OF RULES

Rule

1. Short title.
2. Additional form of memorandum of charge.

SCHEDULE

SUBSIDIARY LEGISLATION

Rules under section 23 and 31

LAND CODE (FORM OR MEMORANDUM OF CHARGE) RULES

[S 120/57]

Commencement: 12th December 1957

1. These Rules may be cited as the Land Code (Form of Memorandum of Charge) Rules.

Short title.

2. In addition to, and not in substitution for, Form E in the Schedule to the Land Code, the form of memorandum of charge set out in the Schedule to these rules may, where it is appropriate, be used by a person wishing to charge his land.

Additional form of memorandum of charge.

SCHEUDLE

CHARGE*

Stamp \$

Fee \$

Total \$

No.

19

I [we]

.....
.....

Full names and addresses of chargors

being registered as the owner[s] [lawfully entitled to charge by virtue of

.....

the property hereinafter described in consideration of

.....

.....

State the authority under which the charge is effected e.g., Letters of Administration, Order of Court, etc.

(hereinafter called the chargee[s]) having agreed to give me [us] credit to the extent of the sum of dollars

.....

(\$) do hereby [jointly and severally] promised to re-

LAWS OF BRUNEI

Land Code

CAP. 40

22

[Subsidiary]

Insert monthly, quarterly or as the case may be.

pay the same on demand [whithin months [s] after demand] [on or before the day of , 19] and until payment to pay interest on the amount thereof from time to time due and owing by me [us] at the rate of % per annum.

As security for the above sum and interest I [we] hereby charge to the chargee[s] the following property, viz.:

Describe the property fully giving E.D.R. No. and name of Land Office.

.....
.....
.....
.....

subject to such a prior charges as are notified by memorandum enclosed herein.

[I [we] hereby undertake to insure and keep the above property insured against [fire] [theft] [maritime risk] in such insurance company as the chargee[s] may require]

.....
.....
.....

Here insert any additional conditions or covenants agreed.

[And I [we] further hereby agree with the chargee[s] as follows:—

.....
.....

Dated this day of , 19

Signed by the said

.....

(chargor[s]) in the presence of —

Name of Witness

Address

Occupation

Signed by the said }
 }
 (chargor[s]) in the presence of — }
 Name of Witness
 Address
 Occupation

Entered in the Register Volume Folio

.....
 LAND OFFICER

* Note — (1) the words in square brackets are alternative. If it is desired to use any of them the square brackets surrounding the words to be used should be deleted.

(2) all words whether outside or inside the square brackets, which are not to be used should be deleted.

NOTE. The following subsidiary legislation has been omitted —

- Land Code Rules 1935 (B.R.O.N. dated 14.10.35)*
- Land Code (Amendment) Rules 1957 (S 44/57)*
- Rules regarding Rent (B.R.O.N. 31/38)*
- Rules governing the taking of Stone, Gravel, etc., (B.R.O.N. dated 14.10.35)*
- Rules governing the taking of Stone, Gravel, etc., (Amendment) (S 44/72)*