



1	<p>Can you give clarification on the dress code under the Syariah Penal Code?</p> <p>First and foremost, it must be clarified that there is NO SPECIFIC OFFENCE in the Syariah Penal Code 2013 (SPC) regarding “clothing”. As such there is no such “dress code” under this law.</p> <p>However, if the attire worn constitutes indecency, then it may fall under section 197 of the SPC (indecent behaviour). Section 197(1) states:</p> <p style="padding-left: 40px;">“Any person who commits an act of indecent behaviour in any public place is guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both”.</p> <p>An act will be deemed to be indecent if it tends to tarnish the image of Islam, deprave a person, bring bad influence or cause anger to the person who is likely to have seen the act. As such, if a person wears clothing that meets any one of these four characteristics it may fall under “indecent behaviour”.</p> <p>On this note, it is emphasised that the above answer is limited to the legal aspect of the provision. For Muslims, the obligation to cover <i>aurah</i> (dress-code for Muslims) is well-known and need not be explained here.</p>
2	<p>Is the dress code applicable for both Muslim and non-Muslim?</p> <p>Yes. The obligation to observe “decent behaviour” applies to both Muslims and non-Muslims.</p>
3	<p>What is considered as indecent clothing?</p> <p>There is no hard and fast rule regarding this, nor is there any specific guideline yet explaining what is considered as indecent clothing. This should be measured with regard to the custom and norms of the Brunei community, taking into account the fact that Brunei practices MIB (Malay Islamic Monarchy) and more importantly, remembering that Islam is the official religion of the country (Brunei Constitution). Generally, clothes should not be <u>provocative</u>. The four characteristics provided under section 197 of the SPC should be adhered to.</p>

4	<p>Will the dress code apply to visitors coming to the country e.g. tourists?</p> <p>The SPC applies to all persons in Brunei Darussalam, including tourists. To ensure that they are aware of this law, a briefing has been given to travel agents and it is expected that they will disseminate any useful information to incoming tourists using suitable means.</p>
5	<p>Will there be a separate dress code that will apply during Puasa month?</p> <p>Generally, the same principles apply throughout the year.</p>
6	<p>Are all restaurants expected to close during the Puasa month?</p> <p>No. The restaurants can remain open for business during the Puasa month.</p> <p>According to section 195(2) of the SPC, any person who sells or serves any food, drink or tobacco for <u>immediate consumption at that spot</u>, in a public place, during the fasting hours is an offence. As such, buying take-aways are allowed. Only dine-ins are prohibited during the fasting hours. Non-Muslim staff can still purchase food items during the day and eat in private places where they will not be visible to the public.</p>
7	<p>In regards to the capital punishment, will it be applicable to non-Muslim? If yes, in what scenario?</p> <p>Offences with capital punishments apply to non-Muslims in certain cases, including the following scenarios:</p> <ul style="list-style-type: none">  Hirabah (robbery) if during the course of action, the non-Muslim has caused death, and the case is proved either by his own ikrar (confession), or by syahadah (testimony) of at least two male syahid witnesses.  Zina (adultery) if the non-Muslim is muhsan and the action is committed with a Muslim, and the case is proved either by his own ikrar, or by syahadah of at least four male syahid witnesses.


- ✎ Zina bil-jabar (rape) if the non-Muslim is muhshan, and the case is proved either by his own ikrar, or by syahadah of at least four male syahid witnesses.
- ✎ Liwat (sodomy) if the non-Muslim is muhshan and the case is proved either by his own ikrar, or by syahadah of at least four male syahid witnesses.
- ✎ Qatlul-'amd (intentionally causing death of another person) if proved either by his own ikrar or syahadah of at least two male syahid according to Hukum Syara'.
- ✎ Contempt of Prophet Muhammad PBUH, if proved either by his own ikrar, or by syahadah of at least two syahid witnesses (and he refuses to repent after being ordered by the Syariah Court).
- ✎ Derides, mocks, mimics, ridicules or contempts any verse of the Al-Qur'an or hadith of Nabi Muhammad PBUH, if proved either by his own ikrar, or by syahadah of at least two syahid witnesses (and he refuses to repent after being ordered by the Syariah Court).

