



**THE RESEARCH OF  
LEGAL SYSTEM OF BRUNEI AND LEGAL INFORMATION  
RELATED TO TRADE AND INVESTMENT IN BRUNEI**

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# Chapter 1

## Overview of Brunei's Law

### 1.1 History of Bruneian Law

Thousands of years ago, Borneo's indigenous people lived in a belief of animism<sup>1</sup> where societies were not abided by rules but by respect to animistic forces. Ways to settle a dispute were to use force and sanctions were in forms of fatal punishment. As time went by, the animistic belief was gradually declined due to an increasing power of religion and a formation of kingdoms. However, traces of animistic belief remains to be seen in some parts of Brunei where indigenous people live<sup>2</sup>.

During 9<sup>TH</sup> - 10<sup>TH</sup> century, Borneo's indigenous belief was greatly affected by an expansion of two great kingdoms, namely, Majapahit Kingdom and Srivijaya Kingdom, where a system of ruler of nation or 'Yang Di-Pertuan' became predominant (the system was later transpired to Sultanate)<sup>3</sup>. The ruler of the nation assumed a status of Devaraja (central of politics and religion) where he would rule his nation<sup>4</sup> and represent God as per Hindi's belief<sup>5</sup>.

During a glorious era of Srivijaya Kingdom, Arabian traders traveled to Brunei and gradually expanded Islamic belief to local people. In the beginning, the pervasion of Islam was persisted by strong Hindi base<sup>6</sup>. However, Islamic belief became increasingly influential in Brunei afterwards leading to important changes in Bruneian's social and institutional figures. A pinnacle of Islamic religion came when King Awang Alak Betatar converted to Islam from Hindi in 1360. He also changed his name to "Muhammad Shah" and became the first Sultan of the nation<sup>7</sup>.

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<sup>1</sup> G C Gunn, *Language, Power, and Ideology in Brunei Darussalam*, Ohio University Center for International Studies, Athens, 1997, pp. 43 and 48.

<sup>2</sup> E. Ann Black, *Brunei Darussalam: Ideology and Law in a Malay Sultanate*, in (eds.) E. Ann Black and Gary F. Bell, *Law and Legal Institutions of Asia Traditions, Adaptations and Innovations* (Cambridge University Press, 2014), p. 300.

<sup>3</sup> Sanskrit scripts from 400 BCE have been found in Borneo. See H R Hughes-Hallet, 'A Sketch of the History of Brunei', *Journal of the Malayan Branch Royal Asiatic Society*, vol. 18, no. 2, 1940, p. 23.

<sup>4</sup> G A Saunders, *History of Brunei*, Oxford University Press, Kuala Lumpur, 1994, p. 5.

<sup>5</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 301.

<sup>6</sup> ASEAN Law Association, *Legal systems in ASEAN: Chapter 1-Historical overview*, p.4, <http://www.aseanlawassociation.org/legal-brunei.html> (accessed 12 November 2014).

<sup>7</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 301.

The incomings of Islam resulted in an application of religious belief into laws. Islamic laws therefore encompassed religious belief, culture, traditions, and social structure such as a legal concept of marriage property (Harta Sepencarian)<sup>8</sup> which was taken from a local traditions and Islamic principles. Islamic laws were later incorporated into two written principles of law – ‘Hukum Kanum Brunei’ and ‘Undang-Undang dan Adat Brunei Lama’. The former consisted of 96 pages of legal codes. The latter was a 96-page compilation of old principles and customary rules. Islamic law reached its pinnacle when the Sultan proclaimed “Hukum Kanum Brunei” as a national law of Brunei rendering it to have a general application to all people in the nation<sup>9</sup>.

In terms of an adjudication system, prior to an establishment of Sharia courts (Islamic courts), most claims were settled amicably by village headmen or by family members. Alternatively, Imam (a mosque leader) or Ulama (a scholar) were able to convene the procedure to settle the claim. If the claim was unsettled, it can be referred to district rulers and nobles for rulings in both criminal and commercial spheres. If dispute still persisted, the claim was to be given a final verdict by a Sultan who acted both as a mediator and an adjudicator. However, enforcement of a verdict remained voluntary since there was no legal enforcement institution<sup>10</sup>.

Even though Brunei historically expanded its territory to the most part of Borneo Island and in the south of the Philippines, its territory became much smaller due to the colonization of Southeast Asia in 17<sup>th</sup> century.<sup>11</sup> Brunei became a protectorate state of England in 1888 and finally fell under the Residency of England in 1905<sup>12</sup>.

Being under the Residency of England, a Sultan remained the head of state but needed to comply with recommendations by England in all matters except Islamic affairs. Even though Brunei was not colonized by England, it lost the freedom to run the country’s matters in its own sake. During the period under the English Residency, common law principles and English court system were introduced in Brunei to replace traditional ways of a dispute settlement. Concepts of common law, legal institutions and justice

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<sup>8</sup> Properties jointly gained by husband and wife while being legally married.

<sup>9</sup> ASEAN Law Association, see n. 6, p. 4.

<sup>10</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 301.

<sup>11</sup> Samart Thongfhua, Islamic Politics in Governing Brunei Darussalam, *Journal of Politics and Governance (JOPAG)*, issue 4, vol. 2 (March-August, 2014), 176.

<sup>12</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 301.

administration with an appeal system had been employed in Brunei's legal system apart from Islamic legal system<sup>13</sup>.

The English legal system had influenced Brunei to enact a new Court Enactment in 1906-1908 to adjudicate criminal and commercial claims by establishing the following courts; (1) the Court of the Resident (2) Courts of Magistrate of the First Class (3) Courts of Magistrate of the Second Class (4) Courts of Native Magistrates and (5) Courts of Kathis<sup>14</sup>.

England did not establish any democratic system in Brunei even though a legal council had been formulated to review and pass laws in the country, but the real authoritative power in the council belonged to the Resident not the council members<sup>15</sup>.

After Japan's invasion of Southeast Asia during the World War II, Brunei had been attempting to declare independence from England. A success came after 10 years of negotiation. A treaty was amended to give Brunei's independence from the English Residency. Brunei was then able to take domestic matters in its own hand, but England remained in charge of matters relating to defense, foreign affairs and internal security<sup>16</sup>.

In 1959, Brunei enacted the first constitution, which required part of members in the parliament to come from an election. In 1962, the first partial election was held. The People's Party of Brunei won the election with overwhelming votes<sup>17</sup>. However, in the same year, a political turmoil was caused by a group of insurgents from some members of the People's Party of Brunei to denounce a proposed unification of Brunei with Malaysia. English military coup then helped to suppress the turmoil. This event marked the first invocation of the Emergency Decree. Even though the turmoil was rapidly tackled by the coup, the Emergency Decree has been renewed every two years and remains in force until today. Brunei then issued a rule prohibiting election winners from taking any political position in the country<sup>18</sup>. After the turmoil, Sultan Omar Ali Saifuddien III abdicated his

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<sup>13</sup> *Ibid*, p. 302.

<sup>14</sup> ASEAN Law Association, see n. 6, p. 1.

<sup>15</sup> A Black, The Stronger Rule of the More Enlightened European: The Consequences of Colonialism on Dispute Resolution in the Sultanate of Brunei, *Legal History*, vol. 13, no. 1, 2009, p. 93.

<sup>16</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 302.

<sup>17</sup> Naimah S. Talib, Brunei Darussalam: Royal Absolutism and the Modern State, *Kyoto Review of Southeast Asia* Issue 13 (March 2013): Monarchies in Southeast Asia, p. 2.

<sup>18</sup> Graham Saunders, *A History of Brunei* (Kuala Lumpur: Oxford University Press, 1994), p.147.

royal position to his son, Haji Hassanah Bolkiah Mu'izzaddin Waddaulah, to throne as the 29<sup>th</sup> Sultan<sup>19</sup>. He is still the Sultan of Brunei as of today.

In 1984, Brunei became fully independent from England and announced the amended constitution which gave centrality of all powers to Sultan and suspended functions of legislative institutions at the parliament<sup>20</sup>. Sultan then declared the principle of “Melayu Islam Beraja (MIB)” as philosophy of the nation encompassing Malay culture and language, Islamic religion, and MIB scheme of governing the nation in which all Bruneians must respect and obey<sup>21</sup>. As asserted by the Sultan, MIB is a concept that regulates Muslim’s lives derived by Quran and Hadith which govern basic rules of ethnic, language, Malay culture and Brunei’s monarchy system<sup>22</sup>.

From the past to present, Brunei’s law was highly influenced by English laws and Islamic laws<sup>23</sup>. Islamic laws have always been main sources of law long before a domination period of English laws. Today, Brunei places high importance on Islamic law principles by announcing an enforcement of Islamic criminal law (Sharia) on 1 May 2014<sup>24</sup> in parallel with conventional criminal codes<sup>25</sup>.

In summary, an evolution of Brunei’s law lies in transitional periods of the nation in different times as described below.

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<sup>19</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 302.

<sup>20</sup> *Ibid.*

<sup>21</sup> From the *titah* (royal speech) given at the promulgation of Brunei’s independence in 1984. *Titah* can be accessed from the Government of Brunei’s website: <[www.jpm.gov.bn](http://www.jpm.gov.bn)>.

<sup>22</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 302.

<sup>23</sup> ASEAN Law Association, see n. 6, p. 4.

<sup>24</sup> Sharia Law has three enforcement phrases: the first phrase is used to punish trivial crimes such as omitting religious rituals or inappropriate behavior. No savaged punishment is employed in this phrase. The second phrase consists of crimes stipulated in Quran and Hadith excluding crimes with the capital punishment. The second phrase includes crimes such as theft which would receive a punishment of cutting off hands. The third phrase will employ severe punishments including the capital punishment for crimes such as fornication and murder. In addition, Sharia Law classifies types of crimes in which different punishment will be applied to different groups of people. The first type is crimes punishable only to Muslim which include abandoning the Muslim status, respecting other beliefs or religions, non-compliance with fasting. The second type is crimes punishable to both Muslims and non-Muslims which include theft, robbery, physical assault, diminishing Quran and Islamic beliefs, drinking alcohol in public, and behaving inappropriately in public. The third type is crimes punishable to non-Muslims if the action of crime concerns Muslim which includes fornication with a Muslim or being sexually engaged in a private place with a Muslim (Samart Thongfhua, Islamic Politics in Governing Brunei Darussalam, Journal of Politics and Governance (JOPAG), issue 4, vol. 2 (March-August, 2014), pp. 181-182.

<sup>25</sup> *Ibid.*



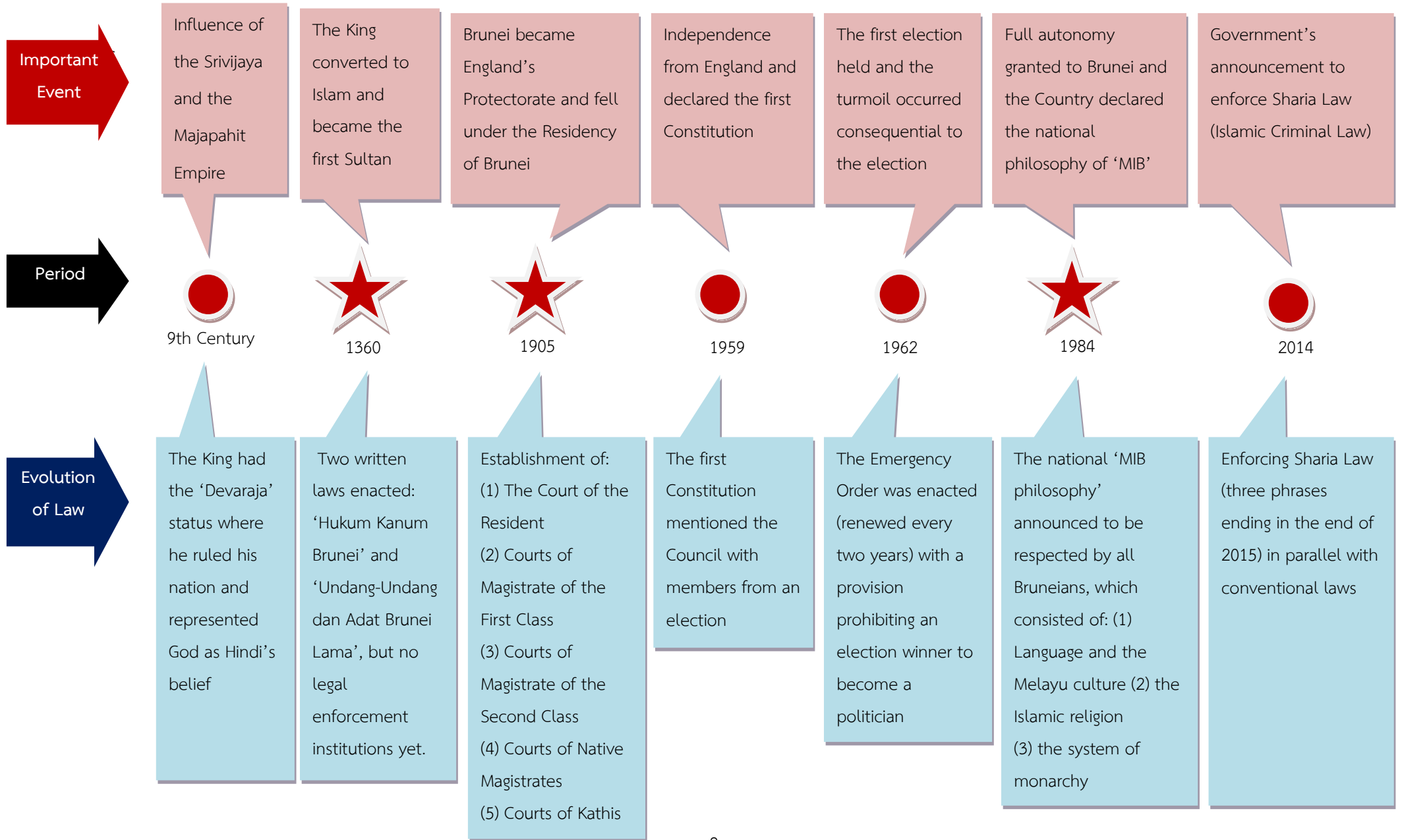
Table 1: Summary on the Evolution of Law in Brunei

Years	Important Events	Evolution of Law
1,000 years ago	<ul style="list-style-type: none"> <li>- People clustered in tribal groups in small villages.</li> </ul>	<ul style="list-style-type: none"> <li>- Animistic</li> <li>- Savaged ways of dispute settlement</li> </ul>
9 <sup>th</sup> Century	<ul style="list-style-type: none"> <li>- Influence of the Srivijaya Empire and the Majapahit Empire.</li> <li>- The ruler governs the Empire.</li> </ul>	<ul style="list-style-type: none"> <li>- The ruler assumed the 'Devaraja' status where he ruled his nation and represented God as per Hindi's belief.</li> </ul>
10 <sup>th</sup> Century	<ul style="list-style-type: none"> <li>- Islamic trader brought the Islamic religion to Brunei.</li> </ul>	
1360	<ul style="list-style-type: none"> <li>- King Awang Alak Betatar converted to Islam.</li> <li>- King Awang Alak Betatar changed his name to Muhammad Shah and became the first Sultan of Brunei.</li> </ul>	<ul style="list-style-type: none"> <li>- Islamic law became the main law of the nation</li> <li>- Islamic law was incorporated into two written codes: 'Hukum Kanum Brunei' and 'Undang-Undang dan Adat Brunei Lama'.</li> <li>- Disputes are settled by Village headmen or family members. Decisions rendered by District rulers and nobles. Final verdicts rested within the power of the Sultan.</li> <li>- No legal enforcement institution in Brunei yet.</li> </ul>
1888	<ul style="list-style-type: none"> <li>- Brunei was under the Protectorate of England.</li> </ul>	<ul style="list-style-type: none"> <li>- The Sultan remained the head of state but needed to comply with England's recommendations in every matter except religious affairs.</li> <li>- Common Law and the English Court System are adopted.</li> </ul>
1905	<ul style="list-style-type: none"> <li>- Brunei was under the Residency of England.</li> </ul>	

Years	Important Events	Evolution of Law
		<ul style="list-style-type: none"> <li>- The Courts Enactment established the following courts:</li> <li>- The Court of the Resident</li> <li>- Courts of Magistrate of the First Class</li> <li>- Courts of Magistrate of the Second Class</li> <li>- Courts of Native Magistrates</li> <li>- (5) Courts of Kathis</li> </ul>
1959	<ul style="list-style-type: none"> <li>- The Treaty was amended to grant Brunei partial independency from England.</li> <li>- The First Constitution was declared.</li> </ul>	<ul style="list-style-type: none"> <li>- Brunei was capable of imposing domestic rules and regulation but England maintained the authority in matters concerning defense, foreign affairs, and internal security.</li> <li>- The first Constitution established the National Council which accepted members from an election.</li> </ul>
1962	<ul style="list-style-type: none"> <li>- The first partial election was held and the People's Party of Brunei won the election.</li> <li>- The insurgents related to the People's Party of Brunei caused turmoil to denounce Brunei's incorporation with Malaysia, which later were suppressed by the English troops.</li> </ul>	<ul style="list-style-type: none"> <li>- The Emergency Order was imposed to control the turmoil and have been renewed every two years.</li> <li>- Law prohibiting the election winners to be politicians was enacted.</li> </ul>
1971	<ul style="list-style-type: none"> <li>- The Treaty between Brunei and England was amended</li> </ul>	<ul style="list-style-type: none"> <li>- Brunei had more autonomy in domestic affairs but the power</li> </ul>

Years	Important Events	Evolution of Law
	to grant more sovereignty to Brunei	in foreign affairs and defense remained within England.
1984	<ul style="list-style-type: none"> <li>- Full independency granted to Brunei</li> <li>- The revised Constitution was declared.</li> <li>- The current Sultan declared the national philosophy of Melayu Islam Beraja or MIB to rule the country.</li> </ul>	<ul style="list-style-type: none"> <li>- Brunei gained full autonomy to run the country.</li> <li>- The Constitution was amended to grant central powers to the Sultan and to suspend the legislative drafting powers of the parliament</li> <li>- All Bruneians must respect and comply with the 'MIB' philosophy which are: <ul style="list-style-type: none"> <li>- Language and the Melayu culture</li> <li>- the Islamic religion</li> <li>- (3) the system of monarchy</li> </ul> </li> </ul>
2014	<ul style="list-style-type: none"> <li>- Brunei enforced the first phrase of Sharia Law (Islamic criminal law)</li> </ul>	<ul style="list-style-type: none"> <li>- Enforcing Sharia law in parallel with conventional criminal law.</li> </ul>

Diagram 1: Summary on the Evolution of Law in Brunei



## 1.2 Brunei's Legal System

Brunei's legal system is influenced from principles of Common Law of England and Islamic Law. Concepts of Common law in Brunei occurred when the country was under the Protectorate of England in 1888 and under the Residency of England in 1905<sup>26</sup>. Common law principles thus play a vital role on creating a legal system in the country besides Islamic law. Brunei's laws consist of written laws and Common law which is also a primary source of law to be adjudicated under Civil Courts of Brunei<sup>27</sup>. In an absent of written law to apply in a case, the courts adhere to principles of case law and precedence under Common law.

