

Brunei

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Corporate finance legislation in Brunei

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Brunei Darussalam was a protectorate of the United Kingdom 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 are in *pari materia* 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 is the arbitration body in Brunei, and 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 *bona fide* 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.

The Securities Order regulates all persons involved in dealing with securities, which term 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 Authority great powers in monitoring all records maintained for such 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.

Brunei does not impose any form of income tax or service tax on personal individuals which includes sole proprietorship and partnerships. For corporate tax, the Income Tax (Amendment) Order 2001 allows deduction of taxes for companies involved in export market development expenditure as well as deduction of taxes for companies who have expended monies on research and development. There have also been arrangements made between Brunei and other countries to provide for tax relief from double taxation for individuals and companies. Although the Brunei currency is pegged at par to the Singapore currency, the Currency and Monetary Order 2004 was enacted to set up the Brunei Currency and Monetary Board (the Board), which takes the form of a body corporate with perpetual succession. The Board's objective is to issue currency and maintain external reserves to safeguard the international value of the Brunei currency. On September 7 2005 the Currency and Monetary (Amendment) Order 2005 was enacted to effect that all assets and liabilities of the Board established under the Currency Act were to be transferred to the Board and that all such accounts would be audited by the auditor-general.

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 and has 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 which is not approved by a moderate form of Islamic *shari-ah* 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 such agreements and matters connected with such agreements. 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.

Corporate and commercial

Recommended firms

Tier 1

Dr Colin Ong Legal Services

Tier 2

Abrahams Davidson & Co

Daud Ismail & Co

D F Abang Zen

S Ong & Hale

Tier 3

Y C Lee & Lee

Penigrad Izad & Lee

Tier 4

Ahmad Isa & Partners

CCW Partnership

K Lim & Company

Dr Colin Ong Legal Services

Dr Colin Ong Legal Services remains the leading firm in Brunei. Due to the strong litigation backgrounds of Colin Ong and Rokiah Swed, a former senior registrar of the Supreme Court, the firm often appears on the largest and highest-profile commercial litigation matters. The firm is the clear leader in terms of pure commercial dealings and dispute resolution work in Brunei and works to the high standards of law firms in London.

Dr Colin Ong has been described by the market as possessing a "complete mastery of the law" and "a brilliant commercial understanding of deals," which allows him to "absorb information quickly and to draft complex corporate documents with ease". As the only consultant law firm in Brunei, many other Brunei law firms privately engage and seek Dr Ong's consultation in the most complex of project financing documentation and corporate structuring deals.

This year the firm has handled a large volume of work across the full range of corporate and commercial practice. In one high-profile deal, the firm represented Air Asia in relation to its takeover of certain domestic operations of Malaysia Airlines, to form Air Asia Brunei. In the project finance arena, meanwhile, the firm continues to act in connection with the development of a large-scale lens factory and is also providing advice in relation to the revamp of Malaysian construction industry, Pam.

Colin Ong's impressive credentials extend beyond his status as head of his firm – he is a practising barrister at Essex Court Chambers in London and the president of the Arbitration Association of Brunei. This year he served as the sole panelist in the WIPO case that decided who had the rights to internet domain names. He was also a panel member of the Asean Protocol on an enhanced dispute settlement mechanism.

Leading lawyer

Colin Ong

Key contact partner

Colin Ong

Abrahams Davidson & Co

Established in 1986, Abrahams Davidson & Co consists of three partners and seven associates, making it the largest firm in Brunei. The firm's lawyers are able to offer specialized legal advice on a range of corporate law matters. Name partner Davidson,

who retired in 2000, continues to act as a consultant on certain matters, and the firm is now under the guidance of senior partner James Chiew, who previously held positions in the government and the judiciary and is highly regarded by the market.

The firm's clients include leading international merchant banks, foreign retail banks, multinational corporations and state entities. In one deal highlight of the past year, Abrahams Davidson worked as part of a legal team that advised on a major merger between a local Islamic bank and the national petroleum company of Brunei (which was set up by the government). The deal closed in May 2006, the resulting entity being the Bank Islam Brunei Darussalam.