Note below:

- Muhshan is a legally married person and has had sexual intercourse in the marriage.
- A syahid witness is a person who fulfills all the necessary requirements according to Hukum Syara', among others, of sound mind, attained puberty and 'adil. Non-Muslims are allowed to become syahid witnesses only limited to offences committed by non-Muslims if such person is credible according to his religion.
- 'Adil is defined as a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins.

8	<p>Can a non-Muslim request for a case to be judged by the Syariah Court?</p> <p>In criminal cases, the prosecution will decide which court will the case be filed, according to the jurisdiction specified in the law. If the case is within jurisdiction of Syariah Court, Section 3(4) of the SPC declared that no court other than the Syariah Courts shall have jurisdiction to hear or determine any matter arising in the SPC.</p>
9	<p>If a case is applicable to be judged in both Civil and Syariah Court, which one will hold precedence?</p> <p>This matter is still under consideration and so far it has not been decided by the authoritative body, i.e. Religious Council of Brunei. However, the principle against double jeopardy will prevent the case from being heard twice in both sets of courts.</p>
10	<p>For Muslim staff that is working on shift onshore who are not performing the Jumaat prayers?</p> <p>Bagi pekerja Muslim yang bekerja shift di darat yang tidak melakukan sembahyang Jumaat?</p> <p>Section 194 of the SPC states that any man who is mukallaf (attained puberty, aged at least 15 years and of sound mind) fails to perform Friday prayers without any <i>uzur syar'ie</i> or reasonable excuse is guilty of an offence punishable by fine not exceeding \$200 for a first offence, a fine not exceeding \$300 for a second offence, and a fine not exceeding \$1,000 for a third or subsequent offence. Note that there are exceptions to this law, that is –</p> <ul style="list-style-type: none"> ✎ <i>uzur syar'ie</i> i.e. conditions recognised by Islam as an exemption from religious obligations, for instance intoxicated due to medicine, travelling or during natural disasters (flood, typhoon, extreme winds, fire, landslides etc.); and ✎ reasonable excuses such as workers ordered to be on duty in which he is not in the position to leave because it may result to bad consequences to the society including doctors, police, customs and immigration officers or security guards, or in cases of a person needed to look after a sick family member who cannot be left alone.

	<p>As such, if a male worker has a reasonable excuse in which leaving his post may result in a detriment to the society or his employer, for instance a staff working on shift, then it falls within the exception and no action will be taken under this law.</p> <p>Nevertheless, all employers are advised to ensure that their Muslim male staff do not miss out on the Friday prayers three times in a row by way of rearranging their schedules to be more flexible so that the staff can perform the prayers alternately in between the weeks.</p>
11	<p>Workers who are still working when Muslims are performing the Friday prayers especially those who are piloting a helicopter and monitoring a wireline operation?</p> <p>The answer is the same as question number 10 above.</p>
12	<p>What is the implication if a female worker is together with her male supervisor in the company's car on business purposes?</p> <p>The offence of khalwat is provided under section 196 of the SPC. It may take place between Muslims only or between Muslims and non-Muslims. This offence occurs between a man (or more) and a woman (or more), except those legally married or mahram (prohibited persons to marry such as siblings), regardless of time of day, in the following situations –</p> <ul style="list-style-type: none"> a) living together, cohabiting, in confinement; or b) isolating oneself in close proximity that can lead to suspicion that they are committing an immoral act. <p>In the situation inquired, if a female staff and a male supervisor are in a company's car on business purposes, generally it is <u>allowed</u> during working hours and it is necessary for the purpose of carrying out their respective duties. This is also allowed during non-working hours if they are ordered or permitted to do so by the employer to carry out extra duties. However this will depend on the circumstances of the case, for example –</p>

