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United Nations Office on Drugs and Crime

Country Review Report of Brunei Darussalam

Review by Liechtenstein and Yemen of the implementation by
Brunei Darussalam of articles 15 – 42 of Chapter III.
“Criminalization and law enforcement” and articles 44 – 50 of
Chapter IV. “International cooperation” of the United Nations
Convention against Corruption for the review cycle 2010 -
2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (the “Convention” or “UNCAC”) was established pursuant to article 63 of the Convention to, *inter alia*, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Brunei Darussalam of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Brunei Darussalam, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Liechtenstein and Yemen, by means of telephone conferences, e-mail exchanges and the country visit. The review team involving Dr. Peter Matt from Liechtenstein and Dr. Blkis Abou-Osba, Mr. Yassin Noman and Mr. Abduraboh Gradah from Yemen, and Mr. Dimitri Vlassis, Dr. Dimosthenis Chrysikos and Ms. Annika Wythes from the Secretariat.
6. A country visit, agreed to by Brunei Darussalam, was conducted from 12 to 15 March 2012. The experts were guided by the National Committee for the Implementation of UNCAC in Brunei Darussalam and had meetings with: the Prime Minister’s Office; Anti-Corruption Bureau; Financial Intelligence Unit under the Authoriti Monetari (Central Bank) of Brunei Darussalam; Ministry of Foreign Affairs and Trade; Brunei Association of Banks (“BAB”); Chamber of Commerce; Attorney General’s Chambers; the Judiciary; and the Royal Brunei Police Force.

III. Executive summary

1. INTRODUCTION

1.1. Incorporation of the UNCAC in the domestic legal system

7. *Brunei Darussalam signed the United Nations Convention against Corruption (UNCAC) on 11 December 2003 and ratified it on 2 December 2008. The instrument of ratification was deposited with the UN Secretary-General on 9 December 2008. The Convention entered into force on 1 January 2009.*

1.2. Overview of the domestic anti-corruption legal and institutional framework¹

8. *The criminal justice system of Brunei Darussalam is based on the English common law system. The relevant anti-corruption provisions are found in the Penal Code (PC) and Prevention of Corruption Act (PCA). Criminal procedure regulations are found in the Criminal Procedure Code (CPC), as well as other specific laws such as those on money laundering, which are currently under review.*
9. *The provisions of the PCA, PC and CPC were deemed to complement each another. If there is an inconsistency, the PCA will prevail, unless it is silent on the matter, in which case the PC and CPC are to be considered.*
10. *The independent Anti-Corruption Bureau (ACB), established on 1 February 1982, is the specialized anti-corruption body in the country. Other related anti-corruption include: the Commercial Crime Investigation Unit under the Police; and National Committee on Anti-Money Laundering and Combating Terrorism Financing (NAMLC).*
11. *The Public Service Commission is an independent body, established in 1962, to deal with matters pertaining to the appointment, transfer, promotion, termination and imposing disciplinary punishment against public servants. The Commission has the authority to deal with the immunities or jurisdictional privileges of any public servant.*

2. IMPLEMENTATION OF CHAPTERS III - IV

2.1. Criminalization and Law Enforcement (Chapter III)

2.1.1. Main findings and observations

Bribery offences; trading in influence (articles 15, 16, 18, 21)

12. *Active and passive bribery in the public sector are criminalized through sections 6(b) and 6(a) of the PCA, respectively. The active bribery provision refers to the conduct of “giving or agreeing to give or offering”. During the country visit, it was confirmed that “promise” is falls under the umbrella of “agreeing to offer”. The passive bribery provision makes reference to “any agent [who] corruptly accept[s] or obtains, or agrees to accept or attempts to obtain”. Seemingly, this covers solicitation or acceptance.*
13. *The review team raised concerns about the manner in which the term “corruptly” as foreseen in section 6(b) of the PCA is interpreted. In response, the national authorities brought to the attention of the reviewing experts two judicial decisions where this term was further specified.*
14. *The law does not require the advantage to be undue, but instead refers to “any gratification”. In this connection, the review team noted the broad definition of the term*

¹ *The information contained herein reflects the implementation of UNCAC by Brunei Darussalam at the time of the peer review process. His Majesty, the Sultan and Yang Di-Pertuan of Brunei Darussalam has since consented to the passing of a new law known as the Criminal Asset Recovery Order 2012 (CARO). It came into effect on 16 June 2012 and repeals the Anti-Money Laundering Act, Chapter 178 and the Criminal Conduct (Recovery of Proceeds) Order 2000.*

covering all sorts of undue advantages, whether tangible or intangible and pecuniary or non pecuniary (section 2 of the PCA).

15. *With respect to “duties”, the law refers to the “principal’s affairs or business”. It was confirmed that this would be equivalent to “official duties”, as set forth in subparagraph (a) of UNCAC article 15.*
16. *Section 6(b) of the PCA describes the conduct of bribery without specifying whether the gratification is for the agent himself or herself, or a third party. Nonetheless, the element of a third party beneficiary is foreseen in other parts of the legislation.*
17. *Section 6 of the PCA uses the term “agent”. This is further defined in section 2 and refers to a person “employed or acting for another”. The national authorities confirmed that the term “agent” is widely used, even in cases of bribery of certain categories of public officials specifically foreseen in the law. In addition to “agent”, it was noted that other terms are also employed, such as “public servant” and “public officer” in both the PCA, PC and Constitution. This raises concerns of a potential inconsistent use of terminology regarding public officials as perpetrators of a corruption-related offence.*
18. *Brunei Darussalam has no specific legislation in place that would explicitly address the issue of active or passive bribery of foreign public officials and officials of public international organizations. Reference was made to section 5 of the PCA, but this was deemed to not provide a clear link to such offences.*
19. *Bribery in the private sector is criminalized through section 5 of the PCA. The Brunei Association of Banks (BAB) and Chamber of Commerce provided that facilitation payments are not tolerated.*
20. *There is no specific provision on trading in influence. Apart from legislatively enacting this offence, a discussion was had on the possibility of using the wide definition of “gratification”, contained in section 2(f) of the PCA when applying mutatis mutandis section 5 of the Act on “punishment of corruption”, in cases on trading in influence.*

Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)

21. *Section 403 of the PC criminalizes the misappropriation or conversion of any movable property for “own use”, whereas sections 405, 406 and 409 of the PC focus on the “criminal breach of trust”.*
22. *The Public Officers (Conduct and Discipline) Regulations in the Public Service Commission Act address abuse of functions and in particular, deal with conflict of interest and abuse of public position for private use. A breach of this Act entails disciplinary and not criminal liability.*
23. *Illicit enrichment is criminalized through section 12 of the PCA. The Attorney-General’s Chambers (AGC) confirmed that it is still the task of the Prosecutor to prove the possession of the property, and then it is the responsibility of the defendant to prove the legitimate origin of such property.*

Laundering of proceeds of crime; concealment (articles 23, 24)

24. *Money-laundering is criminalized in the Anti-Money Laundering Act and Criminal Conduct (Recovery of Proceeds) Order. Section 23(1) of the latter refers to “his [perpetrator of the predicate offence] proceeds of criminal conduct”, which limits its scope.*
25. *There is a high threshold used for predicate offences (i.e. 5 years imprisonment). A new law was suggested with a view to expanding, inter alia, the scope of predicate offences by reducing the threshold to define such offences from 5 years to 1, and also include offences committed outside the national jurisdiction.*
26. *No fundamental principles of domestic legislation were reported, prohibiting the commission of money laundering and predicate offences by the same person. It is possible that both the money-laundering act and the predicate offence are committed by the same person (self-laundering).*
27. *Brunei Darussalam has not furnished copies of its laws to the UN Secretary-General.*
28. *UNCAC article 24 on the criminalization of concealment is implemented in section 23(2) of the Criminal Conduct (Recovery of Proceeds) Order. The law requests knowledge or reasonable grounds for suspecting the illicit origin, the intent to assist and person avoiding prosecution or confiscation.*

Obstruction of justice (article 25)

29. *There seems to be no specific provision criminalizing obstruction of justice, per se. Section 503 of the PC was reported to be the provision of general application. It may be broadly interpreted to cover the “use of physical force, threats or intimidation”, as required by UNCAC article 25(a). However, it was noted that “the promise, offering or giving of an undue advantage” was not provided for in section 503.*

Participation and attempt (article 27)

30. *Sections 13 and 15 of the PCA contain basic regulations on abetment and criminal conspiracy. On meaning of abetment and criminal conspiracy, the general provisions of the PC are of relevance.*
31. *Section 14 of the PCA and section 511 of the PC provide for the punishment of an attempt to commit an offence. The provisions criminalizing attempt are also applicable to the preparations of offences.*

Liability of legal persons (article 26)

32. *The liability of legal persons is not clearly provided for in the domestic legislation. It would not be possible to extend the definition of “person” under section 5 of the PCA to both natural and legal persons. The PCA was enacted primarily to criminalize various forms of corrupt transactions concerning individuals.*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

33. *In general terms, the sanctions foreseen in the legislation for corruption-related offences and for natural persons, as their perpetrators, were deemed adequate.*
34. *The constitutional provisions on immunity (section 84B) stipulate that “Any person acting on behalf, or under the authority, of His Majesty the Sultan and Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him in his official capacity”. With regard to criminal proceedings, doubts were raised as to whether the Public Prosecutor, acting by virtue of section 31 of the PCA, could initiate proceedings in cases where it is not certain whether the perpetrator acted under or on behalf of His Majesty, or His Majesty was not informed correctly about the factual circumstances of the matter.*
35. *For a corruption-related offence to be prosecuted, the Public Prosecutor has to provide his or her consent. The Public Prosecutor enjoys independence and has the absolute discretion to institute or discontinue any criminal proceedings except for cases heard by the Military or Syariah (Islamic Religious) Courts. The Criminal Justice Division of the AGC carries out the responsibilities of the Public Prosecutor. Officers of the Division conduct prosecutions before the Magistrate, Intermediate and High Courts, and appear in criminal appeals before the High Court and Court of Appeal. The separation of investigative services to be provided by ACB and the cases to be handled by the AGC before the competent courts raised concerns with respect of the efficiency of the prosecution.*
36. *Where an accused person provides substantial cooperation in the investigation and prosecution of an offence, the Court may consider this factor as a mitigating factor when imposing his or her sentence.*
37. *There are procedures in place to remove, suspend or reassign public officials accused or convicted. It is, however, within the discretion of the Head of a Department to remove an accused official. Once convicted, the Public Service Commission, acting as disciplinary authority, will hold disciplinary proceedings and will decide whether or not to dismiss an officer.*

Protection of witnesses and reporting persons (articles 32, 33)

38. *Section 30 of the PCA refers to the non-disclosure in any civil or criminal proceeding of the name or address of any informer, or any matter which might lead to his discovery. The identity of an informer is protected and can be revealed only in exceptional circumstances.*
39. *Section 30 of the PCA was viewed as an initial step towards establishing a comprehensive witness protection system.*

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

40. *The domestic legislation on freezing, seizure and confiscation foresees special powers of investigation to secure the proceeds of crime for confiscation. The Permanent Secretary of*

the Ministry of Finance has the power to regulate the administration of “realisable property” after a confiscation order has been filed. Nonetheless, the Permanent Secretary also has the discretion to determine who would otherwise be the competent authority to administer such property.

41. *Banking or any other professional secrecy seems not to be an issue hindering the prosecution of corruption-related offences.*

Statute of limitation; criminal record (articles 29, 41)

42. *The reviewing experts noted the non-existence in the domestic legislation of a statute of limitations period for corruption-related offences. They also noted, in this regard, that this stems from general principles of criminal law in Brunei Darussalam and is not a specific anti-corruption measure with ad hoc symbolic connotations and practical ramifications. However, the review team underlined the impact that this general feature of the domestic criminal justice may have on the prevention of corruption.*

43. *A criminal record request can be made through mutual legal assistance (MLA), pursuant to section 3(a) of the Mutual Legal Assistance in Criminal Matters Order (MLA Order).*

Jurisdiction (article 42)

44. *Jurisdiction principles, including rules of territoriality, and passive and only active personality, are established in section 37 of the PCA and section 7 of the CPC. Domestic prosecution in lieu of extradition where the latter is denied on grounds of nationality, is an available option in the legislation (section 55(2)(a) of the Extradition Order). No clear answer was provided on the establishment of jurisdiction of offences committed against the State.*

Consequences of acts of corruption; compensation of damage (articles 34, 35)

45. *There are no obstacles to making corruption a relevant factor in legal proceedings with respect to UNCAC article 34.*

46. *The CPC provides for the possibility of obtaining compensation within the criminal procedure at the discretion of the Court. The adjudication of compensation also does not prejudice the rights to initiate civil procedures.*

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

47. *The ACB is the specialized body in Brunei Darussalam for combating corruption. The Bureau opens and conducts investigations on corruption-related matters under the PCA. It is independent from any other authority with the exception of His Majesty the Sultan.*

48. *The Commercial Crime Investigation Unit under the Police can also investigate corruption-related matters (i.e. embezzlement) under the PC. However, the ACB can also investigate such offences that would fall under the mandate of the Police (section 19 of the PCA).*

49. *The ACB and Police cooperate with respect to investigations and no issue has arisen regarding their respective mandates. Criminal matters, including those pertaining to corruption, are referred to the Public Prosecutor who can exercise his or her discretion to prosecute or dismiss the case.*
50. *Further to its investigative functions, the ACB is actively promoting social awareness and combating corruption through their lecture programmes, exhibitions, media publicity and promotions to encourage the public to report matters pertaining to corruption. There is also an existing memorandum of understanding (MOU) with the Brunei Association of Banks.*
51. *A framework of cooperation exists between the national law enforcement agencies. Joint operations and investigations are being conducted frequently. The National Committee on Anti-Money Laundering and Combating Terrorism Financing (NAMLC) is an example of interagency cooperation nationally, regionally and international relating to UNCAC article 23. Members include, inter alia: the ACB, AGC, FIU and Police. NAMLC is also the advisory and coordinating committee on matters relating to Anti-Money Laundering/Counter-Financing of Terrorism (AML/CFT) issues. Another cooperation framework is the National Security Committee which brings together officers from the ACB, Police and AGC. Cooperation is further promoted between the FIU, ACB and Police, on the one hand, and the financial institutions, on the other, to promote financial investigations, including through the freezing of bank accounts.*

2.1.2. Successes and good practices

52. *The review team welcomed the following good practices geared towards increasing the effectiveness of criminalization and law enforcement in the anti-corruption field:*
- *The wide definition of the term “gratification” covering undue advantage, whether tangible or intangible and pecuniary or non pecuniary; and*
 - *The lower evidentiary standards used in confiscation proceedings.*

2.1.3. Challenges and recommendations

53. *While noting the considerable and continuous efforts of the authorities in Brunei Darussalam to achieve full compliance of the national legal system with the UNCAC provisions in the criminalization and law enforcement area, the reviewers identified some grounds for further improvement and made the following recommendations for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements):*
- *Continue to clarify the interpretation of the term “corruptly” with a view to ensuring further clarity when implementing section 6 of the PCA;*
 - *Address, for purposes of legal clarity and certainty, the inconsistent use of terminology describing public officials as the perpetrators of corruption-related offences (“agent”, “public servant”, “public officer”);*

- *Extend the scope of application of the bribery and embezzlement offences to cover instances where the undue advantage is intended for a third party;*
- *Ensure that more focused and specific legislation is in place to expressly cover the offence of active and, taking into account the optional nature of the offence, passive bribery of foreign public officials and officials of public international organizations;*
- *Explore the possibility of including in the domestic legislation ad hoc provision(s) to criminalize trading in influence, in line with UNCAC article 18;*
- *Explore the possibility of addressing instances of abuse of functions by public officers through criminal sanctions and not only disciplinary measures;*
- *Widen the scope of application of the money-laundering provision to cover proceeds of crime of not only the perpetrator of the predicate offence, but also other people;*
- *Ensure that the envisaged expansion of the scope of predicate offences through the enactment of new money-laundering legislation is efficiently and effectively implemented;*
- *Ensure that copies of the money-laundering legislation and future amendments of such legislation are sent to the UN Secretary-General;*
- *Ensure that more focused and specific legislative provisions are in place to expressly cover and criminalize conducts falling within the scope of obstruction of justice, as prescribed in UNCAC article 25;*
- *Pursue the establishment of criminal liability of legal persons in a manner that specifies the terms and conditions for triggering such liability; the exact nature of the acts for which such a legal person might be held criminally liable; and an adequacy and deterrent effect of sanctions against legal entities. Moreover, ensure that the liability of legal persons be without prejudice to the criminal liability of the natural persons who committed the offences, and the sanctions for legal persons be effective, proportionate and dissuasive;*
- *Take legislative and other measures to establish effective witness protection procedures, in line with UNCAC article 32, including the consideration of witness protection issues within the scope of bilateral agreements and arrangements with other countries;*
- *Bearing in mind the optional nature of UNCAC article 33, take further steps towards protecting whistleblowers, as well as collaborators of justice, in line with paragraph 4 of UNCAC article 37, by means of including these persons under the same protective status as witnesses, when such status is to be recognized and enforced;*
- *Include in the envisaged new money-laundering legislation certain provisions to define the concept of property and proceeds of crime as subjects of confiscation*

proceedings and delineate the concept of good will of third parties in confiscation proceedings, unless such matters are dealt with exclusively in case law;

- *Continue to clarify the interpretation of existing legislation, including jurisdiction over offences committed against the nationals and/or against the State, taking into account the optional nature of these jurisdictional principles; and*
- *Consider ways and means to use available resources, including, where necessary, synergies among investigative and prosecutorial authorities, to ensure more efficient and effective management of corruption cases, including through the establishment of case management systems and reconsidering the placement of liaison AGC officers in the ACB.*

2.2. International cooperation (Chapter IV)

2.2.1. Main findings and observations

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

54. *Substantive and procedural requirements for extradition are set forth in the Extradition Order, 2006. This also allows for extradition on a case-by-case basis, including with countries with which Brunei Darussalam has no extradition treaty. Apparently Brunei Darussalam does not make extradition conditional on the existence of a treaty and can also use the UNCAC as a legal basis. To date, no extradition request, based on UNCAC, has been received.*
55. *Pursuant to section 3(1) of the Extradition Order, all UNCAC-related offences can, prima facie, be deemed to be extraditable offences. However, the principle of dual criminality is required, noting that it is not necessary to use the same terminology (section 3(2)).*
56. *No extradition request would be refused based on the offence involving fiscal matters.*
57. *A prima facie case needs to be established in domestic extradition proceedings. Such an evidentiary standard may lengthen the proceedings.*
58. *The transfer of prisoners is regulated by the International Transfer of Prisons Order. Sections 54 and 56 of the Extradition Order are applicable to the transfer of criminal proceedings.*

Mutual legal assistance (article 46)

59. *Brunei Darussalam has been a State party to the Association of Southeast Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters since 2006. The enabling legislation is the MLA Order that entered into force on 1 January 2006. The reciprocity principle can also be used as an alternative legal basis for MLA (section 22(1)(c)(i) of the MLA Order).*
60. *It was confirmed that law enforcement agencies transmit information to their counterparts on criminal matters that: could assist them in undertaking or successfully concluding*

inquiries and criminal proceedings; or could result in a formal MLA request. Such transmission of information can be done on a case-by-case basis and through the use of informal channels of communication, reported to exist mainly with other neighboring countries.

