

Brunei

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Corporate finance legislation in Brunei

Colin Ong
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Darussalam

Brunei Darussalam was a protectorate of the UK until 1984 when it obtained full independence and inherited a legal system and judiciary based on English common law and the structure of the English court system. However, in a significant departure from the English system, many of the basic and substantive laws of Brunei, such as contract law, company law, criminal law, defamation law, the law of evidence, intellectual property laws and the procedural rules of court are codified in statutes that attempt to embody English common law or have been borrowed from other Commonwealth countries such as Australia, Malaysia and India.

Where there is any lacuna in the civil and commercial laws of Brunei, the principles and rules laid down by English common law on identical matters are referred to as persuasive guidance. Procedural matters and rules of the higher courts in Brunei are dealt by the Supreme Court Act (CAP 5) and its corresponding rules, with the most recent revision in 2001. In practice, the judiciary and lawyers also rely upon the 1999 version of the English Supreme Court Practice for guidance on the interpretation of the Orders and Rules of the Brunei Supreme Court Act, where they correspond with the English rules. The process of litigation and time taken for a case to reach trial is reasonable and may take anywhere between six and 18 months to reach trial stage.

In view of the fact that the recent amendments to the Brunei Constitution in 2004, wherein the Brunei government retains a statutory immunity from being sued before the Brunei courts, there has been an exponential increase in the number of parties agreeing to arbitration clauses to be used in place of choice of court jurisdiction clauses. The Brunei Arbitration Act 1994 (CAP 173) expressly

allows both awards given in domestic Brunei arbitrations and awards given by way of international arbitrations to be enforceable under conditions of the New York Convention 1958. The Arbitration Association of Brunei Darussalam counts among its members leading figures in various professional disciplines, including reputable architects, engineers, quantity surveyors, lawyers and other professions from both Brunei and internationally.

Corporate governance

The primary sources of corporate governance in Brunei Darussalam are to be found in the Companies Act and the Securities Order 2001, which was enacted to manage and regulate financial exchanges, dealers and other persons who provide advice in respect of dealings in securities. Brunei does not have its own tradable stock exchange as yet, and as such there is no specialized corporate governance code or takeover code, although this may well change in the near future.

Since its original enactment in 1956 the Brunei Companies Act has undergone minor additions. Shareholders retain the inherent right to appoint or remove directors from the board of directors. However, only executive directors can control day-to-day operations as well as project the future directions and guidance for the company. At shareholders' meetings all decisions on the approval of the audit and management reports and the company's annual accounts are made.

Directors have a duty to act in good faith and in the best interests of the company, as well as to perform to the best of their skills and abilities when discharging their fiduciary duties to the company. They cannot make secret profits or perform any acts beyond the scope and powers which they have been endowed with by the shareholders and under the law.

Finance and investment

The Securities Order regulates all persons involved in dealing with securities, a term which has been very broadly defined to encapsulate most forms of financial instruments as

well as dealings in currencies and commodities. The Securities Order confers on the authorities great powers in monitoring all records maintained for dealings in securities. The recent Securities (Amendment) Order 2005 makes additional warnings to unlicensed persons purporting to act as investment advisers as well as to representatives of dealers who are not resident in Brunei.

The Electronic Transactions Order 2000 gives statutory provision for the recognition of formation of contracts by way of offer and the acceptance of an offer expressed by means of electronic record, and is aimed at lending efficacy to electronic communications and in eliminating barriers to electronic commerce resulting from traditional uncertainties over writing and signature requirements.

The Investment Incentives Order 2001 was enacted to assist in the diversification of the economy of Brunei and to attract foreign direct investment into Brunei. Four important sets of new laws affecting corporate finance were enacted in 2006. The Banking Order 2006 has caused several wide ranging implications, including an increased capital requirements of local Brunei incorporated banks to not less than B\$100 million (\$66 million). It has also tightened provisions affecting financial leasing, money transmission services, means of payment (such as credit cards, charge cards, travellers' cheques and bankers' drafts), guarantees, foreign exchange dealings, financial futures, participation in share issues and credit reference services.

