

# Brunei

## Chamber of commerce:

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## Professional body:

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## Brunei's legal landscape

Muhd Jamil Abas bin Abdul 'Ali and James Chiew  
Abrahams Davidson & Co  
Bandar Seri Begawan

### Form of government

The government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam governs by and in accordance with the Articles of a written constitution proclaimed in 1959 and amended in 2004. Under the constitution, the supreme executive authority vests in His Majesty The Sultan and Yang Di-Pertuan.

### Sources of law

The sources of the law of Brunei Darussalam consist of local statute law, common law and principles of equity as applied in England before April 25 1951. It is administered by and in the civil courts. The common law of England, and its doctrines of equity and statutes of general application, with certain exceptions, apply to Brunei Darussalam by virtue of The Application of Laws Act Cap 2 of April 25 1951. Legal precedents from English courts continue to be more persuasive than those from other Commonwealth countries.

### Civil courts and legal practitioners

The majority of private lawyers and judges in Brunei Darussalam were educated and obtained their professional qualifications in England, while a number of former Hong Kong judges continue to sit in the Brunei Darussalam courts. The current Chief Justice of the High Court of Brunei Darussalam was a former judge of the High Court of Hong Kong. The President of the Court of Appeal is a citizen of Australia. A substantial number of local judges sitting in the High Court of Brunei Darussalam were educated and obtained their professional qualifications in England.

### Islamic courts

There is a separate and independent system of courts in Brunei Darussalam known as the Syariah Courts, which have jurisdiction on respect of Islamic laws and are governed by the Syariah Courts Order. However, the Syariah Courts' jurisdiction extends only to matters pertaining to the Islamic faith such as marriage, divorce, family and Islamic gifts and the succession to the estate of deceased Muslim persons.

### Main financial institutions

Presently, there are eight commercial banks providing the full range of modern banking and investment products and services. There are also a number of (both domestic and international) financial institutions and insurance companies. Added to this institutional landscape are a number of international banks that have been granted licences for both international banking, investment banking, investment related services and investment advisory services. There were two Islamic banks in Brunei Darussalam, but in 2007 the Islamic Development Bank of Brunei and the Islamic Bank of Brunei were merged under a new entity (the Bank Islam Brunei Darussalam) to consolidate their assets, products and services.

The Tabung Amanah Islam Brunei (Brunei Islamic Trust Fund) is a financial institution providing a limited range of Islamic banking and investment products. Conventional banks are licensed under and regulated by the recently enacted Banking Order 2006, while Islamic banks and trust funds are licensed and regulated by the Islamic Banking Act and the Tabung Amanah Islam Brunei Act respectively.

### Supervision of financial institutions

Financial, banking and investment activities are supervised and regulated by the financial-institutions division of the Ministry of Finance. The Ministry of Finance is also responsible for the issuance of licences for restricted financial, banking and investment businesses.

### Main legislation applicable to financial and related institutions

The main legislations which affect and regulate financial and related institutions are: (i) the Banking Order 2006; (ii) the Islamic Banking Act Cap 168; (iii) the Insurance Order 2006; (iv) the Syariah Financial Supervisory Board Order 2006; (v) the Securities Order 2001; (vi) the Mutual Funds Order 2001; (vii) the International Banking Order 2000; (viii) the International Insurance and Takaful Order 2002; (ix) the International Business Companies Order 2000; (x) the International Limited Partnerships Order 2000; and (xi) the Companies Act Cap 39.

### Preventive legislation

To maintain the integrity and reputation of Brunei Darussalam and to encourage major participants in the financial markets to use Brunei Darussalam for their financial businesses, laws have been enacted to combat financial crimes and related offences. These include: (i) the Money Laundering Order 2000; (ii) the Criminal Conduct (Recovery of Proceeds) Order 2000; (iii) the Anti-Terrorism (Financial & Other Measures) Order 2002; and (iv) the Emergency (Drug Trafficking) (Recovery of Proceeds) Order 1996.

### Exchange controls

There is currently no exchange control imposed on currencies.

### Restricted financial activities in Brunei

Certain financial and related activities are regulated by laws and can only be carried out if appropriately licensed. These activities include: (i) the marketing and/or offer to the public of interests in a collective investment scheme; (ii) the giving of investment advice; (iii) offers of shares and debentures in a limited company to the public; (iv) the conducting of insurance business; and (v) the carrying on of banking business which includes the receipt-

ing, taking or accepting of advertising for deposits under the Banking Order.

