

# Brunei

## Chamber of commerce:

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## Brunei's legal and financial landscape

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Abrahams, Davidson & Co  
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### 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 laws

Brunei Darussalam's sources of law consist of statute law and common law, with principles of equity of England applying to Brunei by virtue of The Application of Laws Act, Cap 2, which is administered in the civil courts. While the traditional leaning was to prefer legal precedents from English courts of superior jurisdiction, recently legal precedents from other Commonwealth countries such as Australia and Singapore, are also held in high distinction, while those from other Commonwealth countries are of persuasive value.

### 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 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 laws, namely, laws relating to *mu'amelat* (commercial transactions), have been introduced into the civil legal system where parties choose Islamic banking and financial products and services, and *takaful* (Islamic insurance). This means that where parties

choose the Islamic mode of transaction, both civil law and Islamic law will apply. Such transactions come within the jurisdiction of the civil law courts.

### Islamic courts

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

### Main financial institutions

There are eight commercial banks providing the full range of modern banking and investment products and services. In addition, there are also a number of (both domestic and international) financial institutions and insurance companies.

There are now 14 investment advisors licensed by the Brunei International Financial Centre.

Offshore banks are established in Brunei Darussalam with the primary purpose of carrying on business with non-residents. Offshore banks are exempt from tax and are governed by the International Banking Order 2000.

Presently, there is one Islamic bank and one Islamic financial institution carrying on banking business and three *takaful* entities offering a broad range of banking and insurance products.

### Supervision of financial institutions

Financial, banking and investment activities are supervised by the Financial Institutions division of the Ministry of Finance. The Ministry of Finance is also responsible for issuance of licenses for restricted financial activities.

### Main legislation applicable to financial and related institutions

The main legislation that regulates financial institutions are: Companies Act, Cap 39;

Tabung Amanah Pekerja Order, Cap 167; Islamic Banking Act, Cap 168; International Banking Order 2000; International Insurance and Takaful Order 2002; International Business Companies Order 2000; International Limited Partnerships Order 2000; Securities Order 2001; Mutual Funds Order 2001; Banking Order 2006; Insurance Order 2006; Syariah Financial Supervisory Board Order 2006.

### Preventive legislation

To uphold Brunei Darussalam's integrity and reputation, and to encourage major players in the financial arena to use the jurisdiction for their financial businesses, laws have been enacted to combat financial crimes and related offences. These include the: Money Laundering Order 2000; Criminal Conduct (Recovery of Proceeds) Order 2000; Anti-Terrorism (Financial & Other Measures) Order 2002; 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 licensed appropriately. These include: marketing and/or offer to the public of interests in a collective investment scheme; giving of investment advice; offers of shares and debentures to the public in a limited company; carrying on of insurance business; carrying on banking business.

The term *public* is not defined by legislation.

### Corporate legislation

The legal framework regulating the setting up and administration of domestic private limited companies is the Companies Act, Cap 39. Foreign companies wishing to carry on business in Brunei may either incorporate a local subsidiary company or register as a branch office.

The Brunei Companies Act is modelled after the English Companies Act 1929, although changes to it have been made from time to time.

#### International business companies

The International Business Companies Order 2000 provides for the setting up of international business companies (IBC), an offshore company, whose primary purpose is to carry on business with non-residents.

An IBC is not permitted to carry on 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 instruments of transfers of any property to or by an IBC or in relation to shares, debt or other securities of an IBC.

## 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

Brunei has been taking steps toward becoming a hub for Islamic finance – a market that, unlike most conventional financial institutions, has remained relatively unscathed by the global credit crisis. Indeed, there is increasing demand for financial products compliant with *syariah* law (Malaysian Islamic law), not only from Muslims but also other investors around the world. The resilience of these products, which boast strong underlying assets, is attractive to market players seeking safer havens in the wake of recent failures in derivatives traded by mainstream financial institutions.

In response to the global crisis, the government of Brunei issued \$148 million *sukuk-al-ijarah* (Islamic bonds) in January 2009 that are backed by the buying, selling and leasing

of property, bringing its total issuance to over \$1.3 billion. However, though Malaysia and Bahrain have a high rate of issuance, it is thought that the demand for *sukuks* is still largely untapped, which could be an opportunity for Brunei to produce more of the Islamic financing structure. The Ministry of Finance permanent secretary Dato Paduka Ali Apong said in a media interview that Brunei aims to issue *sukuks* at least every two weeks in 2009, with a maturity of three months, one year, two years and more.

However, despite these apparent opportunities, there are also fears that as western governments and regulators look to stricter supervision of banks and conventional securitisation markets, this may discourage the use of Islamic finance instruments and the Islamic banking sector – which relies heavily on asset sales for funding structures.