Islamic law officially emerged in Brunei in 1903 when King Awang Alak Betatar converted from Hindi to Islam, and changed his name to Sultan Muhammad Shah. Since then, Islamic law became incorporated with customs, culture, and a social structure in Brunei<sup>28</sup>. Islamic law in Brunei connotes rules of Sharia law which originates from religious teachings and basic laws of Islam. Sharia law covers personal and public lives including politics, economics, business, banking, contracts, family relationships, sanitary, and other social spheres. Rules of Sharia law therefore regulate a person's life since birth until death<sup>29</sup>. Sharia law is used in civil principles of law such as family law.

## 1.3 Sources of Brunei's Law

Brunei's law is influenced by many sources of law, namely, common law, Islamic law, and customary international law (or Adat). Common law and Islamic law are main sources of law in Brunei<sup>30</sup>. Even though Brunei is an Islamic country, a foundation of Brunei's law has been based on English legal system due to substantial periods of being under the residency of England. Therefore, common law and Islamic law run parallel in the country. Common law has been developed into written laws which are applicable generally to most people in Brunei. Islamic law is only applicable to some offences and enforced only to Muslims<sup>31</sup>. Since England established the residency in the beginning of

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<sup>26</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 301.

<sup>27</sup> *Ibid*, p. 305.

<sup>28</sup> *Ibid*, p. 301.

<sup>29</sup> Samart Thongfhua, see n. 11, pp. 179-180.

<sup>30</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 303

<sup>31</sup> *Ibid*.

20<sup>th</sup> century, common law has always been the main source of law in Brunei. However, Islamic law has been gaining a lot of weight in the past decade. Apart from these two main sources of law, there is an evidence of local customary law usage among indigenous non-Malay communities.

### 1.3.1 The Constitution

Brunei retains a system of Islamic-Malay absolute monarchy by centralizing all powers to the Sultan, who assumes both positions of the president of the country and the religion's president. More importantly, the Sultan elects high-level officials and parliament members within kinship and cordiality.<sup>32</sup> The first constitution of Brunei was declared in 29 September 1959. At that time Brunei was still under the residency of England. Sultan Omar was appointed by England to govern the country under the 1959 constitution. The constitution of Brunei stands on top of the hierarchy of law. The constitution reflects core values of Malay Islamic monarchy.<sup>33</sup> The constitution has been revised three times in 1971, 1984, and 2004 respectively. The current constitution grants a prerogative power to the Sultan in executive, legislative, and religious branches. The Sultan assumes a position of both the prime minister<sup>34</sup> and the commander in chief<sup>35</sup> at once. The passing of Sultanate is prescribed by the royal rules of succession which would remain to be in power until death. Brunei has no separation of powers. The Sultan has the power to enforce the constitution in a way as he sees fit (Section 84<sup>36</sup>), and amend, add, or withdraw any

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<sup>32</sup> Jaran Maluleem, Kitima Amoradhat, and Pornpimon Trichot, *Thailand and the Muslims*, Institute of Asian Studies, Bangkok (1996), p. 234.

<sup>33</sup> Royal Speech: titah in the event of independence declaration in 1984: accessible at <http://jpm.gov.bn> (accessed 12 November 2014).

<sup>34</sup> The Brunei's Constitution, Section 4 (1)(b) "executive authority and principal officers: (1B) His Majesty the Sultan and Yang Di-Pertuan shall be the Supreme Commander of the Royal Brunei Armed Forces."

<sup>35</sup> The Brunei's Constitution, Section 4 (1)(c) "his Majesty the Sultan and Yang Di-Pertuan shall be the Supreme Commander of the Royal Brunei Armed Forces."

<sup>36</sup> The Brunei's Constitution, Article 84 (1) and (2) reads "the Government shall be regulated in accordance with the provisions of this Constitution, and the form of the Government shall not be altered save in pursuance of the power conferred by Article 85... (2) Nothing in this Constitution shall be deemed to derogate from the prerogative powers and jurisdiction of His Majesty the Sultan and Yang Di-Pertuan and, for the avoidance of doubt, it is declared that His Majesty the Sultan and Yang Di-Pertuan retains the power to make laws and to proclaim a further Part or Parts of the law of this Constitution as to His Majesty the Sultan and Yang Di-Pertuan from time to time may seem expedient."

provision in the constitution (Section 85<sup>37</sup>). Moreover, the Sultan is granted with immunity from any court jurisdiction or any legal prosecution (Section 84 (b))<sup>38</sup>. The constitution asserts that the national religion is Islam and the Sultan shall be the religious leader. However, other religions are allowed in Brunei as long as they practices in harmonious and peaceful ways<sup>39</sup>.

The constitution establishes councils to covers governmental affairs, namely, the Council of Ministers, the Privy Council, the Council of Regency, the Religious Council, the *Adat Istiadat* Council, and the Legislative Council. The Council of Ministers assumes executive functions of the country<sup>40</sup>. All ministers in the Council are required by law to be both Malay and Muslim<sup>41</sup>. The Privy Council takes orders from the Sultan in amending or withdrawing the constitution<sup>42</sup>. The Council of Regency is in charge of enacting rules of royal succession rules if required by special circumstances<sup>43</sup>. The Religious Council advices the Sultan in matters concerning religious affairs.<sup>44</sup> The Adat Istiadat Council gives advices

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<sup>37</sup> The Brunei's Constitution, Article 85 reads "His Majesty the Sultan and Yang Di-Pertuan may, by Proclamation, amend, add to or revoke any of the provisions of this Constitution including this Article; and this Constitution shall not otherwise be amended, added to or revoked."

<sup>38</sup> The Brunei's Constitution, Article 84 (B) reads "His Majesty the Sultan and Yang Di-Pertuan can do no wrong in either his personal or any official capacity...." An observation was made that an outcome of the Constitution (revised in 2004) granted powers of the Sultan above the Consitution, see Tsun Hang Tey, 'Brunei's Revamped Constitution', Australian Journal of Asian Law, Vol. 9, no. 2, 2007, 264.

<sup>39</sup> The Brunei's Constitution, Section 3 (2) reads "official religion of Brunei Darussalam and religious observance...(2) The Head of the official religion of Brunei Darussalam shall be His Majesty the Sultan and Yang Di-Pertuan."

<sup>40</sup> The Brunei's Constitution, Chapter 5 (Council of Ministers).

<sup>41</sup> The Brunei's Constitution, Section 4 (4) "The appointment of Ministers and Deputy Ministers shall be made from among the Malay race professing the Islamic Religion, save where His Majesty the Sultan and Yang Di-Pertuan otherwise decides."

<sup>42</sup> The Brunei's Constitution, Section 4: Privy Council and Establishment of Privy Council.

<sup>43</sup> The Royal Succession Rules are prescribed by the Constitution and the Royal Succession Order (1959). The Council of Regency has the power to announce the Royal Succession Rules on behalf of the Sultan if the Sultan is below 18 years of age in the date of ascending to the throne.

<sup>44</sup> The Brunei's Constitution, Section 2 Article 3 reads "(1) the official religion of Brunei Darussalam shall be the Islamic religion provided that all other religions may be practised in peace and harmony by the persons professing them.

(2) The Head of the official religion of Brunei Darussalam shall be His Majesty the Sultan and Yang Di-Pertuan.

(3) The Religious Council shall be the authority responsible for advising His Majesty the Sultan and Yang Di-Pertuan on all matters relating to the Islamic Religion."

(4) For the purpose of this Article, His Majesty the Sultan and Yang Di-Pertuan may, after consultation with the Religious Council, but not necessarily in accordance with the advice of that Council, make laws in respect of matters relating to the Islamic Religion."

to the Sultan in matters regarding the country's traditions.<sup>45</sup> The Legislative Council acts as the government's legal advisor and enacts law.<sup>46</sup>

### 1.3.2 Judicial Precedent

In the absence of expressed written laws (the constitution, acts, and orders, etc.), the courts shall resort to judicial precedence to be applied to settle a dispute<sup>47</sup>. Inherited from the English legal system, the doctrine of stare decisis is employed in Brunei's courts where decisions of higher courts bind lower courts. Judgments are compiled annually as "Judgment of Brunei Darussalam" to be used as precedent by judges in deciding a case.

One of the advantages of the judicial precedent doctrine is certainty in which a judge can look to previous cases in deciding merits of a case where no written laws exist. However, the use of stare decisis gives limited channels for lower courts to decide a case differently from the judgments of higher courts since lower courts always abide by higher courts' judgments. This has led to many appeal cases lodged to courts.

Brunei's courts may consider a case based on past decisions made in other common law countries' jurisdictions such as Singapore, Malaysia, New Zealand and Australia. Although these decisions complement Brunei's courts in passing a judgment, they have no binding effect on the courts' rulings.

### 1.3.3 Common Law

With the Courts Enactment in 1906, common law and equity principles were brought to Brunei<sup>48</sup>. Courts' decisions rendered in England were able to be used as precedence when adjudicating a case in Brunei<sup>49</sup>. Common law has a firm application in Brunei as the Application of Law Act (1951) held that common law and equity principles as well as other laws applicable in England at the time the Act was in effect shall be

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<sup>45</sup> The Brunei's Constitution, Section 3 A (1) reads "there shall be established a Majlis Mesyuarat Adat Istiadat (to be known in English as the Adat Istiadat Council) which shall consist of a Chairman and other members, all of whom shall be appointed by His Majesty the Sultan and Yang Di-Pertuan and hold office during His Majesty the Sultan and Yang Di-Pertuan's pleasure."

<sup>46</sup> The Brunei's Constitution, Chapter 6: Legislative Council and Establishment of Legislative Council

<sup>47</sup> ASEAN Law Association, see n. 6, p. 3.

<sup>48</sup> ASEAN Law Association, see n. 6, p. 4.

<sup>49</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 305.



enforced in Brunei as well.<sup>50</sup> However, common law and equity principles as well as other laws applicable in England shall not conflict with Brunei's ways of living and traditions<sup>51</sup>.

Common law is considered a primary source of law in courts' adjudication<sup>52</sup>. The courts employ principles of stare decisis and precedence in deciding a case. Moreover, the courts may consider a case based on past decisions made in other common law countries' jurisdictions such as Singapore, Malaysia, New Zealand and Australia. Brunei's legal profession law also allows lawyers from other common law countries to litigate cases in Brunei.<sup>53</sup>

There is a tradition to invite judges from other common law countries to sit in Brunei's courts and adjudicate a case<sup>54</sup>. Judges from Hong Kong and England have been invited to sit in High Court and Court of Appeal.<sup>55</sup> In addition, most Bruneian judges have been educated and obtained professional qualifications in England. Therefore, they are familiar with the common law system.<sup>56</sup>

#### 1.3.4 Legislations

Legislations are enacted from a legislative branch of the country which are comprised of three types (a) Enactments (laws enacted before Brunei's independency), (b) Acts, and (c) Orders. On 1 January 1984, there was a compilation of all Brunei's legislations into a series of laws called "Laws of Brunei" (excluding Enactments made before Brunei's independency). However, some revised and modernized Enactments are also included in the Laws of Brunei. Today, Laws of Brunei is consisted of more than 200 legislations.

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<sup>50</sup> The date in which the Application of Law Act (1951) was enforced is 25 April 1951.

<sup>51</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 305.

<sup>52</sup> *Ibid.*

<sup>53</sup> Laws of Brunei, Chapter 132, Legal Profession Act, Part II, Admission of Advocates and Solicitors, Qualifications and procedure for admission "... (3) A person who is not, on the date of his petition for admission, either a citizen of Brunei Darussalam or a permanent resident, shall only apply for admission if, in addition to satisfying the requirements of subsection (1), he has been in active practice in any part of the United Kingdom, in Singapore, in any part of Malaysia, in any Australian State or Territory or in any other country or territory or part of a country or territory in the Commonwealth designated by the Attorney General by notice in the Gazette for at least 7 years immediately preceding such application."

<sup>54</sup> The former chief judge of the Court of Appeal is Judge Noel Power from Australia.

<sup>55</sup> International Business Publication, Brunei Company Laws and Regulations Handbook, United States, 2008, p. 20.

<sup>56</sup> Oxford Business Group, The Report: Brunei Darussalam, Brunei, 2013, p. 195.

Orders are enacted when the country is in a state of emergency. The Sultan is vested with power from the constitution to enact Orders when necessary.<sup>57</sup> Before Orders are enacted, they need to be approved by the legislative council before sending to the Sultan for recognition and announce in the Government Gazette to have an effect on the date of the Sultan's recognition. Besides Orders, other secondary laws such as ministerial rules and regulations are also required to be announced in the Governmental Gazette as well.

Besides Laws of Brunei (Acts and Orders), the following instruments are also considered Brunei's primary laws; (a) the Treaty of Friendship and Co-operation between Brunei Darussalam and the United Kingdom (1979), (b) the Continental Shelf Proclamation (1954), (c) the North Borneo (Definition of Boundaries) Order in Council (1958), and (d) the Sarawak (Definition of Boundaries) Order in Council (1958).

### 1.3.5 Secondary Legislation

Secondary legislations are rules, declarations, instructions, or other documents which are legally binding and incorporated into legislation. Secondary legislations are enacted under the primary legislations.<sup>58</sup> The power to enact subsidiary legislation is indicated in Section 13<sup>59</sup> and Section 16<sup>60</sup> of the Interpretation and General Clauses Act (Cap 4). Subsidiary legislation needs to be published in the Gazette.

Both Orders and secondary laws can be upgraded to Acts (primary laws) by the General Attorney's review powered by the Law Revision Act (2001). The law requires all

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<sup>57</sup> The Brunei's Constitution, Section 83 (3) "When a Proclamation of Emergency has been made and so long as such Proclamation is in force, His Majesty the Sultan and Yang Di-Pertuan may make any Orders whatsoever which he considers desirable in the public interest; and may prescribe penalties which may be imposed for any offence against any such Order; and may provide for the trial by any court of persons charged with such offences."

<sup>58</sup> Interpretation and General Clauses Act, Cap 4.

<sup>59</sup> Interpretation and General Clauses Act, Cap 4 Section 13 (Powers included in authority to make subsidiary legislation) reads "the following provisions shall apply to subsidiary legislation — (a) authority to make subsidiary legislation shall include — (i) authority to provide that a contravention thereof shall be punishable by imprisonment for such term, not exceeding ๖ months, or with such fine not exceeding \$๑๐,๐๐๐ , or by both such fine and imprisonment, as may be specified in the subsidiary legislation..."