	<p> If the car is stationary and is parked in a place isolated from the public in close proximity that can lead to suspicion that they are committing an immoral act, it will constitute khalwat punishable under this law regardless of working hours. Even more so if they are stopping for purposes not related to their duties such as relaxing, eating, drinking, chit-chatting or attending personal matters.</p> <p>On this note, it is advisable that employers avoid from putting male and female staff on duty alone together to avoid any misconception or suspicion, except in instances of high necessity or unavoidable situations. In such a case, the staff are advised not to stop in isolated places because it may lead to suspicion amongst the community. They can rest in places visible to the public such as restaurants etc.</p>
13	<p>What is the implication if a female worker who is together with his male supervisor in a closed office for a one-to-one conversation staff report?</p> <p>It is <u>not</u> an offence of khalwat in cases where a male and a female staff sits together in a closed office for a one-to-one conversation staff report <u>provided</u> that they are carrying out their respective duties, within the working hours and in a place designated for such purpose. During non-working hours, the same principle applies depending whether there exists any directive and permission by the company for overtime hours.</p> <p>Nevertheless, to avoid any misconception, it is advised if possible that reasonable measures be taken without risking confidentiality, for example by opening the door, or by opening the blinds in rooms fitted with windows or glass panels. If it is necessary for the door to be shut, it is advised that it remains unlocked.</p> <p>This type of cases require complete investigation procedures such as report to the authoritative body, a preliminary investigation and followed by a raid. If the element of suspicion exists then an investigation will ensue. Prosecution will later be conducted if there is enough evidence, depending on the circumstances and facts of the case.</p>

14	<p>What is the implication if a female muslim wearing tudong but at the same time with tight fitting / short sleeve clothing?</p> <p>As explained before, to date there is no legal provision regarding women's clothing. Especially for female Muslims, although there is no legal implication for wearing tight-fitting or short sleeve clothing, as a Muslim, she should give precedence to her religious obligation in covering her aurah.</p>
15	<p>What is the implication if a male worker dresses and clothes like a woman?</p> <p>Section 198 of the SPC provides for the offence of a man posing as a woman or vice versa. It states:</p> <p>(1) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place <u>without reasonable excuse</u> is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000, imprisonment for a term not exceeding 3 months or both.</p> <p>(2) Any man who dresses and poses as a woman or any woman who dresses and poses as a man in any public place <u>for immoral purposes</u> is guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.</p> <p>Based on the above provision, a male worker who dresses and poses like a woman in public places may be liable for an action under subsection (1) if the elements are fulfilled having regard to his clothing, way of speech and behaviour without any reasonable excuse. Similarly is the case for a woman who dresses and poses like a man.</p>
16	<p>What is the implication if a male worker has long hair because of a fashion trend and not because he is a transvestite?</p> <p>As explained before, an offence under section 198 of the SPC only occurs when a man dresses and poses like a woman. There is no legal action in cases of male staff having long hair due to a fashion trend.</p>
17	<p>Will there be any implication in a swimming class for muslim children that is mixed together – male and female?</p> <p>There is no legal provision in the SPC that orders segregation between male and female in swimming classes. This will depend on the decision, order or regulation of BSRC</p>

	<p>itself. However it is advisable not to mix between girls and boys and the teachers should be of the same gender with the students (“male teacher – male student” and “female teacher – female student”).</p>
18	<p>What is the legal implication with sport activities like for muslim staffs wearing attire that is revealing parts that needs to be covered or sports activities like netball where it is played together with both male and female?</p> <p>a) The obligation to wear decent clothing applies in sports activities.</p> <p>b) Playing sports together between muslim male and muslim female or non muslim and muslim of different genders is generally not advisable .</p>
19	<p>Will the new Syariah Law prevent non-muslims and muslims from wearing revealing / indecent clothes in public area during BBQ or a company’s event?</p> <p>As explained in the answers to questions 1-3 above, there is no legal obligation in the SPC to wear clothing that covers aurah. It is upon everyone regardless of religion to ensure that the clothing that they wear in public places are decent, with reference to the four characteristics mentioned in section 197.</p> <p>In addition, section 197(2) must be taken into consideration when organising events in public places. According to this provision, any person who organises, persuades or encourages any other person to commit any act of indecent behaviour is guilty of an offence and shall be liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding 2 years or both.</p>
20	<p>Does the Syariah Penal Code apply only to Muslim staff?</p> <p>The Syariah Penal Code applies to both muslim and non muslim.</p>
21	<p>For women working in the field. What about us using coverall/uniform to work sites. Are we also required to change our uniform according to the new syariah laws (loose fittings or...?). Example for those wearing fire retardant tudungs, are we require to wear it long and covering the chest area as well?</p> <p>Since this is a professional uniform and for safety precaution, then it is not required to change the uniform.</p>