61. *The grounds for refusing MLA requests are stipulated in section 24 of the MLA Order, and include both mandatory and optional grounds. The absence of dual criminality is listed among the optional grounds for refusing an MLA request, pursuant to section 24(2)(c) of the MLA Order. This optional requirement in the domestic legislation may well serve the purpose of effective implementation of UNCAC article 46, if the discretion to require dual criminality is only limited to assistance involving coercive measures.*
62. *The central authority for matters pertaining to MLA requests under the UNCAC is the Attorney General. Brunei Darussalam notified the UN Secretary General that MLA requests under the Convention should be made in, or accompanied by a translation into, the English language.*
63. *The average time needed to respond to MLA requests, not related to corruption and focused on documentary evidence, was 2 weeks.*

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

64. *Law enforcement cooperation, including the exchange of information and coordination of certain investigations regarding corruption-related offences, is pursued through, inter alia, the membership and participation of the ACB in the South East Asia Parties against Corruption (SEA-PAC). The ACB also works closely with counterparts from Singapore and Indonesia, as well as organizes bilateral meetings on an annual basis with counterparts from Malaysia. However, Brunei Darussalam does not have a database through which information can be shared with such counterparts.*
65. *Brunei Darussalam cooperates with INTERPOL on matters related to law enforcement cooperation.*
66. *There have been numerous general joint investigations carried out by the Police with other States, such as Malaysia, Lao PDR and Singapore (also on a case-by-case basis). The ACB has conducted one corruption-related joint investigation with Indonesia.*
67. *“Controlled delivery” is one of the investigation techniques already used by the ACB. Electronic surveillance equipment is deployed mainly for the purposes of monitoring. The admissibility of evidence is determined in Court on its relevance, regardless of how it was obtained.*

2.2.2. Successes and good practices

68. *The review team identified the following good practices to strengthen international cooperation mechanisms:*
 - *The existing channels of cooperation with counterparts in the same sub-region;*

- *The links and cooperation with INTERPOL on matters related to law enforcement cooperation; and*
- *The existing practice, based on bilateral agreements or arrangements, of “visiting judges” from Australia, Hong Kong, Singapore and the United Kingdom to adjudicate domestic cases. Although not directly linked to international cooperation, this practice demonstrates the familiarity with a tradition of utilizing international expertise and therefore, the readiness to engage in agreements to accept “liaison officers” for purposes of enhancing the efficiency of international cooperation.*

2.2.3. Challenges and recommendations

69. *The following is brought to the attention of the national authorities as recommended action for further enhancing international cooperation mechanisms that may be taken or considered (depending on the mandatory or optional nature of the relevant UNCAC requirements):*

- *Consider notifying the UN Secretary General of Brunei Darussalam’s readiness to use UNCAC as a legal basis for extradition;*
- *Explore the possibility of taking legislative measures to allow for extradition in the absence of dual criminality, in order to facilitate international cooperation, in line with paragraph 2 of UNCAC article 44;*
- *Amend the extradition legislation with a view to simplifying the evidentiary requirements in domestic extradition proceedings, in line with paragraph 9 of UNCAC article 44;*
- *Seek to expand the country’s extradition treaty network to enhance the effectiveness of extradition and MLA; in doing so, make best use of existing resources and/or consider increasing such resources;*
- *Expand the practice of spontaneous transmission of information that could assist in undertaking or successfully concluding inquiries and criminal proceedings, or could result in a formal MLA request;*
- *Amend the domestic legislation to expressly provide for the exclusion of fiscal offences from the grounds of refusal of MLA requests, rather than relying on the discretionary powers of the Attorney General to do so on a case-by-case basis;*
- *Make efforts to put in place a case management system within the central authority for MLA requests to facilitate, inter alia, the regular monitoring of the length of MLA proceedings for purposes of improving standard practice; and*
- *Make efforts to put in place a database through which information can be shared with law enforcement counterparts in other countries.*

IV. Implementation of the Convention

A. Ratification of the Convention

70. Brunei Darussalam signed the Convention on 11 December 2003 (C.N.1492.2003.TREATIES-95) and ratified it on 2 December 2008 (C.N.995.2008.TREATIES-37). Brunei Darussalam deposited its instrument of ratification with the Secretary-General on 9 December 2008 and it entered into force on 1 January 2009.

B. Legal system of Brunei Darussalam

71. The criminal justice system of Brunei Darussalam is based on the English common law system. It seeks to balance the needs of the State to enforce effectively its criminal laws, with the rights of the person to a due and fair process in conformity with the constitutional provisions. With respect to Brunei Darussalam's anti-corruption legislation, in particular, the relevant provisions are in the Penal Code and Prevention of Corruption Act ("PCA") (Cap 131). Criminal procedure regulations are mostly found in the Criminal Procedure Code, as well as other specific laws such as those on money laundering, which are currently under review.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

72. On 1 January 1982, the Government of His Majesty the Sultan and Yang Di Pertuan of Brunei Darussalam enforced the Emergency (Prevention of Corruption) Act, which was subsequently amended in 1984 and titled 'Prevention of Corruption Act (Cap 131)'. An independent body was established, the Anti-Corruption Bureau ("ACB"), on 1 February 1982.

73. The applicable provision is section 6(b) of the PCA.

Prevention of Corruption Act (Cap 131)

Section 6(b)

any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his

principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

Penalty: a fine of BND\$30,000.00 and to imprisonment for 7 years

74. Brunei Darussalam also cited the case, *Dong Sui Hong v PP* (Criminal Appeal No. 24 of 2009). The High Court of Brunei Darussalam upheld the sentence of 14 months imprisonment imposed on the appellant for corruptly offering a gratification of (Brunei Dollar) BND\$500 to an officer in the Department of Electrical Services. The gratification was offered to expedite the payment of a claim made by his company of BND\$28,870 in respect of works under a contract between the appellant's company and the Department of Electrical Services. This was an offence punishable under section 6 (b) of the PCA.

(b) Observations on the implementation of the article

75. The corruption offences are regulated in Part III of the PCA. Section 6(b) refers to active bribery, as it focuses on “gives or agrees to give or offers”. During the country visit, it was confirmed that “promises” falls under the umbrella of “agrees to offer”.

76. The law does not require the advantage to be “undue” but refers to “any gratification”. In this connection, the review team noted the broad definition of the term covering all sorts of undue advantage whether tangible or intangible and pecuniary or non pecuniary as required by the Convention (section 2 of the PCA).

77. With respect to “duties”, the law refers to the principal's affairs or business. During the country visit, it was confirmed that this would be equivalent to “official duties”, as set forth in the provision under review.

78. The review team raised concerns about the manner in which the term “corruptly” as foreseen in section 6(b) of the PCA is interpreted. In response, the national authorities brought to the attention of the reviewing experts 2 judicial decisions where this term was specified as:

- “qualifying the offence in a significant manner. First, the giving must be accompanied by a corrupt intent. Secondly, it is implicit that there should be a corrupt element in the transaction itself”: *P.P. v Khoo Yong Hak* (1995) 2 SLR 283, at p. 286, as referred to in *Haji Shahrom Bin Haji Mohamed Yusof v Public Prosecutor* (1997) JCBD;
- “The word “corruptly” for the purposes of that section, was to be construed as meaning deliberately offering money or other favours, with the intention that it should operate on the mind of the person to whom it was made so as to encourage him to enter into a corrupt bargain. It did not mean dishonesty, which was a different concept”: *R v Harvey* (1999) Crim. L.R. 70, as referred to in *Public Prosecutor and YAM Pengiran Indera Wijaya Pengiran Dr Hj Ismail bin Pg Hj Damit (D1) Wong Tim Kai (D2)*, High Court of Brunei Darussalam.

79. Section 6 uses the term “agent” instead of “public official”, as set out in article 2 subparagraph (a) of the Convention. The term is defined in section 2 and refers to “employed or acting for another”. The national authorities confirmed that the term “agent” is widely used, even in cases of bribery of certain categories of public officials specifically foreseen in the law (i.e. sections 10 on bribery of member of legislature and 11 on bribery of member of public body of the PCA. Public bodies are further defined in section 2 of the

PCA and its Schedule. These include: Royal Brunei Airlines Berhad; Brunei Shell Petroleum Company Berhad; Brunei Shell Marketing Company Berhad; Brunei LNG Berhad; and Brunei Coldgas Berhad. The reviewing experts raised the issue of potentially an inconsistent use of terminology regarding “public officials” as perpetrators of the crime, as it was mentioned, in addition to the term “agent”, other terms are also employed, such as “public servant” and “public officer” in the PCA, Penal Code and Constitution.

80. The reviewing experts noted that section 6(b) of the PCA described the conduct of bribery without specifying whether the gratification is for the agent himself or herself, or a third party, although the element of a third party beneficiary is foreseen in other parts of the legislation. In response to this, the reviewing experts brought the attention of the national authorities to the issue of aligning the criminalization provisions in order to ensure consistency in their application. It was therefore recommended that such alignment would need to be pursued.
81. During the country visit, the Representative of the Attorney-General’s Chambers (“AGC”) explained the relationship between the PCA, on the one hand and the Penal Code and Criminal Procedure Code, on other hand. The provisions were deemed to complement one another. If there were a discrepancy or doubt, the PCA would prevail unless it is silent, in which case the Penal Code and Criminal Procedure Code would be considered.
82. The ACB stated that it has had 2 cases in 2011 under section 6(b) of the PCA. The first involved a BND\$100.00 gratification and the person was convicted of 8 months imprisonment. The second involved BND\$20 and the person was convicted of 14 months imprisonment. The review team noted the inconsistency in the level of sanctions, but not knowing the facts, were not in a position to comment.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

83. The applicable provision is section 6(a) of the PCA.

Prevention of Corruption Act (Cap 131)

Section 6(a)

If any agent corruptly accept or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favor or disfavor to any person in relation to his principal’s affairs or business he shall be guilty of an offence.

Penalty: a fine of BND\$30,000.00 and to imprisonment for 7 years.

84. Brunei Darussalam also cited the case, *PP v Hj Yakib bin Haji Jumat* (Criminal Appeal No 40 of 2010). The appellant, a former Third Secretary at the Embassy of Brunei Darussalam in Jakarta was charged with 10 offences under section 6(a) of the PCA and 10 offences under section 165 of the Penal Code. He was convicted of 8 offences under the PCA and 8 offences under the Penal Code, and acquitted of 2 offences under the PCA and 2 under the Penal Code. He was sentenced to 45 months imprisonment, but on appeal, his sentence was reduced to 24 months imprisonment, as the High Court was of the view that the initial sentence was excessive in comparison to the case of the ex-Minister of Development who received a 7 years imprisonment sentence for corruptly receiving millions of dollars. In the case of the Third Secretary, the appellant was charged for corruptly accepting a total less than BND\$15,000.00.

(b) Observations on the implementation of the article

85. Section 6(a) of the PCA criminalizes the passive bribery of national public officials. The provision refers to “any agent corruptly accept[s] or obtains, or agrees to accept or attempts to obtain”. Seemingly, this covers the solicitation or acceptance as set forth in the provision under review.

86. The ACB stated that it has had 4 cases in 2011 relating to section 6(a) of the PCA. Three related to public officials (the first to a BND\$40 gratification and the official was sentenced to 12 months imprisonment, the second to BND\$300 and on appeal, he was sentenced to 6 months imprisonment and the third to BND\$2,500 and he was sentenced to 16 months imprisonment, pending an appeal. Another BND\$350 was also received in the third case and was deemed a Penal Code offence). The fourth case related to an unemployed person who used to work for a car re-possessor company and he asked for a gratification of BND\$100.00. He was convicted under the Misuse of Drugs Act (MDA) and after completion of the MDA sentence, was to further serve 12 months imprisonment under the PCA. The review team noted the inconsistency of the level of sanctions, but not knowing the facts, were not in a position to comment.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

87. Brunei Darussalam does not have a specific law with respect to the active bribery of foreign public officials and officials of public international organizations. However, it was held that this could be substituted by section 5 of the PCA.

Prevention of Corruption Act (Cap 131)

Section 5(b)

Any person who shall by himself or by or in conjunction with any other person –

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of –
(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever actual or proposed or likely to take place;
(ii) any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,
shall be guilty of an offence: Penalty, a fine of \$30,000 and imprisonment for 7 years.

(b) Observations on the implementation of the article

88. Brunei Darussalam has no specific legislation in place that would address explicitly the issue of active bribery of foreign public officials and officials of public international organizations. The authorities, however, referred to section 5(b) of the PCA that could be applied in such cases. The reviewing experts were of the view that the constituent elements of section 5(b) do not include a clear link to the functions of a foreign public officials and/or officials of public international organizations. Therefore, they were of the opinion that issues of legal uncertainty or a lack of clarity may arise in this regard. It was recommended that Brunei Darussalam ensure that more focused and specific legislation be in place to expressly cover the offence of active bribery of foreign public officials and officials of public international organizations.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

89. Brunei Darussalam does not have a specific law with respect to the passive bribery of foreign public officials and officials of public international organizations. However, it was held that this could be substituted by section 5 of the PCA.

***Prevention of Corruption Act
Section 5(a)***

Any person who shall by himself or by or in conjunction with any other person -

(a) corruptly solicit or receive or agree to receive for himself or for any other person; or

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever actual or proposed or likely to take place;

(ii) any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,

shall be guilty of an offence: Penalty, a fine of \$30,000 and imprisonment for 7 years.

(b) Observations on the implementation of the article

90. Brunei Darussalam has no specific legislation in place that would address explicitly the issue of passive bribery of foreign public officials or officials of public international

organizations. The authorities, however, referred to section 5(a) of the PCA that could be applied in such cases. The reviewing experts made the same observations as above, taking into account the optional nature of this offence.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

91. The applicable provisions are sections 403, 405, 406, 408 and 409 of the Penal Code (Cap 22).

Penal Code (Cap 22)

Section 403

Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

Section 405

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Section 406. Punishment for criminal breach of trust

Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to 5 years and with fine.

Section 408. Criminal breach of trust by clerk or servant

Whoever, being a clerk or servant, or employed as a clerk or servant and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

Section 409. Criminal breach of trust by public servant or by banker, merchant or agent

Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

92. Brunei Darussalam also cited the case, *Abdul Jalil Bin Haji Tamin v. Public Prosecutor*.

The accused Abdul Jalil, Senior Assistant Supervisor to the Baitul Mal Zakat & Fitrah at the Ministry of Religious Affairs was charged with the offence of misappropriating BND\$43,625.00, an offence punishable under section 409 of the Penal Code. He was subsequently convicted and sentenced to 12 months imprisonment on 24 September 1997. This case was investigated by the ACB.

(b) Observations on the implementation of the article

93. The authorities of Brunei Darussalam referred to a set of provisions in the Penal Code. Section 403 criminalizes the misappropriation or conversion of any movable property "to his own use". Whereas sections 405 and 406 cover the "criminal breach of trust".

94. The reviewing experts noted that the language of sections 403 and 405 of the Penal Code may indicate that the criminal behaviour is more focused on the private sector rather than the public (broad definition of perpetrator of crime, “whoever”), as opposed to section 409 of the Penal Code. However, the authorities of Brunei Darussalam confirmed that sections 403 and 405 of the Penal Code are general provisions applicable to both private and public sector offences.
95. In addition, the reviewing experts reiterated the comments on the lack of the element of third party beneficiaries in the provision implementing UNCAC article 17. However, the authorities of Brunei Darussalam highlighted that the offence is clear in that once a public official acts beyond what he is entrusted to do (whether to benefit himself or others), this is a criminal offence.
96. Sections 408 and 409 provide for a more severe punishment in case of a criminal breach of trust committed by a clerk, servant, public servant, banker merchant or agent.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

97. Brunei Darussalam has partly implemented this provision.

(b) Observations on the implementation of the article

98. In view of the lack of a specific provision on active trading in influence, the reviewing experts discussed with the national authorities the possibility of using the wide definition of “gratification” contained in section 2(f) of the PCA in considering the application of section 5(b) in cases also concerning trading in influence. No further information or jurisprudence was provided to corroborate this conclusion.
99. The review team recommended that the national authorities explore the possibility of including in the legislation *ad hoc* provisions of the kind contained in UNCAC article 18.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the

public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

100. Brunei Darussalam does not have any specific provisions that criminalize the abuse of influence by public official, but referred to section 165 of the Penal Code (Cap 22).

Penal Code (Cap 22)

Section 165

Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment for a term which may extend to 7 years and with fine.

(b) Observations on the implementation of the article

101. As to passive trading in influence, section 165 of the Penal Code seems to request some sort of interest of the briber in a possible proceeding or business transaction to be conducted by the “public servant”, thus creating a conflict of interest. The law does not consider the aim to obtain an undue advantage from a third person from an administration or public authority.

102. During the country visit, the reviewing experts were informed of the case involving the Minister who was also the Istana Project Supervisor (IPS). The Court deemed that in using his influence as the Minister and IPS, he was in breach of section 165 of the Penal Code and was sentenced to 7 years imprisonment, as well as payment of the money received for exercising his influence.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

103. The applicable provision is Regulation 11 of the Public Officers (Conduct and Discipline) Regulations, Public Service Commission Act (Cap 83).

Public Officers (Conduct and Discipline) Regulations, Public Service Commission Act (Cap 83).

Regulation 11

(a) No officer shall conduct himself in such a manner as to bring his private interests into conflict with his public duties or in such a manner as he knows or can reasonably be expected to know is likely to cause a reasonable suspicion in the minds of the public that he -

(i) Has allowed his private interests to come into conflict with his public duties and thereby to impair his usefulness as a public officer; or

(ii) Has used his public position for private advantage.

Any breach of this Regulation will render the officer liable to disciplinary proceedings.

(b) Observations on the implementation of the article

104. The authorities of Brunei Darussalam referred to a regulation contained in the “Public Service Commission Act (Cap 83)”. This regulation deals, in particular, with conflict of interest and abuse of public position for private use. The breach of this provision, however, entails disciplinary proceedings and not criminal liability.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

105. The applicable provision is section 12 of the PCA.

Prevention of Corruption Act (Cap 131)

Section 12. Possession of unexplained property

(1) Any person who, being or having been a public officer -

- (a) Maintains a standard of living above that which is commensurate with his present or past emoluments; or
- (b) Is in control of pecuniary resources or property disproportionate to his present or past emolument

(b) Observations on the implementation of the article

106. Section 12 of the PCA criminalizes the acts set forth in the provision under review. However, there has been no practical application of the provision.

107. The reviewing experts noted section 12(6) of the PCA that claims that in this section a “public officer” includes “a member of the Royal Brunei Police Force, the Royal Brunei Armed Forces and any armed formed of Brunei Darussalam, and includes a person who was a public officer or who has retired as a public officer immediately before the commencement of this Act”.

108. In response to questions of the review team, the AGC confirmed that it is still the task of the Prosecutor to prove the possession of the property, and then it is the responsibility of the Defendant to prove the legitimate origin of the property.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or

herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

109. The applicable provision is section 5 of the PCA.

The Prevention of Corruption Act (Cap 131)

Section 5

Any person who shall by himself or by or in conjunction with any other person -

(a) corruptly solicit or receive or agree to receive for himself or for any other person; or

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of -

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever actual or proposed or likely to take place;

(ii) any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,

shall be guilty of an offence: Penalty, a fine of \$30,000 and imprisonment for 7 years.

(b) Observations on the implementation of the article

110. It was reported that section 5(b) of the PCA is applicable.

111. In a separate discussion with members of the Brunei Association of Banks and Chamber of Commerce, the review team was informed that facilitation payments are not tolerated.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

112. The applicable provisions are sections 403, 405, 406, 408 and 409 of the Penal Code (Cap 22).

Penal Code (Cap 22)

Section 403. Dishonest misappropriation of property

Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

Section 405 Criminal breach of trust

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contact, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Section 406 Punishment for criminal breach of trust

Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to 5 years and with fine.

Section 408 Criminal breach of trust by clerk or servant

Whoever, being a clerk or servant, or employed as a clerk or servant and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

Section 409 Criminal breach of trust by public servant or by banker, merchant or agent

Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to 10 years, and shall also be liable to fine.

(b) Observations on the implementation of the article

113. Embezzlement of property in the private sector seems to be legislatively covered by sections 403, 405, 406, 408 and 409 of the Penal Code.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

114. The applicable provisions are in the Anti-Money Laundering Act (Cap 209) and Criminal Conduct (Recovery of Proceeds) Order, 2000.

115. Brunei Darussalam indicated that there is no relevant case law.

(b) Observations on the implementation of the article

116. The reviewing experts noted that there is an ongoing process to amend the Anti-Money Laundering Act and Criminal Conduct (Recovery of Proceeds) Order, and recommended that the process be accelerated.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

117. The applicable provision is section 23(1) of Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000

Section 23(1)

A person is guilty of an offence if he-

- (a) conceals or disguises property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) converts or transfers that property or removes it from Brunei Darussalam, for the purpose of avoiding prosecution for an offence or of avoiding the making or enforcement of a confiscation order.

