

# Brunei

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## Key developments: Islamic finance market and strategic investments

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In Brunei Darussalam the oil and gas sectors have long been the main source of revenue and drivers of the economy since its discovery in the late 1920s. However in line with its 9th National Development Plan, there has been a strategic shift towards diversifying and adding a new dimension to its economy through strengthening its financial industry in particular in the Islamic financial industry and making strategic investments to achieve alternative and sustainable sources in revenue.

### Driving the Islamic financial industry

Taking the cue from the increasing global demand for syariah-based financing and products in recent years; the government is entering into the fray, mirroring similar efforts in other jurisdictions.

Laying the legal infrastructure and framework is one of the key steps which the Government has already done with the introduction of the Islamic Banking Order 2008 (IBO) and the Takaful Order 2008 (for insurance business); both legislations coming into force in late 2008 to provide for a regulatory and administrative framework for industry players.

Like its counterpart the Banking Order, 2006 for conventional banking, the IBO provides for the issuance of a general commercial Islamic banking licence and an Islamic merchant banking licence to cater for corporate advisory and corporate banking services. The capital requirements are reportedly attractive by international standards to serve as a catalyst to attract participation in the local market from foreign Islamic institutions.

In addition, the Syariah Financial Supervisory Board Order, 2006 was introduced to regulate and approve the offering of Islamic financial products and business ser-

vices to the public. The members of the board established under the Order include syariah experts and scholars to review and approve Islamic products and funds for compliance.

Under this regulatory platform, since 2007 the Government has been at the forefront in leading this drive and has been issuing sovereign Islamic bonds (*Sukuk Al-Ijarah*) under its short term money market programme to corporate investors raising in total a reported sum of approximately BND1.3 billion (\$933 million). According to the Government, this programme is set to continue with the aim to issue sukuk at least every two weeks with a maturity of three months, one year and two years.

In the private sector, there has also been a flurry of financial activity involving local institutions recently; the highlight being state-owned Bank Islam Brunei Darussalam (BIBD) being appointed as co-lead manager for the Islamic Development Bank for its \$1.5 billion sukuk issue alongside leading global players such as BNP Paribas, Deutsche Bank and HSBC in recognition for "its extensive work in terms of regulatory framework" said the Jeddah based institution.

In November 2009, the BIBD was again appointed as joint lead manager for the \$500 million sukuk offering by General Electric Capital Corporation. BIBD is also taking the lead in a number of initiatives, namely in launching the Asia-Pacific Al-Kauthar fund, a first locally-developed syariah compliant infrastructure investment fund which will be domiciled and regulated under Brunei law and its chairman has also announced plans to set up an Islamic finance academy to provide management and leadership training to develop and augment the human resource pool in Brunei.

Prior to this, the Brunei Investment Agency's investment company, BICB Capital has begun offering open-ended syariah-compliant funds to promote and encourage savings and investments to individuals and corporate investors.

At the international level, it was reported in March this year that Hong Kong is now

seeking to work with Brunei in the development of its Islamic finance sector, noting that Brunei has a relatively high degree of syariah expertise which it can draw on to help drive Islamic finance forward.

Separately, BIA announced late last year its investment in Fajr Capital, a Dubai-based investment firm together with other leading institutions including Khazanah Nasional Berhad, the sovereign fund of Malaysia. The investment firm will have a reported funding of an initial \$600 million and will focus primarily in investment in financial services in key Muslim markets including Brunei to develop the Islamic financial industry.

### Strategic investments

Another complementary development to the Islamic finance drive has been focus by the government in making strategic investments with the objective of sustaining and diversifying the country's revenues. On this note, the formation of the Sustainability Fund under the Sustainability Fund Order, 2008 (SFO) was a key development. Under the SFO, the Sustainability Fund and three sub-funds were set up, namely the Fiscal Stabilisation Reserve Fund, the Retirement Fund and the Strategic Development Capital Fund (SDCF) with the stated objectives of ensuring "the long-term sustainability of the finances of the Government" in line with the 9th National Development Plan through economic diversification.