<sup>60</sup> Interpretation and General Clauses Act, Cap 4 Section 16 reads "power to make subsidiary legislation shall, unless another method of publication is authorised, be deemed to include a direction to publish it in the Gazette and, without prejudice to the provisions of sections ๑๕ and ๑๘, a direction that it shall come into operation on the date of its publication...."

laws announced in the Government Gazette after 1 January of every year to be reviewed to increase effectiveness and keep all laws up to date.<sup>61</sup> Laws which have been successfully reviewed will be annexed in Laws of Brunei as Acts<sup>62</sup>.

### 1.3.6 Islamic Law or Sharia Law

Islamic law or Sharia Law derive from Quran (things that Muhammad mentions, acts, or accepts), Sunnah (the way of life as normative for Muslims on the basis of teachings and practices) and other Islamic principles. Sharia law covers a wider range of matters compared to conventional laws because Sharia law is indicated by Islamic principles to regulate human relationships as well as relationships between humans and creatures<sup>63</sup>. Sharia law's application is limited to Muslims and some offences such as violating Islamic principles<sup>64</sup>, family affairs<sup>65</sup>, inheritance<sup>66</sup>, criminal offences (e.g., murder, rape, and theft). These offences are to be tried under Sharia Courts only<sup>67</sup>. State Mufti, the president of the legal committee of the Religious Council, oversees the enforcement of Sharia Law and has the power to enact "Fatawa" or religious rules which bind all Muslims.<sup>68</sup>

Brunei's enforcement of the Sharia Penal Code Order (2013) brings the country to suppress crimes by implementing traditional punishments. Thieves are to have hands cut off. Those who commit sexual offences such as adultery or homosexuality are to be tied to a pole and have people throw rocks at until death. Muslims that drink alcohol will be flogged for 40 times (only fines are imposed for non-Muslims). Brunei recently announced that Sharia law would be fully enforced from 1 November 2015, which will make Brunei the first country in the world to fully enforce Sharia law.<sup>69</sup>

Enforcing a strict Sharia law is considered a massive reformation to align laws with strict rules of religion in order to abide country's affairs with principles of Islamic law.

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<sup>61</sup> Interpretation and General Clauses Act, Cap 4.

<sup>62</sup> ASEAN Law Association, see n. 6, p. 2.

<sup>63</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 306

<sup>64</sup> The Religious Council and Kadis Courts Act, Cap 77 (1984).

<sup>65</sup> The Emergency (Islamic Family Law) Order (1999), and the Islamic Adoption of Children Order (2001).

<sup>66</sup> The Emergency (Islamic Family Law) Order (1999).

<sup>67</sup> The Sharia Courts Act, Cap 184 (1999), and the Sharia Court Evidence Order (2001).

<sup>68</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 306

<sup>69</sup> Samart Thongfua, see n. 11, p. 183.

Brunei insists the country's position despite having been heavily criticized by international community, particularly western nations, after announcing the full enforcement of Sharia law. The legal advisors under High Commissioners on Human Rights of Southeast Asia expressed that death sanctions under Sharia law would tantamount to crimes of torture under international law<sup>70</sup>.

Brunei's announcement of full implementation of Sharia law has caused a widespread criticism on the fact that it now chooses to apply Sharia law strictly while in the past the country had always adhered to a mixed system between English law and Sharia law<sup>71</sup>. Some scholars noted that the full implementation of Sharia law runs contrary to the peaceful culture of Brunei. When the Sultan delivered a speech to announce Sharia law's implementation on 30 April 2014, there was an important part of his speech which read "Sharia law's implementation is a reconstruction of Islamic criminal law which once was enforced to peoples of Brunei centuries ago. It is Allah's duties to enforce his laws. All concerning authorities shall execute promptly for the sake of Allah". The Sultan also responded to criticisms from international community and human rights organizations. In the response, he stated that Brunei never disrespected any country's freedom to chose, and thus never expected others to accept and agree with Brunei; however, others should respect Brunei's choice the same way that Brunei respects others. He also stressed that the implementation of such law was the will of Allah and not concerned with other factors. He was pleased that Bruneians support this action.

### **1.3.7 Customary law**

Islamic law in Brunei emerged from a combination of Islamic principles of Malays and local customs (adat) long before a settlement of Melayu<sup>72</sup>. Therefore, Islamic law in Brunei is different from Islamic law of other Southeast Asian nations. Local customs have

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<sup>70</sup> Stuart Grudgings, Brunei adopts sharia law, others in region consider it, Reuters, available at <http://uk.reuters.com/article/2014/04/29/uk-brunei-sharia-idUKKBN0DF1U320140429> (accessed on 10 November 2014).

<sup>71</sup> The Sydney Morning Herald, Australia to question Brunei over stoning laws before trade talks, available at <http://www.smh.com.au/federal-politics/political-news/australia-to-question-brunei-over-stoning-laws-before-trade-talks-20140629-zsq1h.html> (accessed on 9 November 2014).

<sup>72</sup> Michael Barry Hooker, *A Concise Legal History of South-East Asia*, Clarendon Press, Oxford, 1978, 49-51.

long played an important part in the country, especially in a dispute settlement process among non-Melayu groups.<sup>73</sup>

Presently, Brunei employs customary law in marital assets (*harta sepencarian*) which has been traditionally used for a long time. Any dispute relating to marital assets will be referred to Sharia Courts. In addition, Brunei also recognizes Chinese customs in marriage by allowing a marriage registration in accordance with Chinese traditions<sup>74</sup>. A dispute relating to completion of marriage by Chinese traditions can be referred to Courts of Justice.

Customary law is one of the important sources of Sharia Law in areas of marriage, succession, and vice versa. Besides Sharia law, Brunei's written laws have evolved so little from customary law. Only Chinese marriage law is taken from the customary law.

#### 1.4 Hierarchy of law

Brunei's hierarchy of law runs in a respective order as follows.

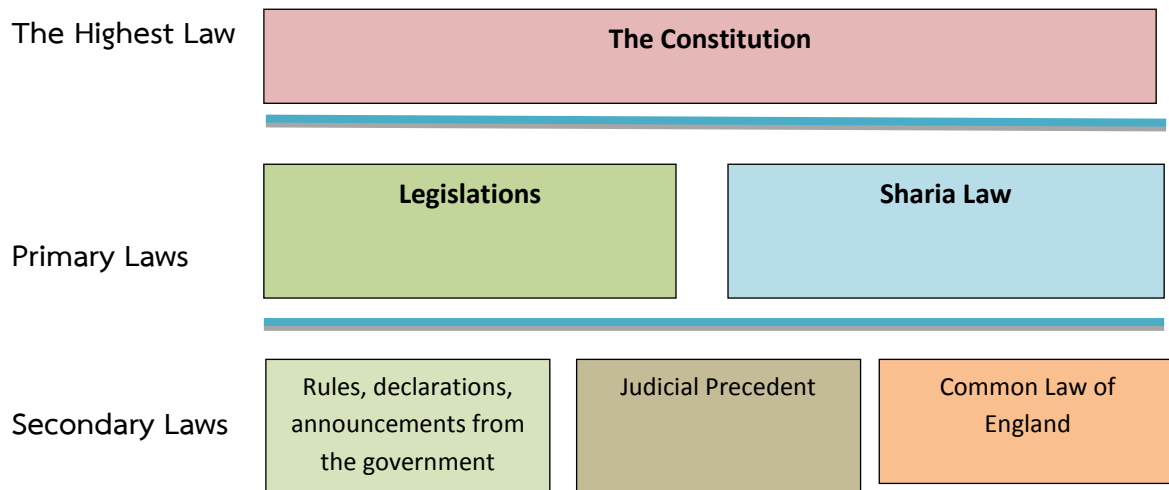
- Constitutional law, the highest law of the country
- Primary laws: (a) legislations and (b) Islamic law
- Subsidiary legislations, which are (a) rules, announcements, regulations or other documents which have a legal enforcement and are incorporated to relevant primary laws, (b) judicial precedent, (c) common law of England.

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<sup>73</sup> Kartindo Academia , Brunei Factbook, Excerpt-Location: Southeastern Asia, bordering the South China Sea and Malaysia, p. 112.

<sup>74</sup> Chinese Marriage Act, Cap 126 (1989) Article 2 "in this Act and any rules made thereunder — "Chinese marriage" means a marriage contracted according to established Chinese law or custom and include a marriage constituted by the marital intercourse of persons betrothed according to such law or custom." Article 4 "every Chinese marriage contracted within Brunei Darussalam shall be registered within one month with the Registrar of the district in which the husband resides..."

Diagram 2: Hierarchy of Law in Brunei



#### 1.4.1 Hierarchy of law and application

In a court hearing, written laws are given priority to adjudicate a case (the constitution, primary laws, rules, declarations, and government announcement which are legally binding). All laws cannot contradict with the constitution.<sup>75</sup>

In case of no written law can be applied, common law of England and the doctrines of equity as well as other English laws currently in force can be applied in Brunei so far as they are not contradictory with local customs.<sup>76</sup>

With recent implementation of the Sharia Penal Code Order (2013) in 2014, the Sharia Court has the jurisdiction over some criminal cases (e.g. murder, rape, theft, etc.) which were previously under the jurisdiction of Criminal Courts provided by the Penal Code (2001).<sup>77</sup> Therefore, there are currently two criminal jurisdictions; ones under the Penal Code and the other ones under the Sharia Penal Code Order.

At the moment, concerning government authorities have discretion to identify criminal jurisdictions on a particular criminal offence (whether to fall under the Penal Code

<sup>75</sup> ASEAN Law Association, see n. 6, p. 4.

<sup>76</sup> Application of Laws Act Section 2 “subject to the provisions of this Act and save in so far as other provision has been or may hereafter be made by any written law in force in Brunei Darussalam, the common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Act, shall be in force in Brunei Darussalam provided that the said common law, doctrines of equity and statutes of general application shall be in force in Brunei Darussalam so far only as the circumstances of Brunei Darussalam and of its inhabitants permit and subject to such qualifications as local circumstances and customs render necessary.”

<sup>77</sup> The Penal Code, Cap 22 (2001).

or the Sharia Penal Code Order). There are currently no clear guidelines on the identification of criminal jurisdiction.<sup>78</sup>

## **1.5 Court's System and Legal Interpretation**

Islamic criminal codes are prescribed under Quran. Legal procedures under Quran have savage sanctions for criminals and place importance on eye witness rather than speculations. If such legal procedures cannot be applied to a particular case, convention legal procedures will be applied instead.

In addition to Islamic legal system, the English legal system plays an important in Brunei, especially in the court system. In 1906 and 1908, the Court Enactment was imposed to prosecute civil and criminal cases and established the following courts; (1) The Court of the Resident, (2) Courts of Magistrate of the First Class, and (3) Courts of Magistrate of the Second Class, (4) Courts of Native Magistrates and (5) Courts of Kathis.

Brunei's court system is comprised of Courts of Justice and Sharia Courts. In Courts of Justice, the Court of Appeal is the highest Court in Brunei. The Sharia Courts accept criminal and civil trails outside jurisdictions of Court of Justice. In the Sharia Courts, a case concerning Islamic law will be trialed such as an application for adoption, inheritance, auctions, and other matters under Islamic law. However, there is no specialization court in Brunei which may cause inefficiency (delay of business case trials). In addition, Brunei's judges also lack expertise to trial specific-subject cases. The Justice Department is overseen by the head officer while the judicial system is overseen by the head judge.

### **1.5.1 The Courts of Justice**

The Courts of Justice adjudicate claims outside jurisdictions of the Sharia Courts. The hearing of the claims is conducted in English with Malay or other dialects translators if necessary. The judgments are in English. Rules concerning evidence are conducted in accordance with English law. However, the jury system in a criminal trial is not employed by Brunei's courts. A judge considers both facts and legal problems.

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<sup>78</sup> Oxford Business Group, Dual track: Common and sharia law systems are both in operation in the Sultanate, <http://www.oxfordbusinessgroup.com/overview/dual-track-common-and-sharia-law-systems-are-both-operation-sultanate>, accessed 27 January 2015.

### 1.5.1.1 The Subordinate Court

The Subordinate Court Act of 1983<sup>79</sup> requires the Sultan to establish the Magistrates Court and the Juvenile Courts, and relinquish a complicated system of court division<sup>80</sup>. The Magistrate Courts adjudicate a majority of cases in the countries. The Magistrates Courts are located in four locations - Banda Seri Begawan, Kuala Belait, Tutong, and Temburong.

The Juvenile Courts are located four areas - Banda Seri Begawan, Kuala Belait, Tutong, and Temburong. The Juvenile Courts have the jurisdiction over three main types of cases; criminal offence where the offender is under 18 years of age; youths that are not under parent's guardian rights, and youths that require special protection.

### 1.5.1.2 The Intermediate Court

The Intermediate Court established in 1991 is powered by the Intermediate Court Act<sup>81</sup>. Judges of the Intermediate Court are appointed by the Sultan. A case can be adjudicated with only one judge.<sup>82</sup> The Intermediate Court is an open court. The Court has jurisdictions over both civil and criminal cases. In a criminal case, the Court has no jurisdictions over a lawsuit with a death penalty.<sup>83</sup> In a civil case, the Court has jurisdictions over a lawsuit with an amount of disputed assets more than 50,000 Brunei Dollars but not exceeding 300,000 Brunei Dollars<sup>84</sup>, or other amounts indicated by the chief judge in the governmental gazette. The Court's jurisdiction covers an offence which has a genuine line with Brunei; for example, the offence is completed in Brunei, the offender resides or has a place of business in Brunei, or the offence is substantially committed in Brunei<sup>85</sup>.

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<sup>79</sup> The Laws of Brunei Darussalam Cap 6

<sup>80</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 312

<sup>81</sup> Intermediate Courts Act, Cap 162

<sup>82</sup> Intermediate Courts Act, Cap 162, Section 10 "every Intermediate Court shall be presided over by a Judge of the Intermediate Courts sitting alone."

<sup>83</sup> Intermediate Courts Act, Cap 162, Section 13 "Intermediate Courts shall not have jurisdiction... in respect of any offence punishable with death or with imprisonment for life..."

<sup>84</sup> Intermediate Courts Act, Cap 162, Section 14(1) "original jurisdiction in every action where the amount claimed or the value of the subject-matter in dispute exceeds \$50,000 but does not exceed \$300,000..."

<sup>85</sup> Intermediate Courts Act, Cap 162, Section 14(1) (a)-(c) "the defendant or any one of the defendants at the time of the institution of the action resides or carries on business or has property or personally works for gain in Brunei Darussalam; or...(c) the facts on which the action is based exist or are alleged to have occurred in Brunei Darussalam."



A decision of the Court can be appealed to the Court of Appeal. The judge in the Intermediate Court is appointed with a special role in overseeing qualifications of advocates and solicitors.

### **1.5.1.3 The Supreme Court**

The Supreme Court was founded in 1963 comprising of the Court of Appeal and the High Court. The Court of Appeal is responsible for all appeals of both criminal and civil cases.<sup>86</sup> The High Court has jurisdiction over appealed cases as well as insolvency law and certain inheritance matters.<sup>87</sup>

The Court of Appeal and the High Court are responsible for all civil administration of justice (independent of Sharia Law). Chief Registrar is the head of courts' management overseeing the whole justice system of Brunei.

The Court of Appeal and the High Court are under the Supreme Court Act and its subsidiary laws which regulate conducts of judges of the Court of Appeal and the High Court. The courts have jurisdictions over civil and criminal cases (including bankruptcy, insolvency, and inheritance) as well as appealed cases from Magistrates Courts. The chief judge and two other judges are required as a composition of the High Court's judges.

In the Court of Appeal, the chief judge and two other judges are required in a given trial. The Court of Appeal had jurisdiction over appealed civil and criminal cases from the High Court and the Intermediate Court. The Court of Appeal is the ultimate court for a criminal case. In a civil case, the Court of Appeal is the ultimate court for an appeal unless parties agree to refer the appeal to the Judicial Committee of the Privy Council.

### **1.5.1.4 The Judicial Committee of the Privy Council**

The Judicial Committee of the Privy Council is the last resort for a party in a civil case to appeal. The right of appeal to the Committee in a criminal case was cancelled in 1995. The right to appeal to the Committee has been strictly applied to a civil case since 1997. In addition to the Court of Appeal and the High Court being the ultimate courts, a civil case can be appealed to the Committee<sup>88</sup>. In the Commonwealth countries including

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<sup>86</sup> E. Ann Black, Gary F. Bell, see n. 2, p. 310.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

Brunei, the Committee acts as the last resort for the right to appeal<sup>89</sup>. An appeal coming from the Court of Appeal and the High Court will be sent to the Sultan and Yang Di-Pertuan, which then will refer such appeal to the Committee. Only civil claims falling under the special agreement between Queen Elizabeth and the Sultan can be appealed to the Committee<sup>90</sup>. The Committee is composed of the judge from the English Court of Appeal and the English Supreme Court who previously acted as Lord of Appeal in Ordinary.<sup>91</sup> The Judge from England takes leading roles in the trial. Besides the English judge, the Committee is comprised of former Brunei's judges from the Court of Appeal and the High Court. Principally, the composition of five judges is required for an appealed case concerning Commonwealth matters, and three judges for other matters<sup>92</sup>.

