

BRUNEI SYARIAH PENAL CODE ORDER, 2013

An Overview

Background

Syariah law is not new to Brunei Darussalam. Islam was adopted in the 15th Century when a Malay Muslim became Head of State and had the responsibility to uphold the Islam as a way of life. Syariah law has long been embedded in the country's system of governance with the Malay Islamic Monarchy (MIB) ideology. Since the 1930s, Heads of State have promoted Islam, including subsidizing the Hajj, building mosques and expanding the Ministry of Religious Affairs. In the 1990s, the sale and consumption of alcohol was restricted (prohibited for Muslims). Matters concerning Family Law have been referred to the Syariah Court since 1999. On 1 May 2014, phase 1 of the new Syariah Penal Code Order, 2013 came into force.

Brunei Darussalam is a conservative Islamic country. There are expectations that every Muslim fulfils his or her religious obligations. Other religions are permitted to co-exist with Islam. However, Non-Muslims should make no attempt to encourage a Muslim to practice any religion other than Islam.

Syariah Penal Code Order, 2013 (the 'Penal Code')

- The Penal Code lays out specific offences and punishments for crimes prescribed by the Al-Quran and *Sunnah* (tradition of the prophet Muhammad).
- However, there are some offences and punishments that are not prescribed by the Al-Quran and *Sunnah* that have been included in the Penal Code, such as making it mandatory for Muslim men to attend Friday prayers and the offence of disrespecting Ramadhan.
- The Penal Code is being introduced in three phases.

Examples of Offences, Punishments and Penalty

Offences	Punishment & Penalty
- <i>Sariqah</i> (theft), <i>Hirabah</i> (robbery), <i>Zina</i> (adultery) <i>Zina Bil-Jabar</i> (rape), <i>Liwat</i> (sodomy), <i>Qazaf</i> (accusation of adultery, sodomy and rape), drinking intoxicating drinks, <i>Irtidad</i> (apostasy)	<i>Hadd</i> - Punishment as ordained by Quran and <i>Hadith</i> , including amputation of hand (theft), death or amputation of hand/foot (robbery), stoning to death or whipping (adultery or rape) <i>Other</i> – Fine, imprisonment, whipping

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<ul style="list-style-type: none"> - Offences against the human body, <i>Qatl</i> (causing death or causing hurt) 	<ul style="list-style-type: none"> <i>Qisas</i> - Retaliation or similar punishment <i>Diyat</i> - Specified amount payable to heirs of victim of <i>Qatl</i> (restitution) <i>Arsy</i> - Compensation payable to victim of hurt <i>Badal-al-suth</i> - Mutually agreed compensation to be paid to a <i>Wali-ad-dam</i> / victim
<ul style="list-style-type: none"> - Offences not expressly mentioned in Quran or <i>Sunnah</i> - Offences that are other than those punishable with <i>Hadd</i> or <i>Qisas</i> - Worship, non-payment of <i>Zakat</i> or <i>Fitrah</i>, failure to perform Friday prayer, consuming alcohol in public places, <i>Khalwat</i> (close proximity if committed with a Muslim), propagating other religion 	<ul style="list-style-type: none"> Ta'zir - Fine, imprisonment, rehabilitation, supervision, whipping and death

Evidentiary Requirements

The evidentiary requirements for conviction of offences under the Penal Code are onerous; many offences require to have been witnessed by 2 (or more) syahid witnesses. A syahid witness is a person who fulfills all the necessary requirements according to Hukum Syara', among others, of sound mind, attained puberty and 'adil. A Non-Muslim is allowed to become a syahid witness only in relation to offences committed by non-Muslims if such person is credible according to his religion. 'Adil is defined as a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins.

Phased Implementation of the Penal Code

- **Phase 1** - came into force in Brunei Darussalam on 1 May 2014. This phase concerns all the offences found under **Part IV Chapter IV** that are punishable only by fine or imprisonment e.g. failure to perform Friday prayer, disrespecting the month of Ramadhan etc.
- **Phase 2** – will be introduced 12 months after the Syariah Courts Criminal Procedure Code is gazetted. This includes all offences under **Part IV Chapter I, II and III** that are punishable by *Hadd*, *Qisas*, *Diyat*, *Badal-Al-Sulh* or *Arsy*, except offences punishable by death. Estimated in force Q3 or Q4 2015.
- **Phase 3** – will be introduced 24 months after the Syariah Courts Criminal Procedure Code is gazetted. The Penal Code will then be fully enforced including offences punishable by death. Estimated in force Q3 or Q4 2016.

Who does the Penal Code apply to?

- The Penal Code applies to both Muslims and Non-Muslims. However, many of the specific offences are applicable to Muslims only.
- Muslims and Non-Muslims – Theft, robbery, causing death, causing hurt, contempt of Prophet Muhammad, deriding verses of Quran or *Hadith*, indecent behaviour, disrespecting *Ramadhan* (fasting month).
- Muslims only - Apostasy, worship, non-payment of *Zakat* or *Fitrah*, failure to perform Friday prayer.

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- Non-Muslims could be implicated - Adultery if committed with a Muslim, consuming alcohol in a public place, close proximity if committed with a Muslim.

Area of Jurisdiction

- Implementation will be in Brunei Darussalam.
- “Extraterritorial Jurisdiction” - offences committed abroad by citizens or permanent residents of Brunei Darussalam may be prosecuted in Brunei (Section 6 (3) Syariah Courts Act Cap.184).
- The existing Civil Penal Code will continue to run in parallel. Some cases could be heard by both Civil and Syariah courts e.g. theft, robbery, statutory rape, unlawful carnal knowledge, criminal defamation, homicide, causing hurt. Such cases will be investigated by the police assisted by religious law enforcement and other law enforcement agencies.

Indecent Behaviour

As per Section 197 of the Penal Code, Indecent behaviour is anything that tarnishes the image of Islam, depraves a person, brings bad influence, or causes anger to the person who is likely to have seen the act. This could include excessive kissing in public and dressing indecently (there is not yet a state guideline on what dress-wear is deemed acceptable in public). Brunei Shell Petroleum Co Sdn Bhd has a staff dress code for its offices and a link to this can be found [here](#). Generally, clothing should not be provocative. A fine of not more than \$2,000, imprisonment of not more than 6 months, or both, may be imposed for the offence of indecent behaviour.

Intoxicating Drinks (alcohol)

As per Sections 104 to 106 of the Penal Code, Non-Muslims are prohibited from public consumption of intoxicating drinks or offering, or exhibiting, the same to Muslims. A fine of not more than \$8,000, imprisonment of not more than 2 years, or both, may be imposed.

Prohibition of Propagation of Religions other than Islam

As per Section 209 of the Penal Code, it is an offence for a person to propagate a religion other than Islam to a Muslim or a person having no religion. There are related offences in Sections 210 and 211 of persuading a Muslim or a person having no religion to become a believer or a member of a religion other than Islam. A fine of not more than \$20,000, imprisonment of not more than 5 years, or both, may be imposed.

Click [here](#) for the FAQ and official Penal Code slide-pack. For further information, please contact [Ayla Abdullah](#).

**BSP-LGL
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