Of the three sub-funds, the SDCF deserves mention given its role to provide risk capital for investment in strategic local development that will bring about economic growth and diversification of government revenues. Under the charge of the Investment Division of the Ministry of Finance, the SDCF has been actively seeking investment opportunities in partnership with foreign financial institutions. To date, it has set up the Imprimis Strategic Investment Corporation Fund and Aureos Brunei Fund, and notable transactions respectively include the announced acquisition of the Piper Aircraft Inc and the investment in a joint-venture

company to manufacture halal medical and health products with Viva Pharmaceutical Inc in Brunei.

Underpinning these investment activities in Brunei, are key financial and corporate legislations such as the Companies Act, Cap. 39, the International Business Companies Order, 2000, the Securities Order, 2001 and the Mutual Funds Order, 2001; a number of which are understood to be currently being updated and enhanced by the authorities.

## Financial and corporate

Recommended firms
<b>Tier 1</b>
Abrahams Davidson & Co
CCW Partnership
Dr Colin Ong Legal Services
<b>Tier 2</b>
Ahmad Isa & Partners
Daud Ismail & Co
DF Abang Zen
Hale Zainidi Ong
K Lim & Co
Pengiran Izad & Lee
YC Lee & Lee

As with other Association of South East Asian Nations (Asean) member states, Brunei corporates consider foreign direct investment (FDI) a key source of revenue, and the nation's tax incentives structure is testament to this. However, a large proportion of investments into Brunei are exclusive to the oil and gas space, and the government remains resolute on lowering its dependence on this one industry despite its economy fighting off a recession largely due to the continuing demand for oil. "We can't afford to have a high degree of specialisation," says a lawyer.

The partner adds that the focus has to be on diversification. "What is driving the Brunei economy? It's driven by oil, and oil prices did not drop down [during the crisis]. The big prospects are still with the government and the Brunei Economic Development Board (BEDB)."

That being said, although revenue streams are still coming in, FDI has been at a standstill. Domestic Brunei projects remain problematically small in value, and in spite of great efforts from the public sector, funds have not been pouring in via BEDB initiatives. An initial BEDB draw of \$4.5 billion in January 2003 had failed to meet the target in 2008, leaving a practitioner to surmise that "it is not known if the BEDB has actually been able to

bring in more than \$20 million in FDI since 2003."

Yet looking past the slow growth years and initial stages, development has been on an uptick recently. With the completion of 4,000 low-cost houses under the Brunei National Housing Scheme and the 271-hectare methanol plant at the Sungai Liang Industrial Park, the BEDB is further looking to wrap up the construction of an export facility for the same methanol plant, a Single Point Mooring System.

As the Pulau Muara Besar project, a deep-water container terminal under the operation of Container Terminal Services, marks its first year in operation, the Surbana consortium in Singapore readies the infrastructure tenders for an export-processing zone and manufacturing hub with supporting commercial facilities adjacent to the port.

Surprisingly, the above projects are only a fraction of the government initiatives. Under the Ministry of Industry and Primary Resources, the Brunei Halal Brand is a thriving and niche business with "real tangible prospects as the demand is out there" says a commentator.

The Sultanate is planning to capture up to 5% of the global market, an industry currently worth \$560 billion. "There are many [international] businesses wanting to register their [halal] products here," notes an observer, with Indonesia setting a prime example - Dr Anggito Abimanyu, deputy to Indonesia's Minister of Finance and acting head of the Fiscal Policy Office, said his government is interested in looking to Brunei for "Islamic products such as halal branding and sukuk transactions." Funding from Islamic financial institutions has been instrumental in facilitating this process. These players, attracted by Brunei's reputation for a strict application of halal rules and certifications, have already set up several special purpose investment funds to start up halal medical product manufacturers.

Finally, even as development is strong across the board, private-practice lawyers unanimously agree that "the possibilities are in Islamic finance" and "promotion of Islamic finance seems to be a key here at the moment." The government continues to issue short-term (91 days) *sukuk al-ijarah* (capital leasing), accumulating approximately \$58 million in its most recent issuances in April and May 2010. Thus far, issuances since April 2006 have totalled at over \$2.1 billion.