22	<p>Does this apply to non-Muslim expats? In the Borneo Bulletin it had an article that quoted HM saying that it didn't apply to us but then people are now warning us that it does? Who is right?</p> <p>The Syariah Penal Code applies to both muslim and non muslim including foreigners who stay in Brunei Darussalam.</p>
23	<p>Only pious Muslims can be a witness to a crime in order to get someone convicted.</p> <ul style="list-style-type: none"> · Can a woman be a pious Muslim? · Can someone who is not MIB be a pious Muslim? · Can someone from Oman (for example) be a pious Muslim, since they have a different denomination of Islam? <p>Pious is defined as having strong religious belief. Anyone can be pious, whether man or woman. MIB or nationality is not a pre-requisite to be a pious Muslim; as long as such Muslim is devoutly religious i.e ardently fulfilling his/her religious duties.</p> <p>In order to be a competent witness (<i>syahid</i>), several conditions must be fulfilled, amongst others, the witnesses must be of sound mind, reaches the age of puberty according to <i>Syara'</i> (<i>baligh</i>), '<i>adil</i>, have a good memory (i.e not forgetful or suffer from lapses of memory) and are not imputed/ possess good attributes.</p> <p>'<i>Adil</i> means someone who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins. If a person is of bad temperament/character or if he is suspected to have bad relationship with the person whom he is testifying against, his testimony will not be admitted as <i>syahadah</i>, but he may be competent to give evidence in offences punishable with punishment other than <i>hadd</i>, <i>qisas</i>, <i>diyat</i> or <i>arsy</i>. (e.g fine, imprisonment, whipping).</p> <p>Additional conditions for testimony in <i>hadd</i> cases are the witness must be able to speak, see and hear. A witness must be someone who has first-hand/direct experience in witnessing the actual commission of a crime.</p> <p>A special examination (<i>tazkiyah al syuhud</i>) will be conducted in order to ensure the credibility of a witness.</p>

	<p>Generally, all offences which are punishable with <i>hadd</i>, <i>qisas</i>, <i>diyat</i> or <i>arsy</i> must be proved either by <i>ikrar</i> (confession) or <i>syahadah</i> (testimony) of 2 male witness, except in the case of <i>zina</i>, <i>zina bil jabar</i> and <i>liwat</i>, must be proved either by <i>ikrar</i> (confession) or <i>syahadah</i> (testimony) of 4 male witness.</p> <p><i>Qatlu Syibhil 'Amd</i> (Culpable homicide not amounting to murder) and <i>Qatlul khata'</i> (unintentional homicide) may also be proved by testimony of 1 male witness and 2 female witnesses, or testimony of 1 male witness and oath of the complainant.</p>
24	<p>How many people in Brunei can be classed as pious Muslims? What is the percentage of the Brunei population?</p> <p>No statistic has been compiled to this effect.</p>
25	<p>If a non-Muslim is accused of a crime under Syariah law, can a non-Muslim be a witness for the defence?</p> <p>Yes, a non-Muslim may be a witness for another non-Muslim if he or she is considered credible according to his or her own religion.</p>
26	<p>Can a non-Muslim defend him/herself, or will a non-Muslim be convicted when the right amount of pious Muslim witnesses is reached?</p> <p>Every person whether Muslim or non-Muslim is given the right to defend himself under Syariah law, whether by himself or by employing a lawyer.</p> <p>'The right amount of pious Muslim witnesses' is one of the many requirements to convict an offender on offences that are punishable with <i>hadd</i>, such as adultery, rape, sodomy, robbery, drinking liquor, false accusation of adultery, rape or sodomy. For example, in case of theft, the requisite evidence to prove theft punishable with <i>hadd</i> is either the confession of the offender or the <i>syahadah</i> (statements of eye-witnesses) of 2 Muslim witnesses who have undergone strict process of <i>tazkiyah-al-syuhud</i> (examination of witnesses). Evidence other than that can be used to prove the offence but it will lower the punishments to only fine and imprisonment. The same is also applicable in other offences punishable with <i>hadd</i> as mentioned above. However, for the offence of adultery, a non-Muslim can only be prosecuted if the act is done <u>with a</u></p>