The Finance Companies Act (Amendment) Order 2006 has a similarly wide effect on finance companies, including obliging all local Brunei finance companies to have an increased capital requirement of not less than B\$25 million. It provides for new forms of businesses, including Islamic financing business to cater for financing business whose aims and operations do not involve any element that is not approved by a moderate form of *shariah* law. The Insurance Order 2006 raises the paid up-capital of Brunei insurance companies, and also provides for

tighter regulations on the establishment and maintenance of insurance funds, the allocation of surplus, the form, investment and situation of assets, the restrictions on payment of dividends and the requirements of disclosure of interests by directors.

Finally, the Hire Purchase Order 2006 has been enacted to regulate the form and content of hire-purchase agreements, as well as the rights and duties of contracting parties to these agreements and connected matters. It is wide-ranging in its scope and covers most situations apart from certain exceptions where agreements have stated that the property in the goods passes at the time of the agreement or at any time before delivery of the goods. Also, it does not cover situations where the person by whom the goods are being hired or purchased is a person who is engaged in the business of selling goods of the same nature as stated in the agreement.

Recent developments in Brunei have included the development of a downstream methanol plant in the Sungei Liang area. Project financing for the plant has been arranged by way of syndication between BIBD, a local Bruneian Bank, and the Japan Bank for International Cooperation. The industrial site should be ready for construction to begin by 2008. Brunei has also recently been emphasizing intellectual property rights and stricter enforcement of the Trade Marks Act 2000 as well as the Orders on Patents, Copyright, Industrial Designs and Layout-Designs of Integrated Circuits.

Financial and corporate

Recommended firms	
Tier 1	Abrahams Davidson & Co Dr Colin Ong Legal Services
Tier 2	CCW Partnership Daud Ismail & Co DF Abang Zen Pengiran Izad & Lee S Ong & Hale
Tier 3	Ahmad Isa & Partners K Lim & Company YC Lee & Lee

Islamic bond issues have captured the headlines in Brunei in the last 18 months, which bodes well for the government's aspirations for the country to become a centre for Islamic finance. This initiative's focus is shifting away

from the country's rich natural reserves of oil and gas, and practitioners in the market have also observed local banks turn their attention from financial products to Islamic products in the last year.

The 2006 merger between two local banks to establish the Islamic Bank of Brunei Darussalam (IBB) was a significant step towards this goal, with the Bank acting as one of a group of primary dealers in the state's first sovereign debt issue in the first half of 2006. September 2006 saw the launch of the first Islamic corporate bond in Brunei by Brunei LNG, with the IBB acting as sole lead arranger, a groundbreaking transaction which marked the first time a sovereign has developed Islamic debt before issuing conventional paper.

However with Brunei's great wealth – the state's standard of living is one of the highest in the world – and its small size, some market observers doubt whether there will be enough demand for debt market borrowing in the country, especially when compared to other neighbouring Islamic nations with similar goals, most notably Malaysia.

Abrahams Davidson & Co

The "approachable, professional and no-nonsense" Abrahams Davidson & Co makes it into the top tier this year thanks to positive client feedback and an impressive portfolio of work. Senior partner James Chiew is the firm's best-known partner, and stands out in the market for his expertise in commercial and financial matters, while partner Bernard Tan is praised by clients for being "a very thorough lawyer [who] is always trying to protect our interests". The firm's clients from the past year include government bodies, local and foreign companies, financial institutions and foreign law firms seeking consultation on local and regulatory issues in Brunei. The firm is also on the panel of lawyers for a lot of banks operating in the country.

A standout project for the firm in the past year has been the development of the Sungai Liang Industrial Park, where the firm has been advising the Brunei Economic Development Board in relation to contracts involving investors, setting up the plants and various other matters. Chiew and Tan have been advising and drafting the lease between the owners of a manufacturing plant on the site and the lessee. Chiew has also been busy advising on and preparing documents for a foreign bank applying for an investment advisor licence and incorporation of a subsidiary office in Brunei. A final highlight saw Tan act for the subsidiary of an international company in its joint venture in connection with a pharmaceutical manufacturing plant in Brunei.