(b) Observations on the implementation of the article

118. Section 23(1) of Criminal Conduct (Recovery of Proceeds) Order refers to “his proceeds of criminal conduct”, which limits its scope. For this reason, the reviewing experts recommended amending the provision to widen the scope of this money laundering conduct to the proceeds of crime of other people as well.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

119. The applicable provision is section 22(1) of Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000

Section 22(1)

A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(b) Observations on the implementation of the article

120. The provision under review has been legislatively implemented in section 22(1) of Criminal Conduct (Recovery of Proceeds) Order.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) *Subject to the basic concepts of its legal system:*

(ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

(a) Summary of information relevant to reviewing the implementation of the article

121. The applicable provision is section 21(1) of Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000

Section 21(1)

Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement whereby -

(a) the retention or control by or on behalf of another (call him "A") of property which is the proceeds of A's criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) property which is the proceeds of A's criminal conduct is used -

(i) to secure funds that are placed at A's disposal ; or

(ii) for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, is guilty of an offence.

(b) Observations on the implementation of the article

122. Section 21(1) of Criminal Conduct (Recovery of Proceeds) Order legislatively appears to cover the provision under review.

Article 23 Laundering of proceeds of crime

Paragraph 2

2. For purposes of implementing or applying paragraph 1 of this article:

(a) *Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

(b) *Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

(a) Summary of information relevant to reviewing the implementation of the article

123. The applicable provision is section 5(9)(a) of Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000

Section 5(9)(a)

In this Order -

(a) references to an offence to which this Order applies are references to any offence, committed in Brunei Darussalam, other than a drug trafficking offence, punishable in Brunei Darussalam (whether or not with any other method of punishment) with imprisonment for a term of not less than five years or for life or which is a capital offence;

(b) Observations on the implementation of the article

124. During the country visit, the national authorities noted that the enactment of a new law had been suggested with a view to expanding *inter alia* the scope of predicate offences by reducing the threshold to define such offences from five years to one. The review team welcomed the proposed enactment and recommended that the national authorities ensure that it be efficiently and effectively implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

125. Brunei Darussalam has partly implemented the provision under review, pursuant to section 7 of the Criminal Procedure Code (Cap 7).

Criminal Procedure Code (Cap 7)

Section 7

Subject to the provisions of this Code, the jurisdiction of the High Court and the Court of a Magistrate in criminal matters shall extend to any offence committed -

- (a) wholly or partly within Brunei Darussalam; or
- (b) on board any ship registered in Brunei Darussalam; or
- (c) on board any aircraft registered in Brunei Darussalam; or
- (d) on the high seas if the offence is piracy by the law of nations; or
- (e) by any person outside Brunei Darussalam who abets, or enters a conspiracy to commit, an offence within Brunei Darussalam, whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam; or
- (f) by a subject of His Majesty whether the offence was committed within or outside Brunei Darussalam.

(b) Observations on the implementation of the article

126. Pursuant to section 7 of the Criminal Procedure Code, there needs to be some sort of connection or relationship with or to Brunei Darussalam in order for the Criminal Courts of Brunei Darussalam to have jurisdiction. An offence having no such link with Brunei Darussalam could therefore not be considered a predicate offence.

127. The review team noted the high threshold used for predicate offences (i.e. 5 years imprisonment). In response to this, the Legal Unit of the ACB, AGC and FIU noted that a reduction of this threshold is planned in the context of reviewing the anti-money laundering legislation to one year, and also expanding the scope to include offences committed outside the territoriality of Brunei Darussalam to cover also instances of Brunei companies with operations overseas.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

128. Brunei Darussalam has not furnished copies of its laws to the Secretary-General of the United Nations.

(b) Observations on the implementation of the article

129. The review team recommended that the national authorities take appropriate action to ensure that copies of money laundering legislation and future amendments to such legislation be sent to the UN Secretary-General.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

130. No fundamental principles of domestic legislation were reported prohibiting the commission of money laundering and predicate offences by the same person.

(b) Observations on the implementation of the article

131. During the country visit, the reviewing experts were informed that under domestic legislation, it is possible that both the money laundering act and predicate offence are committed by the same person (self-laundering).

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

132. The applicable provision is section 23(2) of Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000

Section 23(2)

Any person is guilty of an offence if, knowing or having reasonable grounds for suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he -

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from Brunei Darussalam,

with intent to assist any person to avoid prosecution for an offence or to avoid the making or enforcement of a confiscation order.

(b) Observations on the implementation of the article

133. The provision under review has been legislatively implemented in section 23(2) of Criminal Conduct (Recovery of Proceeds) Order. The law requests knowledge or reasonable grounds for suspecting the illicit origin, the intent to assist and person avoiding prosecution or confiscation.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

134. Criminal intimidation is covered by section 503 of the Penal Code (Cap 22).

Penal Code (Cap 22)

Section 503

Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

(b) Observations on the implementation of the article

135. There seems to be no specific provision criminalizing the behaviour set forth in the provision under review. However, during the country visit, the AGC indicated that section 503 of the Penal Code is generally applied in this regard. The reviewing experts were of the view that this section may be broadly interpreted to cover the “use of physical force, threats or intimidation” as required by subparagraph (a) of UNCAC article 25. However, it was noted that “the promise, offering or giving of an undue advantage” was not provided for in section 503, and therefore the review team recommended addressing this accordingly.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

The applicable provisions are sections 186, 189, 190, 224, and 225 of the Penal Code (Cap 22) and sections 20(2), 21(3), 23(4) and 34A of the PCA (Cap 131).

Penal Code (Cap 22)

Section 186. Obstructing public servant in discharge of public functions.

Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment for a term which may extend to 3 months, or with fine which may extend to \$2,000, or with both.

Section 189. Threat of injury to public servant.

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment for a term which may extend to 5 years and with fine.

Section 190. Threat of injury to induce person to refrain from applying for protection to public servant.

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment for a term which may extend to 3 years and with fine.

Section 224. Resistance etc. to lawful apprehension: escape from custody.

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escape, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall, be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both.

Explanation - The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Section 225. Resistance or obstruction to lawful apprehension of another person.

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues, or attempts to rescue, any other person from any custody in which that person is lawfully detained for an offence -

(a) shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both; or

(b) if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term which may extend to 10 years, shall be punished with imprisonment for a term which may extend to 3 years, and shall also be liable to fine; or

(c) if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine; or

(d) if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for a term of 10 years or upwards, shall be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine; or

(e) if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for a term not exceeding 15 years, and shall also be liable to fine.

Prevention of Corruption Act (Cap 131)

Section 20(2)

Any person who -

(a) when requested under paragraph (a) of subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance; or

(b) obstructs or resists the Director or the Deputy Director or any police officer or any Officer of the

Bureau in the exercise of the powers of entry and search conferred by paragraph (b) of subsection (1), shall be guilty of an offence: Penalty, a fine of \$20,000 and imprisonment for one year.

Section 21(3)

Any person who obstructed or resists the Director or any Officer of the Bureau or any police officer in the exercise of the powers of entry and search under this section shall be guilty of an offence: Penalty, a fine \$20,000 and imprisonment for one year

Section 23(4)

Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents, safe-deposit box or other article to the Director, Deputy Director or an Officer of the Bureau authorised under subsection (1), shall, notwithstanding the provisions of any other law and any oath of secrecy to the contrary, comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs the Director, the Deputy Director or such Officer of the Bureau in the execution of the authorisation given under subsection (1), shall be guilty of an offence: Penalty, a fine of \$20,000 and imprisonment for one year.

Section 34A

Any person who resists or obstructs any Officer of the Bureau in the execution of his duty is guilty of an offence and liable on conviction to a fine not exceeding \$20,000 and imprisonment for one year.

(b) Observations on the implementation of the article

136. As to the intimidation of judicial and law enforcement officials, the Penal Code and PCA provide for a whole set of offences that are applicable to the provision under review. However, the reviewing experts deemed sections 224 and 225 of the Penal Code to not be relevant to subparagraph (b) of UNCAC article 25. During the country visit, the experts were informed that there have been no relevant cases.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

137. Brunei Darussalam cited section 5 of the PCA.

Prevention of Corruption Act (Cap 131)

Section 5

Any person who shall by himself or by or in conjunction with any other person -

(a) corruptly solicit or receive or agree to receive for himself or for any other person; or

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of -

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever actual or proposed or likely to take place;

(ii) any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,
shall be guilty of an offence: Penalty, a fine of \$30,000 and imprisonment for 7 years.

Interpretation and General Clauses Act (Cap.4) - The word "person" includes any company or association or body of persons, corporate or unincorporate; and this interpretation shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation.

(b) Observations on the implementation of the article

138. During the country visit, it was confirmed by the national authorities that the liability of legal persons was not clearly provided for in the law, and this was further a matter to be addressed. Even section 5 of the PCA that had initially been cited as being applicable both to natural persons, as well as to any kind of company, association or body of persons was deemed insufficient. It would not be possible to extend the definition of “person” under section 5 to both natural and legal persons. For this reason, the reviewing experts recommended that for purposes of legal certainty it would be appropriate to pursue the establishment of criminal liability of legal persons in a way that would clearly specify: 1) the terms and conditions for triggering the criminal liability of legal persons; 2) the exact nature of the acts for which such a legal person might be criminally liable; and 3) the adequacy and deterrent effect of sanctions against legal entities.

Article 26 Liability of legal persons

Paragraphs 3 and 4

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

139. The provision under review is designed to provide for criminal, civil or administrative liability to legal (non-natural persons i.e. incorporations) engaged in corruption. Serious and sophisticated crime is frequently committed by, through or under the cover of legal entities, such as companies, corporations or charitable organizations. Complex corporate structures can effectively hide the true ownership, clients or specific transactions related to serious crimes, including the corrupt acts criminalized in accordance with UNCAC. The PCA was enacted primarily to criminalize various forms of corrupt transactions concerning natural persons or individuals. Further consideration was given to expressly extend criminal liability to incorporations, and/or to extend the scope of the penalty imposed (i.e. payable by the corporation concerned) through the amended section 17 of the PCA. Other legislation may also be affected, such as income tax (i.e. making gifts proven to be ‘masks; bribes to be non-tax deductible).

140. The applicable legal provisions are sections 17 of the PCA and 81 of the Penal Code (Cap 22).

Prevention of Corruption Act (Cap 131)

Section 17. When penalty to be imposed in addition to other punishment

Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within the time and to the body and in the manner specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.

Penal Code (Cap 22)

Section 81. Act likely to cause harm, but done without criminal intent, and to prevent other harm

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

(b) Observations on the implementation of the article

141. Section 17 of the PCA was enacted primarily to criminalize various forms of corruption concerning natural persons.

142. Further to the recommendations made above under UNCAC article 26, the reviewing experts recommended that the national authorities ensure that 1) the liability of legal persons be without prejudice to the criminal liability of the natural persons who have committed the offences and 2) the sanctions for legal persons be effective, proportionate and dissuasive.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

143. The applicable legal provisions are sections 13 and 15 of the PCA, as well as sections 107 to 117 of the Penal Code (Cap 22).

Prevention of Corruption Act (Cap 131)

Section 13. Abetment of offences

Whoever abets, within the meaning of the Penal Code (Cap 22) -

(a) the commission of an offence under this Act; or

(b) the commission outside Brunei Darussalam of any, in relation to the affairs or business or on behalf of a principal residing in Brunei Darussalam, which if committed in Brunei Darussalam would be an offence under this Act,

shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for such offence.

Section 15. Conspiracy

Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code (Chapter 22), to commit an offence under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for such offence.

Penal Code (Cap 22)

Section 107

Any person abets the doing of a thing who-

- (a) instigates any person to do that thing; or
- (b) engages, with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission take place in pursuance of that conspiracy, and in order to the doing that thing; or
- (c) intentionally aids, by any act or illegal omissions, the doing of that thing.

Section 108

A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Section 108A

A person abets an offence, within the meaning of this Code who-

- (a) within Brunei Darussalam abets the commission of any act without Brunei Darussalam; or
- (b) without Brunei Darussalam abets the commission of any act within Brunei Darussalam if the act would constitute an offence if committed in Brunei Darussalam.

Section 109

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the offence.

Section 110

Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Section 111

When an act done was a probable consequence of the abetment, and was committed under the influence of the instigation,, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Section 112

If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and continues a distinct offence, the abettor is liable to punishment for each of the offences.

Section 113

When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause the effect.

Section 114

Whenever any person, who if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Section 115

Whoever abets the commission of an offence punishable with death or imprisonment for 15 years shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment for a term which may extend to 7 years, and shall also be liable to fine; And if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment for a term which may extend to 14 years, and shall also be liable to fine.

Section 116

Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence or with both; And if the abettor or the person abetted is a public servant, whose duty is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term, which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Section 117

Whoever abets the commission of any offence by the public generally, or by any number or class of persons exceeding 10, shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

Section 120

Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows, to be false respecting such design, shall if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence or with both.

Section 120A

When 2 or more persons agree to do, or cause to be done-

(a) an illegal act; or

(b) an act which is not illegal by illegal means, such as an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Section 120B

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, or imprisonment for a term of 2 years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punishable with for 10 years and with fine.

(b) Observations on the implementation of the article

144. Sections 13 and 15 of the PCA contain basic regulations on abetment and criminal conspiracy. With regard to the meaning of abetment and criminal conspiracy, this is referred to in the provisions of the Penal Code. Sections 107 to 117 contain more detailed provisions on abetment. Section 120 deals with the criminality of the “assistant”, while sections 120A and 120B regulate conspiracy (several perpetrators acting as accomplices).

145. According to section 116 in the second paragraph of the Penal Code, the abetment of a public servant by a private person seems to also be punishable. The provisions on participation also seem to be in line with the provision under review.

Article 27 Participation and attempt

Paragraphs 2 and 3

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

146. The applicable provisions are section 14 of the PCA and section 511 of the Penal Code (Cap 22).

Prevention of Corruption Act (Cap 131)

Section 14. Attempts

Whoever attempts to commit an offence punishable under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for such offence.

Penal Code (Cap 22)

Section 511

Whoever attempts to commit an offence punishable by this Code or by any other written law with imprisonment, fine or whipping or with a combination of such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence: Provided that any term of imprisonment imposed shall not exceed one half of the longest term provided for the offence.

147. Brunei Darussalam also cited the case, *PP v Md Jinan Haji Kassim*. In this case, the Defendant was the Assistant Labour Inspector who was convicted of attempting to obtain a gratification of BND\$200 from a local company. In exchange, he was to give a favourable report, which was in breach of the Labour Regulations. The Defendant was sentenced to 12 months imprisonment in the Magistrate Court, but on appeal, this was reduced to 9 months imprisonment.

(b) Observations on the implementation of the article

148. Section 14 of the PCA and section 511 of the Penal Code provide for the punishment of an attempt to commit an offence set out in the respective laws.

149. Regarding paragraph 3 of UNCAC article 27, the provisions of the PCA and Penal Code criminalizing attempt are also applicable to the preparations of offences.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

150. Section 25 of the PCA operates as a tool for the prosecution to trigger the presumption of corruption once the gratification has been shown to be given and accepted (i.e. such an inducement or reward). It is thereafter for the accused to show the contrary (satisfy the evidential burden) on a balance of probabilities. However, the legal burden of proof, as a whole, still remains with the Prosecution to prove the charge beyond reasonable doubt.

Prevention of Corruption Act (Cap 131)

Section 25

Where, in any proceedings for an offence under this Act it is proved that the accused gave or accepted a gratification, the gratification shall be presumed to have been given and accepted corruptly as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.

(b) Observations on the implementation of the article

151. Section 25 of the PCA was regarded as a powerful tool for the Prosecution.

152. During the country visit, the Judiciary confirmed that as a common law based system, elements of an offence need to be inferred from the objective factual circumstances to prove beyond a reasonable doubt that such an offence has been committed. They further referred to the term “corruptly” and its interpretation in case law on the basis of such objective factual circumstances.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

153. Brunei Darussalam does not have a statute of limitations for corruption or any other criminal offence.

(b) Observations on the implementation of the article

154. Brunei Darussalam does not have a statute of limitations for corruption related offences. This was welcomed by the experts. This is a demonstration of zero-tolerance against corruption. However, the experts noted that this extends to all criminal offences as a general concept of the criminal justice system.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

155. The applicable provisions are sections 7 and 17 of the PCA, and the Prime Minister's Office's Circular No.19/1998.

Prevention of Corruption Act (Cap 131)

Section 7

(1) A person convicted of an offence under section 5 or 6 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with any public body, or a sub-contract to execute work comprised in such a contract, be liable to a fine of \$30,000 and to imprisonment for 10 years.

(2) Where a person charged with 2 or more offences for the acceptance of gratification in contravention of this Act is convicted of one or some of those offences, and the other outstanding offences are taken into consideration by the court for the purpose of passing sentence, the court may increase the penalty mentioned in subsection (1) by an amount not exceeding the total amount or value of the gratification specified in the charges for the offences so taken into consideration.

Section 7 of the PCA enhances the imprisonment penalty from 7 years maximum to 10 years maximum when the corrupt offence relates to matters or transaction involving a contract or a proposal of a contract with any public body.

Section 17

When a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within the time and to the body and in the manner specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.

Prime Minister's Office's Circular No.19/1998

This circular is an administrative sanctions imposed on a public servant charged with criminal offences involving dishonesty such as theft, criminal breach of trust, corruption or any offences involving his position where the public servant will be suspended from duty with half pay. Once convicted the public servant will be terminated from service and lose all benefits, including pensions, gratuity, if any.

156. Brunei Darussalam cited the case, *PP v Haji Yakib bin Haji Jumat* (MCC 1778/2007). The Chief Magistrate ordered, the Defendant in addition to his imprisonment sentence, to pay as a penalty, the amount of gratification he received, which amounted to BND\$14,918.25.

(b) Observations on the implementation of the article

157. In assessing the criminal provisions against corruption related offences, the review team was of the opinion that, in general terms, the sanctions foreseen in the legislation for such offences and for natural persons as their perpetrators were adequate.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

158. Every prosecution of any corruption-related offence requires the consent of the Public Prosecutor. This is to ensure that there is no abuse of prosecutorial discretion, pursuant to section 31 of the PCA.

159. The Public Service Commission is an independent body, established in 1962, to deal with matters pertaining to the appointment, transfer, promotion, termination and imposing disciplinary punishment against public servants. The Commission has the authority to deal with the immunities or jurisdictional privileges of any public servant.

160. The applicable legal provision is section 31(1) of the PCA.

Prevention of Corruption Act (Cap.131)

Section 31(1)

A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor:

provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any person so arrested may be remanded in custody or on bail, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(b) Observations on the implementation of the article

161. In discussing issues of immunity, the reviewing experts were informed about the constitutional provisions on immunity (section 84B) where, among others, it is stipulated that “Any person acting on behalf, or under the authority, of His Majesty the Sultan and

Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him in his official capacity”. The experts were also informed of existing jurisprudence (i.e. *Cap(Rtd) Hjh Huraizah and YB Pehin Datu Singa Menteri (2011)*, Court of Appeal of Brunei Darussalam) on the responsibility of administrative bodies to make recommendations to His Majesty that fall under his prerogative powers (i.e. the dismissal or any disciplinary sanctions against a public officer). Such consultative powers, however, have been repealed in connection with the Public Service Commission in the 2004 amendments of the Constitution. With regard to criminal proceedings, in particular, the reviewing experts still had doubts as to whether the Public Prosecutor, acting by virtue of section 31 of the PCA, could initiate such proceedings in cases where it is not certain whether the perpetrator acted under or on behalf of His Majesty, or His Majesty was not informed correctly about the factual circumstances of the matter.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

For a corruption-related offence to be prosecuted, the Public Prosecutor has to provide his or her consent, which includes his or her reason, including a deliberation and full consideration of exercising discretionary legal powers. Section 374(1) of the Criminal Procedure Code (Cap.7) further states that the Attorney General shall be the Public Prosecutor and shall have the general direction and control of criminal prosecution and proceedings under the Penal Code or under any other written law. This will ensure that the legal powers to prosecute any person for any criminal offences remain with an independent and impartial body.