The General Attorney once stated that the appeal procedure under the Committee was to be maintained for the benefits of foreign investors who were not familiar with the Brunei's justice system.<sup>93</sup>

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<sup>89</sup> Judicial Committee of the Privy Council, Practice Directions, available at <https://www.jcpc.uk/procedures/practice-direction-01.html> (accessed on 17 November 2014).

<sup>90</sup> Brunei (Appeals) Act 1989 (1989 c.36), Brunei (Appeals) Order 1989 (S.I. 1989 No. 2396, as amended by Brunei (Appeals) (Amendment) Order 1998, S.I. 1998 No. 255).

<sup>91</sup> The Judicial Committee of the Privy Council, available at <https://www.supremecourt.uk/docs/beginners-guide-to-the-jcpc.pdf> (accessed on 17 November 2014)

<sup>92</sup> Judicial Committee of the Privy Council, Practice Directions, <https://www.jcpc.uk/procedures/practice-direction-01.html> (accessed on 17 November 2014).

<sup>93</sup> The speech by Yang Amat Mulia Pengiran Laila Kanun Diraja Pengiran Haji Bin Pengiran Haji Abbas, in the event of the Legal Year, February 1998.

Diagram 3: Court System of Civil Cases

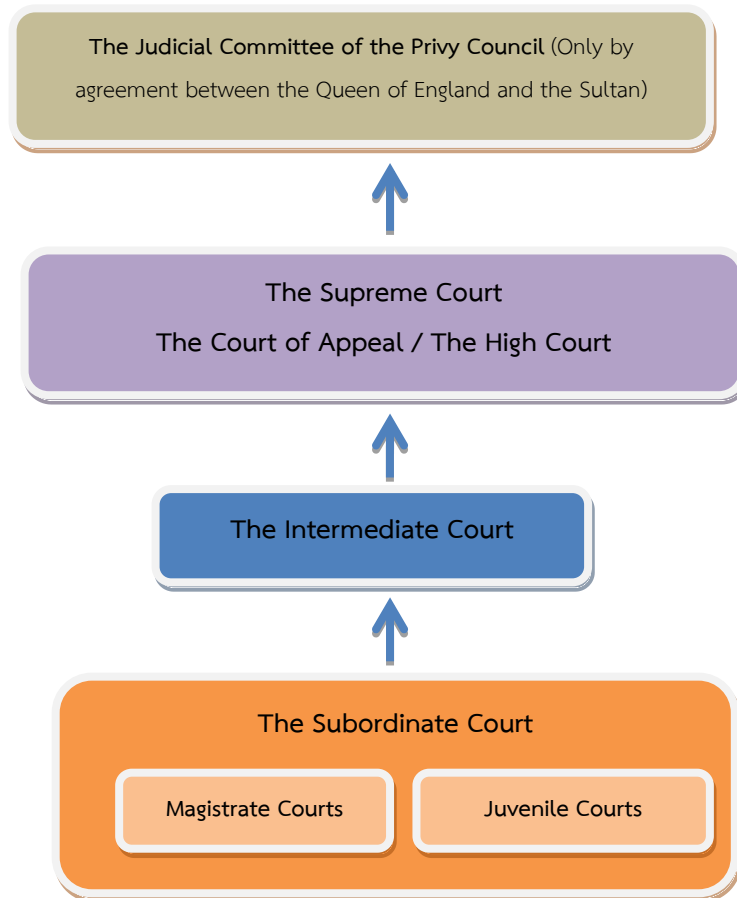
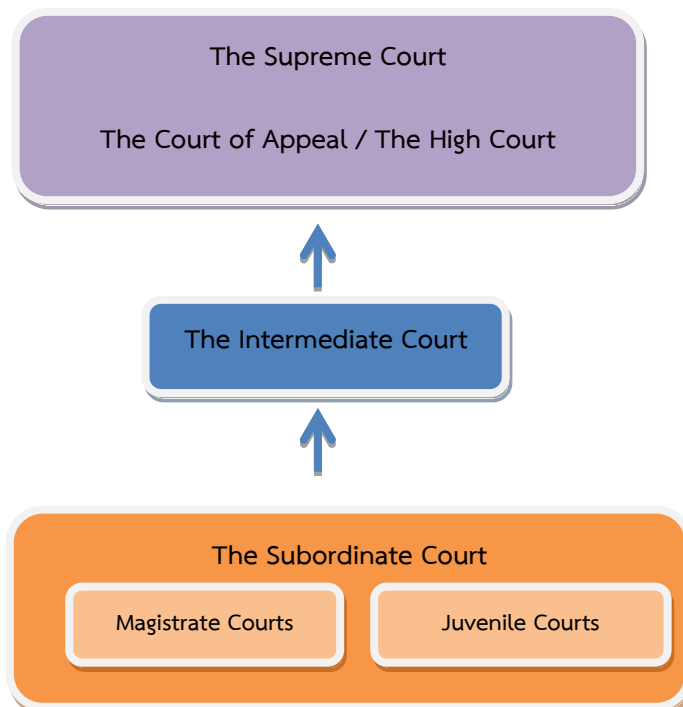


Diagram 4: Court System of Criminal Cases



### 1.5.2 Sharia Courts

The Sharia Courts are founded by the Sharia Court Act (2000)<sup>94</sup> consisting of the Sharia Subordinate Court, the Sharia High Court, and the Sharia Court of Appeal. The Sharia Courts have jurisdiction over civil and criminal cases falling under the Sharia Court's jurisdiction. In civil cases, the Sharia Court has jurisdiction over family law, succession law, and other matters falling under the Sharia Court's jurisdiction. In criminal cases, the Sharia Court has jurisdiction over offences stipulated in the Sharia Penal Code Order (2003)

The number of laws has been amended to serve the Sharia Court's jurisdiction; for example, the new Islamic family law (The Islamic Family Law Order of 1999) which has provisions over family matters, adoption and inheritance.<sup>95</sup> New rules concerning evidence have been formulated under the Sharia Courts Evidence Order 2001 and the Sharia Courts Civil Procedure Order of 2005, replacing previous evidence rules which are not applied to a case concerning Islamic law<sup>96</sup>. The language used in the Sharia Court is Malay and the documents are to be made in Jawi.<sup>97</sup>

#### 1.5.2.1 The Sharia Subordinate Court

In criminal cases, the Sharia Subordinate Court has jurisdiction over offences with penalty not exceeding 10,000 Brunei Dollars fine or not exceeding 7 years imprisonment or both.<sup>98</sup> In civil cases, the Sharia Subordinate Court has jurisdiction over a case with amount

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<sup>94</sup> The Syariah Court Act, Cap 184 (2000).

<sup>95</sup> E. Ann Black and Gary F. Bell, see n. 2, p. 314.

<sup>96</sup> *Ibid.*

<sup>97</sup> Syariah Courts Act, Cap 184, s7 (2) (a) and (b) "(a) No business shall be transacted at any meeting of the Privy Council if there are less than one-third of the Members of the Council (besides His Majesty the Sultan and Yang Di-Pertuan or other person presiding)...(b) If the number of Members of the Privy Council is not a multiple of 3..." See also Religious Council and Kadis Courts Act, Cap 7, s. 52 (1) and (2) "the language of the Court shall be Malay... (2) All documents and written proceeding maybe written or typewritten in either Jawi or Romanised Malay."

<sup>98</sup> Azrimah Binti Haji Abdul Rahman, Working paper for National day Seminar 2006 "Legal System in Brunei Darussalam after The Singing of The Supplementary Agreement 1905/1906 Between Brunei & Great Britain", [http://www.bruneiresources.com/pdf/nd06\\_azrimah.pdf](http://www.bruneiresources.com/pdf/nd06_azrimah.pdf) accessed 27 January 2015, p. 21.

of disputed asset not exceeding 500,000 Brunei Dollars or a case with inestimable assets. However, the Sultan has the power to increase jurisdiction in either case.<sup>99</sup>

### 1.5.2.2 The Sharia High Court

The procedures under the Sharia High Court are prescribed in the Sharia Court Act<sup>100</sup>. The Sharia High Court has the power to adjudicate claims concerning engagement, marriage, divorce and assets after divorce, guardian rights, harta sepencurian (property jointly acquired by a husband and wife under marriage), will, inheritance assets, or other matters prescribed by law to be under the jurisdiction of the Sharia High Court<sup>101</sup>. The jurisdiction includes a criminal offence under the Sharia criminal law.

### 1.5.2.3 The Sharia Appeal Court

The Sharia Appeal Court adjudicates a case appealed from the Sharia High Court. In order to appeal a case from the Sharia Subordinate Court to the Sharia High Court, such appeal needs to be approved by the Sharia Appeal Court which will grant an approval for an appeal in legal questions with public interests<sup>102</sup>. The Sharia Appeal Court prevails the Sharia High Court and can reverse a judgment of the Sharia High Court. In a case where a judge at the Sharia Appeal Court sees appropriate or a request is made by a concerning party, the Sharia Appeal Court can request for a hearing record of the Sharia High Court and suspend the procedure. The Sharia Appeal Court is able to make recommendations to the Sharia High Court if necessary to sustain justice<sup>103</sup>.

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<sup>99</sup> Section 16 (2) of the Syariah Courts Act Cap (184) “His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Chief Syar’ie Judge from time to time, by notification in the Gazette, increase the civil jurisdiction of the Syariah Subordinate Courts.”

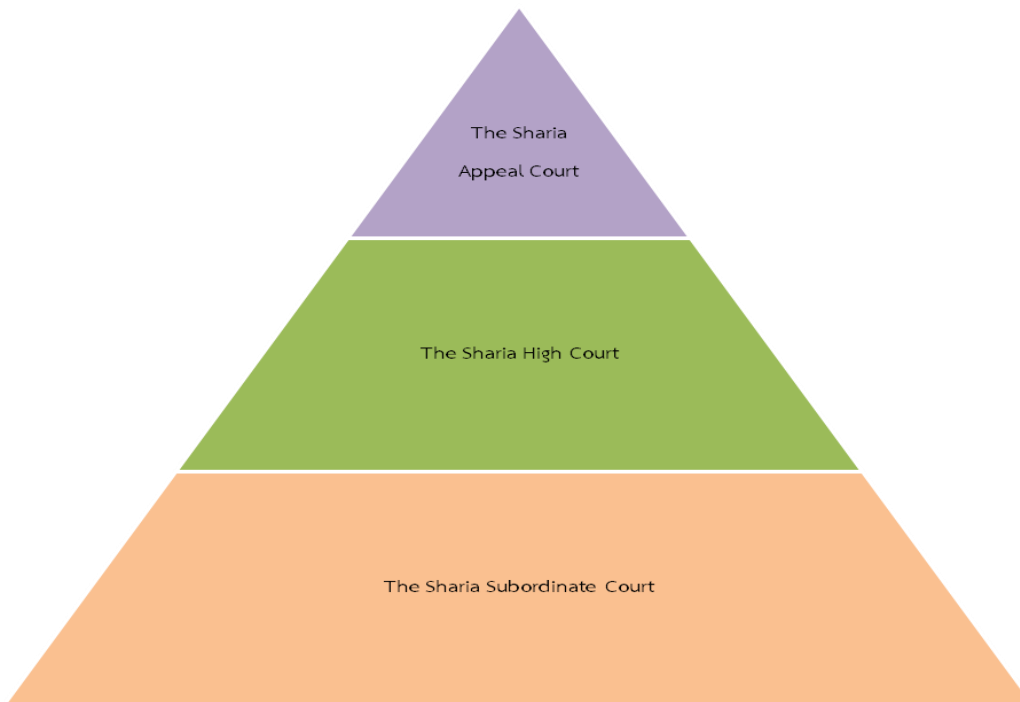
<sup>100</sup> Sharia Court Order, Cap 184.

<sup>101</sup> Sharia Court Order, Cap 184, s15(b).

<sup>102</sup> Sharia Courts Act, Cap 184, s 20 (1).

<sup>103</sup> Sharia Courts Act, Cap 184, s 21 (1)-(2).

Diagram 5: The Sharia Court System



## 1.6 Legal Enforcement and Practical Problems

### 1.6.1 Overview of Brunei's Justice System

#### 1.6.1.1 Criminal Justice

The police retain an initial function of criminal justice in capturing wrongdoers and criminals for further investigations by the state prosecutors. The state prosecutors then have the power to decide whether to send the case for court trials. Brunei has a medium-level crime rate.<sup>104</sup> Most crimes are small offences such as thievery. The crime rate tends to increase in July and December each year due to school holidays and public holidays.<sup>105</sup> The Brunei Police Force are effective in suppressing crimes which normally manage to reach the crime scene within 30 minutes after being notified.<sup>106</sup>

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<sup>104</sup> Ranked by the Overseas Security Advisory Council (OSAC), United Department of States (2012). <https://www.osac.gov/pages/AboutUs.aspx> (accessed 27 January 2015).

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

### 1.6.1.2 Civil Justice

Most civil cases involve breach of contracts or remedy for damages. Initially, an aggrieved person needs to procure an attorney to represent the case before court. The court trail needs to be conducted under the Supreme Court Rules which stipulate jurisdictions, hearing process, forms and documents.

## 1.6.2 Brunei's Institutions on Legal Enforcement

### 1.6.2.1 The Brunei Royal Police Force

Established in 1921, the Brunei Royal Police Force has main functions to arrest an offender and refer to other judicial bodies for further actions. Besides arresting an offender to bring justice to the society, the Brunei Royal Police Force had other functions in the past including fire brigading, prisoners' control, immigration, vehicle registration and issuing relevant permits.

Today, Brunei has changed the structure of the Brunei Royal Police Force in order to increase efficiency and to enforce law effectively. The immigration department was separated from the Brunei Royal Police Force in 1958<sup>107</sup>. The Brunei Royal Police Force has seven regional offices<sup>108</sup>. The Brunei Royal Police Force in each region is divided into four departments; (1) execution and finance, (2) organizational strategy, (3) investigation, and (4) administration and support. The Brunei Royal Police Force's operations are reviewed by Ombudsman, the Royal Police Commander and the Vice Commander of the Royal Police.

Brunei is among many countries with the highest ratio of numbers of policemen to citizens. Compared with other ASEAN nations, Brunei has the best ratio of numbers of policemen to population.

**Table 2: Ratio of Policemen per 100,000 populations**

Rank	Country	Ratio of Policemen Per 100,000 populations
1	Brunei	1086.5
2	Singapore	396.4
3	Malaysia	354.0
4	Thailand	321.0

<sup>107</sup> *Ibid.*

<sup>108</sup> Brunei, Belait, Muara/Marine, Tutong, Temburong, Jerudong, and Berakas Police Districts.

Rank	Country	Ratio of Policemen Per 100,000 populations
5	Philippines	131.9
Global average ratio		341.8

Source: United Nations Office on Drugs and Crime (UNODC) and European Institute for Crime Prevention and Control, *International Statistics on Crime and Justice*, (eds.) S. Harrendorf, M. Heiskanen, and S. Malby, 2010, pp. 135-136.

The Brunei Royal Police Force's operation is overseen by the Brunei Royal Police Force Act which regulates an appointment to office, management, duties of the police, and sanctions for misconduct. In accordance with the Act, the police are prohibited from following actions while performing duties<sup>109</sup>

- absence from duty without leave or good cause
- sleeping on duty
- conduct to the prejudice of good order and discipline
- discreditable conduct
- disobedience of Police Regulations, or any Orders made under this Act or any Orders of a superior police officer whether written or oral
- being unfit for duty through intoxication
- insubordination or oppressive conduct
- neglect of duty or orders
- malingering
- falsehood or prevarication
- excess of duty resulting in loss or injury to any other person
- willful destruction or negligence loss of or injury to property belonging to the government
- engaging in trade or other employment without the permission of the Commissioner
- breach of confidence
- corrupt practice

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<sup>109</sup> Royal Brunei Police Force Act, Cap 60, Art. 25 (2) (a) - (o) "where the Commission or on authorized police officer finds a subordinate police officer of any of the following offences (a) absence from duty without leave or good cause (o) corrupt practice."



If a policeman is found guilty of performing one of the actions above, the Ombudsman has the power to withdraw such policeman from the office or impose other sanctions relative to the level of severity including demoting, decreasing the salary, or warning<sup>110</sup>. Generally, the Brunei police execute functions in accordance with the law. Misconduct is rare.<sup>111</sup> However, in a case of severe misconduct, the Sultan can send a direct order to sanction such policeman<sup>112</sup>.