Leading lawyers

James Chiew

Dr Colin Ong Legal Services

Dr Colin Ong Legal Services is traditionally the pre-eminent firm in Brunei for all areas of commercial law, corporate restructuring and banking and finance matters. Managing partner Colin Ong is also highly respected in the Brunei legal market for his in-depth knowledge of the law and commercial understanding of deals. As a practising barrister at Essex Court Chambers, Ong is often called upon for his arbitration skills and is currently representing one of the sides in a case involving two Malaysian parties in the construction industry.

The clients who turn to the firm for its expertise range from high net-worth individuals to Asean and Brunei multinational corporations as well as international banks, quasi-government bodies, and other law firms seeking consultation on complex transactions.

In the past year Ong has advised local and foreign clients on a range of transactions from the commercial and financial sector, most recently advising a local financial institution on a \$40 million financing deal for a downstream plant. The firm is also involved in the modernization of the Brunei banking sector and has drafted a joint venture agreement concerning new financial products for one of the local banks for subscription by customers in Brunei. Also of significance is the firm's role advising a foreign company involved in energy derivatives dealing on International Swaps and Derivatives Association master agreements.

Leading lawyers

Colin Ong

CCW Partnership

CCW Partnership earns a promotion in the rankings following a successful year advising high-calibre clients such as Halliburton, Philip Morris, IBM and General Electric on their cross-border transactions in Brunei. Partner Andrew Ong is a well known and respected practitioner with over 20 years of experience in the market. Despite being best known for litigation matters, Ong's broad practice also covers corporate, construction, property and insolvency law, and the firm is especially popular among the country's banks.

In the past year partner Dunstan Sim has been particularly visible advising UOB on the project financing of a major shopping mall and Crédit Agricole on establishing a presence in the market. AdvanTel, a communications company, also turned to the firm for its exper-

tise in drafting an international information technology contract.

Leading lawyers

Andrew Ong

Daud Ismail & Co

Leading lawyer Mohamed Daud Ismail is the managing partner of Daud Ismail & Co, a firm well known for its banking and corporate capabilities with emphasis on *shariah*-compliant finance. The firm continues to see a steady stream of work from domestic and international clients who turn to it for guidance in a variety of commercial and financial transactions.

Leading lawyers

Mohamed Daud Ismail

DF Abang Zen

Although best known for its strengths in intellectual property, the four-lawyer firm DF Abang Zen also advises clients on a range of financial and corporate matters. Name partner Ferida Abang Zen enjoys an excellent reputation in the market particularly for her knowledge in Islamic and commercial law.

Leading lawyers

Ferida Abang Zen

Pengiran Izad & Lee

Pengiran Izad & Lee is another firm to climb the rankings this year following recognition in the market for its expertise in working with banks and corporates on various financial matters. The “respectable, very helpful and very intelligent” senior partner Ronnie Lee is the firm’s leading lawyer, and is highly rated by clients, with one saying: “He is very pro-client and likes to advise. In a negotiating situation, he’s more of a mediator, trying to achieve an amicable resolution for both parties.”

The firm continues to advise clients on oil and gas related matters, and has recently acted for large companies including Shell and Total. Another important source of work is the Brunei Association of Banks, which frequently turns to the firm for advice on new legislation. In the last year the firm was also retained to act as counsel on a joint venture to construct and operate a methanol plant.

Leading lawyers

Ronnie Lee

Ahmad Isa & Partners

Although it is well known for its strength in corporate matters, Ahmad Isa & Partners has had a particularly strong year in Islamic finance. Acting as counsel to the Government of Brunei the firm saw the successful launch of the sultanate of Brunei Darussalam’s first *sukuk* issue, hailed as the first Islamic corporate bond in the nation’s history. The deal was significant as it marks Brunei as the first nation to develop a local Islamic capital market without already having a conventional (non-Islamic) capital market. Name partner Ahmad Isa is the managing partner at the firm, and provides advice across all areas of financial and corporate work. Partner Aisha Alkaff led the team on the *sukuk* transaction.

YC Lee & Lee

At YC & Lee, partner Lee Yew Choh has a broad practice advising on corporate and commercial matters, and is well known as a prominent litigator in the country acting as honorary legal adviser to the British High Commission. Partner Esther Lim heads up the real estate and banking departments and the firm counts many major property developers among its clients as well as Islamic, local and foreign banks, including Standard Chartered and HSBC.

Leading lawyers

Lee Yew Choh