(b) Observations on the implementation of the article

162. Bearing in mind section 31 of the PCA, Brunei Darussalam underlined the independence and impartiality of the Public Prosecution. This is certainly to be welcomed and constitutes an important contribution to the effective prosecution of corruption related offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

163. The applicable provisions are covered by sections 346 (for pending trial), 283 and 431 (for pending appeal) of the Criminal Procedure Code (Cap.7).

Criminal Procedure Code (Cap.7)

Section 346

Bail shall be discretionary for the purpose of this Chapter when-

- (a) it is declared by any written law to be discretionary in respect of any offence;
- (b) the offence is declared by the First Schedule of this Code to be non-bailable; or
- (c) the offence alleged against the person arrested or detained is punishable by imprisonment for a term of 2 years or more whether or not it is also punishable by fine,

bail shall be obligatory in any case in which it is not discretionary.

Section 283

When an appeal is presented against an acquittal the High Court may issue a warrant directing that the accused be arrested and brought before it, and may commit him to prison pending the disposal of the appeal or admit him to bail.

Section 431

The Court of Appeal may, if it thinks fit on the application of an appellant, admit him to bail pending the determination of his appeal.

(b) Observations on the implementation of the article

164. Provisions of the Criminal Procedure Code deal with the possibility of bail. In most corruption-related cases, bail seems to be discretionary (i.e. imprisonment for a term of 2 years or more: section 346(c)). On appeal, against an acquittal, the High Court has the possibility of issuing a warrant against the acquitted and commit him or her to prison pending trial. The Court of Appeal has the possibility of granted bail to an Appellant.

165. During the country visit, the reviewing experts were informed that the ACB has the power to detain the alleged perpetrator for a period of 48 hours before a judicial decision is taken on such custody, including bail considerations.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

166. The applicable provision is regulation 41 of Prisons Rules (Cap.51).

Prisons Rules (Cap.51)

Regulation 41

With a view to encouraging good conduct and industry and to facilitate reformatory treatment, a convicted prisoner sentenced to a term of imprisonment exceeding one month shall be entitled to be granted a remission of one third of this sentence:

Provided that, in no case, shall any remission granted result in the release of a prisoner until he has served one calendar month.

(b) Observations on the implementation of the article

167. In Brunei Darussalam, a convicted is entitled to be granted a remission of one third of his or her sentence for good conduct. The experts deemed this to be a sufficiently high level.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

168. For each individual or public servant who is facing corruption related allegations, the ACB is responsible for giving notice to the relevant department concerned. It is, however, the discretion of the Head of Departments of that individual or public servant whether they are to be dismissed, suspended or an individual or public servant is to be transferred.

169. For the purpose of the provision under review, every public servant will face a dismissal from holding public office. Once convicted and having served the sentence, the Public Service Commission will hold a disciplinary proceeding to deal with cases involving such officers.

170. The applicable provisions are regulations 39, 44 and 47 of Public Officers (Conduct and Discipline) Regulations, Public Service Commission Act (Cap.83).

Public Officers (Conduct and Discipline) Regulations (Cap.83)

Regulation 39

If a non-pensionable officer is convicted on a criminal charge the procedure in Regulations 36, 37 and 38 above may be dispensed with. On receipt of a report by the Head of Department the Disciplinary Authority may call for a copy of the proceedings of the criminal court or for a report by the Legal Department on those criminal proceedings and shall then make his decision regarding the dismissal or other punishment of the officer.

Regulation 44

If a pensionable officer in the Public Service is convicted on a criminal charge, the Chief Registrar of the Supreme Court of the Presiding Officer of the Court, as the case may be, where the officer was convicted, shall transmit to the Disciplinary Authority a copy of the charge and the conviction and the sentence imposed, and if after consideration of the same and the report of the Legal Department the Disciplinary Authority is of the opinion that the officer should be dismissed or otherwise punished on account of the offence of which he has been convicted, the officer may thereupon be dismissed or otherwise punished without any of the proceedings prescribed in Regulation 41, 42 or 43 above being taken.

Regulation 47

An officer convicted on a criminal charge against whom proceedings under Regulation 44 are contemplated shall be suspended from the exercise of his office and shall not receive any emoluments from the date of conviction pending a decision in his case by the Disciplinary Authority.

(b) Observations on the implementation of the article

171. There are procedures in place in Brunei Darussalam to remove, suspend or reassign public officials accused or convicted. It is, however, within the discretion of the Head of a Department to remove an accused official. Once convicted, the Public Service Commission, acting as a disciplinary authority, will hold disciplinary proceedings and will

decide on whether to dismiss an officer. The applicable Public Officers Regulations distinguish between non-pensionable and pensionable officers. Both categories, however, can be dismissed.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

172. The cited provision is regulation 6 of the Public Officers (Appointments and Promotions) Regulations, Public Service Commission Act (Cap. 83).

Public Officers (Appointments and Promotions) Regulations

Regulation 6

An officer who has been dismissed from the service or whose services have been terminated on the grounds of unsatisfactory work or conduct may only be employed in special and exceptional circumstances.

(b) Observations on the implementation of the article

173. There are no specific provisions in place that would allow Courts to disqualify convicted public officials from holding public office or office in public enterprises. Pursuant to regulation 6 of the Public Officers (Appointment and Promotions) Regulations, reemployment after dismissal on grounds of unsatisfactory work or conduct is only possible in special and exceptional cases. However, the provision under review appears to have been implemented by the Public Officers (Conduct and Discipline) Regulations, as referred to above.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

174. Brunei Darussalam has not established the procedures required by the provision under review.

(b) Observations on the implementation of the article

175. There are no specific provisions in place that would allow Courts to disqualify convicted persons from holding office in a State owned enterprise.

Article 30 Prosecution, adjudication and sanctions

Paragraphs 8 and 9

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

(a) Summary of information relevant to reviewing the implementation of the article

176. The Public Service Commission is an independent body, established in 1962, to deal with matters pertaining to the appointment, transfer, promotion, termination and imposing disciplinary punishment against public servants. This body has the authority to deal with any immunities or jurisdictional privileges that will be accorded to any public servant.

(b) Observations on the implementation of the article

177. The authorities of Brunei Darussalam referred to the independent Public Service Commission that is in charge of disciplinary sanctions. The disciplinary proceedings seem to be independent from the criminal proceedings, i.e. conviction does not prevent the Commission from initiating disciplinary proceedings.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

178. The applicable provisions are regulations 198, 199 and 201 of Prisons Rules (Cap.51)

Prisons Rules (Cap 51)

Regulation 198

At each prison there shall be established a Discharged Board, (in this Part referred to as "The Board"), which shall consist of the Officer-in-Charge, the Chief Officer and such other prison officers as may be appointed by the Director.

Regulation 199

The Board shall interview all prisoners on admission and within 3 months of their due date of discharge, and shall decide the form of assistance to be granted to the prisoner with a view to his rehabilitation in civil life.

Regulation 201

In the case of prisoners who are proceeding to another of Brunei Darussalam on release, the Board shall communicate with the local Labour Department with a view to obtaining employment for the prisoner.

(b) Observations on the implementation of the article

179. The authorities of Brunei Darussalam referred to several regulations contained in the Prisons Rules that obliges the Discharged Board to assist the released prisoners, e.g. in finding employment.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

180. Some of the measures highlighted in the provision under review are covered by sections 5 and 6 of the Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000 **Section 5**

- (1) The court shall have power, in addition to dealing with an offender in any other way, to make an order under this section requiring him to pay such sum as it thinks fit.
- (2) The Court may make such an order against an offender where-
 - (a) he is found guilty of an offence to which this Order applies; and
 - (b) it is satisfied that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the Court takes into consideration in determining his sentence, and which is not a drug-trafficking offence.
- (3) For the purpose of this Order, a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained.
- (4) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Order as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of that pecuniary advantage.
- (5) The sum which an order made by the Court under this section requires an offender to pay shall not exceed-
 - (a) the benefit in respect of which it is made; or
 - (b) the amount appearing to the Court to be the amount that might be realised at the time the order is made, whichever is the less.
- (6) The standard of proof required to determine any question arising under this Order as to-
 - (a) whether a person has benefited as mentioned in paragraph (b) of subsection (2); or
 - (b) the amount to be recovered in his case under section 6, shall be that applicable in civil proceedings.
- (7) Where, in any proceedings for an offence under this Order, it is proved that the defendant has benefited from an offence to which this Order applies, any realisable property held by him obtained as a result of or in connection with its commission shall be presumed to have been obtained with knowledge that such an offence had been committed, unless the contrary is proved.
- (8) The Court may, on the application of the Attorney General, make a confiscation order when the defendant (Whether or not he has been charged) cannot be found or who is outside Brunei Darussalam and cannot be compelled to attend before the Court, or when the identity of the owner of the property is not known.
- (9) In this Order –
 - (a) references to an offence to which this Order applies are references to any offence, committed in Brunei Darussalam, other than a drug trafficking offence, punishable in Brunei Darussalam (whether or not with any other method of punishment) with imprisonment for a term of not less than five years or for life or which is a capital offence;
 - (b) a person against whom proceedings have been instituted for an offence to which this Order applies is referred to (whether or not he has been convicted) as "the defendant".

Section 6

(1) A Court shall not make a confiscation order unless the prosecution has given written notice to the Court to the effect that it appears to it that, were the Court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least such amount as the prosecution may consider reasonable in the circumstances.

(2) If the prosecution has given the Court such a notice, the Court shall determine whether it ought to make a confiscation order.

(3) When considering whether to make a confiscation order, the Court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

(4) If the Court determines that it ought to make such an order, it shall, before sentencing or otherwise dealing with the defendant in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be received in his case by virtue of this section and make a confiscation order for that amount specifying the offence or offences.

(5) Where the Court makes a confiscation order against a defendant in any proceedings, it shall be its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before-

(a) imposing any fine on him;

(b) making any order involving any payment by him by way of compensation, other than an order under section 382 of the Criminal Procedure Code (Cap.7); or

(c) making any order under section 3 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96), but subject to that, shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No written law restricting the power of the Court dealing with an offender in a particular way from dealing with his also in any other way shall, by reason only of the making of a confiscation order, restrict it from dealing with an offender in any way it considers appropriate in respect of an offence to which this Order applies.

(7) Where –

(a) the Court makes both a confiscation order and an order for payment by way of compensation under 382 of the Criminal Procedure Code (Cap.7) against the same person in the same proceedings; and

(b) it appears to the Court that he will not have sufficient means to satisfy both the orders in full, it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

(b) Observations on the implementation of the article

181. Section 5 of the Criminal Conduct (Recovery of Proceeds) Order provides for the possibility of requiring an offender to pay a certain amount as the Courts “thinks fit”. The offender needs to be convicted and to have benefited from the offence. A benefit is to be considered as obtaining property. It was further noted that drug trafficking offences are excluded. Paragraph 5 limits the sum to be paid by the offender either to the benefit or the amount that might be realized in the opinion of the Court, whichever is less. The second option of paragraph 5 raises some questions, in particular, in the case where the offender gave away his benefit without proper consideration. On the application of the Prosecution, an order might also be issued if the defender cannot be found or is outside Brunei Darussalam. Paragraph 3 allows the Court to take into account any information as to whether the victim intends to initiate civil proceedings. According to paragraph 7, the assets recovered may be used to compensate the victim, if the offender does not have enough means to honour both the compensation and confiscation orders.

(c) Successes and good practices

182. The reviewing experts identified as a good practice the lower evidentiary standards used in confiscation proceedings, as specified in section 5(6) of the Criminal Conduct (Recovery of Proceeds) Order.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b) and paragraph 2

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

183. Some of the measures highlighted in the provisions under review are covered by sections 21, 23, 23A and 23B of the PCA.

Prevention of Corruption Act (Cap. 131)

Section 23. Special powers of investigation

(1) The Public Prosecutor or the Director, if satisfied that there are reasonable grounds for suspecting that an offence under this Act has been committed by any person, may, for the purposes of an investigation into such offence, authorise in writing any Officer of the Bureau specified in such authorisation, to exercise the following powers on the production by him of the authorisation - [S 16/98]

(a) to investigate and inspect 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 whatsoever kind or description, any safe-deposit box, and any banker's books or company books, of or relating to any person named or otherwise identified in such authorisation;

(b) to require from any person the production of any accounts, books, documents, safe-deposit box or other article of or relating to any person named or otherwise identified in such authorisation which may be required for the purpose of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts and books or of any relevant entry therein.

(2) Every authorisation given under subsection (1) shall be deemed also to authorise the Director, Deputy Director or Officer of the Bureau specified therein to require from any person information as to whether or not at any bank, company or other place there is any account, book, document, safe-deposit box or other article liable to investigation, inspection or production under such authorisation.

(3) A requirement under subsection (2) shall be made in writing and any statement therein as to the existence of the appropriate authorization under subsection (1) shall be accepted as true without further proof of the fact.

(4) Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents, safe-deposit box or other article to the Director, Deputy Director or an Officer of the Bureau authorised under subsection (1), shall, notwithstanding the provisions of any other law and any oath of secrecy to the contrary, comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs the Director, the Deputy Director or such Officer of the Bureau in the execution of the authorisation given under subsection (1), shall be guilty of an offence: Penalty, a fine of \$20,000 and imprisonment for one year.

(5) Any person who falsely represents that an appropriate authorisation has been given under subsection (1) shall be guilty of an offence: Penalty, a fine of \$20,000 and imprisonment for one year.

Section 23A

(1) In the course of any investigation into or proceedings relating to an offence alleged or suspected to have been committed by any person under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code (Chapter 22) or a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the Public Prosecutor may, notwithstanding anything in any other written law to the contrary, by written notice -

(a) require any such person to furnish a statutory declaration or, as the Public Prosecutor sees fit, a statement in writing enumerating all movable or immovable property belonging to or possessed by such person and by the spouse, parents, or sons and daughters of such person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;

(b) require any such person to furnish a statutory declaration or, as the Public Prosecutor sees fit, a statement in writing of any money or other property sent out of Brunei Darussalam by him, his spouse, sons and daughters during such period as may be specified in the notice;

[S 34/91]

(c) require any such person to furnish a statutory declaration or, as the Public Prosecutor sees fit, a statement in writing enumerating all movable or immovable property belonging to or possessed by such person where the Public Prosecutor has reasonable grounds to believe that such information can assist the investigation;

(d) require the manager of any bank to give copies of the accounts of such person or of the spouse or of the parents or a son or daughter of such person at the bank;

(e) require the person in charge of any Department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body to produce or furnish, as specified in the notice any document which is in his possession or under his control.

(2) Every person to whom a notice is sent by the Public Prosecutor under subsection (1) of this section shall, notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of that notice within such times as may be specified therein and any person who wilfully neglects, or fails so to comply shall be guilty of an offence: Penalty, a fine of \$5,000 and imprisonment for one year.

Section 23B.

(1) The Public Prosecutor may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Public Prosecutor.

(2) Where any property specified in a notice under subsection (1) includes any debt or obligation due by a bank or deposit-taking company to the person to whom the notice is given the Public Prosecutor may serve on such bank or deposit-taking company a copy of that notice, which copy notice shall have the effect of directing the bank or deposit-taking company not to pay any money to the person specified in the copy notice without the consent of the Public Prosecutor.

(3) A notice under subsection (1) -

(a) may be served by delivering it personally to the person to whom it is addressed or may, where the Court of a Magistrate is satisfied that such person cannot be found or is not in Brunei Darussalam, be served in such other manner as the court may direct on application ex parte by or on behalf of the Public Prosecutor;

(b) shall have effect from the time of service and shall continue in force for a period of 12 months or until cancelled by the Director whichever is the earlier.

(4) Nothing in subsection (3) shall prevent the Public Prosecutor from making a further order in respect of the same property.

(5) The Public Prosecutor may impose such terms and conditions as he thinks fit to a consent to the disposal of or other dealing with any property specified in a notice under subsection (1).

(6) A person who disposes of or otherwise deals with any property specified in a notice under subsection (1) or a bank or deposit-taking company which pays any money to a person specified in a copy of notice served on it under subsection (2) other than in accordance with the consent of the Public Prosecutor shall be guilty of an offence: Penalty, a fine of \$50,000 or the value of the property disposed or otherwise dealt with, whichever is greater, and to imprisonment for 3 years.

(b) Observations on the implementation of the article

184. The reviewing experts highlighted that the domestic legislation seemed to be in line with the provision under review, as it foresees special powers of investigation to secure the proceeds of crime for the purposes of confiscation.

185. The provisions cited under paragraph 2 of UNCAC article 31 cover the production of information and evidence related to financial and other assets. The production of such evidence could be asked of any person. It seems that the ACB or Police have the power to investigate the accounts of any persons, no matter whether they are suspected or not.

186. During the country visit, the reviewing experts were informed that internal consultations were in place to initiate proceedings for putting in place additional

legislation that would give further investigative powers to the ACB, especially with regard to the conduct of special investigative techniques. Such legislation will include proceedings for acquiring judicial authorization, as appropriate.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

187. The ACB has the power to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of UNCAC article 31.

(b) Observations on the implementation of the article

188. During the country visit, the ACB informed the review team that indeed it is the Permanent Secretary of the Ministry of Finance who only has the power to regulate the administration of “realisable property” after a confiscation order by the investigative authorities has been filed. Nonetheless, the Permanent Secretary also has the discretion to determine who would otherwise be the competent authority to administer such property. No information on its practical implementation was given.

Article 31 Freezing, seizure and confiscation

Paragraphs 4, 5 and 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

189. The applicable provision is section 23(1) of Criminal Conduct (Recovery of Proceeds) Order, 2000.

Criminal Conduct (Recovery of Proceeds) Order, 2000

Section 23(1)

A person is guilty of an offence if he -

- (a) conceals or disguises property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or

(b) converts or transfers that property or removes it from Brunei Darussalam, for the purpose of avoiding prosecution for an offence or of avoiding the making or enforcement of a confiscation order.

(b) Observations on the implementation of the article

190. The review team was aware of the ongoing consultative process for revising the money laundering legislation, including the Criminal Conduct (Recovery of Proceeds) Order. The reviewing experts therefore advised that it may be appropriate for purposes of legal certainty to include in the revised legislation certain provisions on the clear delineation of the concept of property and proceeds of crime, as subjects of confiscation proceedings that would further give practical effect to paragraphs 4, 5 and 6 of UNCAC article 31.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

191. The applicable provision is section 23 of the PCA.

(b) Observations on the implementation of the article

192. Banking or any other professional secrecy seems not to be an issue hindering the prosecution of corruption related offences.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

193. The applicable provision is section 22(1) of the PCA.

Prevention of Corruption Act (Cap.131)

Section 22

(1) Every person required by any Officer of the Bureau or a police officer to give any information on any subject which it is the duty of such officer to inquire into under this Act or any prescribed offence and which it is in his power to give, shall be legally bound to give the information.

(b) Observations on the implementation of the article

194. The reviewing experts referred to section 5(7) of the Criminal Conduct (Recovery of Proceeds) Order as being relevant, rather than section 22 of the Prevention of Corruption Act.

Criminal Conduct (Recovery of Proceeds) Order 2000
Section 5.

(7) Where, in any proceedings for an offence under this Order, it is proved that the defendant has benefited from an offence to which this Order applies, any realisable property held by him obtained as a result of or in connection with its commission shall be presumed to have been obtained with knowledge that such an offence had been committed, unless the contrary is proved.

Article 31 Freezing, seizure and confiscation

Paragraphs 9 and 10

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of the article

195. The right of bona fide third parties was said to be protected.

(b) Observations on the implementation of the article

196. According to the national authorities, bona fide third parties are protected.

197. The reviewing experts reiterated their comments on the ongoing consultative process of reviewing the legal framework on money laundering and proceeds of crime. In this connection, they invited the national authorities to consider the inclusion of a provision on the revised legislation that would define the concept of good will of third parties in confiscation proceedings unless such matters are dealt with exclusively in case law. The experts were informed that this is being considered by the AGC and will be legislatively considered.