### 1.6.2.2 The Internal Security Department

The Internal Security Department has functions in maintaining the nation's internal security. The Internal Security Department Act (1983) grants the Department with the power of seizure and detention of a suspect who commits an offence relating to the nation's security such as the government overthrow, organized crimes and other offences to national security<sup>113</sup>. The Act empowers the government to order a detention without trial to any suspect for the maximum of two years extendable by the Sultan's approval<sup>114</sup>. In addition, the Act grants the power to an appointed officer to seize any suspect believed to commit an offence related to the nation's security without warrants<sup>115</sup>.

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<sup>110</sup> Royal Brunei Police Force Act, Cap 50, Art. 25 (2) (i) - (iv) "where the Commission or on authorized police officer finds a subordinate police officer of any of the following offences (i)reduction in rank , grade seniority or salary (iv) caution."

<sup>111</sup> United States Department of State, Brunei: Bureau of Democracy, Human Rights, and Labor, available at <http://www.state.gov/j/drl/rls/hrrpt/2006/78767.htm> (accessed 12 November 2014).

<sup>112</sup> Mahidi Waleed P.D., Wake Up Call to Country's Law Enforcement Agencies, Borneo Bulletin, 17 September 2010.

<sup>113</sup> Internal Security Act, Cap 133, Objective (1983) "an Act to provide for the internal security of Brunei Darussalam, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property in specific areas of Brunei Darussalam, and for matters incidental thereto."

<sup>114</sup> Internal Security Act, Cap 133, Article 3 "if His Majesty the Sultan and Yang Di-Pertuan is satisfied with respect to any person that, in order to prevent that person from acting in any manner prejudicial to the security of Brunei Darussalam or any part thereof ... , the Minister\* shall make an order directing that such person be detained for any period not exceeding 2 years..."

<sup>115</sup> Internal Security Act, Cap 133, Article 18 "any officer or person authorised to exercise the powers of entry or investigation under section 17 may, without warrant and with or without assistance, enter any premises..."

Article 19 "any officer or person authorised to exercise the powers of entry or investigation ... may seize any document or other thing in respect of which he reasonably believes an offence to have been committed under this Chapter..."

### 1.6.2.3 Attorney General's Chambers

The Attorney General's Chambers have the main responsibility to act as the government's legal advisor in civil and criminal matters.<sup>116</sup> The Attorney General has the prerogative power vested by the Constitution to prosecute criminal proceedings.<sup>117</sup> Besides aforementioned duties, the Attorney General assumes other functions as follows.<sup>118</sup>

- Give legal advice to all governmental bodies and all its delegates including state-owned enterprises
- Drafting and reviewing contracts and legal documents on behalf of the government
- Represent the government in civil claims
- Negotiate and draft treaties and international agreements
- Drafting laws for the government
- Manage and protect intellectual property rights
- Take part in meetings and conferences at international level and report to the government including making recommendations on bringing domestic laws to conform with international obligations
- Research and improve domestic laws

### 1.6.3 Problems of Legal Enforcement in Trade Matters

In terms of intellectual property rights' enforcement, Brunei was considered one of nations to have high level of infringements on intellectual property rights in 2012.<sup>119</sup> Most infringed products are CDs, musical records, and computer software. Pirated CDs amount to 30 per cent of all domestic CD sales whereas infringed computer software peaks at 66 per

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<sup>116</sup> The Constitution, Section 81“(1) There shall be an Attorney General who shall be appointed by His Majesty the Sultan and Yang Di-Pertuan by notification published in the Gazette (2) The Attorney General shall advise on all legal matters connected with the affairs of Brunei Darussalam referred to him by His Majesty the Sultan and Yang Di-Pertuan or by the Government..”

<sup>117</sup> The Constitution, Section 374 (1) “the Attorney General shall be the Public Prosecutor and shall have the general direction and control of criminal prosecutions and proceedings under this Code or under any other written law...”

<sup>118</sup> ASEAN Law Association, see n. 6, pp. 7-8.

<sup>119</sup> International Intellectual Property Alliance (IIPA), 2012 Special Report on Copyright Protection and Enforcement: Brunei, available at <http://www.iipa.com/rbc/2012/2012SPEC301BRUNEI.PDF> (accessed 27 January 2015).

cent of all domestic computer software sales. Brunei faces obstacles in enforcing intellectual property rights as follows.

- Slow court process (most IP cases take longer than 2 years)
- Light penalty for IP infringers creating less effect on deterring crimes
- Difficulties in capturing wrongdoers due to a requirement that a warrant needs to be present in every capture by police

#### **1.6.4 Problems of Islamic Legal Enforcement**

Brunei officially announced to incorporate traditional punishments of Sharia Law into the nation's criminal code and to enforce them within 2014. These punishments include severing of limbs, flogging, and stoning to death<sup>120</sup>. Many countries including the United Nations condemn the harsh punishments brought about by Sharia Law which are tantamount to a torture. Many countries and international organizations request Brunei to change the savaged punishments to conform to international standards of criminal sanctions. However, Brunei insists to continue with the Sharia Law's enforcement claiming that they are appropriate sanctions to suppress crimes.

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<sup>120</sup> BBC, Brunei Introduces tough Islamic Penal Code, 30 April 2014, available at <http://www.bbc.com/news/world-asia-27216798> (accessed on 15 November 2014).



## Chapter 2

### Foreign Trade in Goods and Trade in Services

#### 2.1 Introduction

Brunei is a member of the World Trade Organization (WTO) since 1995. Therefore, Brunei is bound by obligations from WTO agreements such as General Agreement on Tariffs and Trade (GATT: 1994), General Agreement on Trade in Services (GATS), and enabling clause<sup>121</sup>. Moreover, Brunei has concluded a number of regional trade agreements (RTAs) such as ASEAN Trade in Goods Agreement (ATIGA), ASEAN-Australia-New Zealand FTA, and ASEAN-China FTA. These agreements bound Brunei to reduce tariffs on imported products to the agreed rates.

Brunei is also under an obligation to adjust domestic laws in conformity with these agreements. There are a number of domestic legislations relating to foreign trade and investment as follows.

#### 2.2 Laws concerning foreign trade in goods and trade in services

##### 2.2.1 Foreign Employment Law

There are a few legislations concerning foreign employment in Brunei. The Employment Order (2009) identifies rights of employers and employees as well as regulates foreign employments in Brunei. The Immigration Act (Cap 17, 1954)<sup>122</sup> regulates an entrance of foreigners into Brunei's territory based on requirements set out below.

##### 2.2.1.1 Requirements on Foreign Employment

Covered professions to which the rules apply are all professions from junior level to executive level except administrative and related officers, drivers, and security guards. For the covered professions, an employer is required to apply for a foreign working licence

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<sup>121</sup> Enabling Clause is a decision of the GATT Contracting Parties to allow preferential treatments to developing country members of the GATT.

<sup>122</sup> Pursuant to the Labor Act (Chapter 93), 1954.

at the Commissioner of Labour Brunei Darussalam.<sup>123</sup> A foreign employee must have a working visa issued by the Director of Immigration of Brunei Darussalam and a foreign working licence order to work in Brunei.<sup>124</sup> A business organization which employs a foreign employee must legally obtain a licence from the Commissioner to do so, and must register with the Legal Department of Brunei Darussalam.<sup>125</sup>

### 2.2.1.2 Requirements on a Foreign Working Licence

A foreigner wishing to work in Brunei is required to apply for a two-year working employment licence. In order to apply, the foreigner must have a working visa.

Any foreigner with more than three-month foreign working licence is required to register for a renewable Brunei Darussalam (Green) Identity Card which is valid to the length of foreign working licence. The foreign employee must return to home country when he/she completes a two-year working contract. A foreigner can apply for a three-year working licence at the Commissioner of Labour Brunei Darussalam. If the Commissioner approves the employment, the Immigration Office will issue the foreign working licence. The Commissioner requires the licence holder to open a saving account to deposit some money equivalent to a one-way air ticket fare to his/her home country as a warrantee. The licence cannot be amended within six months. The licence holder will not be allowed to work unless the hiring organization is legally registered with the Legal Department of Brunei Darussalam.<sup>126</sup>

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<sup>123</sup> Employment Order, 2009, Section 112 states that “No person shall knowingly employ any immigrant employee unless he has obtained a licence from the Commissioner to do so in such form and subject to such conditions as the Commissioner may determine:

Provided that where an immigrant employee is found at any premises or place and is in possession of any tools or other implements or is engaged in any activity which may give rise to the inference that he is doing any work, the occupier of such premises or place shall, until the contrary is proved, be presumed to have employed him knowing that he is an immigrant employee.”

<sup>124</sup> ASEAN investment guide book: BRUNEI DARUSSALAM, Department of Trade Negotiations, Ministry of Commerce, 1<sup>st</sup>, 2014, p. 102

<sup>125</sup> Law of Brunei, Chapter 93 Labor, Section 118(1) states that “No person shall knowingly employ any immigrant worker unless he has obtained a licence from the Commissioner to do so in such form and subject to such conditions as may be prescribed unless such worker has been brought before the Commissioner for the purpose of subsection (2) of section 50.”

<sup>126</sup> ASEAN investment guide book: BRUNEI DARUSSALAM, Department of Trade Negotiations, Ministry of Commerce, 1<sup>st</sup>, 2014, p. 103

A company cannot terminate a currently hired local worker in order to substitute the position with a foreign worker.<sup>127</sup>

## 2.2.2 International Law and International Agreement acceded by Brunei

### 1) The World Trade Organization (WTO)

Brunei became a member of the WTO in 1995. There has been no WTO dispute concerning with Brunei. The table below displays existing obligations of Brunei under WTO Agreements.<sup>128</sup>

**Table 3: Brunei’s Obligations under the WTO (2008-2014)**

WTO Agreement	Article	Obligation
Enabling Clause	Paragraph 4 (a)	Regional Trade Agreements (RTAs)
	Paragraph XXIV (a)	Free Trade Agreements (FTAs)
General Agreement on Trade in Services: GATS)	Article V: 7 (a)	Economic Integration Agreements
Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping)	Article 16.5	Authorities and Procedures
Agreement on Sanitary and Phytosanitary Measures (SPS)	Article 7, Annex B	SPS Regulations
Agreement on Technical Barrier to Trade (TBT)	Annex 3C	Code of Good Practice

Source: WTO Secretariat, 2004

<sup>127</sup> Employment Order, 2009, Section 113 states that “No employer shall, without reasonable grounds, terminate the contract of service of a local employee for the purpose of employing an immigrant employee.”

<sup>128</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 18

## 2) Regional Trade Agreements (RTAs)

Presently, Brunei has acceded 8 regional trade agreements as follows:<sup>129</sup>

- (1) ASEAN Trade in Goods Agreement (ATIGA) which liberalizes goods trade and abolishes tariffs among ASEAN members, namely, Thailand, Singapore, Malaysia, Indonesia, Philippines, Cambodia, Laos, Myanmar, and Vietnam.
- (2) ASEAN-Australia-New Zealand FTA which liberalizes trade and abolishes tariffs among ASEAN members, Australia and New Zealand.
- (3) ASEAN-China FTA which liberalizes trade and abolishes tariffs among ASEAN members and China.
- (4) ASEAN-India FTA which liberalizes trade and abolishes tariffs among ASEAN members and India.
- (5) ASEAN-Japan Comprehensive Economic Partnership which harmonizes trade and steers closer economic integration among ASEAN members and Japan.
- (6) ASEAN-Korea FTA which liberalizes trade and abolishes tariffs among ASEAN members and Korea.
- (7) Brunei-Japan FTA which liberalizes trade and abolishes tariffs among Brunei and Japan.
- (8) Trans-Pacific Strategic Economic Partnership which harmonizes trade and steers closer economic integration among Brunei, Chile, Singapore and New Zealand.

## 3) ASEAN Economic Community (AEC)

ASEAN integration started with an Association of Southeast Asian Nations (ASEAN) under the Bangkok Declaration in 1967 with an aim to fend off political interference from the region.<sup>130</sup> Indonesia, Malaysia, Philippines, Singapore and Thailand are the first six countries which signed the Bangkok Declaration. Later, Brunei joined in 1984. Vietnam joined in 1995. Both Laos and Myanmar joined in 1997. The last country which joined ASEAN in 1998 is Cambodia.

In 2003, all ASEAN members signed the Bali Concord II which would set up the ASEAN Community (AC) within 2015. The ASEAN Charter is promulgated to lay out legal

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<sup>129</sup> *Ibid*, p. 27

<sup>130</sup> Department of Trade Negotiations, Ministry of Commerce, ASEAN Economic Community: AEC, November, 2009, p.9



and institutional framework of the ASEAN as well as establishing targets for all member states to achieve. The ASEAN Community comprises of 3 pillars - (1) the ASEAN Political and Security Community (APSC), (2) the ASEAN Economic Community (AEC), and (3) the ASEAN Socio-Cultural Community (ASCC).<sup>131</sup>

### **2.2.3 The Essence of Brunei's ASEAN Obligations**

The ASEAN Economic Community provides for the harmonization and mobilization of goods, services, investment, and skilled labors,<sup>132</sup> which are obligations from the following ASEAN agreements.

#### **1) The ASEAN Trade in Goods Agreement (ATIGA)**

The ATIGA is conceived by the AEC Blueprint. The agreement aims to create a single market and production base with free flow of goods, services, investment, skilled labor, and capital. The agreement has been in force since 17 May 2010. The agreement is an important ASEAN instrument to liberalize trade in goods and regulate import and export measures.

#### **2) The ASEAN Framework Agreement on Services (AFAS)**

The AFAS aims to enhance cooperation in services trade within the region in order to strengthen competitiveness among the region's service providers. The agreement aims to liberalize services trade in a deeper and wider manner than the GATS. The ASEAN services negotiation is materialized in rounds of negotiations to meet the ASEAN liberalization target in 2015.

#### **3) The ASEAN Comprehensive Investment Agreement (ACIA)**

The ACIA aims to liberalize investment and create transparency in order to attract intra-ASEAN investment as well as outer-ASEAN investment. The agreement covers 4 main elements, which are, (1) liberalization, (2) investment promotion, (3) investment facilitation, and (4) investment protection which covers both foreign direct investment (FDI) and portfolio investment. The coverage of the agreement apply to investments in the following

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<sup>131</sup> *ibid*, p. 24

<sup>132</sup> Declaration of ASEAN Concord II (Bali Concord II), available online at <http://www.asean.org/news/item/declaration-of-asean-concord-ii-bali-concord-ii> (accessed on 15 April, 2015).

sectors; agriculture, fishery, forestry, mining and quarrying, manufacturing, and services incidental to the aforementioned sectors.

#### 4) The ASEAN Mutual Recognition Arrangements (MRAs)

The MRAs recognize professional qualifications from different ASEAN member states to encourage free flow of professionals within the region. At the moment, the ASEAN has achieved qualification recognitions for 8 professions, namely, doctors, dentists, accountants, surveyors, architects, nurses, engineers, and tour operators (except tour guides).

### 2.3 Import and Export

Brunei collects only customs duties. Different rates apply to different types of goods. Generally, food and goods for manufacturing such as machines are exempted from customs duties.<sup>133</sup> A customs duty for a cigarette is levied at 25 Brunei Cent per each cigarette if less than 500 cigarettes (or 250 grams of tobacco) are imported in Brunei each time. If more than 500 cigarettes are imported in Brunei, more than 200% customs rate will be applied.

Goods imported in Brunei are generally subject to customs duties except goods in exemption list in accordance with the Royal Customs and Excise Department (RCED) under Ministry of Finance which adheres to commitments under the ASEAN Trade in Goods Agreement overseen by Ministry of Foreign Affairs and Trade.<sup>134</sup>

Most customs duties are ad valorem rates<sup>135</sup> on the sale price of goods (e.g. 20% of the sale price). A few types of goods are levied in specific rates on weight or quantity (e.g. 60 Brunei Dollars per kilogram). The classification of customs is stipulated in accordance with the customs duty announcement in 2007.

Brunei abolished export duties since 1973 to promote local businesses. The Customs Order (2006) and the Customs Import Duties Order (2007) are the main instruments in regulating the customs duties.

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<sup>133</sup> ASEAN Tax Guide, KPMG Asia Pacific Tax Centre, November, 2013 p. 16

<sup>134</sup> Paige McClanahan, Alexander Chandra, Ruben Hattari and Damon Vis-Dunbar, Taking Advantage of ASEAN's Free Trade Agreements, A GUIDE FOR SMALL AND MEDIUM-SIZED ENTERPRISES, January 2014, p. 11

<sup>135</sup> Brunei Darussalam Tax Profile, KPMG Asia Pacific Tax Centre, April 2013, p. 8

### 2.3.1 Import and Export Procedures

The Brunei Darussalam National Single Window (BDNSW) starting in January 2014 enables an import/export person to file for e-Custom<sup>136</sup> with required documents and procedures as follows.