The term public is not defined by legislation. What does or does not constitute an offer to the public will depend on circumstances. The courts of Brunei Darussalam will be guided by the decisions of England and other Commonwealth countries with similar legislations.

#### Corporate legislation

The legal framework regulating the setting up and administration of private limited companies are provided for in Companies Act Cap 39. Foreign companies seeking to conduct business in Brunei may either incorporate a local subsidiary company or register as a branch office, as is the case of all well-known international banks operating in Brunei at present.

The Brunei Companies Act is modelled on the English Companies Act 1929, although changes have been made to it from time to time. In this respect, provisions for the registration, incorporation, formation, membership, management and administration, directors' duties and obligations, meetings and winding-up are similar to those found in England.

#### International business companies

In its effort to promote Brunei as an international financial centre, the International Business Companies Order 2000 was introduced for the setting up of an international business company (IBC) or offshore company whose primary purpose is to conduct business with non-residents. An IBC is not permitted to conduct business with persons resident in the country and may not own an interest in land save for a lease. An IBC is exempted from corporate tax, income tax, tax on capital gains or other direct or indirect tax in connection with any activity, business or investment with respect to dividends, earnings, interests or other returns from shares, debts or securities. Stamp duty is also not chargeable on the instruments of transfer of any property to or by an IBC or in relation to shares, debt or other securities.

## Financial and corporate

### Recommended firms

#### Tier 1

Abrahams Davidson & Co  
CCW Partnership  
Dr Colin Ong Legal Services

#### Tier 2

Ahmad Isa & Partners  
Daud Ismail & Co  
DF Abang Zen  
Hale Zainidi Ong  
K Lim & Company  
Pengiran Izad & Lee  
YC Lee & Lee

The start of Brunei's programme in 2006 to issue short-term sovereign *sukuk al-ijarah* (Islamic sale-and-leaseback bonds) was a bold move to signal that the sultanate is serious in its intent to join the ranks of Bahrain and Kuala Lumpur as an Islamic-finance heavyweight. The programme has since seen 13 further issuances, despite the lack of a conventional domestic capital market.

2008 saw another move towards building Brunei as a centre for Islamic finance. In response to King Abdullah's \$2.64 billion reforms to the Saudi *shariah* judicial system, including the upgrading and training of judges, the Government of Brunei is now also said to be planning to follow suit. It has started to entertain calls from Muslim scholars for an overhaul of *shariah* colleges and is looking at codifying *shariah* laws. Ultimately, the jurisdiction hopes to train more scholars in Islamic bank supervision to keep up with global demand.

With Brunei's Islamic-finance industry starting to mature, the country's lawyers are seeing an increasing demand from international banks and law firms for advice on local compliance as well as work from local banks who are introducing new Islamic investment products to their clients.

These developments, and the increasing price of oil, the fiscal surplus and the expansion of trade, make this an exciting era for Brunei's financial sector.

### Abrahams Davidson & Co

"Why did we originally choose Abrahams? Purely for their reputation," says a client. "When we require local legal counsel we always use Abrahams Davidson & Co as they prove to be consistently reliable, professional and easy to deal with." Clients also emphasized that as one of Brunei's largest firms the practice has greater exposure to, and an in-depth understanding of, a wide range of industries. Says a client: "On a number of

occasions I have asked Abrahams to speak with our industry's investors who were very impressed that they operated and thought as they did. I can not speak highly enough of them as Abrahams made us look good too."

James Chiew and Bernard Tan are widely acknowledged for their expertise. "James Chiew is excellent with land matters and has a great mind," says one client. Bernard Tan also comes in for client praise: "He is extremely thorough and very knowledgeable. I have worked with him for a few years now and have complete confidence in his abilities."

The firm is highly regarded for advice on the establishment of joint ventures as well as securitisation, private placement of funds and Islamic banking.

One of the biggest deals Abrahams Davidson & Co worked on this year was advising foreign lawyers on local compliance issues and the transfer of securities from a local subsidiary in connection with a \$135 million *murabaha* (Islamic deferred sale) facility between an international bank and a petroleum company in the Gulf. The firm also advised on legal compliance in setting up a \$70 million investment fund and joint venture between a state entity and foreign participants.