198. Regarding paragraph 10 of UNCAC article 31, the national authorities informed the experts that the pertinent legal framework is in the process of being revised.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure

or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

199. Brunei Darussalam cited section 30 of the PCA.

Prevention of Corruption Act (Cap 131)

Section 30

(1) Except as hereinafter provided, no complaint as to an offence under this Act or any prescribed offence shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passage to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If in any proceeding relating to an offence under this Act or a prescribed offence the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

200. Brunei Darussalam only has the provision that provides for the giving evidence through the use of telecommunication technology in cases involving sexual assault offences, pursuant to section 236B of the Criminal Procedure Code (Cap 7).

201. The protection of “Witnesses, Experts and Victims” was the theme of the 10th Annual General Conference and Meeting of the International Association of Prosecutors held in Copenhagen, Denmark. Various examples may be derived from other jurisdictions with varying degrees of legislation designed to ensure that the key players in the criminal justice system are given the necessary protection under the law.

202. There is nothing in domestic law which would prevent a victim from voicing their views and concerns in relation to how the case has affected them personally or professionally. This will depend on the presiding judge as to whether or not such views and concerns will be accepted.

203. Brunei Darussalam also cited the case, *PP v Hj Yakib bin Haji Jumat*. 4 complainants expressed how the case had affected them professionally during the trial. The presiding Chief Magistrate took note of their concerns and also an additional factor in assessing the credibility of the complainant when reaching her verdict.

(b) Observations on the implementation of the article

204. The reviewing experts were informed of section 30 of the PCA and considered that that this was an initial step, but still remains a fragmented effort in view of structuring a comprehensive witness protection system. In light of this, the review team recommended that the national authorities take legislative and other measures to establish effective witness protection procedures in line with UNCAC article 32.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

205. The applicable provisions are section 30 of the PCA and section 125 of Evidence Act (Cap 108). The former accords protection against the disclosure of a complaint of an offence under the PCA made by an informer. The identity of the informer is also protected from disclosure save in circumstances of paragraph 3 of section 30. The latter is also a similar provision.

Evidence Act (Cap 108)
Section 125

No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue or the excise laws.

206. Brunei Darussalam also noted that the identity of every complainant or informant who goes to the ACB or contacts the Bureau to report matters pertaining to corruption, will remain anonymous. His or her name will not appear on the First Information Report Form.

(b) Observations on the implementation of the article

207. According to the authorities of Brunei Darussalam, the identity of an informer is protected and can be revealed only under very specific circumstances, in particular, if justice cannot be fully done without the discovery of the informer. It seems that the identity of a person informing the ACB may remain anonymous, at least, at the beginning of the investigations.

208. The reviewing experts, bearing in mind the optional nature of UNCAC article 33, invited the national authorities to take further steps towards protecting whistleblowers by means of including these persons under the same protective status as witnesses when such status is to be recognised and enforced. In addition, the protection of whistleblowers should include measures to prevent discriminatory treatment or disciplinary sanctions against reporting persons in the field of public administration.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

209. There is nothing in domestic law to prevent corruption from being a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(b) Observations on the implementation of the article

210. The authorities of Brunei Darussalam outlined that there are no obstacles to making corruption a relevant factor in legal proceedings with respect to the provision under review. No information on its practical implementation was mentioned.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

211. The applicable provision is section 382 of the Criminal Procedure Code (Cap 7)

Criminal Procedure Code (Cap 7)

Section 382

(1) When a person is convicted of any crime or offence the Court may, in its discretion, make either or both of the following orders against him in addition to any other punishment, name-

- (a) an order for the payment by him of the costs of his prosecution or such part thereof as the Court directs;
- (b) an order for the payment by him of a sum to be fixed by the Court by way of compensation to any person, or the representatives of any person, injured in respect of his person, character or property by the crime or offence for which the sentence is passed.

(2) The Court shall specify the person to whom any sum in respect of costs or compensation as aforesaid is to be paid, and payment thereof may be enforced in the same manner as if the amount thereof were a fine, or in such other manner as the law for the time being directs.

(3) The Court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and, if no direction be given, an order for payment of costs shall have priority over an order for payment of compensation.

(4) An order for payment under this section shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages but the Court shall take into account the amount of compensation paid under the order.

(5) Every order made under this section by a magistrate shall be appealable to the Court to which an appeal ordinarily lies.

(6) The powers conferred by this section may be exercised on appeal, reference or revision.

(b) Observations on the implementation of the article

212. The Criminal Procedure Code of Brunei Darussalam provides for the possibility of obtaining compensation within the criminal procedure. This lies within the discretion of the Court. The adjudication of compensation also does not prejudice the rights to initiate civil procedures.
213. The reviewing experts were referred to section 382(1)(b) of the Criminal Procedure Code that would allow for a victim to file an application for compensation.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

214. The ACB was established in 1982 and is the specialized body in Brunei Darussalam for combating corruption. Section 4A of the PCA provides for the duties of the Director and officers of the Bureau.
215. Under the ACB work scheme, it is a mandatory for each officer to undergo a 9 months police training in Home Team Academy in Singapore. Officers of the Bureau are also exposed to work of the Corrupt Practices Investigation Bureau (“CPIB”) in Singapore and the Malaysian Anti-Corruption Commission (“MACC”). Officers have further opportunities to attend seminars on money laundering, asset recovery and investigative techniques conducted by fellow counterparts in the Association of Southeast Asian Nations (“ASEAN”). Moreover, officers of the Bureau are required to pass law exams, including on the PCA, Brunei General Orders, Criminal Procedure Code, Penal Code, Evidence Act and other relevant legislation.
216. Section 3 of the PCA was held to fulfil the requirement for independence of the ACB.

Prevention of Corruption Act (Cap 131)

Section 3

- (1) His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam may appoint a Director who, subject to the orders and control of His Majesty, shall be responsible for the direction and administration of the Bureau.
- (2) The Director shall not be subject to the direction or control of any person other than His Majesty.

(b) Observations on the implementation of the article

217. During the country visit, it was confirmed that the ACB opens and conducts investigations on corruption-related matters under the PCA. Brunei Darussalam established this body under the Act. Section 4A of the PCA focuses on the duties on the Director and the officers of the Bureau. The power of investigations are dealt with in Part IV of the Act, which appear to provide for broad investigative powers. The ACB is independent from any other authority with the exception of the His Majesty the Sultan (section 3). The Commercial Crime Investigation Unit under the Police can also investigate corruption-related matters (i.e. embezzlement) under the Penal Code.

However, pursuant to section 19 of the PCA, the ACB can also investigate corruption-related offences that would generally fall under the mandate of the Police.

218. The reviewing experts were informed by the ACB and Police that they receive corruption-related complaints via email, in person, telephone, messages and letters, which can also be received anonymously. These would go to the Complaint and Evaluation Committee of the ACB which would either 1) address the complaint (i.e. investigate), 2) refer the complaint or 3) no action would be carried out. The ACB and Police also cooperate with respect to investigations and no issue has arisen with respect to their respective mandates. Criminal matters, including those that are corruption related, are referred to the Public Prosecutor who can exercise his or her discretion to 1) prosecute, 2) dismiss or 3) recommend disciplinary action.
219. In general, any and every prosecution of a corruption-related offence needs to be authorized by the Public Prosecutor (section 31 of the PCA). As provided for by the national authorities, under the Constitution, the Attorney-General who is also the Public Prosecutor has the absolute discretion to institute or discontinue any criminal proceedings except for cases heard by the Military or Syariah (Islamic Religious) Courts. The Criminal Justice Division of the AGC carries out the responsibilities of the Public Prosecutor. Officers of the Division conduct prosecutions before the Magistrate, Intermediate and High Courts, and appear in criminal appeals before the High Court and Court of Appeal.
220. In the exercise of this power, the Public Prosecutor is not subject to the discretion of any person or authority. The Public Prosecutor is to protect the public interest and to represent the State in court proceedings. No review of prosecutorial discretion was reported. Moreover, the review team was informed that the AGC has 28 prosecutors who cover all matters.
221. During the country visit, the reviewing experts were informed that in the past, prosecutors from the AGC used to be seconded to the ACB and only focused on corruption-related cases. This practice has been discontinued and further prosecutors within the AGC focus on a range of criminal matters without concrete specialisation in corruption-related cases.
222. In order to ensure that the ACB officers have received the appropriate training, Brunei Darussalam cooperates with Singapore and Malaysia who assist in such a training. The reviewing experts were informed that each officer has to undergo a 9 month training in Singapore.
223. Bearing in mind the above, the reviewing experts recommended that the national authorities consider ways and means to use available resources, including, where necessary, synergies among investigative and prosecutorial authorities to ensure more efficient and effective case management. This may include the establishment of case management systems and reconsideration of placing liaison AGC officers in the ACB.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

224. The ACB established a Memorandum of Understanding (“MOU”) with other law enforcement agencies in Brunei Darussalam, such as the Royal Brunei Police Force, and Royal Customs and Excise Department to educate their officers on corruption-related matters.

(b) Observations on the implementation of the article

225. As mentioned above, corruption-related complaints can be received via email, in person, telephone, messages and letters, which can also be received anonymously. In that context, the ACB and Police may also utilize or make use of information from persons who have participated in the commission of the offence. Such information may also be used to substantiate the charge and build the case for further action.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

226. Where an accused person provides substantial cooperation in the investigation and prosecution of an offence, the Court may consider this factor as a mitigating factor when imposing its sentence.

227. Brunei Darussalam also cited the case, *PP v Sukri Haji Sahari and 8 others* (2003 JCBD Vol.1 352). The High Court held that the information that the accused gave to the police in the successful apprehension of another accused was a mitigating factor and therefore imposed a reduce sentence.

(b) Observations on the implementation of the article

228. The authorities referred to a case of the High Court where the punishment had been mitigated.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

229. The decision to prosecute, and therefore any decision on the granting of immunity to any person is a matter for the Public Prosecutor, as he is the person who has the general direction and control of prosecutions, pursuant to section 374(1) of the Criminal Procedure Code (Cap 7).

Criminal Procedure Code (Cap 7)

Section 374(1)

The Attorney General shall be the Public Prosecutor and shall have the general discretion and control of criminal prosecution and proceedings under this Code or under any other written law.

(b) Observations on the implementation of the article

230. As referred to above, in a case where cooperation by participating persons was provided, the AGC has the discretion to discontinue criminal proceedings against such a person within its broad prosecutorial discretion. The reviewing experts were informed that such discretion has been exercised in the past.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

231. The applicable provision is section 30 of the PCA.

(b) Observations on the implementation of the article

232. The reviewing experts referred to their comments made with respect to the national implementation of UNCAC articles 32 and 33. In this connection, they invited the national authorities to take further steps towards protecting collaborators of justice by means of including these persons under the same protective status as witnesses when such status is to be recognised and enforced.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

233. The ACB has a bi-lateral treaty with the MACC.

(b) Observations on the implementation of the article

234. Taking into account the information provided under UNCAC Chapter IV on bilateral agreements and arrangements with neighbouring countries, the reviewing experts invited the national authorities to include this matter within the scope of these arrangements, as well as extend it to other countries.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

235. There is an existing framework for cooperation between national enforcement agencies in Brunei Darussalam. Joint operations and investigations are being conducted more frequently. The level of cooperation between the agencies concerned can always be enhanced especially to effectively combat complex crimes.

236. Brunei Darussalam cited the case, *PP v Adimodaamin Hj. Moktal*. This required cooperation between the ACB and Royal Brunei Police Force involving offences committed under the Penal Code.

(b) Observations on the implementation of the article

237. The authorities referred to an already existing framework on cooperation between the different law enforcement of Brunei Darussalam.

238. During the country visit, the Representative of the FIU referred to the National Committee on Anti-Money Laundering and Combating Terrorism Financing (NAMLC), which is an example of interagency cooperation nationally, regionally and international

relating to UNCAC article 23. Members of the NAMLC *inter alia* include the ACB, AGC, FIU and Police. NAMLC is an advisory and coordinating committee on matters relating to Anti-Money Laundering/Counter-Financing of Terrorism (AML/CFT) issues. Some of the objectives have been to develop national policies on measures to combat ML/TF activities, reviewing strategies, reviewing and amending AML/CFT-related and examining guidance notes, and to facilitate coordination and exchange of information between members as well as with counterpart committees both regionally and internationally.

239. The reviewing experts were further informed of additional cooperation schemes beyond money laundering such as the National Security Committee. This includes *inter alia* the ACB, Police and AGC. It meets monthly to consider major matters requiring law enforcement cooperation.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

240. The ACB is actively promoting social awareness and combating corruption through their lecture programmes, exhibitions, media publicity and promotions to encourage the public to report matters pertaining to corruption. There is also an existing MOU with the Brunei Association of Banks.

(b) Observations on the implementation of the article

241. The authorities of Brunei Darussalam referred to the awareness raising activities of the ACB and an MOU with the Brunei Association of Banks.

242. During the country visit, the reviewing experts were further informed of existing cooperation between the monetary authority (FIU), ACB and Police with the financial institutions to promote financial investigations, including through freezing bank accounts.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

243. The Anti-Corruption Bureau disseminated leaflets containing information on where to report corruption related offences.

(b) Observations on the implementation of the article

244. The reviewing experts were informed by the ACB and Police that they receive corruption-related complaints via email, in person, telephone, messages and letters, which can also be received anonymously. It was further noted that the identity of informers is in general protected. Comments of the reviewing experts on further protective measures for informers are included under the respective provisions of UNCAC.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

245. The applicable provisions are section 23A(1)(d) of the PCA and section 56 of the Criminal Procedure Code (Cap 7).

Prevention of Corruption Act (Cap 131)

Section 23A(1)(d)

In the course of any investigation into or proceedings relating to an offence alleged or suspected to have been committed by any person under this Act or under sections 161 to 165 or 213 to 215 of the Penal Code (cap 22) or a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the Public Prosecutor may, notwithstanding anything in any other written law to the contrary, by written notice - require the manager of any bank to give copies of the accounts of such person or of the spouse or of the parents or a son or daughter of such person at the bank.

(b) Observations on the implementation of the article

246. The PCA and 7 of the Criminal Procedure Code provide for the disclosure of account information by the manager of any bank, irrespective of any written law to the contrary.

247. During the country visit, the national authorities confirmed that bank secrecy was not an obstacle to investigate corruption and other related offences.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

248. The request for a previous conviction of any alleged offender from another State can be obtained through Mutual Assistance in Criminal Matter Order, 2005.

249. There has been no recent request made under this provision.

(b) Observations on the implementation of the article

250. A criminal record request can be made through mutual legal assistance, pursuant to section 3(a) of Mutual Legal Assistance in Criminal Matters Order: “The objects of this Order are to facilitate the provision and obtaining by Brunei Darussalam of international assistance in criminal matters, including– (a) the obtaining of evidence, documents, articles or other things”.

251. During the country visit, the Representative of the AGC mentioned that it had not, to date, considered a criminal record from abroad, but mentioned that Australia had made such a request from Brunei Darussalam.

Article 42 Jurisdiction

Paragraph 1

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

252. The applicable provision are sections 37 of the PCA and 7 of the Criminal Procedure Code (Cap.7).

Prevention of Corruption Act (Cap 131)

Section 37

The provisions of this Act shall, in relation to citizens of Brunei Darussalam, have effect outside as well as within Brunei Darussalam, and where an offence under this Act or any prescribed offence, is committed by any citizen of Brunei Darussalam in any place outside Brunei Darussalam he may be dealt with in respect of that offence as if it had been committed at any place within Brunei Darussalam at which he may be found or to which he may have been brought in consequence of any proceedings for this extradition to Brunei Darussalam from any place outside Brunei Darussalam.

Criminal Procedure Code (Cap 7)

Section 7

Subject to the provisions of this Code, the jurisdiction of the High Court and the Court of a Magistrate in criminal matters shall extend to any offence committed -

(a) wholly or partly within Brunei Darussalam; or

(b) on board any ship registered in Brunei Darussalam; or

(c) on board any aircraft registered in Brunei Darussalam; or

(d) on the high seas if the offence is piracy by the law of nations; or

(e) by any person outside Brunei Darussalam who abets, or enters a conspiracy to commit, an offence within Brunei Darussalam, whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam; or

(f) by a subject of His Majesty whether the offence was committed within or outside Brunei Darussalam.

(b) Observations on the implementation of the article

253. Section 7 of the Criminal Procedure Code provides for the jurisdiction of Brunei Darussalam as requested by paragraph 1 of UNCAC 42. Section 37 of the PCA provides

for its application if a citizen of Brunei Darussalam has committed an offence either within or outside Brunei Darussalam.

254. During the country visit, the Representative from the ACG informed the reviewing experts that the PCA prevails over the Criminal Procedure Code; the latter only being used when the former remains silent on the issue.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

255. The cited provision was section 7(f) of the Criminal Procedure Code (Cap.7).

(b) Observations on the implementation of the article

256. The reviewing experts noted that the passive personality principle (jurisdiction over an offence committed against a national) is not clearly and explicitly stipulated.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

257. The cited provision was section 7 of the Criminal Procedure Code (Cap.7).

(b) Observations on the implementation of the article

258. This first part of the provision under review appears to have been implemented by sections 7(f) of the Criminal Procedure Code and 37 of the PCA. During the country visit, the Representative of the ACG informed the reviewing experts that stateless persons would be included under section 7(a) of the Criminal Procedure Code.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

259. The applicable provision is section 7(e) of the Criminal Procedure Code (Cap.7).

(b) Observations on the implementation of the article

260. During the country visit, it was confirmed that section 7(f) of the PCA would also be applicable.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

261. Under Brunei Darussalam's Constitution, a case cannot be brought against the State.

(b) Observations on the implementation of the article

262. The national authorities did not provide a clear answer to queries of the review team on the establishment of jurisdiction of offences committed against the State.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

263. The applicable provisions are section 37 of the PCA, and 7(a) and (f) of the Criminal Procedure Code (Cap 7).

264. Brunei Darussalam cited the case, *PP v Haji Yakib bin Haji Jumat*. The defendant, a Brunei national, committed corrupt offences in Jakarta, Indonesia where he worked as a Third Secretary with the Brunei Darussalam's Embassy. He was brought back to Brunei to be charged and tried for those offences which he committed in Indonesia.

(b) Observations on the implementation of the article

265. According to sections 7 (f) of the Criminal Procedure Code and 37 of the PCA, Brunei Darussalam has jurisdiction over its nationals even if the offence was committed abroad. In addition, it was confirmed that domestic prosecution *in lieu* of extradition where the latter is denied on grounds of nationality, is an available option in the legislation: see section 55(2)(a) of the Extradition Order and for more information, below under paragraph 11 of UNCAC article 44.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

266. The provision under review has been implemented to the extent that the offence is committed in Brunei Darussalam.

267. The applicable provision is section 7(e) of the Criminal Procedure Code (Cap.7).

(b) Observations on the implementation of the article

268. During the country visit, it was confirmed that section 7(a) of the PCA would also be applicable. In addition, it was confirmed that domestic prosecution *in lieu* of extradition where the latter is denied because the extradition offence is an offence for which the country also has jurisdiction, is an available option in the legislation: see section 55(2)(b) of the Extradition Order and for more information, below under UNCAC article 44(11).

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

269. Brunei Darussalam again cited the case, *PP v Haji Yakib bin Haji Jumat* in which the Anti-Corruption Bureau of Brunei Darussalam consulted with Corruption Eradication

Commission of Indonesia in coordinating the actions against the defendant for the purposes of investigation and prosecution.