In late 2008, Brunei's new Islamic Banking Order and the *Takaful* Order (concerning Islamic insurance, or joint guarantees) were passed. Though the orders focus primarily on Islamic issues, they are the first attempt to align the country with international standards and attract more foreign participants to its offshore and onshore services. The new legislation also seeks to support the sustainability of micro-credit activities and SMEs (small and medium enterprises).

Among wider trends, lawyers note there has been increased inbound investment from countries such as Australia, Malaysia and Canada in the form of setting up operations for contracts in relation to government-initiated projects in the construction and oil and gas sectors.

### Abrahams Davidson & Co

As one of the sultanate's largest firms, though still modest by international standards, Abrahams Davidson & Co offers a wide range of advice on matters including Islamic banking, derivatives, securitisation and private placement of funds. James Chiew is widely regarded as strong in banking work and "one of the leading commercial lawyers".

#### Leading lawyers

James Chiew  
Bernard Tan

### CCW Partnership

With firm sizes in Brunei generally as few as two to three lawyers, CCW Partnership is one of the more resourced firms in this small market, focussing on corporate and financial work including structured products. The firm also advises on private investments.

The firm's corporate and banking department is headed by Dunstan Sim, who is respected by rivals as a "very fine lawyer".

US law firm Sullivan & Cromwell sought the firm's counsel on a proposed Reit (Real Estate Investment Trust) within Brunei law, as did Mitsubishi Corporation on an asset transfer.

#### Leading lawyers

Dunstan Sim

### Dr Colin Ong Legal Services

Project finance clients applaud the work of Dr Colin Ong Legal Services, citing "their impressive knowledge in the law and business acumen". Clients also highlight the firm's "exemplary service" and "good overall knowledge of international finance".

"[They are] a strong working team which can deliver when needed, and appears to be more than apt to provide appropriate and sound advice," says another client.

Leading partner Colin Ong, who advises on banking and finance deals, receives exceptional praise from clients as being "very decisive, brutally frank" and "providing a fast response and clear opinions." Lim Chin Wah and Irene Appaduray are also singled out by clients: "They have excellent business sense and are very commercially-minded lawyers."

Notable projects the team has acted on include advising banks on financing for a downstream methanol project, and representing a state-owned company on the re-financing of two aircraft finance facilities.

#### Leading lawyers

Irene Appaduray  
Colin Ong  
Lim Chin Wah

### Other ranked firms

Aisha Alkaff is a leading figure at **Ahmad Isa & Partners**, which has been active in finance work in recent years and is often involved in sizable deals. Peers note the firm is "very good at Islamic banking" and describe Alkaff as "one of the most knowledgeable" lawyers in Brunei.

*Leading lawyers:* Aisha Alkaff

**Daud Ismail & Co** is renowned for banking and financial work, and in particular wins praise for its expertise in *shariah*-compliant finance. Name partner Mohamad Daud Ismail is highly recommended by clients.

*Leading lawyers:* Mohamad Daud Ismail

Rivals recognise **DF Abang Zen's** strength in banking work. Name partner DF Abang Zen was lead counsel for Brunei companies in

a cross-border wind turbine project in Indonesia.

Instructed by **Gide Loyrette Nouel's** London office, the firm has been advising offshore funders on their funding agreement with a Brunei offshore company for a steel pipe factory project in Algiers since December 2008.

*Leading lawyers:* DF Abang Zen

**Hale Zainidi Ong** is regarded as one of the leading firms for commercial, financing and liquidation work in Brunei. Sue Fen Ong and Damien Hale are described as “particularly outstanding in commercial practice and litigation”.

*Leading lawyers:* Damien Hale, Muhammad Zainidi Abdul Hamid and Sue Fen Ong

**K Lim & Company** acted for listed Malaysian company novaMSC on negotiation and formation of a joint venture company in Brunei's IT sector.

*Leading lawyers:* Kelvin Lim

A slightly smaller firm, **Pengiran Izad & Lee's** long presence in the market is widely recognised. Rivals describe it as “one of the most reputable firms” in corporate work, mostly due to firm leader Ronnie Lee's expertise as a “substantially experienced commercial lawyer”. Pengiran Izad & Lee has a strong practice in Islamic finance, along with banking clients that include Standard Chartered Bank, HSBC, RHB Bank and Tabung Amanah Islam Brunei.

*Leading lawyers:* Ronnie Lee

**YC Lee & Lee** name partner Yew Choh Lee is highly respected in the Brunei legal market. “Lee is a confident lawyer,” says a peer, adding: “There are just a few financial lawyers in Brunei, and they get the majority of work.”

Owing to its long presence in the market, the firm boasts positions on a number of bank panels. One of the firm's highlights saw it advise on an acquisition deal for insurance companies National Insurance and Aviva Insurance.

*Leading lawyers:* Yew Choh Lee