#### 1) Required Documents for Import and Export

All imports and exports must declare necessary documents for customs clearance and inspections. The documents must indicate quantity, descriptions, value, and origin and destination country, etc.

The lists of required documents are:<sup>137</sup>

- (1) Invoice or a purchase bill
- (2) Freight and insurance payment slips
- (3) Delivery order or airway bill
- (4) Packing list
- (5) Custom declaration form (at least 3 copies which information such as quantity, descriptions, weight, value – F.O.B. and C.I.F., country of origin and country of destination)
- (6) Other documents required by the Customs Department<sup>138</sup> such as;
  - (6.1) Certificate of origin
  - (6.2) Certificate of analysis
  - (6.3) Approval permit of the RCED
  - (6.4) Import license issued by the relevant Government Department/Agencies
  - (6.5) Verification certificate of a recognized foreign agency
  - (6.6) Other relevant documents

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<sup>136</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2015, p. 26

<sup>137</sup> Custom Import Duty, Custom Matters, KEMENTERIAN KEWANGAN, Ministry of Finance, <http://www.mof.gov.bn/index.php/royal-custom-matters/customs-procedures/custom-import-duty>, accessed on 1 December 2014.

<sup>138</sup> Customs Order, 2006, Section 99 states that “on demand of the proper officer of excise, the importer of any goods, or his agent, shall produce to such officer all invoices, bill of lading, certificates of origin or of analysis and any other documents, which such officer may require to test the accuracy of any declaration made by such importer to any officer of excise.”

An importer of goods must register at the port of entry and must have a relevant license issued by responsible authorities related to such goods (e.g. plant, fish, poultry, salt, sugar, rice, medicines, gambling equipments, used vehicles, etc.)

Sanitary or phytosanitary certificates from an exporter country are required to accompany a license to import vegetables, fruits, meat, meat products, poultry and fish. Open general licenses<sup>139</sup> are required for other products under no specific prohibition.

## 2) Import and Export Procedures

From the information on maritime shipping at Muara, Bandar Seri Begawan, Brunei<sup>140</sup>, the procedures and duration for import and export are as follows:

### 2.1) Import procedures

Table 4: Procedures, duration, and estimated costs for import

Procedures	Time (Day)	Costs (US\$)
Customs clearance and inspections	1	80
Document preparation	11	150
Inland transportation and handling	1	225
Ports and terminal handling	2	315
Total	15	770

Source: The World Bank (2015)

### 2.2) Export procedures

Table 5: Procedures, duration, and estimated costs for export

Procedures	Time (Day)	Costs (US\$)
Customs clearance and	2	50

<sup>139</sup> Custom Import Duty, Custom Matters, KEMENTERIAN KEWANGAN, Ministry of Finance,

<http://www.mof.gov.bn/index.php/royal-custom-matters/customs-procedures/custom-import-duty>, accessed on 1 December 2014.

<sup>140</sup> Doing Business 2015, Brunei Darussalam, 12 edition, A World Bank Group, p. 67

Procedures	Time (Day)	Costs (US\$)
inspections		
Document preparation	11	190
Inland transportation and handling	3	225
Ports and terminal handling	3	240
Total	19	705

Source: The World Bank (2015)

Controllers of Customs are in charge of making decisions on goods inspections. If any party is unsatisfied with the decision, the party can appeal such decision to the Minister. The Minister's decision is final unless an absolute power is conferred to Controllers of Customs by specific laws to make decisions.<sup>141</sup>

### 2.3.2 Import Customs Valuation

Import customs evaluation is conducted in accordance with the Customs Valuation of Imported Goods Rules (2001) which adheres to the international standard of the WTO (the GATT Valuation). The GATT Valuation employs 6 methods as follows.<sup>142</sup>

#### Method 1: Transaction Value

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller such as supplementary equipment payments, agency payments, loyalty payments, etc.

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<sup>141</sup> Customs Order, 2006, Section 161 states that "where it is provided in this Order that the decision on any matter rests with the Controller, except in the case of a decision made pursuant to section 43 or 59, any person aggrieved by such decision may within 14 days thereof appeal to the Minister whose decision shall be final."

<sup>142</sup> In accordance with customs rules of the GATT (General Agreement on Tariff and Trade).  
<http://www.customs.go.th/wps/wcm/connect/Library+cus501th/InternetTH/4/6AA6AA488B686ABDC053C983B1AF9E09>  
 accessed on 2 December 2014.

### **Method 2: Transaction Value of Similar Goods**

The transaction value is calculated in the same manner on similar goods if goods closely resembling the goods being valued in terms of component materials, characteristics, function. The goods must be capable of performing the same functions and are commercially interchangeable with the goods being valued, and are produced in the same country as and by the producer of the goods being valued.

### **Method 3: Transaction Value of Identical Goods**

The transaction value is calculated in the same manner on identical goods if the goods are the same in all respects including physical characteristics, quality, and reputation. The goods must be produced in the same country as the goods being valued. The transaction takes into account insurance cost, transportation cost to the port, loading cost, and other managerial cost relating to bringing goods to the port.

### **Method 4: Deductive Value**

When customs value cannot be determined on the basis of the transaction value of the imported goods or identical or similar goods, it will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. Such value will be calculated after deducting some payments such as agency cost, transportation and insurance arising in the importing country, internal tax in the importing country, value added cost from addition components of goods.

### **Method 5: Computed Value**

Computed value determines the customs value on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. Computed value includes packaging cost, transport cost and insurance cost.

## Method 6: Flexible and Reasonable Method

Customs value may be determined using reasonable means. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.

The customs valuation should be used in order starting with the method 1. If the method 1 is inapplicable, the method 2 is to be used respectively.

### 2.3.3 Customs Collection

The main legislation for the customs collection is the Customs Order (2006) which regulates responsibilities of customs officers as well as important rules relating to import-export, customs procedures, declaration of goods, warehousing, inspection documents, confiscation of goods, customs return, inquiries, liabilities and penalties.<sup>143</sup>

Generally, a person wishing to import goods into Brunei must declare goods which are dutiable for inspection whether such goods are with that person, in a luggage or in a vehicle. A person who fails to declare goods to the inspection officer or gives false information will be subject to a fine or imprisonment.<sup>144</sup>

Table 6: Dutiable goods and rate<sup>145</sup>

Dutiable goods	Customs rate
Unroasted coffee	11 Brunei Cent/1 kilogram
Roasted coffee	22 Brunei Cent/ 1 kilogram
Tea	22 Brunei Cent/ 1 kilogram

<sup>143</sup> Customs Order, 2006, Part 2-15

<sup>144</sup> Customs Order, 2006, Section 145 (1) states that “any person who, being required by this Order to answer any question put to him by any proper officer of excise, or to give any information or produce any document which may reasonably be required of him by the officer and which it is in his power to give —

(a) refuses to answer the question or does not truly answer the question;

(b) refuses to give such information or produce such document; or

(c) furnishes as true any information or document which he knows or has reason to believe to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding \$8,000, imprisonment for a term not exceeding one year or both.”

<sup>145</sup> Custom Import Duty, Custom Matters, KEMENTERIAN KEWANGAN, Ministry of Finance,

<http://www.mof.gov.bn/index.php/royal-custom-matters/customs-procedures/custom-import-duty>, accessed on 7 December 2014.

Dutiable goods	Customs rate
Instant coffee/ instant tea/ non-dairy creamer	5%
Grease	11 Brunei Cent/ 1 kilogram
Lubricating oil	44 Brunei Cent/ 1 kilogram
Carpet and other fabricated materials for laying on the floor	5%
Mattress and matting sheet	10%
Wood and wooden product	20%
Shoes and other products with the same functioning as shoes	5%
Cosmetics, perfume, soap, shampoo, etc.	5%
Car products	20%
Jewelry and other artificial jewelry	5%
Clocks, watches and their components	5%
Musical instruments	10%

Source: Ministry of Finance (2014)

### 2.3.4 Import and Export Prohibition

The Customs Order (2006) in Article 31 grants power to the Minister of Finance to consider goods bound for import and export prohibition. Presently, Brunei restricts importation and exportation of certain products for reasons relating to health, public morals, security, environment, and religion.<sup>146</sup> The import restriction lists are as follows.

#### Group 1 Prohibited Import<sup>147</sup>

Brunei controls consumption of alcoholic beverages by prohibiting sale of alcoholic beverages. However, an importation of alcoholic beverages is allowed for a non-Muslim person who is entitled, in each entrance into the country, to bring no more than 2 bottles

<sup>146</sup> Custom Import Duty, Custom Matters, KEMENTERIAN KEWANGAN, Ministry of Finance, <http://www.mof.gov.bn/index.php/royal-custom-matters/customs-procedures/custom-import-duty>, accessed on 3 December 2014.

<sup>147</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 33



of alcoholic beverages in Brunei (each bottle must contain no more than one liter in quantity) and no more than 12 bottles of beer for personal consumption/use.<sup>148</sup> In addition, Brunei prohibits the importation of the following products.

**Table 7 : Prohibited Imports**

<b>Prohibited products</b>	<b>Reasons for prohibition</b>
Dangerous drugs (e.g. opium, heroin, morphine)	Health and morals
Java sparrows	They are prohibited under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) <sup>149</sup>
Live animals from countries with Foot and Mouth Disease (FMD)	Health
Fire crackers (known as double bangers)	Safety and security
Salk polio vaccine	Health
Vaccines of Chinese Taipei origin	Health and security
Arms and ammunition	Security
Fabric of tissue bearing the imprint of any currency or bank notes/coins	Security
Cigarettes without health warning written on packaging	Health
Shark products	Food security and environment

Source: Trade Policy Review Body, WTO (2014)

<sup>148</sup> Customs Order, 2006, Section 74 (1) states that “No person shall sell by retail or offer for sale by retail, or permit to be sold or offered for sale by retail, or have in his possession for sale by retail, any intoxicating liquor whether for consumption on or off the premises of the vendor except under and in accordance with a licence issued under this Part and in a place specified in the licence.”

<sup>149</sup> Brunei Darussalam joins in 1990.

## Group 2 Restricted Imports<sup>150</sup>

An importer of products listed as restricted imports is required to request for an approval to import the restricted products from relevant authority as shown in the table below.

**Table 8: Restricted imports**

Restricted products	Reasons for restrictions	Authorities to request for import approval
Eggs for hatching purposes and fresh eggs unless clearly stamped in non-erasable ink or similar substance with the word "IMPORTED" on the shell of each egg	Health To prevent introduction of zoonotic poultry diseases (e.g. Avian Influenza)	Department of Agriculture and Agrifood: DOAA)
Any living plant or planting material, plant products and soil	To prevent the introduction of exotic plant pest and diseases	Department of Agriculture and Agrifood: DOAA)
Live animals (e.g. cattle, sheep, goats, poultry, and birds)	To prevent the introduction of animal diseases	Department of Agriculture and Agrifood: DOAA)
Pin tables, fruit machines, slot machines and any other machines of like nature whether involving an element of chance or not	To prevent illegal gambling activities	Ministry of Home Affairs
Poisons and deleterious drugs	Health	Narcotics Control Bureau
Rice paddy and the products thereof, and separated, skimmed or whole milk	Security of supply and price stability	Supply and State Stores Department: SSSD

<sup>150</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 34

Restricted products	Reasons for restrictions	Authorities to request for import approval
Separated skimmed or filled milk	Food safety and health	Ministry of Health
Persian glue	Health	Ministry of Health
PohKa, PohKah or PohKau; Koyoh or Koyok; LiowKo, Ch'owKo	To prevent illegal gambling activities	Ministry of Home Affairs
Sugar, salt	Security of supply and price stability	Supply and State Stores Department: SSSD
Converted timber	Security of supply and price stability	Forestry Department
Used and reconditioned vehicles (5 years or older) including motorcars, motorcycles, lorries, omnibuses, tractors and trailers	Safety	Royal Customs and Excise Department (RCED) and Land Transport Department
Any radio-active materials	Safety	Ministry of Health
Rhinoceros horn and all other parts of or products derived from the carcass of a rhinoceros	CITES	Department of Agriculture and Agrifood: DOAA)
Beef, including the carcass of the animal or any part thereof, the meat (whether frozen, chilled or fresh), bones, hide, skin, hooves, horns, offal or any other part of the animal or any portion thereof, unless it has been slaughtered in an abattoir	Religious and health	Minister of Religious Affairs and Department of Agriculture and Agrifood: DOAA)

Restricted products	Reasons for restrictions	Authorities to request for import approval
approved in writing by the Minister of Religious Affairs		
Turtle eggs	CITES	Department of Agriculture and Agrifood: DOAA)
Broadcasting equipment	Security	Authority for Info-communications Technology Industry: AiTi
Cigarettes unless with Ministry of Health approved health warning written on the packages	Health	Ministry of Health
Poultry, including the carcass of the bird or any part thereof, the meat (whether frozen, chilled or fresh), bones, skin, offal or any other part of the animal or any portion thereof, unless it has been slaughtered in an approved abattoir	Religious and health	Ministry of Religious Affairs; DOAA
Alcoholic beverages	Religious	Royal Customs and Excise Department (RCED)
Cough mixture containing codeine	Health	Royal Customs and Excise Department (RCED)
Pens and other articles resembling syringes	Safety and security	Royal Customs and Excise Department (RCED)

Source: Trade Policy Review Body, WTO (2014)

### Group 3 Prohibited exports<sup>151</sup>

Although Brunei abolished export duties since 1973, certain products are prohibited for export as stipulated in the table below.

**Table 9: Prohibited export**

Products prohibited for export	Reasons for prohibition
Prawn refuse and copra cake	Health and safety
Stone and gravel	Preservation of natural resources
Round timber of logs and sawn timber	Preservation of primary resources

### Group 4 Restricted exports<sup>152</sup>

An exporter of products listed as restricted exports is required to request for an approval to export the restricted products from relevant authority as shown in the table below.

**Table 10: Restricted exports**

Restricted products	Reasons for restrictions	Authorities to request for export approval
Articles of antique or historical nature made or discovered in Brunei	Cultural heritage	Department of Museums
Cigarettes	Health	Ministry of Health
Automotive gas oil (diesel)	Supply and price stability	Energy Department
Gasoline (premium and regular)	Supply and price stability	Energy Department
Kerosene	Supply and price stability	Energy Department
Rice, paddy, and products thereof	Supply and price stability	Supply and State Stores Department: SSSD
Sugar	Supply and price stability	Supply and State Stores Department: SSSD

<sup>151</sup> *ibid*, p. 39

<sup>152</sup> *ibid*, p. 39

Restricted products	Reasons for restrictions	Authorities to request for export approval
Highly processed timber	Supply and price stability	Forestry Department
ElaeisQuineesis (oil palm)	Supply and price stability	Supply and State Stores Department: SSSD
Derris species (tuba)	Wildlife	Department of Agriculture and Agrifood: DOAA)

Source: Trade Policy Review Body, WTO (2014)

## 2.4 Measures relating to Goods and Services Trade

### 2.4.1 Barriers to Goods and Services Trade

Besides import and export prohibitions, there are certain measures which act as barriers to trade; for example, licensing requirements for certain products and quality requirements for certain products which is further elaborated below.

#### 1) Licensing requirement<sup>153</sup>

Certain products are required to have licensed imports. Therefore, an importer of those products needs to apply for a special permit from the relevant authority as shown in the table below.