(b) Observations on the implementation of the article

270. Where there is a conflicting jurisdiction between States parties, consultations appear possible under the law of Brunei Darussalam. This was confirmed during the country visit, especially with neighbouring States.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

271. The applicable provisions are sections 37 of PCA and 7 of the Criminal Procedure Code (Cap.7).

(b) Observations on the implementation of the article

272. The reviewing experts deemed Brunei Darussalam to have implemented the provision under review.

Chapter IV. International cooperation

Article 44 Extradition

Paragraphs 1 and 2

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

273. The Extradition Order, 2006 allows extradition on a case-by-case basis, pursuant to section 3.

Extradition Order 2006

Section 3. Extradition offence

(1) An offence is an extradition offence if -

(a) it is an offence deemed by any written law or any treaty to which Brunei Darussalam is a party to be an extradition offence; or

(b) it is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year, and the conduct that constitutes the offence, if committed in Brunei Darussalam, would constitute an offence in Brunei Darussalam for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year.

(2) In determining whether any conduct constitutes an offence-

(a) regard may be had to only some of the acts that make up that conduct; or

(b) it is not relevant whether that conduct is named, defined or characterised by the requesting country in the same way as it is in Brunei Darussalam.

(3) In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard shall be had to the level of penalty that can be imposed by any court in the requesting country of that offence.

(4) An offence may be an extradition offence notwithstanding that -

(a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters or to foreign exchange control; and

(b) Brunei Darussalam does not impose a duty, tax, impost or control of that kind.

(5) A person may be extradited -

(a) whether or not the conduct on which the extradition country bases its request occurred in the territory over which it has jurisdiction; and

(b) whether or not Brunei Darussalam could exercise jurisdiction in similar circumstances.

(6) An offence shall also be an extradition if it consists of an attempt or a conspiracy to commit, or an abetment of the commission of, any offence described in subsection (1).

274. The applicable provision is section 37 of the PCA, which addresses the liability of citizens for offences committed outside of Brunei Darussalam.

Prevention of Corruption Act (Cap 131)

Section 37

The provision of this Act shall, in relation to citizens of Brunei Darussalam, have effect outside as well as within Brunei Darussalam, and where an offence under this Act or any prescribed offence, is committed by any citizen of Brunei Darussalam in any place outside Brunei Darussalam he may be dealt with in respect of

that offence as if it had been committed at any place within Brunei Darussalam at which he may be found or to which he may have been brought in consequence of any proceedings for this extradition to Brunei Darussalam from any place outside Brunei Darussalam:

Provided that any proceedings against any person under this section which would be a bar to subsequent proceedings against the person for a bar to further proceedings against him under the law relating to extradition of persons in respect of the same offence outside Brunei Darussalam.

(b) Observations on the implementation of the article

275. Pursuant to section 3(1) of the Extradition Order, as Brunei Darussalam is a State party to UNCAC, all UNCAC related offences can, *prima facie*, be deemed to be extraditable offences, but the principle of dual criminality is required (“and the conduct that constitutes the offence, if committed in Brunei Darussalam, would constitute an offence in Brunei Darussalam for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year”). It was noted that it does not need to be named, defined or categorised the same way (section 3(2)). An exception to this would be where it falls under section 3(4) (i.e. relating to taxation, customs duties).

276. During the country visit, the ACB and AGC noted that it has never received a corruption-related extradition request. It was further noted by AGC that Brunei Darussalam has also never sent such a request. Pursuant to section 6 of the Extradition Order on a provisional arrest warrant, ACB mentioned that one person surrendered to Brunei Darussalam from Malaysia prior to a formal extradition request having been sent under the Summons and Warrant Act (Cap 155). The Police further informed the reviewing experts that extradition requests have been sent and received, but these were not corruption-related. As there are no extradition examples to refer to, this is referred to throughout the experts’ observations under UNCAC article 44.

277. The reviewing experts noted that the domestic legislation provides for the dual criminality requirement as a condition for granting an extradition request. The experts recommended that the national authorities also focus on paragraph 2 of the UNCAC article 44, which allows for extradition in the absence of dual criminality in order to facilitate international cooperation.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

278. The applicable provision is section 3 of Extradition Order, 2006.

(b) Observations on the implementation of the article

279. Section 3(2)(a) of the Extradition Order refers to any conduct constituting an offence where regard may be had to only some of the acts that make up that conduct.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

280. The applicable provision is section 3 of Extradition Order, 2006. It was held that Brunei Darussalam can also use UNCAC as a legal basis for extradition.

(b) Observations on the implementation of the article

281. As mentioned above, pursuant to section 3(1) of the Extradition Order, as Brunei Darussalam is a State party to UNCAC, all UNCAC related offences can, *prima facie*, be deemed to be extraditable offences, but the principle of dual criminality is required. UNCAC as a legal basis for extradition was further confirmed by Brunei Darussalam in its response to the self-assessment checklist.

282. The experts deemed sections 4 and 2 of the Extradition Order to be applicable to the provision under review.

Extradition Order, 2006

Section 4. Extradition objection

For the purposes of this Order, these is an extradition objection in relation to an extradition offence for which the surrender of a person is sought by an extradition country if –

(a) the extradition offence is regarded as a political offence...

Section 2.

“political offence”, in relation to a country, means an offence against the law of that country that is of a political character [whether because of the circumstances in which it is committed or otherwise and whether or not there are competing political parties in the country], but does not include –

(a) an offence –

(i) that is constituted by conduct of a kind referred to in a multilateral treaty to which Brunei Darussalam is a party; and

(ii) for which parties have an obligation to extradite or prosecute;

(b) the offence of genocide;

(c) an offence of –

(i) murder, kidnapping or any other attack on any person or his liberty; or

(ii) threatening or attempting to commit, or participating as an accomplice in, murder, kidnapping or any other attack on the person or liberty; or

(d) any other offence that Brunei Darussalam and the other country have agreed will not be treated as a political offence for the purposes of extradition.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may

consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

283. The Attorney General can provide for extradition on a case-by-case basis, and also with another country with which it does not have an extradition treaty. Brunei Darussalam noted that it can use UNCAC as legal basis for extradition.

284. The cited provision was section 2 of the Extradition Order, 2006.

Extradition Order, 2006

Section 2

"extradition country" means -

- (a) a Commonwealth country;
- (b) a designated country;
- (c) a treaty country; or
- (d) any other country certified by the Attorney General to be an extradition country for the purpose of a particular extradition requests;

"treaty" includes a convention, protocol, arrangement or agreement between 2 or more countries;

"treaty country" means a country -

- (a) with which Brunei Darussalam has an extradition treaty; and
- (b) where the treaty is a bilateral extradition treaty, that is specified in the Third Schedule.

(b) Observations on the implementation of the article

285. During the country visit, it was confirmed that extradition could be granted on a case-by-case basis, and UNCAC could also be used as a legal basis.

Article 44 Extradition

Paragraphs 6 - 8

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

286. Brunei Darussalam does not make extradition conditional on the existence of a treaty. It further considers this Convention as the legal basis for extradition in respect to any offence to which this article applies.

287. Brunei Darussalam has not informed the UN Secretary-General, as prescribed by subparagraph 6(a) of UNCAC 44.

(b) Observations on the implementation of the article

288. As provided for above, pursuant to section 3(1) of the Extradition Order, as Brunei Darussalam is a State party to UNCAC, all UNCAC related offences can, *prima facie*, be deemed to be extraditable offences, whereby extradition can be done on a case-by-case basis, and UNCAC can also be used by Brunei Darussalam as the legal basis for extradition. However, extradition is subject to various conditions, such as the principle of dual criminality, the maximum penalty requirement for extraditable offences (“the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than one year”), as well as extradition objections foreseen under section 4 of the Extradition Order.

Extradition Order, 2006

Section 4. Extradition objection

For the purposes of this Order, there is an extradition objection in relation to an extradition offence for which the surrender of a person is sought by an extradition country if –

- (a) the extradition offence is regarded as a political offence;
- (b) there are substantial grounds for believing that his surrender is sought for the purpose of prosecuting or punishing him because of his race, religion, nationality, political opinions, sex or status, or for a political offence in the requesting country;
- (c) on surrender, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, because of his race, religion, nationality, political opinions, sex or status;
- (d) the offence is an offence under military law, but not also under the ordinary criminal law, of Brunei Darussalam;
- (e) final judgment has been given against him for the offence in Brunei Darussalam or in a third country;
- (f) under the law of the requesting country or of Brunei Darussalam, he has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason;
- (g) he has already been acquitted or pardoned in the requesting country or in Brunei Darussalam, or punished under the law of that country or of Brunei Darussalam, for the offence or another offence constituted by the same conduct as the extradition offence; or
- (h) judgment has been given in his absence and there is no provision in the law of the requesting country entitling him to appear before a court and raise any defence that he may have.

289. The reviewing experts further noted the designation of competent authorities to deal with extradition requests is also a matter to be dealt with in domestic legislation. Bearing this in mind, the experts expressed confidence that in existing extradition practice, all appropriate arrangements were made between the designated authorities of the two States. As an exception, it was reported, during the country visit, that in cases of cooperation with a special administrative region, there was direct communication between the anti-corruption authorities themselves *in lieu* of formal extradition arrangements.

290. The experts encouraged Brunei Darussalam, despite the lack of obligation, to notify the Secretary-General of the United Nations of their readiness to use UNCAC as a legal basis for extradition.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

291. Brunei Darussalam noted that it has partially implemented the provision under review by citing section 32 of the Extradition Order, 2006 which covers the conduct of proceedings.

Extradition Order, 2006

Section 32. Conduct of proceedings

- (1) A magistrate shall not conduct extradition proceedings unless he is satisfied that both the person sought and the designated country have had reasonable time to prepare for the conduct of the proceedings.
- (2) During the extradition proceedings, the magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if that person was accused of an offence committed within his jurisdiction.
- (3) In the proceedings, that person is not entitled to adduce evidence, and the magistrate is not entitled to receive evidence to contradict an allegation that he has engaged in conduct that constitutes the offence for which extradition is sought.

(b) Observations on the implementation of the article

292. The reviewing experts were of the review that the applicable provisions were sections 12, 13, 23, 53 and 54 of the Extradition Order.

Extradition Order, 2006

Section 12. Extradition proceedings

If -

- (a) the Attorney General has issued an authority to proceed for an extradition offence in relation to any person;
- (b) that person has not under section 11 consented to surrender for the offence;
- (c) an application is made to a magistrate by or on behalf of that person or of the requesting country for extradition proceedings to be conducted in relation to him; and
- (d) the magistrate considers that that person and the requesting country have had reasonable time to prepare for the conduct of the proceedings,

the magistrate shall conduct extradition proceedings as soon as practicable to determine whether he should be surrendered for the extradition offence.

Section 13. Conduct of proceedings

- (1) During the extradition proceedings, the magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if the person was accused of an offence committed within his jurisdiction.
- (2) During the proceedings, a person is not entitled to adduce evidence, and the magistrate is not entitled to receive evidence, to contradict an allegation that he has engaged in conduct that constitutes the offence for which extradition is sought.

Section 23. The *prima facie* evidence scheme

In addition to any evidentiary requirements in Part II, a magistrate shall not determine that a person should be surrendered to a requesting country unless the evidence before him is such that, if the offence for which surrender is sought had been committed in Brunei Darussalam, there would be sufficient evidence to establish a *prima facie* case that he had committed the offence.

Section 53. Evidence for purposes of surrender of persons to Brunei Darussalam

- (2) If the Attorney General intends to seek a person's extradition to Brunei Darussalam, he may, by notice in writing, authorise the taking of evidence for use in any proceedings for the extradition of that person to Brunei Darussalam.
- (3) A magistrate may take the evidence of each witness on oath and shall –
 - (a) cause it to be reduced to writing and certify as to the taking of the evidence; and
 - (b) cause it and the certificate to be sent to the Attorney General.
- (4) The person in relation to whom the evidence is being taken is not entitled to be represented while the evidence is being taken.

Section 54. Taking of evidence at request of another country

- (1) If another country requests Brunei Darussalam to take evidence for the purpose of criminal proceedings in that country, the Public Prosecutor may authorise a magistrate to do so.
- (2) The magistrate may take the evidence of each witness on oath and shall –
 - (a) cause it to be reduced to writing and certify as to the taking of the evidence; and
 - (b) cause it and the certificate to be sent to the Public Prosecutor.

293. The reviewing experts noted that the *prima facie* case needs to be established in extradition proceedings and drew the attention of the national authorities to the impact that such an evidentiary standard may have on the length of such proceedings. Therefore, they recommended that the national authorities amend the extradition legislation with a view to simplifying the evidentiary requirements in the extradition proceedings in line with paragraph 9 of UNCAC article 44.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

294. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

295. The experts noted sections 6, 7, 9(3), 10, 47 and 48 of the Extradition Order.

Extradition Order, 2006

Section 6. Issue of provisional arrest warrant

- (1) A magistrate shall issue a provisional arrest warrant for a person if –
 - (a) a country or entity, either directly or through ICPO-Interpol, notifies Brunei Darussalam –
 - (i) a person whose surrender is desired is, or is believed to be, in or on his way to Brunei Darussalam; and
 - (ii) the requesting country or entity intends to make a formal request to Brunei Darussalam for his extradition;
 - (b) an application on behalf of the requesting country or entity is made to a magistrate for a provisional arrest warrant;
 - (c) the application is supported by the documents specified in subsection (2);
 - (d) the magistrate is satisfied that the offence is an extradition offence; and
 - (e) the magistrate is satisfied that the request is made by an extradition country.
- (2) The following documents are required for a provisional arrest warrant –
 - (a) a copy of the warrant for the arrest issues in the requesting country;
 - (b) a description of the person sought;
 - (c) a statement of the acts that constitute the offence;

- (d) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence;
- (e) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that can be imposed.

Section 7. Arrest and remand on provisional arrest warrant

- (1) A person arrested under a provisional arrest warrant shall be brought before a magistrate as soon as practicable.
- (2) Until the Attorney General issues an authority to proceed, the magistrate shall –
 - (a) Remand that person in custody; or
 - (b) If the magistrate is satisfied that he is unlikely to abscond, release him on bail.
- (3) A magistrate who releases a person on bail may order that his passport and other travel documents be surrendered until the extradition proceedings are concluded.
- (4) Subject to section 8, a person shall not be remanded in custody or released on bail for a period longer than 60 days.
- (5) After remanding him, the magistrate shall –
 - (a) inform the Attorney General –
 - (i) that he has remanded that person;
 - (ii) of the name of the requesting country;
 - (iii) of the offence from which surrender is being sought; and
 - (b) provide to the Attorney General and the person being remanded a copy of the documents on which the issue of the provisional arrest warrant is based.

Section 9. Authority to proceed

- (3) If any authority to proceed is received by a magistrate in relation to a person who has not been arrested under a provisional arrest warrant, the magistrate shall issue a warrant, in accordance with Form 7 of the Fourth Schedule, for the arrest of that person.

Section 10. Arrest and remand on authority to proceed

- (1) A person who is arrested under a warrant issued under subsection (3) of section 9 shall be brought before a magistrate as soon as practicable.
- (2) The magistrate shall –
 - (a) remand the person in custody; or
 - (b) if the magistrate is satisfied that he is unlikely to abscond, release him on bail for a period that is necessary for proceedings under this Part to be conducted.
- (3) A magistrate who releases a person on bail may order that his passport and other travel documents be surrendered until the extradition proceedings are concluded.

Section 47. Arrest of persons escaping custody

- (1) A police officer may arrest a person without warrant if he has reasonable grounds for believing that he has escaped from custody that was authorised under this Order.
- (2) Such person shall be returned to the custody mentioned in subsection [1].

Section 48. Arrest of person released on bail

- (1) A police officer may arrest a person who has been released on bail under this Order if he has reasonable grounds for believing that he has contravened, or is about to contravene, a condition subject to which bail was granted.
- (2) Such person shall be brought before a magistrate as soon as practicable.

296. As provided for above, during the country visit, the ACB mentioned that, pursuant to section 6 of the Extradition Order, one person surrendered to Brunei Darussalam from Malaysia prior to a formal extradition request having been sent under the Summons and Warrant Act (Cap.155). The request was conducted on an agency-to-agency basis.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The

States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

297. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

298. The experts noted the applicability of section 55 of the Extradition Order.

Extradition Order, 2006

Section 55. Prosecution, instead of extradition

- (1) A person may be prosecuted and punished in Brunei Darussalam for an offence if the Attorney General refuses to order his surrender because of a circumstance listed in subsection (2).
- (2) The following are the circumstances for purpose of subsection (1) –
 - (a) he is a citizen of Brunei Darussalam; or
 - (b) the extradition offence is one in respect of which the courts in Brunei Darussalam have jurisdiction.
- (3) A person shall not be prosecuted unless the Public Prosecutor –
 - (a) considers that there is sufficient evidence in Brunei Darussalam to justify prosecuting him for the offence; and
 - (b) consents to him being prosecuted for the offence.
- (4) A person may be prosecuted whether he engaged in the conduct before or after the commencement of this Order.
- (5) A person to whom subsection (1) applies may be –
 - (a) arrested for an offence mentioned in subsection (1);
 - (b) charged with the offence; and
 - (c) remanded in custody or released on bail,although the Public Prosecution has not given consent under subsection (3).

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

299. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

300. The experts noted section 55(2)(a) of the Extradition Order, whereby a citizen of Brunei Darussalam may be prosecuted and punished in Brunei Darussalam.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

301. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

302. In response to relevant queries raised by the review team, the national authorities confirmed that there was no practice on the implementation of the provision under review. However, they also added that theoretically such a case could be triggered in the future and could be supported by means of the provisions of the International Transfer of Prisoners Order, especially section 9(1)(b): “A certified copy of a judgement or other order referred to in section 6(10)(c) shall...have effect as if it were a judgment or other order of a court of competent jurisdiction in Brunei Darussalam”.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

303. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

304. The reviewing experts noted section 13(1) on the conduct of the proceedings of the Extradition Order, whereby “[d]uring the extradition proceedings, the magistrate shall hear the case in the same manner and have the same jurisdiction and powers, as near as may be, as if the person was accused of an offence committed within his jurisdiction”.

305. During the country visit, a Representative from AGC further referred the experts’ attention to section 16(1) of Extradition Order: “If a magistrate makes an order that a person be held in custody until the Attorney General makes a final decision under section 17, he may apply to the High Court for a review of the order”.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

306. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

307. The experts referred to sections 4(b) and (c) of the Extradition Order, whereby extradition would be rejected if “there are substantial grounds for believing that his surrender is sought for the purpose of prosecuting or punishing him because of his race, religion, nationality, political opinions, sex or status, or for a political offence in the requesting country” or “on surrender, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, because of his race, religion, nationality, political opinions, sex or status”.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

308. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

309. The experts referred to section 3(4) of the Extradition Order, whereby an offence maybe be an extradition offence notwithstanding that (a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters or to foreign exchange control, and (b) Brunei Darussalam does not impose a duty, tax, impost or control of that kind. The experts questioned whether or not this was broad enough to have implemented the provision under review. However, during the country visit, the FIU and ACG confirmed that no extradition request would be refused based on the offence involving fiscal matters.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

310. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

311. During the country visit, the AGC confirmed that they would consult prior to refusing an extradition request.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

312. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

313. The reviewing experts recommended that the competent national authorities seek to expand the country's extradition treaty network with a view to enhancing effectiveness of extradition and in doing so, make best use of existing resources and/or consider increasing such resources.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

314. Brunei Darussalam referred to section 2 of the International Transfer of Prisoners Order, 2011.

International Transfer of Prisons Order, 2011

Section 2

'transfer' means transfer of a prisoner-

- (a) from a designated country to Brunei Darussalam; or
- (b) from Brunei Darussalam to a designated country.

(b) Observations on the implementation of the article

315. The experts noted that the long title of the International Transfer Order is an “Order to implement the Scheme for the Transfer of Convicted Offenders within the Commonwealth and to facilitate the transfer of prisoners between Brunei Darussalam and designated countries within or outside the Commonwealth with which Brunei Darussalam has entered into agreements for the purpose of the transfer of prisoners so that the prisoners may serve their sentences of imprisonment in their countries of nationality or in countries or territories with which they have close community ties” (section 1(2)).

