

BRUNEI

Brunei legislation guide



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Traditionally, many of the statutory laws of Brunei Darussalam that regulate business activities and disputes are based upon English Acts. In addition to a common law system, Brunei is the last country in Asia to have the Judicial Committee of the Privy Council sitting in the UK as its court of final appeal.

For civil matters, parties to a dispute can mutually agree before the commencement of a trial or before a judgment has been handed down by the Court of Appeal to have the Judicial Committee of the Privy Council as the court of final appeal.

The Brunei Supreme Court has exclusive jurisdiction over all civil and criminal laws and the rules of procedure that are used in the Supreme Court are based upon the pre-1999 English Supreme Court Practice. One of the most important pieces of legislation in Brunei is the Application of Laws Act. This statute essentially provides that the Common Law of England and the doctrines of equity, together with

There is no requirement in Brunei for practicing lawyers to undergo continuous professional development. Only a handful of lawyers who are concurrently practitioners in other jurisdictions undergo such development. The vast majority of law firms tend to deal with a range of practice areas including civil and criminal law as well as family law. A smaller handful specialise in road traffic accident issues while a much smaller number specialise purely in corporate and commercial law activities and commercial arbitration.

Foreign judgments can be enforced in Brunei by statute as well as by common law rules. The Reciprocal Enforcement of Foreign Judgments Act 1996 (Revised Edition 2000) (CAP 177) is the enabling statute that allows the enforcement of foreign judgments in Brunei. The Brunei courts automatically recognise and enforce the foreign civil and monetary judgments of any country that also recognises and enforces Brunei court judgments. Upon registration, the foreign judgment would become automatically enforceable by the Brunei courts.

The enabling Brunei legislation that gives effect to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is the Arbitration Act 1994 (CAP 173 Rev. 1999). Reform, however, has already begun. The Arbitration Order 2009, that regulates domestic arbitrations, and the International Arbitration Order 2009, that regulates international arbitration, came into force in February 2010. Both of these are based on the UNCITRAL Model Law on International Commercial Arbitration and follow the principle that the Brunei courts may only support but not interfere with the arbitration process.

Under the two new statutes, the Arbitration Association Brunei Darussalam (AABD) has been statutorily appointed as the default appointing body in the event of default or failure by the parties to appoint. Prior to the two new statutes, the AABD was the sole arbitral institution in Brunei. It was formed in 2004 partly to assist Brunei Darussalam in developing and providing advisory and assistance support in the field of arbitration. It was also formed just after revision of the Brunei Constitution and laws of Brunei Darussalam, which provided for complete immunity by the Government of Brunei Darussalam from suit before the Brunei law courts. This means that all contractual matters involving the Government of Brunei are subject to arbitration. The AABD panel of arbitrators is kept to a very high standard and there is a wide choice of leading international arbitrators who are mainly non-Brunei nationals.

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statutes of general application, as administered or in force in England prior to April 25 1951 shall be in force in Brunei. The important proviso to this canon is that the said common law, doctrines of equity and statutes of general application shall be in force only so far as the circumstances of Brunei permit and that they are also subject to be qualified by local circumstances and native customs.

The system of civil law within the civil courts is generally administered by UK-qualified judges. The majority of leading private legal practitioners are also educated and obtained their professional qualifications in the UK. And there is a large minority of lawyers who have also qualified from the Malaysian Bar. Until recent amendments to the Legal Profession Act, there was a wide range between the qualifications and experiences of practicing advocates and solicitors in the country. As standards differ vastly between practicing lawyers in Brunei, there is a view that international corporate clients prefer to engage lawyers from premier UK universities or have work experience from law firms in the UK. It has now almost become standard practice for many overseas corporate clients to demand full disclosure of professional qualifications and experience of prospective Brunei lawyers.

Financial & Corporate

RECOMMENDED FIRMS

Tier 1

Abrahams Davidson & Co

CCW Partnership

Dr Colin Ong Legal Services

Tier 2

Ahmad Isa & Partners

Daud Ismail & Co

DF Abang Zen

Hale Zaindi Ong

K Lim & Co

Pengiran Izad & Lee

YC Lee & Lee

Abrahams Davidson & Co

Abrahams Davidson & Co is a noticeable force on two fronts: Islamic finance as well as oil and gas. “We basically worked with them on energy, infrastructure and construction type issues,” recalls a corporate client. “We recommend the firm for the quality of its legal professionals who are among the best in the country and a top choice for non-routine legal work.” The firm’s established reputation in the market means that it acts for some of the most high-profile Bruneian and global clients. “They really know what they are doing and understand how to deal with Brunei’s government bodies,” says a partnering law firm. “The advice is first-rate, thoughtful and well-analysed.”

Its Islamic finance practice is one of the most capable in Brunei, producing new structures that have not previously been seen in the country and attracting work from international investment bank Deutsche Bank. While managing partner James Chiew stepped down, Bernard Tan has proven to be very capable in providing financial advice in addition to his traditional strength of securing mandates for the construction of oil and gas infrastructure. “Bernard treats us well and operates as an extension to our team with seamless advice and service,” comments one client. “He had a good handle on everything from oil and gas to general corporate work.” An example of work in this area is Tan’s representation of Brunei Economic Development Board (BEDB) on the Single Point Mooring Buoy and Pipeline Facilities project. “We decided to go with Bernard because he’s done a lot of work with BEDB in the past,” says a corporate client. “Things in Brunei can be very slow, but he’s always on the ball and on the job.”