**Table 11: Products required to have licensed imports**

Products	Reasons for licensed imports	Authority to approve imports
Publication materials, prints, films, CDs, DVDs, etc.	Security and moral	Royal Brunei Police Force
Recital of Al-Quran, Hadith, religious books	Security and moral	Islamic Dakwah Center
Talisman goods (e.g. clothing with dubious photos)	Moral	Internal Security Department
Halal meat and meat	Religion	Halal Import Permit Issuing

<sup>153</sup> *ibid*, p. 35

Products	Reasons for licensed imports	Authority to approve imports
products (fresh, cold, frozen)		Board
Firearms, explosives, dangerous weapons	Safety	Royal Brunei Police Force
Scrap metal	Safety	Royal Brunei Police Force
Plants, crops, live animals, vegetables, fruits, eggs	Safety	Department of Agriculture
Fish, prawns, shells, water organisms, fishing equipment, etc.	Safety	Fisheries Department
Chemical, poison and radioactive materials	Safety	Ministry of Health
Medicines, herbal, health foods, soft drinks, snacks	Safety	Ministry of Health
Radio transmitter and receiver and communications equipment, and broadcasting equipment	Security	Authority for Info-communications Technology Industry (AiTi)
Used vehicles, e.g. cars, motorcycles, mini buses, trucks, trailers, bicycles	Safety	Royal Customs and Excise Department (RCED) and Land Transport Department
Timber and products thereof	Primary Resources	Forestry Department
Badges, banners, souvenirs of government flags and emblems, royal regalia, government flags and crests	Security	AdatIstiadat Department
Antiques made or found in Brunei	Historical	Museums Department
Mineral water	Safety	Ministry of Industry and Primary Resources
Building construction	Safety	Ministry of Industry and

Products	Reasons for licensed imports	Authority to approve imports
material, e.g. cement		Primary Resources
Rice, sugar and salt	Security of supply and price stability	Supply and State Stores Department: SSSD

Source: Trade Policy Review Body, WTO (2014)

## 2) Quality requirement

Non-tariff barriers such as Sanitary and Phytosanitary measures (SPS) are enforced to imported products in accordance with relevant laws – the 1971 Agricultural Pets and Noxious Plants Act (Chapter 43), the 1934 Quarantine and Prevention of Diseases Act (Chapter 47), the 1998 Halal Meat Act (Chapter 183). These laws require import products to undergo inspections from relevant government authorities to ensure that the products meet the required quality requirements.<sup>154</sup>

Sanitary and Phytosanitary measures (SPS) are implemented against products such as fruits, vegetables, living animals, eggs, meat (such as frozen poultry) in order to check for contamination from pesticides' chemicals. In addition, imported products must be strictly processed in accordance with Halal. The imported products must be certified by relevant authorities in order to verify that the products meet the quality requirements.<sup>155</sup> For example, Minister of Religious Affairs assumes a role to certify that the product is affixed with Halal labels. The Fisheries Department is the authority which certifies fish products. The Forestry Department certifies products relating to forestry. At present, Brunei only imports Halal meat from certain countries (Australia, China, India, Jordan, Malaysia, and Philippines).<sup>156</sup>

There are legislations which regulate quality requirements of imported products as listed below.

<sup>154</sup> *Ibid*, p. 35

<sup>155</sup> TRADE POLICY REVIEW Report by the Secretariat BRUNEI DARUSSALAM, WT/TPR/S/196, 2008, p. 48

<sup>156</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 38



### **2.1) The 1971 Agricultural Pets and Noxious Plants Act (Chapter 43)**

The Act empowers local authorities to inspect, quarantine, or destroy imported plants which bring dangerous pests and diseases. All plant imports and domestic plants are subject to inspection by the Department of Agricultural and Agrifood (DOAA) on arrival. Importers are required to present before the local authority phytosanitary certificates issued in the country of origin.

The Act requires imports of all plants and plant materials to have import permits issued by the DOAA, and phytosanitary certificates issued by the legal issuing authority in the country of origin which certifies the phytosanitary status of the plants.<sup>157</sup>

### **2.2) The 1934 Quarantine and Prevention of Disease Act (Chapter 47)**

This Act allows for the prohibition of import, detention of animals for treatment and examination, and for the investigation of imported products. Prohibition on import may be implemented during an epidemic (e.g. bird flu).

Imports and exports of animals or their products must be declared at the port of entry or exit for quarantine inspection; and must be accompanied by an import permit, issued by the DOAA, and a veterinary health certificate, issued by a veterinarian authorized in the country concerned within seven days before departure. Exports of live animals and poultry must be accompanied by a veterinary health certificate. When a certificate is required for exports of products derived from animals, an Animal Health Certificate may be obtained from the relevant veterinary office.<sup>158</sup>

### **2.3) The 1998 Halal Meat Act (Chapter 183)**

The Act grants power to the Board for Issuing Halal Import Permits if the slaughterhouse is already on a list approved by the Brunei Islamic Religious Council (Majlis Ugama Islam). Imports of beef and poultry are subject to import restrictions, unless they have been slaughtered in a foreign abattoir approved in writing by the Minister of Religious Affairs.<sup>159</sup>

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<sup>157</sup> *Ibid*, p. 37

<sup>158</sup> *Ibid*, p. 37

<sup>159</sup> *Ibid*, p. 37

The use of Halal label on permitted meat or poultry must be compliant with the Halal Certificate and Halal Label Order 2005, which stipulate requirements on applying for the Halal label and using the label as well as sanctions for misuse or unauthorized use of the label.

#### **2.4) The 1956 Poison Act (Chapter 114)**

This Act applies to all imports and exports of pharmaceuticals, chemicals, agri-chemicals, pesticides, and other related products in collaboration with Customs. Regular inspections are also conducted on pharmaceutical wholesalers, clinics, and retailers in Brunei. Imported veterinary pharmaceuticals, animal vaccines, and agri-chemicals are controlled and approved by the DOAA, through Ministry of Health under the Poisons Act. The Act is enforced by the Pharmaceutical Enforcement Services, in Ministry of Health.<sup>160</sup>

#### **2.5) The 1998 Public Health (Food) Act (Chapter 182)**

This Act provides rules for protecting consumers from food contamination or poor quality foods. Food importers are required to submit the customs declaration form together with relevant documents (including health certificates) to the Food safety and Quality Control Division, Department of Health Services under Ministry of Health for endorsement.<sup>161</sup>

#### **2.4.2 Antidumping Measures**

##### **1) Laws concerning Antidumping**

There are currently no legislation or regulations on antidumping, subsidies and countervailing, and safeguard measures. Brunei has never been engaged in any dispute regarding these measures.<sup>162</sup>

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<sup>160</sup> *Ibid*, p. 38

<sup>161</sup> *Ibid*, p. 38

<sup>162</sup> *Ibid*, p. 35

## 2) Other relevant laws

Although there is no legislation on antidumping in Brunei, there are other legislations in the area of trade and fair dealings such as the Competition Order (2015), the Consumer Protection (Fair Trading) Order (2011), and the 1974 Price Control Act (Chapter 142).<sup>163</sup>

### 2.1) The Competition Order (2015)

Brunei recently promulgated the Competition Order in 2015 which aims to promote fair competition by preventing agreements distorting competition, abuse of dominant power, mergers and takeovers leading to unfair competition. The Act establishes the Competition Commission to promote competition and to have power in making inquiry and trial an anti-competition case as well as enforcing its decision.

There are a number of measures preventing anti-competitive practices under the Competition Order. Any party in the merger transaction can make a request to the Competition Commission to decide whether the transaction leads to anti-competitive practices.<sup>164</sup> The Competition Commission has the power to inquire into the practice of the alleged party. If the Commission considers the transaction to be anti-competitive, the decision will be rendered. The losing party has to undertake commitments to bring practices in compliant with the Commission' decision.<sup>165</sup>

### 2.2) The Consumer Protection (Fair Trading) Order (2011)

The Act provides rules to protect consumers when entering into a range of contracts which may impose unfair practices such as deceptive practices or putting consumers into a disadvantaged position. The Act allows consumers to take unfair sales practices to civil courts. The alleged supplier has a burden of proof before court.<sup>166</sup>

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<sup>163</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 45

<sup>164</sup> Competition Order, 2015, Section 25 states that "...an anticipated merger to be considered by the commission on the application of a party to that anticipated merger who thinks the anticipated merger, if carried into effect, may infringe the section 23 prohibition."

<sup>165</sup> Competition Order, 2015, Section 41(2) states that "...upon considering any representation made to the Commission...the Commission may, as it thinks fit, make a decision..."

<sup>166</sup> Consumer Protection (Fair Trading) Order, 2011, Section 18 (1) states that "If, in any proceedings taken in any court between a consumer and a supplier in relation to a consumer transaction, any dispute arises as to whether the supplier

### 2.3) The 1974 Price Control Act (Chapter 142)

The Act stipulates maximum and minimum retail prices, and may also prohibit or restrict trade in price-controlled goods; for example, sugar is required to be sold at 1.25 Brunei Dollars/kg. Minimum price is fixed for controlled goods such as cigarettes and tobacco. The prices are set for both domestic and imported products by the Supply and State Stores Department (SSSD).<sup>167</sup>

Currently, there are 19 items listed for the maximum price, and 1 item listed for minimum price.<sup>168</sup>

**Table 12: Listed Items for Price Control**

Maximum Price	Minimum Price
<ol style="list-style-type: none"> <li>1. Asphalt</li> <li>2. Automotive gas oil (diesel)</li> <li>3. Powdered infant milk</li> <li>4. Bitumen</li> <li>5. Bottled LPG</li> <li>6. Bricks (clay and concrete)</li> <li>7. Cement</li> <li>8. Cooking oil (canola, corn , palm, vegetable, sunflower, and soya bean)</li> <li>9. Dual purpose kerosene</li> <li>10. Milk (condensed and evaporated)</li> <li>11. Gasoline (Premium 97, Super 92 and Regular 85)</li> <li>12. Passenger motor vehicles</li> <li>13. Plain flour</li> <li>14. Rice</li> <li>15. Ready-mix concrete</li> </ol>	<ol style="list-style-type: none"> <li>1. Cigarettes and tobacco</li> </ol>

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has complied with any specified requirement of this Order or the regulations made thereunder, the burden of proving that the supplier has so complied shall be on the supplier.”

<sup>167</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 46

<sup>168</sup> *Ibid*, p. 47

Maximum Price	Minimum Price
16. Reinforcement bar	
17. Sand	
18. Stone (aggregate ¾)	
19. Sugar (white, refined, granulated, cane sugar, fine grain)	

Source: The Price Control (Maximum Prices and Charges) Order (2012) and the Price Control (Minimum Prices and Charges) Order (2012)

### 2.4.3 Trade and Services Promotion

#### 1) Tariff Concessions under Regional Trade Agreements (RTAs)

Brunei has been reducing custom duties to promote trade under RTAs. The details of average reductions on custom duties and volume are as follows.<sup>169</sup>

Table 13 : Brunei's Tariff Concessions under RTAs

RTAs	Total		WTO Agriculture		WTO Non-Agriculture	
	Average (%)	Duty Free rates (%)	Average (%)	Duty Free rates (%)	Average (%)	Duty Free rates (%)
ASEAN Trade in Goods Agreement (ATIGA)	0.0	100.0	0.0	100.0	0.0	100.0
ASEAN-Australia-New Zealand FTA	0.5	95.1	0.0	98.2	0.6	94.7
ASEAN-China FTA	0.1	97.5	0.0	98.2	0.1	97.4
ASEAN-India FTA	1.4	78.1	0.0	97.8	0.6	75.1
ASEAN-Japan CEP	0.3	96.3	0.0	98.2	0.3	96.0

<sup>169</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 32

RTAs	Total		WTO Agriculture		WTO Non-Agriculture	
	Average (%)	Duty Free rates (%)	Average (%)	Duty Free rates (%)	Average (%)	Duty Free rates (%)
ASEAN-Korea FTA	0.2	97.7	0.0	97.6	0.3	97.7
Brunei-Japan FTA	0.0	98.8	0.0	98.2	0.0	98.9
Trans-Pacific Strategic Economic Partnership	0.3	96.5	0.0	98.2	0.3	96.2

Source: WTO Secretariat (2014)

## 2) Rules of Origin

Brunei applies preferential rules of origin under its RTAs in force. The basic rule of origin is a product wholly obtained or that has undergone substantial transformation in the country of export. Substantial transformation is defined as a change in tariff classification, value-added threshold, and specific process, which vary across agreements. There are two approaches in determining rules of origin being employed in RTAs in which Brunei is a party.<sup>170</sup>

### 2.1) Change in Tariff Classification (CTC)

CTC may allow final products to contain a percentage of non-originating inputs that have not undergone a change in tariff classification under Harmonized System (HS) of the World Customs Organization (WCO) in the following methods.<sup>171</sup>

<sup>170</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 27

<sup>171</sup> The Rules of WTO No.6: Customs and Institutions, The Thailand Research Fund (TRF), No 6: June 2009, p. 42-45

### **(1) Change of Chapter (CC)**

CC denotes a change to the chapter, heading or subheading from any other chapter. This means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 2-digit level; for example, a change from pineapple under digits 08 (0804.30) to pineapple juice under digits 20 (2009.41).

### **(2) Change of Tariff Heading (CTH)**

CTH denotes a change to the chapter, heading or subheading from any other heading. This means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 4-digit level. For example, wood in rough (digits 4403) is transformed into sheets for veneering for plywood (digits 4408).

### **(3) Change of Tariff Subheading (CTSH)**

CTSH denotes a change to the chapter, heading or subheading from any other subheading. This means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 6-digit level. For example, chassis for air-conditioning machines (digits 8415.90) is transformed into a window/wall type air-conditioning machine (digits 8415.10).

Most RTAs in which Brunei is a party employ the Change of Tariff Heading (CTH)'s approach in determining the rules of origin for a product. In the CTH approach, a country qualified for a product-originating country must have transformed a change in heading at 3<sup>rd</sup> and 4<sup>th</sup> digit. Therefore, a particular country is a country of origin if there is a production that causes a transformation of the product resulting in a change of heading at 3<sup>rd</sup> and 4<sup>th</sup> digit in such country.<sup>172</sup>

There are FTAs that use the CTH method for determining rules of origin (ATIGA, ASEAN-Australia-New Zealand FTA, ASEAN-Japan CEPT, ASEAN-Korea FTA). However, the ASEAN-India FTA uses the CTSH method (Change of Tariff Subheading) in determining rules of origin.<sup>173</sup>

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<sup>172</sup> *Ibid*, p. 43

<sup>173</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 28

## 2.2) Regional Value Content (RVC)

The RVC is a method used to determine the origin of the product by setting a minimum percentage of local materials used to produce the product. For example, the ASEAN-originated product must have at least 40% of materials originating from ASEAN Member Countries (Local Content).<sup>174</sup>

The following table displays methods determining rules of origin employed in main RTAs in which Brunei is a party.<sup>175</sup>

**Table 14: Methods used in Determining Rules of Origin in main ASEAN trade agreements**

Rules of Origin Determination	ATIGA	ASEAN-Australia-New Zealand FTA	ASEAN-India FTA	ASEAN-Japan CEPT	ASEAN-Korea FTA
	CTC (CTH) or 40% RVC	CTC (CTH) or 40% RVC	CTC (CTH) and 35% RVC	CTC (CTH) or 40% RVC	CTC (CTH) or 40% RVC

Source: WTO Secretariat (2014)

## 2.5 Trade in Services

### 2.5.1 Movement of Business Persons and Services Liberalization

The ASEAN Framework Agreement on Services (AFAS) calls for a progressive liberalization in services among ASEAN member countries. Under the AFAS obligations, ASEAN member countries have to eliminate market access restrictions<sup>176</sup> and national treatment restrictions<sup>177</sup> in the following services sectors:

<sup>174</sup> The Rules of WTO No.6: Customs and Institutions, The Thailand Research Fund (TRF), No 6: June 2009, p. 42

<sup>175</sup> WT/TPR/S/309 - Brunei Darussalam, Trade policy review, World Trade Organization, 2014, p. 28

<sup>176</sup> Market access restrictions are measures implemented by a government in a way that causes barriers to entry of services provided from another state. Market access restrictions can be legislations, domestic measures, or other orders which cause limitations to entry of services. The AFAS follows the GATS categorization of market access restrictions as follows;



- 1) Business services
- 2) Communications services
- 3) Construction and related engineering services
- 4) Distribution services
- 5) Educational services
- 6) Environmental services
- 7) Financial services
- 8) Health-related and social services
- 9) Tourism and travel related services
- 10) Recreational, cultural, and sporting services
- 11) Transport services
- 12) Other services not included elsewhere

The 12 services sectors will need to be liberalized through the 4 modes of services supply.<sup>178</sup>

### **Mode 1: Cross-Border Supply**

This so-called “mode 1” occurs when a service provider supplies services from his/her own country to a consumer located in a different country. The example is consulting services via the internet.

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- a) limitations on the number of service suppliers
  - b) limitations on the total value of service transactions or assets
  - c) limitations on the total number of service operations or on the total quantity of service output
  - d) limitations on the total number of natural persons that may be employed in a particular service sector
  - e) measures which restrict or require specific types of legal entity or joint venture
  - f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding

<sup>177</sup> National treatment is a commitment that a WTO member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers. Some of the measures contrary to national treatment are subsidy, nationality requirement, technology transfer requirements, land ownership restrictions.

<sup>178</sup> The current situation of tourism services in an FTA, [http://www.atta.or.th/upload/news/228/chapter\\_2.pdf](http://www.atta.or.th/upload/news/228/chapter_2.pdf) (available at 10 April 2015)

### **Mode 2: Consumption Abroad**

This so-called “mode 2” occurs when a consumer from the first country moves to the second country to consume services provided by a service provider of the second country. The example is a tourist travelling to the second country to receive tour operation services supplied in the second country.

### **Mode 3: Commercial Presence**

This so-called “mode 3” occurs when the first country’s service provider establish a business organization in the second country in order to provide services in the second country. The example is a hotel company from the first country establishes a hotel company in the second country to provide hotel services.