316. Section 9 on application was further considered.

International Transfer of Prisons Order, 2011

Section 9. Documentary proof

- (1) A certified copy of a judgment or other order referred to in section 6(10)(c) shall –
 - (a) be accepted as conclusive proof of the facts stated therein; and
 - (b) have effect as if it were a judgment or other order of a court of competent jurisdiction in Brunei Darussalam.
- (2) Any document required under this Order to be certified shall, if that document purports to be certified or signed by a judicial officer or authority or by the person in charge of any penal institution in the country in which the prisoner was detained, and without proof of the signature or the official character of the person by whom it purports to be signed or certified, be accepted as evidence of the facts stated therein, unless the contrary is proved.
- (3) A document referred to in this section shall, when accepted –
 - (a) be treated as though it was duly certified or signed in relation to a person convicted and sentenced in Brunei Darussalam; and
 - (b) subject to this Order, have effect according to the terms thereof.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

317. Brunei Darussalam is a State party to the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, which was signed on 29 November 2004 and later, ratified on 15 February 2006. Under this treaty, States 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 (“MLA Order”) was enacted and enforced on 1 January 2006.

318. This Order enables Brunei Darussalam to facilitate the provision and obtain MLA to and from other countries in criminal matters and related purposes, including but not restricted to:-

- i. the obtaining of evidence, documents, articles or other things; i. the obtaining of evidence, documents, articles or other things;
- ii. making of arrangements for persons, including detained persons, to give evidence or assist an investigation,

- iii. confiscation of property in respect of an offence,
- iv. service of documents,
- v. identification and location of persons,
- vi. execution of requests for search and seizure, and
- vii. provisions of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records.

319. The provisions of the Order are applicable, subject to any treaty entered into by Brunei and another country. It also does not prevent the provision or the obtaining of international assistance in criminal matters to or from the International Criminal Police (Interpol) or any other international organization.

320. The AGC has set up, within its Chambers, a MLA Secretariat to consider and deal with requests to and from other jurisdictions when such requests are made under this Order.

321. Also, applicable to the provision under review is section 2 of the MLA Order.

Mutual Legal Assistance in Criminal Matters Order 2005

Section 2. Interpretation

"criminal investigation" means an investigation –

- (a) into an offence; or
- (b) for the purposes of an ancillary criminal matter;

"criminal matter" includes a criminal investigation, any criminal proceeding and an ancillary criminal matter;

"criminal proceedings" means a trial of a person for any offence, and includes any proceedings to determine whether a particular person should be tried for any offence and any proceedings in respect of an ancillary criminal matter;

(b) Observations on the implementation of the article

322. The experts noted the applicability of section 4 of the MLA Order.

Mutual Legal Assistance in Criminal Matters Order 2005

Section 4. Application of Order

(1) This Order applies to any foreign country, subject to-

- (a) any mutual assistance treaty between that country and Brunei Darussalam; and
- (b) any multilateral mutual assistance treaty being a treaty to which that country and Brunei Darussalam are parties.

(2) This Order does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police (INTERPOL) or any other international organization.

(3) This Order does not prevent the provision or obtaining of international assistance in a criminal matter to or from any foreign country other than assistance of a kind that may be provided or obtained under this Order.

323. During the country visit, the Representative from the AGC referred the reciprocity principle as an alternative legal basis for MLA (section 22(1)(c)(i) of the MLA Order). He further informed the reviewing experts of general MLA requests that have been responded to, namely, from Australia, the United Kingdom, Thailand, Malaysia and Singapore.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

324. Brunei Darussalam cited section 3 of the MLA Order.

Mutual Legal Assistance in Criminal Matters Order, 2005

Section 3. Objects of Order

The objects of this Order are to facilitate the provision and obtaining by Brunei Darussalam of international assistance in criminal matters, including -

- (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 in 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;
- (g) the provision of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; and
- (h) any other type of assistance that is not contrary to the laws of Brunei Darussalam.

(b) Observations on the implementation of the article

325. The experts further referred to section 22 of the MLA Order.

Mutual Legal Assistance in Criminal Matters Order 2005

Section 22. Requests for assistance

- (1) If a foreign country requests assistance under this Part, the Attorney General shall consider the following matters in order to decide whether that request should be dealt with-
 - (a) if there is in force a treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country under which that country has agreed to provide assistance in criminal matters in Brunei Darussalam;
 - (b) if the request is made in accordance with a convention to which Brunei Darussalam and that country are parties which provides for the convention to be used as a basis of providing assistance in criminal matters;
 - (c) if paragraphs (a) and (b) are not applicable –
 - (i) any assurance given by that country that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters;
 - (ii) the seriousness of the offence to which the request relates;
 - (iii) the objects of this Order as specified in section 3; and
 - (iv) any other matters that the Attorney General considers relevant.
- (2) If, after considering those matters, the Attorney General decides that the request should be dealt with under this Part, he may deal with that request accordingly.

326. The reviewing experts welcomed the readiness of the national authorities to decrease the threshold of predicate offences and expressed confidence that this would be reflected in the final text of the law when amended. The experts also encouraged the authorities to consider in the context of reviewing the money laundering legislation to further expand the scope of predicate offences to include offences committed extra-territoriality in line

with subparagraph 2(c) of UNCAC article 23. It was the firm belief of the review team that such an expansion would facilitate international cooperation in combating money laundering and more generally, increasing the effectiveness of MLA proceedings involving legal persons, especially in cases involving national companies operating overseas.

Article 46 Mutual legal assistance

Subparagraphs 3 (a) – (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

327. Section 3 of the MLA Order was cited.

(b) Observations on the implementation of the article

328. During the country visit, the Representative of the AGC, in addition to section 3 of the MLA Order referred to section 16 (Request for enforcement of orders). It was held that section 16 could be cross-referenced with Schedule 1 of the Criminal Conduct (Recovery of Proceeds) Order, 2000. However, such a cross-reference had not been tested, to date. It was further mentioned that MLA Order is under review and amendments *inter alia* aim to include confiscation and restraining orders overseas.

Article 46 Mutual legal assistance

Subparagraphs 3 (j) – (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) *Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

(k) *The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

329. The provision under review has been partially implemented pursuant to section 46 of the MLA Order.

Mutual Legal Assistance in Criminal Matters Order 2005

Section 46. Custody and disposal of article or thing seized

- (1) Where any authorised officer has seized any article or thing pursuant to a warrant issued under section 43, he shall deliver it into the custody of the Commissioner of Police.
- (2) Where the article or thing has been delivered into his custody under subsection (1), the Commissioner of Police shall arrange for it to be kept for a period not exceeding one month from the day on which it was seized pending a direction in writing from the Attorney General as to the manner in which it is to be dealt with (which may include a direction that it be sent to the foreign country).
- (3) Where, before the expiry of the period referred to in subsection (2), the Attorney General gives a direction in respect of the article or thing, it shall be dealt with in accordance with that direction.
- (4) If no direction has been given by the Attorney General before the expiry of the period referred to in subsection (2), the Commissioner of Police shall arrange for the article or thing to be returned to the person from whose possession it was seized as soon as practicable after such expiry.

(b) Observations on the implementation of the article

330. The reviewing experts took note section 46 of the MLA Order and advised the national authorities to consider international aspects of confiscation when reviewing the existing confiscation legislation with a view to ensuring further improvements.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

331. Sections 4 and 7 of MLA Order were cited.

Mutual Legal Assistance in Criminal Matter Order 2005
Section 7. Requests to be made by Attorney General

Requests by Brunei Darussalam for assistance under this Order shall be made by the Attorney General.

(b) Observations on the implementation of the article

332. The reviewing experts deemed sections 4 and 7 of MLA Order to be irrelevant. However, during the country visit, the national authorities confirmed that the law enforcement agencies have transmitted information to their counterparts relating to criminal matters that could assist in undertaking or successfully concluding inquiries and criminal proceedings, or could result in a formal MLA request. Such a transmission of information can be done on a case-by-case basis and through the use of informal channels of communication, reported to exist mainly with other neighbouring countries. The reviewing experts recommended an expansion of this informal cooperation to additionally include other countries.

Article 46 Mutual legal assistance

Paragraphs 6 and 7

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of the article

333. Brunei Darussalam confirmed that UNCAC could be used as a legal basis.

(b) Observations on the implementation of the article

334. During the country visit, the Representative from the AGC referred to section 4(1)(b) of the MLA Order: “This Order applies to any foreign country, subject to ... (b) any multilateral mutual legal assistance treaty being a treaty to which that country and Brunei Darussalam are parties”, as well as section 22(1)(b): “If a foreign country requests assistance under this Part, the Attorney General shall consider the following matters in order to decide whether that request should be dealt with... (b) if the request is made in accordance with a convention to which Brunei Darussalam and that country are parties which provides for the convention to be used as a basis for providing assistance in criminal matters”. In light of this, UNCAC could be used as a legal basis for MLA.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

335. Section 24 of MLA Order was cited.

Mutual Legal Assistance in Criminal Matter Order 2005

Section 24. Refusal of assistance

- (4) A request by a foreign country for assistance under this Part shall be refused if, in the opinion of the Attorney General –
- (a) that country has, in respect of that request, failed to comply with the terms of any treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country;
 - (b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law applicable in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam;
 - (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to that person on account of his colour, race, ethnic origin, sex, religion, nationality or political opinions;
 - (d) the offence to which that request relates is not an offence of sufficient gravity;
 - (e) the article or thing requested is of insufficient importance to the investigation or could reasonably be obtained by other means;
 - (f) it would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interests of Brunei Darussalam to provide such assistance;
 - (g) that country has failed to undertake that the article or thing requested for will not be used, except with the consent of the Attorney General, for a matter other than the criminal matter in respect of which the request was made;
 - (h) in the case of a request for assistance in obtaining evidence and in search and seizure, that country has failed to undertake to return to the Attorney General, upon request, anything obtained pursuant to that request upon completion of the criminal matter in respect of which the request was made;
 - (i) in the case of a request for assistance in arranging the attendance of a person in a foreign country, the person to whom the request relates is not prepared to give his consent to the transfer; or
 - (j) the provision of the assistance could prejudice a criminal matter in Brunei Darussalam.
- (5) A request by a foreign country for assistance under this Part may be refused by the Attorney General –
- (a) pursuant to the terms of any treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country;
 - (b) if, in his opinion, the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in Brunei Darussalam or elsewhere);
 - (c) if the request relates to the investigation, prosecution or punishment of any person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would not have constituted an offence against the laws of Brunei Darussalam;
 - (d) if, in his opinion, the provision of the assistance would impose an excessive burden on the resources of Brunei Darussalam;
 - (e) if, in the case of a request for the attendance of a prisoner in Brunei Darussalam, the granting of that request –
 - (i) would not be in the interests of the public;
 - (ii) would not be in the interests of the person to whom the request relates; or
 - (f) the request does not comply with the requirements of section 23.

(b) Observations on the implementation of the article

336. The reviewing experts in discussing the provision under review with the Representative of the AGC agreed that section 30 of MLA Order was the applicable provision and not section 24.

Mutual Legal Assistance in Criminal Matter Order 2005

Section 30. Special provisions regarding documents etc. in the possession of financial institutions

Notwithstanding section 29 or any other written law, if the documents, articles or other things are in the possession of a financial institution, the Attorney General may in writing order that that financial institution provide an authorised officer within such period and in such form and manner as may be

specified in the order, the information, documents, articles or other things, including those relevant to any one or more of the following –

- (a) whether an account is held by a specified person with that financial institution;
- (b) whether a particular person is a signatory to an account;
- (c) whether any person holds an account with that financial institution, and the current balance of that account;
- (d) details of transactions on such an account over a specified period;
- (e) details of any related accounts (including the names of those who hold those accounts);
- (f) any transaction conducted by the financial institution on behalf of a specified person.

337. The review team further noted that the above section was in conformity with what was reported in relation to the implementation of UNCAC article 40, namely that bank secrecy does not create practical obstacles to domestic investigations on corruption-related offences.

Article 46 Mutual legal assistance

Paragraph 9

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

338. Sections 4 and 24, as well as section 2 on the interpretation of “criminal matter” of MLA Order were cited. Brunei Darussalam provided that it has partially implemented subparagraph 9(b) of UNCAC article 46.

(b) Observations on the implementation of the article

339. The reviewing experts took into account that the absence of dual criminality is listed among the optional grounds for refusing an MLA request, pursuant to section 24(2)(c) of the MLA Order. The experts were of the view that this optional requirement in the domestic legislation may well serve the purpose of effective implementation of UNCAC article 46, if the discretion to require dual criminality is only limited to assistance involving coercive measures.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

340. Sections 3(e) and 36 of MLA Order were cited.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 36. Assistance in arranging attendance of a prisoner in foreign country for specific purposes

- (2) A foreign country may request the Attorney General to assist in arranging the attendance in that country for either or both of the purposes specified in subsection (2), of a person in Brunei Darussalam who is a prisoner.
- (3) The purposes referred to in subsection (1) are –
 - (a) for giving evidence in relation to any criminal proceedings in that country;
 - (b) for assistance in relation to a criminal matter in respect of an offence in that country.
- (4) The Attorney General may in writing authorise assistance in accordance with this section if, on receipt of a request made under subsection (1),
 - (a) the request relates to the attendance of the person concerned in connection with a criminal matter in that country;
 - (b) there are reasonable grounds for believing that the person concerned could give or provide evidence or assistance relevant to that criminal matter;
 - (c) the person concerned has freely consented to attend as requested;
 - (d) the foreign country has given an adequate undertaking in respect of the matters specified in section 37.
- (5) Where assistance is authorised in accordance with subsection (3), the Attorney General may direct that the prisoner be released from the prison in which he is detained for the purpose of travelling to that foreign country to give evidence at the hearing, and may make arrangements for the prisoner to travel to that country in the custody of a police officer or of a prison officer as defined in section 2 of the Prisons Act (Chapter 51).
- (6) A direction given pursuant to subsection (4) by the Attorney General in respect of a prisoner shall be sufficient authority for the release of the prisoner from the prison for the purposes of the direction.
- (7) Where a person has been transferred to a foreign country in accordance with subsection (3), he shall be deemed or continue to be in legal custody when, being in Brunei Darussalam or on board a Brunei Darussalam aircraft or hovercraft or a Brunei Darussalam ship, he is being taken to or from any place or being kept in custody under the direction made by the Attorney General under subsection (4).
- (8) A person authorised by or for the purposes of any such direction to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer in Brunei Darussalam.
- (9) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a police officer and taken to any place directed by the Attorney General.
- (10) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying fines as it applies to a prisoner.
- (11) In subsection (6) –

“Brunei Darussalam aircraft or hovercraft” means any aircraft or hovercraft registered in Brunei Darussalam or any aircraft or hovercraft of His Majesty the Sultan and Yang Di-Pertuan;

“Brunei Darussalam ship” means a Brunei Darussalam ship as defined in subsection (1) of section 2 of the Merchant Shipping Order, 2002 (S27/02) or a ship of His Majesty the Sultan and Yang Di-Pertuan;

In this subsection, references to aircraft, hovercraft and ships of His Majesty the Sultan and Yang Di-Pertuan are to aircraft, hovercraft and ships which belong to or are exclusively employed in the service of His Majesty the Sultan and Yang Di-Pertuan in right of the government of Brunei Darussalam.

(b) Observations on the implementation of the article

341. Section 36 of MLA Order was found to meet the relevant requirements of the provision under review.

Article 46 Mutual legal assistance

Paragraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

342. Brunei Darussalam referred to the MLA Order.

(b) Observations on the implementation of the article

343. The reviewing experts in discussing the provision under review with the Representative of the AGC agreed that the following provisions were of relevance to paragraph 11 of UNCAC article 46:

- In general: sections 10, 12 and 13 of the MLA Order;

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 10. Request for attendance of person in Brunei Darussalam

- i. Where the Attorney General is satisfied that there are reasonable grounds for believing that a person in a foreign country could give or provide evidence or assistance relevant to any criminal matter in Brunei Darussalam, the Attorney General may request that foreign country to assist in arranging the attendance of that person in Brunei Darussalam to give or provide that evidence or assistance.

- ii. Where the Attorney General is satisfied that a person in respect of whom a request is made to a foreign country under subsection (1) has consented to travel to Brunei Darussalam to give or provide evidence or assistance pursuant to that request, the Attorney General may make arrangements with that foreign country for –
- (a) the attendance of that person in Brunei Darussalam;
 - (b) in the case of a foreign prisoner, his custody while in Brunei Darussalam;
 - (c) his return to that foreign country; and
 - (d) any other relevant matters.

Section 12. Custody of foreign prisoners

(1) Where –

- (a) a person who is brought to Brunei Darussalam from a foreign country pursuant to a request made under subsection (1) of section (10) is a foreign prisoner; and
 - (b) that foreign country has requested that he be kept in custody while he is in Brunei Darussalam, that person shall, whilst in Brunei Darussalam or travelling to or from Brunei Darussalam pursuant to that request, be held in custody as the Minister may direct in writing.
- (2) A direction pursuant to subsection (1) shall be sufficient authority for the detention of that person in accordance with the terms of such direction.

Section 13. Release of foreign prisoner upon request by foreign country

Where –

- (a) a foreign prisoner is being held in custody in accordance with a direction pursuant to subsection (1) of section (12); and
 - (b) the foreign country from which that person has been brought has request his release from such custody,
- the Minister shall direct that he be released from custody.

- For sub-paragraph (a), section 36 (6), (7) and (9) of the MLA Order;

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 36. Assistance in arranging attendance of a prisoner in foreign country for specific purposes

(6) Where a person has been transferred to a foreign country in accordance with subsection (3), he shall be deemed or continue to be in legal custody when, being in Brunei Darussalam or on board a Brunei Darussalam aircraft or hovercraft or a Brunei Darussalam ship, he is being taken to or from any place or being kept in custody under the direction made by the Attorney General under subsection (4).

(7) A person authorised by or for the purposes of any such direction to take the prisoner to or from any place or to keep him in custody shall have all the powers, authority, protection and privileges of a police officer in Brunei Darussalam

(9) This section applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying fines as it applies to a prisoner.

- For sub-paragraph (b), section 37 (c) of the MLA Order;

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 37. Undertaking required from foreign country

Where, pursuant to section 35 or 36, a foreign country requests that assistance of the Attorney General in arranging the attendance in that country of any person to whom either of those sections applies, the Attorney General shall, before authorising such assistance in accordance with either of those sections, obtain an undertaking from that country in relation to the following matters –

(c) that the person will be returned to Brunei Darussalam in accordance with arrangements agreed by the Attorney General as soon as practicable after giving or providing the evidence or assistance.

- For sub-paragraph (c), section 10(2)(c) of the MLA Order;
- For sub-paragraph (d), section 10(5) of the International Transfer of Prisoners Order.

International Transfer of Prisoners Order, 2011

Section 10. Detention of transferred prisoners

(5) A transferred prisoner undergoing a term of imprisonment shall -

- (a) be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law relating to remission of prison sentences in the designated country; and
- (b) thereafter be eligible to earn remission of that terms as if he had been sentenced to a term of imprisonment of the same length by a court in Brunei Darussalam.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

344. The applicable provision is section 37 of MLA Order.

Mutual Legal Assistance in Criminal Matter Order 2005

Section 37. Undertaking required from foreign country

Where, pursuant to section 35 or 36, a foreign country requests the assistance of the Attorney General in arranging the attendance in that country of any person to whom either of those sections applies, the Attorney General shall, before authorising such assistance in accordance with either of those sections, obtain an undertaking from that country in relation to the following matters –

- (a) that the person to whom the request relates shall not –
 - (i) be detained, prosecuted, or punished for any offence against the law of the foreign country concerned that is alleged to have been committed, or that was committed, before his departure from Brunei Darussalam, other than an offence in respect of which the Attorney General consents to his being so detained, prosecuted or punished;
 - (ii) be subject to any civil proceedings in respect of any act or omission of that person that is alleged to have occurred, or that did occur, before his departure from Brunei Darussalam, being civil proceedings to which that could not have been subjected to if he were not in that country; or
 - (iii) be required to give or provide evidence or assistance in respect of any criminal matter in that foreign country other than the matter to which the request relates,
 unless that person has left that foreign country, or has had the opportunity of leaving that country and has remained there otherwise that for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates;
- (b) that any evidence given by him in the criminal proceedings to which the request relates shall be inadmissible and not otherwise used in any prosecution of that person for any offence against a law of that foreign country other than the offence of perjury or contempt of court in relation to the giving of that evidence;
- (c) that the person will be returned to Brunei Darussalam in accordance with arrangements agreed by the Attorney General as soon as practicable after giving or providing the evidence or assistance;
- (d) in a case where the request relates to a person who is a prisoner in Brunei Darussalam and the Attorney General has requested the foreign country to make arrangements for the keeping of that person in custody while that person is in that country –
 - (i) that appropriate arrangements will be made for that purpose;
 - (ii) that he will not be released from custody in that country without the prior approval of the Attorney General; and
 - (iii) if he is released in that country, at the request of the Attorney General, before the completion of the proceedings to which the request relates, that his accommodation and expenses will be met by the foreign country; and
- (e) such other matters (if any) as the Attorney General thinks appropriate.