CCW Partnership

One of the top full-service firms in Brunei, CCW Partnership has significant experience in servicing multinational companies including Standard Chartered Bank, Oracle, IBM Malaysia and SG Asset Management. The firm also advised on agreements for an international hotel franchise and a leasing of precious metals for a major resources company operating in Brunei. While the team, headed by leading lawyer Dunstan Sim, has an enviable list of global clients, it has been equally active on domestic deals. Sim recently acted for a local commercial bank on several of its structured products and represented Brunei Petroleum, a regular client, on various oil and gas projects. Moreover, Sim is particularly renowned for his construction advice, both for standard development and energy-related infrastructure projects. The focus on construction is well extended beyond the corporate side to Andrew Ong’s dispute resolution practice, especially on high-profile projects. Ong has a successful track record defending contractors, developers, architects and offshore companies in a number of large litigation and arbitration cases.

Dr Colin Ong Legal Services

The reputation of Colin Ong lies in the realm of commercial dispute resolution. “He’s one of the best around in terms of his specialised knowledge in shareholder and infrastructure disputes,” says a client. “He has a long standing relationship with many key corporates and government entities in Brunei and Indonesia.” One of Ong’s best qualities is his unparalleled expertise in international arbitration, with many clients affirming that his abilities are not only market-leading in Brunei but across the region. “He is my recommended lawyer for arbitration,” says one partner who worked with Ong. “His abilities transcend Brunei, as there is no one of his standing in Southeast Asia.”

Besides arbitration, the firm also has a very strong regional presence on general corporate deals, acting as lead counsel to clients such as Thai energy powerhouse Banpu on a US\$350 million M&A deal and a large Indonesian utilities company on matters worth US\$800 million. “Dr Colin Ong Legal Services has been the foremost law firm that our publicly-listed company and its subsidiaries would first approach in the event that we encounter any dispute settlement and arbitration matters concerning oil and gas, coal mining issues and energy law,” says one corporate client.

In Brunei, Ong is a strategic adviser for many of the government’s high-profile projects, ranging from the opportunistic Brunei Halal Brands to a US\$20 million defence project. In addition, Brunei Petroleum and The

Amarco Group seek the firm for advice on oil and gas issues. "I would recommend Dr Colin Ong if you need someone who clearly articulates issues, picks up on key facts quite quickly and delivers a good argument during negotiations," says a corporate client.

Ahmad Isa & Partners

A notable financial powerhouse, Ahmad Isa & Partners is often sought by international investment banks for generalist advice on the Bruneian legal landscape. Many clients acknowledge the firm as one of the best financial outfits in Brunei, servicing clients including the Ministry of Finance and Bank Islam Brunei Darussalam. While most clients seek Ahmad Isa & Partners for its expertise on Islamic finance matters, a wealth of private sector banks such as Tabung Amanah Islam Brunei also target the firm's advice on a variety of financial products. Leading practitioner Aisha Alkaff operates in the niche intellectual property space, representing multinational clients such as Nestlé and Procter & Gamble.

DF Abang Zen

Name partner Ferida Abang Zen is one of Brunei's most prominent lawyers. She is best known for her knowledge and experience in commercial law, as well as Islamic finance. Her regular clients include Baiduri Bank, Maybank and RHB Bank.

Hale Zaindi Ong

Very respectable in contentious matters, Hale Zainidi Ong is a firm with expert negotiators on family and matrimonial issues. Of the more top-end issues, rivals singled out the firm as an exclusive specialist on restructuring and insolvency in Brunei. Prominent clients that Hale Zainidi Ong receives mandates from include TM Asia Insurance Singapore, TSL Group, Tabung Amanah Islam Brunei and BIBD At-Tamwil. Key lawyers at the firm include Damien Hale and Sue Ong.

K Lim & Co

K Lim & Co is a robust corporate outfit that reaches beyond its own jurisdiction. The firm has been particularly active on cross-border deals, with its thorough experience among the reasons for its selection by Debevoise & Plimpton as local counsel on the acquisition of Geoservices by Schlumberger. Kelvin Lim remains a very prominent lawyer in the projects area, having advised the government on its Brunei Halal Brands in a joint venture with Kerry Logistics. He also advised a local company on its cooperation with Chinese company Sinohydro Corporation on a US\$100 million dam infrastructure project.

Pengiran Izad & Lee

Pengiran Izad & Lee is a leading player in the oil and gas industry. Over the years, the firm has developed a strong understanding of what international clients look for when investing in Brunei, and as a result acts for some of the largest multinationals, such as Shell, Total and Brunei Petroleum. Leading professionals at the firm include Ronnie Lee and Izad Bahrin who enjoy close ties with regulators and industry bodies, such as the Brunei Association of Banks. This has in turn helped the firm excel above its competitors and secure Islamic banking and foreign investment instructions from BIBD, Baiduri Bank Group and HSBC. Ronnie Lee and Izad Bahrin are recognised names in the market.

YC Lee & Lee

YC Lee & Lee's client base includes financial institutions such as HSBC, Standard Chartered, BIBD and Tabung Amanah Islam Brunei, as well as entities such as Brunei's French and German embassies. The firm is particularly distinguished as commercial litigators for international clients, as well as providing advice on mutual funds and other financial products. Yew Choh Lee is considered by many to be a leading practitioner.