#### Leading lawyers

Muhd Jamil Abas bin Abdul 'Ali  
James Chiew  
Bernard Tan

### CCW Partnership

CCW Partnership has been promoted to the top tier after universal praise from clients and peers, one of whom describes it as "definitely a key player with a loyal following of bank clientele".

"Andrew Ong has depth and understanding that is unmatched," says a client of the firm. "As a seasoned legal veteran he understands our needs and offers clear legal counsel and excellent personal service," says a client. Dunstan Sim is also widely recognised and respected in the Brunei legal market.

The reputation of CCW's corporate and banking departments as one of the best in the country is reinforced by the firm's commercial litigation department. For example, CCW Partnership acted for a bank in a judicial management case under the new provisions of the Companies Act in the High Court and Court of Appeal. The case, handled by Andrew Ong and Linda Lee, was an important precedent because it established the limits of a judicial managers' statutory powers against the proprietary rights of secured creditors.

CCW Partnership has advised clients including HSBC, Crédit Agricole,

Halliburton, Maersk Contractors and Brunei National Petroleum on a range of issues from establishing their presences in the market to private placements of funds. Its counsel is also sought by numerous international law firms such as Blake Dawson & Waldon and Thommessen Krefting Greve Lund. Recently US law firm Baker & Daniels retained the firm's services on a high-profile deal involving the acquisition of an international company.

#### Leading lawyers

Andrew Ong  
Dunstan Sim

### Dr Colin Ong Legal Services

The firm retains its first tier ranking, thanks to managing partner Colin Ong's reputation with clients. Says one: "He is the go-to person for strategic legal counsel, particularly standing out when it comes to more complicated issues, as he knows everything about everything that matters." This reputation has won the firm a client base spanning several quasi-governmental bodies, international banks, law firms, high net-worth individuals and multinational companies across Asean and domestically.

Ong, who is a member of two UK barristers' chambers, is often retained for his expertise on projects such as the \$100 million restructuring of the main-listed parent entity of Macquarie Bank under English and Brunei laws.

In the past year, one of the most significant deals Dr Colin Ong Legal Services advised on, and drafted all legal documentation for, was RHB Bank's \$15 million financing deal for the Giant group of hypermarkets, which will see the construction of Brunei's largest supermarket. The firm also advised Tenaga Cable Industries (a subsidiary of Malaysia's largest power company) on a joint venture in Brunei.

With the lateral hire of lawyers Irene Appaduray, Charles Lim from Abrahams Davidson & Co and Lim Chin Wah from Kamarudin & Partners (a Malaysian firm), the firm gains further expertise across the board.

#### Leading lawyers

Colin Ong

### Ahmad Isa & Partners

Ahmad Isa & Partners is a long-established firm with a good reputation among both competitors and clients. "They do some excellent work and have advised on a lot of cross border financings," says a rival. "It is one of the favourites for foreign law firms to work with." Norton Rose is one such firm, and has con-

sulted Ahmad Isa & Partners on local law aspects of cross-border financing and re-financing deals.

The firm is perceived as having strong government ties, which were evident when it acted as counsel to the Government of Brunei when the sultanate issued its first *sukuk al-ijarah* in 2006. On the back of this groundbreaking project - which created a local Islamic capital market even though the jurisdiction had no conventional non-Islamic capital market - Ahmad Isa & Partners is often sought after for Islamic-financing issues, with *shariah* bank Tabung Amanah Islam Brunei as one of its many clients.

The firm also excels in corporate, banking and insurance law. To sum up, one client says: "Ahmad Isa & Partners provides good quality service [and is] sensibly priced."

#### Leading lawyers

Aisha Alkaff  
Ahmad bin Isa

### Daud Ismail & Co

Daud Ismail & Co is known for being engaged by local and international parties in large commercial and financial transactions.

Managing partner Mohamad Daud Ismail, a former mayor of Malaysia's Limbang Town, is well-regarded by both clients and peers: "For a two-man show they are actually really good, especially in *shariah*-compliant finance, and they do well with property," says one. "Ismail provides answers and solutions, not problems. I would not hesitate to recommend them."