	<p><u>Muslim</u>. For the offence of drinking liquor, a non- Muslim can be prosecuted if he drinks <u>in public</u>.</p>
27	<p>Is any evidence needed to convict someone of a crime, or is only a witness statement enough? What if the evidence is not supporting the witness statements?</p> <p>Witness statement <u>IS</u> one form of evidence. In case of the General Offences under Part IV of Chapter IV of the Syariah Penal Code Order 2013, any form of evidence (CCTV, DNA, fingerprints, witness' statements, etc.) may be used to prove an offence beyond reasonable doubt. Any inconsistencies between the evidence available will be assessed by the Court when making its decision.</p> <p>In case of other offences punishable with hadd such as theft, evidence (CCTV, DNA, fingerprints, witness' statements, etc.) may be accepted as evidence but not to convict him with hadd punishment.</p>
28	<p>If I am not a Muslim, can I choose to get convicted under the Civil Penal Code?</p> <p>The Syariah Penal Code applies to both Muslims and non-Muslims except otherwise expressly stated in the code. If non-Muslims committed syariah offences as prescribed under the Syariah Penal Code, 2013, he may not be convicted under the Civil law.</p>
29	<p>In case of crime accusations which are crime in both civil penal as well as under Syariah, will I be convicted in both systems? As such, will I have to serve two sentences and get two corporal punishments if applicable?</p> <p>If there are similar offences under both Civil and Syariah Penal Code the person cannot be prosecuted or charged before both courts because it would amount to double jeopardy.</p>
30	<p>If I break a Syariah law which is about a crime that is not a crime in my culture (e.g cross dressing) will I have to serve time in prison in Brunei, or will I be deported to my home country?</p> <p>Everyone in Brunei is subject to the laws of Brunei and if he breaks the laws of Brunei Darussalam he will be charged in Brunei and whether you will be deported to your home country or not is subject to circumstances and case to case basis.</p>

31	<p>As a woman, I am not allowed to walk around in men`s clothing. Are trousers and a formal shirt considered men`s clothing?</p> <p>Section 198 provides for the offence of man dressing and posing as woman and vice versa. The said section would only apply if the clothing was worn with the intent to imitate the opposite gender.</p> <p>A female wearing trouser or formal shirt would not be said to commit an offence if it is worn as uniform or worn casually without any intention to imitate or pose as the opposite gender. A female is said to imitate the opposite gender if in addition to wearing man`s clothing, her conduct and the manner can be attributed to that of a man.</p>
32	<p>In other countries it is prohibited to be alone in the same room as man and woman (colleagues), also during business discussion. Will this restriction apply in Brunei?</p> <p>Please refer to answer in question 13.</p>
33	<p>Is it possible to create a fully English version of the Syariah law translating the Arabic terms into the equivalent English term?</p> <p>Not possible to create a Fully version of the Syariah law translating the Arabic terms into the equivalent English term because no equivalent english terms can be used to adequately and comprehensively explain the meaning behind such arabic terms in accordance to the meaning intended by Hukum Syara`.</p> <p>However, the relevant authorities are already taking the initiative to compile a glossary listing all the arabic terms used in Syariah Penal Code Order, 2013. Explanations and illustrations will be given to elaborate the meanings behind such arabic terms so as to provide better understanding amongst non-arabic speakers.</p>