

Brunei

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Corporate finance legislation in Brunei

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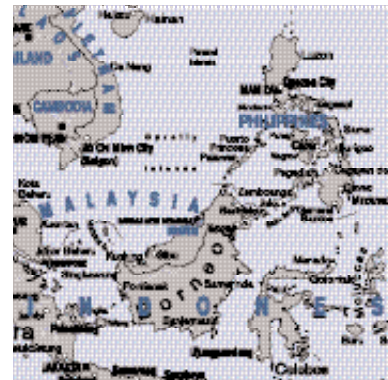
Brunei Darussalam was a protectorate of the United Kingdom until 1984 when it obtained full independence and inherited a legal system and judiciary based on the English common law and the structure of the English court system. However, in a significant departure from the English system, many of the basic 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 materially the same as the English ones. 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 Brunei government retains a statutory immunity from being sued before the courts, 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. As Brunei does not have its own national arbitration centre, Brunei lawyers have increasingly tended to favour using The Regional Centre for Arbitration at Kuala Lumpur, which is perceived to be very efficient and much more economical than other more traditional arbitration venues such as London, Geneva and Singapore.

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, although this may well change in the near future.



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 *bonafide* 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 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 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 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.

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

D F Abang Zen

Dr Colin Ong Legal Services

Ahmad Isa & Partners

Daud Ismail & Co

Abrahams Davidson & Co

CCW Partnership

S Ong & Hale

YC Lee & Company

D F Abang Zen

Senior partner Ferida Abang Zen is one of Brunei's most experienced and well-respected lawyers. The firm itself specializes in joint ventures, securities, Islamic finance and banking. However, D F Abang Zen has been moving away from civil common law and is now regarded as an expert in *Sharia* law, a practice area concerned with family and property disputes.

Partner Chu Wee Ken has a strong reputation among her peers, and brings in an international clientele with the strength of her intellectual property work, particularly in the provision of trademark advice.

Key contact partner

Ferida Abang Zen

Leading lawyers

Ferida Abang Zen

Chu Wee Ken

Dr Colin Ong Legal Services

Dr Colin Ong Legal Services is perhaps the most international of Brunei's law firms. It advises on banking, corporate and commercial work, and joint ventures. The client list includes CIT Leasing Corporation and Morgan Stanley, which Dr Colin Ong Legal Services advised on an Isda master agreement swaps matter. The firm also advised on the construction of an Eco cyberpark project in Brunei.

Name partner Colin Ong has many other strings to his bow; he is a barrister at Essex Court Chambers in London, and also acts as a consultant to Singapore firm Khattar Wong & Partners, a firm allied to Eversheds.

Key contact partner

Colin Ong

Leading lawyer

Colin Ong

Abrahams Davidson & Co

Though corporate and commercial work in Brunei has traditionally been handled by international law firms, more domestic companies are taking up this practice area. Abrahams Davidson & Co is one such firm, and has a track record of advising on Islamic real estate funds, derivatives, swaps and options.

Foreign firms

With the globalization of the legal market, international law firms are with greater frequency conducting business in jurisdictions where they have no offices, and in Brunei big deals are often overseen by large US and European firms.

Freshfields Bruckhaus Deringer advised the Brunei government and the Brunei Investment Agency on civil proceedings brought in Brunei and England against HRH Prince Jefri and others in one of the largest ever civil claims ever brought in Brunei. Richard Chalk, Jo Rickard and Bob Charlton advised on this landmark case.

Herbert Smith conducts work in Brunei for its client Shell. **Milbank Tweed Hadley & McCloy** represented Crédit Lyonnais as mandated lead arranger of investorAB's \$170 million leveraged buyout of Cosmetic Care Group Holdings, a deal that covered 13 jurisdictions, including Brunei. **Norton Rose** has advised HSBC in connection with a \$100 million Islamic lease lending for a LNG carrier for Brunei Gas Carriers, with **Watson Farley & Williams** advising the Brunei company opposite Norton Rose. Also active in Brunei are the Australian firms **Allens Arthur Robinson** and **Freehills**.