(b) Observations on the implementation of the article

345. The reviewing experts were of the view that the section 37 of MLA Order implements the provision under review.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

346. The central authority for matters pertaining to MLA under this Convention is:

The Attorney General
Attorney General's Chambers
Prime Minister's Office
Jalan Tutong
Bandar Seri Begawan BA1910
Brunei Darussalam

347. Section 7 of MLA Order was also cited.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 7. Requests to be made by Attorney General

Requests by Brunei Darussalam for assistance under this Part shall be made by the Attorney General.

(b) Observations on the implementation of the article

348. Brunei Darussalam informed the UN Secretary-General on 11 December 2008 (C.N.997.2008.TREATIES-38) that with reference to paragraph 13 of UNCAC article 46, the Attorney General is designated as the central authority for the matters pertaining to MLA under this Convention and the address is the same as above.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

349. Brunei Darussalam provided that “requests for mutual legal assistance under the Convention should be made in, or accompanied by a translation into, the English language”, and referred to section 23 of MLA Order.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 23. Form of request

Every request by a foreign country for assistance under this Part shall –

- (c) be made in writing or by any other means capable of producing a written record, in the English language;
- (d) be made orally only in urgent circumstances but shall subsequently be confirmed in writing in the English language;
- (e) specify the purpose of the request and the nature of the assistance being sought;
- (f) identify the person who initiated the request; and
- (g) be accompanied by –
 - (i) a statement from that country that the request is made in respect of a criminal matter;
 - (ii) a description of the nature of that criminal matter and a statement setting out a summary of the relevant facts and law;
 - (iii) where the request relates to –
 - (A) the location of a person who is suspected to be involved in or has benefited from the commission of an offence; or
 - (B) the tracing of property that is connected with a criminal matter, the name, identify, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting out the basis for suspecting the matter referred to in sub-paragraph (A) or (B);
 - (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
 - (v) details of the procedure that that country wishes to be followed by Brunei Darussalam in giving effect to the request, including details of the manner and form in which any information, article or thing is to be supplied to that country pursuant to that request;
 - (vi) a statement setting out the wishes of that country concerning the confidentiality of the request and the reason for those wishes;
 - (vii) details of the period within which that country wishes the request to be met;
 - (viii) if the request involves a person travelling from Brunei Darussalam to that country, details of allowances to which the person will be entitled, and of the arrangements his accommodation while he is in that country pursuant to that request;
 - (ix) any other information required to be forwarded with the request under any treaty, memorandum of understanding or other agreement between Brunei Darussalam and that country; and
 - (x) any other information that may assist in giving effect to the request or which is required under the provisions of this Order.

350. Brunei Darussalam has notified the UN Secretary-General as prescribed above.

(b) Observations on the implementation of the article

351. Brunei Darussalam informed the UN Secretary-General on 11 December 2008 (C.N.997.2008.TREATIES-38) with reference to paragraph 14 of UNCAC article 46 that MLA requests should be made in, or accompanied by a translation into the English language.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

352. Section 23 of the MLA Order was cited.

(b) Observations on the implementation of the article

353. The experts deemed the provisions under review to have been implemented by section 23 of the MLA Order, noting that the exact requirements (i.e. identity and nationality of any person concerned) have been broadly addressed.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

354. Section 25 of the MLA Order was cited.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 25. Assistance may be provided subject to conditions

Assistance under this Part may be provided to a requesting country subject to and conditions as the Attorney General may determine in any particular case or class of case.

(b) Observations on the implementation of the article

355. The reviewing experts were of the view that section 25 of the MLA Order implements the provision under review.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

356. Section 9 of the MLA Order was cited.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 9. Requests for hearing evidence from witnesses abroad through television link

The Attorney General may request a foreign country to arrange for a person in that foreign country to give evidence that would be relevant to any criminal matter in Brunei Darussalam, through a live television link.

(b) Observations on the implementation of the article

357. The reviewing experts were of the view that section 9 of the MLA Order implements the provision under review.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

358. Brunei Darussalam provided that it has partly implemented the provision under review, pursuant to section 34 of the MLA Order.

(b) Observations on the implementation of the article

359. The reviewing experts in discussing the provision under review with the Representative of the AGC agreed that the applicable provision for outgoing requests was section 19 and for incoming request, implicitly section 27(8) of the MLA Order.

Mutual Legal Assistance in Criminal Matter Order, 2005
Section 19. Temporary surrender warrant

Section 27. Assistance in the taking of evidence

(8) Evidence taken under this section shall not be admissible in evidence or otherwise used, for the purposes of any judicial proceedings, disciplinary proceedings or other proceedings in Brunei Darussalam, except in the prosecution of the person who gave that evidence for the offence of perjury or contempt of court in relation to the giving of that evidence.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

360. Brunei Darussalam provided that it has partially implemented the provision under review, pursuant to section 23 of the MLA Order.

(b) Observations on the implementation of the article

361. The reviewing experts in discussing the provision under review with the Representative of the AGC agreed that implicitly section 23(vi) of the MLA Order was the applicable provision.

Mutual Legal Assistance in Criminal Matter Order, 2005
Section 23.

Every request by a foreign country for assistance under this Part shall -

(vi) a statement setting out the wishes of that country concerning the confidentiality of the request and the reasons for those wishes;

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, order public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

362. Section 24 of the MLA Order was cited.

(b) Observations on the implementation of the article

363. The experts deemed the provision under review to have implemented by section 24 of the MLA Order.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

364. Brunei Darussalam provided that it has partially implemented the provision under review, pursuant to sections 24 and 25 of the MLA Order.

(b) Observations on the implementation of the article

365. The reviewing experts recommended that it would be better to provide for the requirements of the provision under review in the law itself rather than rely on the discretionary powers of the Attorney General on a case-by-case basis as foreseen in section 25 of the MLA Order.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

366. Brunei Darussalam cited section 24 of the MLA Order.

(b) Observations on the implementation of the article

367. During the country visit, the Representative of the AGC informed the reviewing experts that Brunei Darussalam, in practice, would provide reasons for refusing an MLA request.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

368. Brunei Darussalam provided that it has partially implemented the provision under review, pursuant to section 23 of the MLA Order.

(b) Observations on the implementation of the article

369. During the country visit, the Representative of the AGC informed the reviewing experts that Brunei Darussalam has responded to MLA requests (which have not been corruption-related and focused on documentary evidence) within generally two weeks. The experts noted that two weeks is exemplary and invited such a practice to continue where possible. They further noted however that in a wider context the absence of a case management system within the central authority could prevent this authority from regularly monitoring the length of MLA proceedings for purposes of improving standard practice.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

370. Brunei Darussalam cited section 24, in particular subparagraph (1)(b), of the MLA Order, “the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law applicable in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam”.

(b) Observations on the implementation of the article

371. The reviewing experts were of the view that due to the lack of an *ad hoc* provision in the domestic legislation, section 25 of the MLA Order could be applicable *mutatis mutandis*.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

372. Brunei Darussalam provided that it has partially implemented the provision under review, pursuant to section 25 of the MLA Order.

(b) Observations on the implementation of the article

373. The review team noted the irrelevance of section 25 of the MLA Order to the provision under review. Furthermore, no concrete practice was reported on this issue. However, the confirmed average time of two weeks for granting an MLA request was considered as an indicator that the administrative practice of consultations with the foreign counterparts was followed.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

374. Brunei Darussalam provided that it has partially implemented the provision under review, pursuant to section 37 of the MLA Order.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 37. Temporary surrender warrant

- (1) The Attorney General may issue a temporary surrender warrant if -
 - (a) that person is serving a custodial sentence in Brunei Darussalam;
 - (b) surrender is sought for an offence of which he is accused but of which he has not been convicted;
 - (c) he is satisfied that the designated country has given an adequate undertaking that -
 - (i) that person will be given a speedy trial in the designated country; and
 - (ii) he will be returned to Brunei Darussalam after the trial; and
 - (d) the Attorney General is satisfied that adequate provision has been made for the travel of that person to the designated country and for his return to Brunei Darussalam.
- (2) The temporary surrender warrant shall -

- (a) be in writing;
 - (b) state the offences for which that person is to be surrendered;
 - (c) require any person who has the custody of that person to hand him over to a police officer;
 - (d) authorise a police officer to –
 - (i) transport that person from the place where the police officer takes custody of him to another place within Brunei Darussalam for the purpose of handing him over to the custody of a foreign escort officer; and
 - (ii) hold him in custody for so long as is necessary to enable him to be handed over to the custody of a foreign escort officer; and
 - (e) authorise the foreign escort officer to transport him out of Brunei Darussalam.
- (3) If a person who was the subject of a temporary surrender warrant –
- (a) has been returned to Brunei Darussalam after trial and sentence in the designated country; and
 - (b) has completed his custodial sentence in Brunei Darussalam, a magistrate shall issue a surrender warrant for the surrender of that person to the designated country.
- (4) Any time that a person spends in custody in the designated country is deemed to be time spent in custody in Brunei Darussalam for the purpose of completing the sentence for which he was in custody in Brunei Darussalam.
- (5) If –
- (a) the time spent in custody in the designated country is taken into account as mentioned in subsection (4); and
 - (b) because of this, his sentence in Brunei Darussalam is concluded, the Attorney General may inform the requesting country that the undertakings given by that country about the speedy trial and his return no longer apply and the surrender shall be final.

(b) Observations on the implementation of the article

375. The reviewing experts deemed section 37 of the MLA Order to meet the requirements of the provision under review.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

376. Brunei Darussalam referred to the MLA Order.

(b) Observations on the implementation of the article

377. The reviewing experts linked the issue of costs in MLA proceedings to existing (and future) agreements and arrangements, which could provide the appropriate legal framework to regulate this issue.

Article 46 Mutual legal assistance

Paragraph 29

29. *The requested State Party:*

(a) *Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

(b) *May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

(a) Summary of information relevant to reviewing the implementation of the article

378. Brunei Darussalam provided that it has partially implemented the provision under review, pursuant to section 29 of the MLA Order.

Mutual Legal Assistance in Criminal Matter Order, 2005

Section 29. Arrest and remand on endorsed warrant

- (1) A person arrested under an endorsed warrant shall be brought before a magistrate as soon as practicable.
- (2) The magistrate shall –
 - (a) remand that person in custody; or
 - (b) if the magistrate is satisfied that he is unlikely to abscond, release him on bail whether with or without sureties,
for a period that is necessary for proceedings under this Part to be conducted.
- (3) A magistrate who releases a person on bail may order that his passport and other travel documents be surrendered until the extradition proceedings are concluded.
- (4) A person shall be remanded in custody or on bail for a period longer than 28 days.
- (5) If a magistrate remands that person in custody after he has made an application for bail, that person is not entitled to apply to any other magistrate for release on bail during that remand, unless the first-mentioned magistrate is no longer available.

(b) Observations on the implementation of the article

379. The reviewing experts deemed section 29 of the MLA Order to meet the requirements of the provision under review.

Article 46 Mutual legal assistance

Paragraph 30

30. *States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

(a) Summary of information relevant to reviewing the implementation of the article

380. Section 4 of the MLA Order was cited.

(b) Observations on the implementation of the article

381. The national authorities identified as the implementing provision, section 4 of the MLA Order, which stipulates that this Order applies subject to any conditions set forth in

existing mutual legal assistance treaties (MLATs). From this point of view, section 4 will also be applicable, subject to any future MLA treaties that should be concluded in order to increase efficiency of related mechanisms.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

382. Brunei Darussalam referred to the Extradition Order, 2006.

(b) Observations on the implementation of the article

383. The reviewing experts in discussing the provision under review with the Representative of the AGC agreed that section 54 of the Extradition Order was applicable in relation to relevant requests received from foreign countries. For outgoing requests, section 56 was of relevance.

Extradition Order, 2006

Section 54. Taking of evidence at request of another country

(6) If another country requests Brunei Darussalam to take evidence for the purpose of criminal proceedings in that country, the Public Prosecutor may authorise a magistrate to do so.

(7) The magistrate may take the evidence of each witness on oath and shall –

- (a) cause it to be reduced to writing and certify as to the taking of the evidence; and
- (b) cause it and the certification to be sent to the Public Prosecutor.

Section 56. Provision of evidence for prosecution by other countries

If –

- (a) another country has refused to order that a person be surrendered to Brunei Darussalam; but
- (b) that country is prepared to prosecute him for the offence for which Brunei Darussalam sought his surrender,

the Public Prosecutor shall give that other country all the available evidence to enable that other country to prosecute him.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

384. The ACB is a member of the South East Asia Parties against Corruption (SEA-PAC), as all ASEAN countries with the exception of Myanmar who is still an observer.

385. The ACB also has bi-lateral meetings on an annual basis with counterparts from Malaysia. Moreover, the ACB works closely with counterparts from CPIB, Singapore and Corruption Eradication Commission (“KPK”), Indonesia.

386. Brunei Darussalam cited various cases, such as *PP v Hj Yakib bin Haji Jumat* which involved close cooperation with the KPK, Indonesia and led to a conviction in the Magistrate Court.

387. Brunei Darussalam does not have a database through which information can be shared.

(b) Observations on the implementation of the article

388. During the country visit, the national authorities confirmed links and cooperation with INTERPOL on matters related to law enforcement cooperation. The reviewing experts found that the practice reported was in compliance with the relevant provision of the UNCAC and encouraged the national authorities to expand the network of agreements or arrangements on law enforcement cooperation to combat corruption with other countries beyond SEA-PAC.

Article 48 Law enforcement cooperation

Subparagraphs 1 (b) and (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

389. Brunei Darussalam cited the MLA Order.

(b) Observations on the implementation of the article

390. As already mentioned under the section on the national implementation of paragraphs 4 and 5 of UNCAC article 46, during the country visit, the national authorities confirmed that law enforcement agencies have transmitted information to their counterparts relating to criminal matters that could assist in undertaking or successfully concluding inquiries

and criminal proceedings, or could result in a formal MLA request. Such transmission of information can be done on a case-by-case basis and through the use of informal channels of communication, reported to exist mainly with other neighbouring countries. The reviewing experts recommended an expansion of this informal cooperation to additionally include other countries.

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

391. As a member to SEA-PAC, the ACB has shared some best practices and experiences in investigations, as well as the methods that it uses. However, it is also open for questions in order to enhance and improve existing methods or skills.

392. Brunei Darussalam is also an observing country to the ADB/OECD Initiatives.

(b) Observations on the implementation of the article

393. The reviewing experts found that the practice reported was in compliance with the relevant provision of UNCAC and encouraged the national authorities to enhance information-sharing with other countries beyond SEA-PAC.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

394. As Brunei Darussalam's laws are similar to Malaysia and Singapore's, the ACB has been conducting joint trainings and workshops, as well as exchanging officers.

395. The MACC has been continuously offering the ACB trainings in their academy.

(b) Observations on the implementation of the article

396. During the country visit, more concrete information was provided to the review team on the trainings offered to enhance the capacity of national officers. In particular, under the ACB work scheme, it is a mandatory for each officer to undergo a 9 months police training in Home Team Academy in Singapore.

397. An interesting practice reported, during the country visit, was that of temporary assignment, based on bilateral agreements or arrangements, of “visiting judges” from Australia, Hong Kong, Singapore and United Kingdom to adjudicate domestic cases. Although this practice is not directly linked to the implementation of this provision, the reviewing experts deemed it appropriate to make specific reference to it as it is a demonstration of Brunei Darussalam’s commitment to accept the posting of international experts within its legal system in a capacity that goes far beyond that of a “liaison officer” and is related to the performance of domestic public functions (on a temporary basis).

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

398. SEA-PAC and bilateral meetings have assisted the ACB in terms of exchanging information and coordinating certain investigations on corruption-related offences.

(b) Observations on the implementation of the article

399. The reviewing experts found that the practice reported was in compliance with the relevant provision of the UNCAC and encouraged the national authorities to enhance information-sharing for the purpose of early identification of offences with other countries beyond SEA-PAC.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

400. Brunei Darussalam has entered into bilateral or multilateral agreements or arrangements, as mentioned above under subparagraph 1(a) of UNCAC article 48.

(b) Observations on the implementation of the article

401. The reviewing experts recommended that the national authorities expand their existing agreements or arrangements on law enforcement cooperation, including through the use of UNCAC as a legal basis for such cooperation.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

402. Brunei Darussalam provided that it has implemented the provision under review.

(b) Observations on the implementation of the article

403. The reviewing experts noted the bilateral agreement that ACB has with the MACC, and the arrangement in place with the KPK, Indonesia.

404. The experts recommended that the national authorities make further use of existing instruments which focus on UNCAC-related offences committed through the use of modern technology.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

405. Brunei Darussalam noted the bilateral agreement it has with the MACC. It has also conducted investigations with the KPK, Indonesia on several occasions. Above and beyond this, recourse would have to be made to the respective MLA arrangements in each State's jurisdiction.

406. Brunei Darussalam also cited the cases, *PP v Hj Yakib bin Haji Jumat* (offence under section 6(a) of PCA; requiring Indonesia's assistance) and *PP v 21 Customs officers and*

inspectors. The latter case involved the smuggling of oil outside Brunei Darussalam; the Customs Officers and Inspectors received monetary 'tips' as bribes.

(b) Observations on the implementation of the article

407. During the country visit, the reviewing experts were informed by the ACB that the MOU it has with Malaysia has been in existence for 10 years and there have been 9 cases made, pursuant to this. Brunei Darussalam has further sought cooperation with Mauritius, Australia and Hong Kong.

408. Moreover, there have been numerous general joint investigations carried out by the Police of other States, such as with Malaysia, Lao PDR and Singapore (also on a case-by-case basis). Investigations have been conducted pursuant to the domestic jurisdiction of the State in which the investigations have been carried out. It was mentioned by the ACB that it has conducted one joint investigation that was corruption-related with Indonesia, as provided for in the case above cited.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

409. "Controlled delivery" is one of the investigation techniques used by the ACB. Furthermore, during the country visit, the Representative of the Police informed the reviewing experts of the existence of a Department in the Police that focuses on intelligence, including the conduct of special investigative techniques. Electronic surveillance equipment is deployed mainly for the purposes of monitoring. The admissibility of evidence is determined in Court with respect to its relevance, regardless of how it was obtained. However, the national authorities recognized, during the country visit, the necessity of putting in place new legislation on special investigative techniques.

This will *inter alia* deal with the legality and judicial authorization as a requirement for such admissibility into Court.

410. Brunei Darussalam also cited the case, in *PP v Abd Jaman*. The Prosecution used telephone conversations between the complainant and defendant as evidence, which was deemed admissible by the Court.

(b) Observations on the implementation of the article

411. The reviewing experts noted that the evidence derived through special investigative techniques, including electronic surveillance was considered admissible based on its relevance and not the manner in which it was obtained. The review team welcomed the readiness of the national authorities to address this loophole through new legislation. The team further indicated the urgency of putting in place such a new law and thus, ensuring full compliance with paragraph 1 of UNCAC article 50. This requires States parties not only to allow for the conduct of special investigative techniques but also to provide for rules that regulate the admissibility of evidence in Court derived from such techniques. In response, the national authorities indicated that the process for preparing and enacting such legislation may be completed in 2013 and expressed their willingness to benefit from available legal expertise (compilation/ summary of various legal practices on this matter).