However, activity in the private sector has been plentiful as well, with Bank Islam Brunei Darussalam (BIBD) as co-book runners to several significant *sukuk* issues with bulge-bracket investment banks and multinational corporations seeking funding from Islamic law-governed jurisdictions. Although Islamic

products issued by institutions in the Middle East and Malaysia often dwarf Brunei's both in terms of size and complexity, Brunei draws on its high degree of *syariah* expertise to reinvent certain innovative products originally catered to Middle Eastern clientele for the local market under *shafi'i* law, the predominant *madh'hab* (or Islam law) in the region.

### Abrahams Davidson & Co

"They offer better advice than most of the other firms in the country and advice on par or even superior to that offered by other firms in the region," says one international client.

While local project financings have been few and far between, with the notable exception of the firm's involvement in advising Deutsche Bank on multi-currency, multi-million dollar loan facilities with an entity incorporated under the Brunei Offshore Regime, Abrahams Davidson & Co has been busy strengthening its Islamic banking practice. It is able to structure new *mudharabah ijarah* (sponsorship of a capital leasing) financing facilities and draft a *musharakah* (partnership finance) partnership, both introduced for the first time in Brunei, and has various new structures in its pipeline.

However, with key partner James Chiew - who forged the firm's reputation in Islamic finance - retiring from the public face of the firm and taking on his new capacity as a legal advisor, Bernard Tan was handed the leadership reins and has been met with nothing but success. "Bernard has a very good bedside manner and he really doesn't miss a beat," says a client. "He is without a doubt, the best corporate lawyer in town."

The transition saw Tan step up on a number of deals, most notably in the oil and gas-related market. The success of the existing methanol plant meant the increasing capacity demanded new transportation facilities. Tan advised the Brunei Economic Development Board (BEDB) alongside US firm Gibson Dunn & Crutcher on the procurement, installation and commission of the Single Point Mooring Buoy and Pipeline Facilities, arguably the most complex and high-value project BEDB completed this year. One party who had knowledge of the project says of Tan: "He really understands how to get things done in Brunei and has some great suggestions on how to deal with government bodies."

"Tan is thoughtful and analyses the issues instead of just regurgitating the law, so the advice and drafting are first rate," says another client. "Qualitatively, he's met the grade."

#### Leading lawyers

Bernard Tan

## CCW Partnership

"[CCW Partnership] is definitely one of the leading firms in Brunei," admits a rival.

The firm continues to leverage on its expertise in dealing with multinational companies seeking advice on cross-border transactions in Brunei. Standard Chartered Bank, IBM Malaysia, and more recently, SG Asset Management, are among the key international clients who seek services from CCW Partnership.

Corporate counsel Dunstan Sim spearheads this practice. An example of his work includes advisory on the documentation for a software procurement project for a major local financial institution in upgrading its systems, which involved heavy negotiations and dealings with Oracle, and acting as local counsel on aircraft leasing transactions in regards to compliance matters.

Nevertheless, oil-related projects remain a core fee-driver, and CCW Partnership has a large share of downstream production and infrastructure work. While the firm deals regularly with the Brunei National Petroleum Company in its joint oil-production agreements, the firm is actively seeking to position itself more prominently in the area of oil and gas infrastructure construction.

Its involvement with construction projects extends past the commercial advisory and conveyancing matters to Andrew Ong's litigation practice, where the firm acted for its clients successfully in several high-profile disputes. Peers note that Ong "is a great and well-known litigator".

Notable cases last year include arbitration proceedings related to prolongation issues of a public project, a dispute involving professional negligence of developers and architects, and a Court of Appeal case between leading contractors. In addition to construction businesses, the largest dispute resolution department in Brunei also has key financial institutions and government entities in its list of clients.

### Leading lawyers

Andrew Ong  
Dunstan Sim

## Dr Colin Ong Legal Services

"For most of us in the in-house counsel world, the most important thing for us, apart from technical expertise, is attitude," says one client. "Surely both are available in Dr Colin Ong's all-round boutique law firm."

Touted as a leading commercial litigation firm by its peers, the reputation of Colin Ong goes beyond his contentious team and well beyond its locale. A peer observes that Ong "has an encyclopaedic knowledge of case law in different jurisdictions". The firm's strong

regional grasp has led it to secure an advisory role as lead local counsel to energy powerhouses, including Thailand's Banpu, on inbound acquisitions and joint ventures collectively worth over \$350 million.

