

Brunei

Chamber of commerce:

Brunei International Chamber of Commerce and Industry
PO Box 2285
1922 Bandar Seri Begawan
Brunei Darussalam
Tel: +673 2 236 601
Fax: +673 2 228 389

Arbitration Association of Brunei Darussalam

PO BOX 354
BS 8670 Bandar Seri Begawan
Brunei Darussalam
Tel: +673 2 423 871
Fax: +673 2 423 870

Colin Ong

Dr Colin Ong Legal Services Brunei

Brunei Darussalam was a protectorate of the UK until 1984, when it obtained full independence and inherited a legal system and judiciary based on the English common law and the structure of the English court system. However, in a 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 materially the same as the English ones. The process of litigation and time taken for a case to reach trial is reasonable and might take anywhere between six and 18 months to reach trial stage.

The Brunei government retains a statutory immunity from being sued before the courts, so there has been a culture of parties agreeing to arbitration clauses to be used in place of choice-of-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 given under conditions of the New York Convention 1958. The Arbitration Association of Brunei Darussalam is the arbitration body in Brunei. It counts amongst its members the leading figures in various professional disciplines, including architects, engineers, quantity surveyors, lawyers and other professionals from Brunei and overseas.

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 yet have its own tradable stock exchange, and as such there is no specialized corporate governance code nor any takeover, merger or acquisition code as yet.

The Brunei Companies Act, since its original enactment in 1956, has undergone minor amendments over the years. Shareholders retain the inherent rights 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 their fiduciary duties to the best of their skills and abilities. They may not make secret profits nor perform any *ultra vires* acts beyond the scope and powers that they have been endowed with by the shareholders and under the law.

The Securities Order regulates all persons involved in dealing with securities, which has been very broadly defined to encapsulate most forms of financial instruments as well as dealings in currencies and commodities. The Securities Order allows the Authority great powers in monitoring all records maintained for such dealings in securities.

Brunei does not impose any form of income tax or service tax on personal individuals, including 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 that have spent money 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.

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 improving the efficiency of electronic communications and at 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.

Corporate and commercial

Recommended firms

Tier 1

D F Abang Zen

Dr Colin Ong Legal Services

Tier 2

Abrahams Davidson & Co

Daud Ismail & Co

S Ong & Hale

Tier 3

Ahmad Isa & Partners

CCW Partnership

K Lim & Co

YC Lee & Company

D F Abang Zen

D F Abang Zen is a four-lawyer practice led by name partner Ferida Abang Zen, a highly respected senior practitioner in the Brunei legal market. Although there have been some comments that Abang Zen has been less visible of late, the firm continues to be engaged across transactions ranging from an intellectual property test case to inheritance rights under *Sharia* law.

In the corporate area, D F Abang Zen has been involved in advising a Brunei company in connection with a government-awarded project valued at over Br\$4 million (\$2.4 million), and won a role acting on a cooperation agreement with Singaporean engineering company MPL Pte. Securing the Radio Television Brunei Centre for Broadcasting Development as a client has allowed the firm to branch out into entertainment and media law, advising on and preparing documentation for overseas location filming.

Partner Chu Wee Ken is noted for her intellectual property expertise, and was appointed in May 2005 by the Brunei Attorney General's Chambers as a national consultant. Chu has also been endorsed by the World Intellectual Property Organization for one of its sponsored projects in the Asean region.

Leading lawyer

Ferida Abang Zen

Key contact partners

Ferida Abang Zen

Chu Wee Ken

Dr Colin Ong Legal Services

Dr Colin Ong Legal Services remains in the first tier due to a well-developed combination of local and international expertise. The firm has a reputation for strong foreign direct investment and banking capabilities. However, as a result of a general slowdown in local transaction work, the firm has been increasingly involved in cross-border work, such as advising on regional and worldwide equity funds covering Asean countries. The firm has also advised on the restructuring of non-per-

forming loan portfolios for the national asset management company of a neighbouring country.

Due to the strong litigation backgrounds of Colin Ong and Madam Rokiah Swed – the latter being a former senior registrar of the Supreme Court – the firm often appears on the largest and highest-profile commercial litigation matters. Managing partner Colin Ong's impressive list of qualifications include being the only qualified and practising commercial arbitrator in Brunei, an arbitrator in eight countries and a barrister at Essex Court Chambers in London. He is regularly consulted on high-profile disputes and arbitrations in Malaysia and Singapore, and also provides advice to regional quasi-government bodies.

Leading lawyer

Colin Ong

Key contact partner

Colin Ong

Abrahams Davidson & Co

At three partners and seven associates, Abrahams Davidson & Co is the largest firm in the Brunei market. The broad-ranging experience of its professionals (including legal experience in Malaysia and Singapore) means that the firm is able to act on a wide variety of commercial transactions, including conventional and Islamic banking, financial products including derivatives, funds documentation, joint ventures, property matters, corporate litigation matters, telecommunications and information technology work and other corporate work.

The market has high regard for senior partner James Chiew, who previously held positions in the government and the judiciary. Several of the firm's lawyers are qualified as barristers in Brunei and England.

Key contact partner

Tan Suan Chin

CCW Partnership

CCW Partnership's six-lawyer outfit is one of the larger firms in Brunei and is led by the experienced and respected Andrew Ong. A recent highlight for the firm has been its role alongside Rajah & Tann and KPMG Business Advisory in respect of the development of a new licensing and regulatory framework for Brunei's telecommunications industry.

Key contact partner

Andrew Ong

K Lim & Company

Founded in 2001, K Lim & Company is a relatively young firm, but partners Kelvin Lim and Adrian Chan are rapidly developing a name for themselves, and the firm enters the rankings for the first time based on market recommendation. In building their practice, Lim and Chan have been able to draw upon their 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, insurance companies, foreign missions, property developers, cigarette companies and motor vehicle distributors.

Key contact partners

Adrian Chan

Kelvin Lim

Foreign firms

None of the international firms has offices in Brunei, but they conduct work in the country when it forms part of a wider international transaction or where foreign legal expertise is required for complex Brunei work.

Freshfields Bruckhaus Deringer and **Milbank Tweed Hadley & McCloy** acted on the complex recapitalization of a leveraged buyout by AB Investor of Sweden across 12 jurisdictions, including Brunei. **Clifford Chance** represented Mitsui Sumitomo Insurance on its acquisition of Aviva's non-life operations in several Asian countries (including Brunei). Aviva was represented by **Allen & Overy**.

Norton Rose has been acting for the sponsors for the \$800 million ammonia and urea plant project in Brunei, which is notable for being the first onshore project financing in the country. **Linklaters** is acting for Brunei Shell Petroleum on the same transaction.

In terms of regulatory work, **Lovells** is part of a special legal panel selected by the Brunei Economic Development Board for the development of the Sungei Liang industrial park and the Pulau Muara Besar global port, and has started work on special purpose legislation for the project. Lastly, the Authority for Info-communications Technology Industry of Brunei Darussalama (AiTi) appointed **Rajah & Tann** to help formulate a new licensing regime for the telecommunications industry.