#### Leading lawyers

Mohamad Daud Ismail

### DF Abang Zen

DF Abang Zen is built on the reputation of Ferida Abang Zen, one of Brunei's undisputed leading lawyers and best known for her expertise in *shariah*-compliant financial and commercial law. One interviewee sums up the general consensus: "Ferida always delivers."

The firm has worked with Baiduri Bank, Maybank and RHB Bank as well as a number of international law firms including Drew & Napier, Mayer Brown JSM and Allens Arthur Robinson.

#### Leading lawyers

Ferida Abang Zen

### Hale Zainidi Ong

The law firm of Hale Zainidi Ong was formed by the merger of established firms S Ong &

Hale and Zainidi & Associates. All three name partners, Muhammad Zainidi Abdul Hamid (the president of Brunei's law society), Sue Fen Ong and Damien Francis Hale are well known and respected in Brunei's legal community. "With Ong and Hale you can always be sure of sound legal advice with quick execution," observes one rival while a client praises Hale for providing "the kind of service one would expect from a first-rate firm".

Hale Zainidi Ong has experience in various commercial and financing mandates on behalf of clients such as TM Asia Insurance Singapore, the TSL Group (responsible for some of the largest construction projects in Brunei, including the recently-opened Parliament Building) and Islamic banking institutions such as Tabung Amanah Islam Brunei and BIBD At-Tamwil. The firm is also considered one of the leading law firms for large-scale liquidations in Brunei.

#### Leading lawyers

Damien Hale

### K Lim & Company

The recent departure of Adrian Chan to Veerasamy Associates arguably weakens K Lim & Company but the market's opinion is that this will not necessarily have a long-term effect on the firm's reputation or work flow. Name partner Kelvin Lim has an excellent reputation with a number of clients, one of which describes him as "savvy and knowledgeable". Competitors comment that K Lim & Company is a "respectable firm with great talent", while one says of the name partner: "Kelvin has a very sharp mind and provides outstanding legal counsel."

Although K Lim & Company is a relatively young firm, the legal team has more than 35 years of collective legal experience covering jurisdictions including Australia, Brunei, the UK, Malaysia and New Zealand. The firm's experience spans banking and finance, corporate law, insurance, and shipping and securities.

Clients include domestic and international banks, international trust companies, foreign missions, property developers, law firms and motor vehicle distributors. The firm has advised industrial clients Dowell Schlumberger Eastern, BAG Networks, Brunei National Petroleum and San Hing Developers, and was instrumental in the Hua Ho Group's \$60 million capital-raising and management of two large shopping malls in Brunei.

#### Leading lawyers

Kelvin Lim

## **Pengiran Izad & Lee**

According to a rival: “Pengiran Izad & Lee is a trusted name in the market that is getting stronger.” The firm plays an important role in advising companies that the Brunei Economic Development Board has attracted into the country. Senior Partner Ronnie Lee is the firm’s most visible and respected lawyer, and draws particular praise: “He always did a great job and I would say he lives up to his reputation,” says a recent client.

Though Pengiran Izad & Lee is renowned for its banking work and advising on oil-and-gas-related matters (for clients such as Shell, Total and Brunei Petroleum), it also has a strong practice in Islamic finance and foreign investment. The firm acts for the Brunei Association of Banks, which often seeks its advice on new legislation. Pengiran Izad & Lee also serves on a number of banking panels such as HSBC, Standard Chartered Bank, RHB Bank and Tabung Amanah Islam Brunei.

### **Leading lawyers**

Ronnie Lee

## **YC Lee & Lee**

Best known as the legal advisor to Brunei’s French and German embassies and the British High Commission, YC Lee & Lee also advises numerous banks and insurance companies in Brunei. The firm has been very active this year according to market commentators, particularly with mutual fund transactions. “YC Lee makes this firm stand out. He is always in demand,” says one rival. Clients agree, praising name partner Yew Choh Lee as “an excellent legal adviser” who “excels at contentious work and has a very strategic mind”.

Representative clients include Standard Chartered Bank, HSBC, Bank Islam Brunei Darussalam, Malayan Banking, Baiduri Bank, Tabung Amanah Islam Brunei, United Overseas Bank, Aiva Insurance, National Insurance Company and Takaful BIBD.

### **Leading lawyers**

Yew Choh Lee