Leading lawyer

James Chiew

Key contact partner

Tan Suan Chin

Daud Ismail & Co

Daud Ismail & Co is led by name partner Mohamad Daud Ismail, the former mayor of Malaysia's Limbang town. The firm is renowned for its expertise in international commercial and finance law. At the time of writing the firm was negotiating a large international joint venture contract, working across the negotiating table from Dr Colin Ong Legal Services.

Daud Ismail & Co has also worked on several general banking and finance matters in the past 12 months, both in the domestic and international markets. The firm is generally engaged by local and international parties in large commercial or financial transactions.

Leading lawyer

Mohamad Daud Ismail

Key contact partner

Mohamad Daud Ismail

D F Abang Zen

Name partner Ferida Abang Zen, a highly respected senior practitioner, leads this four-lawyer practice. The firm's lawyers focus their attentions on the full range of corporate and commercial law, including banking, capital markets, project finance, insolvency and restructuring and mergers and acquisitions.

The firm has forged strong relationships with a number of foreign firms, especially in relation to intellectual property matters. Among its best relationships are those with Singapore firm Drew and Napier, Hong Kong market leader Johnson Stokes & Master, and UK patent and trademark specialist Marks and Clerk.

Leading lawyer

Ferida Abang Zen

Key contact partners

Ferida Abang Zen
Chu Wee Ken

Y C Lee & Lee

Y C Lee & Lee is a four-lawyer full-service firm that specializes in litigation and commercial arbitration. Although some market commentators were of the opinion that Y C Lee & Lee has been rather passive of late, it is still certainly seen on its fair share of deals. And in July 2005, Esther Lim, previously of Pengiran Izad & Lee, joined the firm to head up real estate and banking activities – as a result of which the firm saw increased work in this area following mandates from a number of major property developers.

Y C Lee & Lee is uniquely and strategically poised to handle both onshore and offshore assignments, such as private banking referrals. This year the firm has advised on several big deals,

including on employee share-option schemes for a multinational corporation and on a loan restructuring for a major international cosmetic franchise chain.

The firm has also advised on private placement issues for TAIB, Brunei's Islamic banking institution set up by statute, and on the assignment of the debt of a major creditor of Yaohan in liquidation. Y C Lee & Lee has also conducted due diligence exercises in relation to both actual and contemplated acquisitions, and served as Brunei counsel in relation to a syndicated loan granted to the 3G mobile phone company.

Leading lawyer

Yew Choh Lee

Key contact partner

Yew Choh Lee

CCW Partnership

Set up in 1980, CCW Partnership is one of the larger firms in Brunei. The six-lawyer outfit is led by the "experienced" and "highly respected" Andrew Ong. In the past 12 months CCW has acted for a bank in a major banking case and was involved in a property development case in the High Court.

On the instruction of US M&A powerhouse Wachtell Lipton Rosen & Katz, partner Dunstan Sim spearheaded the firm's advice to Tupperware in respect of its acquisition of a global business.

Among the year's other highlights, at the time of writing the firm was acting as Brunei counsel to the state on the negotiation of production-sharing agreements in respect of two onshore blocks for the exploration, development and production of oil and gas in the country.

Leading lawyer

Andrew Ong

Key contact partner

Andrew Ong

K Lim & Company

K Lim & Company entered the rankings last year on market recommendations. Although the firm was only founded five years ago, Kelvin Lim and Adrian Chan have laid solid foundations by drawing on a collective wealth of legal experience locally and in Malaysia, Australia and New Zealand.

The firm's main practice areas are banking and finance, commercial litigation, corporate advisory, insurance and shipping and securities. Clients include domestic and international banks, international trust companies, foreign missions, property developers, cigarette companies and motor vehicle distributors.

Key contact partners

Adrian Chan
Kelvin Lim