Dr Colin Ong Legal Services has additionally pushed its efforts and resources into domestic corporate deals even as the government continues to instruct international counsels on its oil and gas-related projects. For example, Ong acts as strategic adviser to Brunei Halal Brand on corporate issues, a diversification strategy from the government potentially worth \$2 billion of business and industry.

Other public matters include defence projects with a price tag of more than \$20 million.

Dr Colin Ong Legal Services continues to be the main law firm for Brunei Petroleum, the state national oil and gas company, and acts for The Amarco Group, one of the largest vessel operators for the oil and gas industry in Brunei.

### Leading lawyers

Colin Ong

## Other ranked firms

**K Lim & Company** acted as local counsel for a number of cross-border deals this year, including its role in undertaking legal due diligence on the takeover of Geoservices by Schlumberger as part of the global effort involving over 100 companies in 20 jurisdictions. The outfit was also brimming with activity on the projects front, instructing on the incorporation of a joint venture between the government of Brunei and Kerry Logistics ahead of the Brunei Halal Brand launch, as well as advising Chinese firm Sinohydro Corporation on a \$100 million infrastructure project.

*Leading lawyers:* Kelvin Lim

**Ahmad Isa & Partners** is a local favourite for foreign firms interested in aspects related to cross-border investments and refinancings. International clients seek the firm as a first port-of-call for general advice on the Bruneian legal environment. Competitors acknowledge that Ahmad Isa & Partners "appears near the top of their list [of law firms in Brunei]".

The firm is also sought after by government entities, including the Ministry of Finance and Bank Islam Brunei Darussalam for Islamic finance issuances, including the ongoing short-term *sukuk al-tjarah* (capital leasing) offerings.

From the private sector, Tabung Amanah Islam Brunei also instructs the firm to act on its Islamic finance products. Of note is the firm's strength in intellectual property adviso-

ry work, with clients including Nestlé and Procter & Gamble recommending the services of leading partner Aisha Alkaff.

*Leading lawyers:* Aisha Alkaff

**DF Abang Zen** has one of Brunei's leading luminaries, Ferida Abang Zen, on the team. Best known for her thorough knowledge and experience in commercial law, Zen continues to advise clients on a number of *shariah*-compliant securities for Baiduri Bank, Maybank and RHB Bank.

*Leading lawyers:* Ferida Abang Zen

**Hale Zainidi Ong** has a well-respected and recognised team of specialists that provides expert advice on a wide range of contentious matters, ranging from commercial litigation to family and matrimonial issues. One rival singles out Hale Zainidi Ong as "the only other firm I consider good [in Brunei]."

The firm is often the go-to outfit for high-profile restructurings and insolvencies in Brunei. Prominent clients the firm receive mandates from include TM Asia Insurance Singapore, TSL Group, Tabung Amanah Islam Brunei and Bank Islam Brunei Darussalam At-Tamwil.

*Leading lawyers:* Damien Hale and Sue Ong

**Pengiran Izad & Lee** found its niche in the oil and gas industry, often involved in a spectrum of matters with the largest multinational players in the industry, including Shell, Total and Brunei Petroleum. The firm has a strong understanding of the demands of international clients, and on numerous occasions was invited to instruct companies the Brunei Economic Development Board had attracted into the country.

With Pengiran Izad & Lee joining the panel of Brunei Association of Banks, financial institutions such as Bank Islam Brunei Darussalam, Baiduri Bank Group and HSBC regularly request the team for their in-depth knowledge and advice in Islamic banking and foreign investment.

*Leading lawyers:* Izad Bahrin and Ronnie Lee

**YC Lee & Lee** is best known for its established base of clients, which ranges from financial institutions including HSBC, Standard Chartered, BIBD, Malayan Banking, Baiduri Bank, Tabung Amanah Islam Brunei, United Overseas Bank, Aiva Insurance, National Insurance Company and Takaful Bank Islam Brunei Darussalam, to foreign governments including Brunei's French and German embassies.

The firm is known for handling specialist commercial litigation for foreign and domestic clients, as well as providing advice on mutual funds among other financial products. Also noteworthy is the firm's presence in Kuala Belait, reflecting YC Lee & Lee's commitment to service clients across the country.

*Leading lawyers:* Yew Choh Lee