### **Mode 4: Movement of Natural Persons**

This so-called “mode 4” occurs when a natural person from the first country moves to provide services in the second country. The example is the movement of a chef from one country to another country to provide services.

In regards to the movement of natural persons, Brunei is yet to liberalize the movement of natural persons due to market access restriction under the Employment Order (2009) which restrict foreign employment by means of licensing requirements issued by the Commissioner of Labour Brunei Darussalam. Brunei also retains restrictions on national treatment in the Employment Order (2009) such as measures favoring domestic employment over foreign employment.

## **2.5.2 Roles to Support Services Liberalization**

To foster greater movement of business persons in ASEAN, Brunei supports the ASEAN services liberalization by joining the ASEAN Mutual Recognition Arrangements (MRAs) to recognize qualifications of 8 professions including medical practitioners, dentists, accountants, surveyors, architects, nurses, engineers, and tour operations officers (excluding tour guides).

## **2.6 Benefits to Thai Entrepreneurs accorded by Brunei under ASEAN Preferential Treatment**

Members must abolish tariff in goods listed in the Inclusion List (IL) within 2010.<sup>179</sup> In addition, non-tariff barriers can narrowly be applied in necessary cases. Brunei also adopts rules of origin to accord preferential treatment to ASEAN originated goods.<sup>180</sup> As a member of the ASEAN, Thai entrepreneurs are entitled to these preferential treatments on goods exported to Brunei.

Currently, Brunei grants 0% tariff on almost all imported goods from ASEAN Members except firework-related products (HS Code 3604) in which the tariff remains at 30%.

## **2.7 Conclusion on Benefits from Goods and Services Liberalization and Suggestions for Thai Entrepreneurs**

### **1) Trade in Goods**

Under the ASEAN obligations to liberalize trade in goods, Brunei grants preferential tariff on goods imported from ASEAN country members. With the tariff rate in almost all imported goods being at 0%, Thai entrepreneurs have more chance to sell more products in Brunei since the costs are lower. However, there are some products which still retain imported tariff for specific reasons such as fireworks (30% imported tariff).

### **2) Trade in Services**

Under the ASEAN obligations to liberalize trade in services, Brunei as well as other ASEAN countries still retains high level of restrictions to market access and national treatment. Brunei grants more favorable treatments to domestic employers in subjecting foreign workers to approval from a concerning government authority and measures giving priority to hiring domestic workers. This creates difficulties in working in Brunei.

However, the MRAs concluded among ASEAN countries may develop to provide the full-fledged movement of business persons in the future in 8 professions; medical practitioners, dentists, accountants, surveyors, architects, nurses, engineers, and tour operations officers (excluding tour guides).

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<sup>179</sup> ASEAN Tax Guide, KPMG Asia Pacific Tax Centre, November 2013, p. 16

<sup>180</sup> TRADE POLICY REVIEW Report by the Secretariat BRUNEI DARUSSALAM, WT/TPR/S/196, 2008, p. 37



## Chapter 3

### Foreign Investment

#### 3.1 Introduction

The Investment Incentives Order (2001) is designed to promote foreign investment and stimulate economic development by encouraging the establishment of industrial and economic enterprises in Brunei Darussalam. The Order provides guidelines for granting pioneer status to certain industries and tax relief for foreign and local investment, as well as the possibility of extending tax relief periods.

Apart from the Order, there are other legislations concerning establishing an investment in Brunei including the Companies Act (Cap 39), the Miscellaneous License Act (Cap 127), and the Industrial Coordination Order (2001).

#### 3.2 Foreign Investment in Promoted Industries

##### 3.2.1 The Investment Incentive Order (2001)

The Investment Incentive Order (2001) is the main legislation for investment promotion and expanding investment in the country. Ministry of Industries and Primary Resources oversees the investment promotion schemes (e.g. tax exemption, tax relief, import tax exemption, tax allowance) for the following promoted industries.<sup>181</sup>

- 1) Pioneer Industry
- 2) Pioneer Service Company
- 3) Post-Pioneer Company
- 4) Expansion of Established Enterprises
- 5) Expanding Service Companies
- 6) Product for Export
- 7) Export of Services
- 8) International Trade Incentives
- 9) Foreign Loans for Productive Equipment
- 10) Investment Allowances

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<sup>181</sup> ASEAN Investment Guidebook 2008, Jakarta: ASEAN Secretariat, February 2010, p.3

- 11) Warehousing and Servicing Incentives
- 12) Investment in New Technology Companies
- 13) Overseas Investment and Venture Capital Incentives

The details of each scheme are prescribed in the Order which can be explained below.

### **1) Pioneer Industries<sup>182</sup>**

The pioneer industries are the kind of industries that yield public benefits in which Brunei has limited resources to offer these industries to public.<sup>183</sup> The pioneer industries include agri-business (e.g. fertilizing and pesticide), construction, petrochemical industries, plastic production, and communication device production.

Any company which has been granted a pioneer certificate will be given pioneer incentives provided the following requirements are met<sup>184</sup>

- The Minister of Industries and Primary Resources is satisfied that it is in the public interest to do so
- The industry has never been previously implemented on a scale sufficient to the economic needs of Brunei Darussalam
- There is a high possibility that the industry is a pioneer business of Brunei

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<sup>182</sup> Investment Incentive Order 2001, Part 2.

<sup>183</sup> Brunei, U.S. Department of State: 2014 Investment Climate Statement June 2014, p. 3

<sup>184</sup> Investment Incentive Order 2001, Section 4 (1) states that “Subject to subsection (2), the Minister may, if he considers it expedient in the public interest to do so, by order declare an industry, which is not being carried on in Brunei Darussalam on a scale adequate to the economic needs of Brunei Darussalam and for which in opinion there are favourable prospects for development, to be a pioneer industry and any specific product of that industry to be a pioneer product.”

## Tax Relief Period<sup>185</sup>

The tax relief period of a pioneer industry will only begin on its first day of production.

**Table 15: Tax relief period for pioneer industries**

Fixed Capital Expenditure	Tax Exemption Period
B\$500,000 but less than B\$2.5 million	5 years
B\$2.5 million or over	8 years
Located in a Hi-Tech Park	11 years
Extension	3 years at one time but not exceeding 11 years in total
Extension for being located in Hi-Tech Park	5 years at one time but not exceeding 20 years in total

## Investment Incentives

- Exempt from income tax and certain dividends exempted from income tax<sup>186</sup>
- Exempt from Import Duties on raw materials<sup>187</sup>

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<sup>185</sup> Investment Incentive Order 2001, Section 6 states that

“(1) The tax relief period of a pioneer enterprise shall commence on its production day and shall continue for a period of —

- (a) 5 years, where its fixed capital expenditure is not less than \$500,000 but is less than \$20.5 million;
- (b) 8 years, where its fixed capital expenditure is more than \$2.5 million;
- (c) 11 years, where it is located in a high tech park.

(2) Where the tax relief period of a pioneer enterprise is 5 years and the Minister is satisfied that it has incurred by the end of the year following the end of that period fixed capital of not less than \$2.5 million, the Minister may extend its tax relief period to 8 years from the production day.

(3) In this section, "fixed capital expenditure" in relation to a pioneer enterprise, means capital expenditure incurred by the pioneer enterprise on its factory building (excluding land) or on plant, machinery or other apparatus used in Brunei Darussalam in connection with and for the purposes of the pioneer enterprise.”

<sup>186</sup> Investment Incentive Order 2001, Section 14 states that

“(1) Subject to subsection (6) of section 15, where any statement issued under section 13 has become final and conclusive, the amount of the income shown by the statement shall not form part of the statutory income of the pioneer enterprise for any year of assessment and shall be exempt from tax.

(2) The Collector may, in his discretion and before such a statement has become final and conclusive, declare that a specified part of the amount of such income is not in dispute and such an undisputed amount of income is exempt from tax, pending such a statement becoming final and conclusive.”

- Exempt from Import Duties on materials not available in Brunei<sup>188</sup>
- Carry forward of loss and allowance<sup>189</sup>

## 2) Pioneer Service Company<sup>190</sup>

- When the Minister of Industry and Primary Resources considers it is in the public interest and where a company is engaged in any of the following activity<sup>191</sup>:
- Any engineering or technical services including laboratory, consultancy and research and development activities
- Computer-based information and other computer related services

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<sup>187</sup> Investment Incentive Order 2001, Section 109 states “Notwithstanding the provision of section 11 of the Customs Act (Chapter 36) or any written laws or regulations in force, the Minister may, subject to such terms and conditions as he thinks fit, exempt a pioneer enterprise or an export enterprise from the payment of the whole or any part of any customs duty which may be payable on any machinery, equipment, component parts and accessories including prefabricated factory or building structures to be installed as necessary part of parts of the factory:

Provided that similar machinery, equipment, component parts, accessories or building structures of approximately equal price and equal quality are not being produced or available within Brunei Darussalam.”

<sup>188</sup> Investment Incentive Order 2001, Section 112 states that “Notwithstanding the provision of section 11 of the Customs Act or any written laws or regulations in force, a pioneer enterprise and an export enterprise shall be exempt from the payment of import duties on raw materials imported for use in the pioneer enterprise to be used in the production of a pioneer product specified in the pioneer certificate.

Provided that such raw materials are not available or produced within Brunei Darussalam.”

<sup>189</sup> Investment Incentive Order 2001, Section 16 states that

(1) Where a pioneer enterprise has, during its tax relief period, incurred a loss for any year, that loss shall be deducted as provided for in subsection (2) of section 30 of the Income Tax Act but only against the income of the pioneer enterprise as ascertained under section 11, except that the balance of any such loss which remains unabsorbed at the end of its tax relief period is available to the new trade or business in accordance with that Act.

(2) Notwithstanding paragraph (a) of section 8, the balance of any allowance as provided for in section 11 which remains unabsorbed at the end of the tax relief period of the pioneer enterprise is available to the new trade or business in accordance with the Income Tax Act.”

<sup>190</sup> Investment Incentive Order 2001, Part 3.

<sup>191</sup> Investment Incentive Order 2001, Section 17 states that “For the purposes of this Part, unless the context otherwise requires —

“commencement day”, in relation to a pioneer service company, means the date specified under subsection (3) or (4) of section 18 in the certificate issued to that company under that section;

“pioneer service company” means a company which has been issued with a certificate under section 18;

“qualifying activity” means any of the following —

(a) any engineering or technical services including laboratory, consultancy and research and development activities;

(b) computer-based information and other computer related services;



- Development or production of any industrial design
- Provision of leisure and recreation related services and activities
- Publishing services
- Provision of education related services
- Medical services
- Agriculture Technology related services and activities
- Services and activities relating to the organisation or management of exhibitions and conferences
- Financial services
- Business, management and professional consultancy services
- Venture capital fund activity
- Operation or management of any mass rapid transit system
- Services provided by auction house
- Maintaining and operating a private museum
- Such other services or activities as the Minister may prescribe.

## Tax Relief Period<sup>192</sup>

**Table 16: Tax relief period for pioneer service company**

Pioneer service company	Income tax exemption period
All pioneer service companies	8 years
Financial pioneer service company	5 years
Extension (all)	Maximum 3 years
Extension (financial pioneer service company)	Maximum 5 years

## Investment Incentives<sup>193</sup>

- Exempt from income tax and certain dividends exempted from income tax
- Carry forward loss and allowance

### **3) Post-Pioneer Company**<sup>194</sup>

A post-pioneer company can be classified in any of the following:<sup>195</sup>

- 
- (c) the development or production of any industrial design;
  - (d) services and activities which relate to the provision of leisure and recreation;
  - (e) publishing services;
  - (f) services which relate to the provision of education;
  - (g) medical services;
  - (h) services and activities which relate to agricultural technology;
  - (i) services and activities which relate to the provision of warehousing facilities;
  - (j) services which relate to the organization or management of exhibitions and conferences;
  - (k) financial services;
  - (l) business consultancy, management and professional services;
  - (m) venture capital fund activity;
  - (n) operation or management of any mass rapid transit system;
  - (o) services provided by an auction house;

<sup>192</sup> Investment Incentive Order 2001, Section 19 states that “The tax relief period of a pioneer service company, in relation to any qualifying activity specified in any certificate issued to that company under section 18, shall commence on the commencement day and shall continue for a period of 8 years or such longer period, not exceeding 11 years, as the Minister may determine.”

<sup>193</sup> Investment Incentive Order 2001, Section 19.

<sup>194</sup> Investment Incentive Order 2001, Part 4.

<sup>195</sup> Investment Incentive Order 2001, Section 22 (1) states that “Any company which is

- A pioneer company that has been in operation since or after 1st May 1975
- A pioneer enterprise or pioneer service company
- An export enterprise which has been a pioneer enterprise immediately before its tax relief period as export enterprise.

#### Tax Relief Period<sup>196</sup>

Tax relief period of Post-Pioneer Company shall commence on its commencement day and shall continue for a period not exceeding 6 years and may be extended but not more than 11 years in total.

#### Investment Incentives<sup>197</sup>

- Certain dividends exempted from income tax
- Deduction of losses
- Adjustment of capital allowances and losses

#### **4) Expansion of Established Enterprises**<sup>198</sup>

Any company intending to incur new capital expenditure for the purpose of the manufacture or increased manufacture of an approved product may apply to the Minister

(a) a pioneer company on or after 1<sup>st</sup>. May, 1975;

(b) a pioneer enterprise or a pioneer service company;

(c) an export enterprise which had been a pioneer enterprise immediately before its tax relief period as an export enterprise,

may apply in the prescribed form to the Minister for approval as a post-pioneer company.”

<sup>196</sup> Investment Incentive Order 2001, Section 23 states that

“(1) The tax relief period of a post-pioneer company shall commence on its commencement day and shall continue for a period not exceeding 6 years as the Minister may determine.

(2) The Minister may, subject to such terms and conditions as he may impose, extend the tax relief period of a post-pioneer company for such further period or periods as he may determine except that the tax relief period of the company shall not in the aggregate exceed 11 years.”

<sup>197</sup> Investment Incentive Order 2001, Section 25 states that “The Minister may, in relation to post-pioneer companies, by regulations provide for —

(a) the manner in which expenses, capital allowances and donations allowable under the Income Tax Act are to be deducted; and

(b) the deduction of capital allowances and of losses otherwise than in accordance with sections 20 and subsection (2) of section 30 of the Income Tax Act.”

<sup>198</sup> Investment Incentive Order 2001, Part 5.

of Industry and Primary Resources for an Expansion Certificate. The following criteria must be met:

- 1) The company must incur a new capital expenditure in the purchase of production equipment exceeding 1 million Brunei Dollars or
- 2) Where the expenditure is less than 1 million Brunei Dollars but exceeds 500,000 Brunei Dollars and will result in an increase of not less than 30% in value at the original cost of all the production equipment of the company.<sup>199</sup>

Tax Relief Period<sup>200</sup>

**Table 17 : Tax Relief Period of Expansion of Established Enterprises**

New Capital Expenditure	Tax Exemption Period
Up to 1 million Brunei Dollars	3 years
More than 1 million Brunei Dollars	5 years
Extension	3 years at any one time but not exceeding 15 years in total

<sup>199</sup> Investment Incentive Order 2001, Section 30 states that (1) Subject to subsection (2), where the Minister is satisfied that the increased manufacture of the product of any industry would be of economic benefit to Brunei Darussalam, he may, if he considers it expedient in the public interest to do so, by order, declare that industry to be an approved industry and the product thereof to be an approved product for the purposes of this Part.

(2) The Minister may revoke any order made under this section but any such revocation shall not affect the operation of any expansion certificate issued to any expanding enterprise before the revocation.”

<sup>200</sup> Investment Incentive Order 2001, Section 32 states that

“(1) The tax relief period of an expanding enterprise shall commence on its expansion day or if the expansion day falls within the tax relief period specified in any certificate previously issued to the enterprise under Part II or VII for the same or similar product, commence on the day immediately following the expiry of that tax relief period and shall —

(a) where such expanding enterprise has incurred new capital expenditure not exceeding \$1 million, continue for a period of 3 years; and

(b) where such expanding enterprise has incurred new capital expenditure exceeding \$1 million, continue for a period of 5 years.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of an expanding enterprise for such further period or periods, not exceeding 3 years at any one time, as he may determine, except that the tax relief period of the expanding enterprise shall not in the aggregate exceed 15 years.”

## Investment Incentives<sup>201</sup>

- Tax relief and exemption from income tax of dividends from expansion income

## **5) Expanding Service Companies**<sup>202</sup>

The tax relief period of an expanding service company will commence on its day of expansion. If the expansion falls within the tax relief period specified in any certificates previously issued to the company for the same or similar qualifying activities, the new tax relief period will begin immediately upon expiry of the existing tax relief period.<sup>203</sup>

## Tax Relief Period<sup>204</sup>

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<sup>201</sup> Investment Incentive Order 2001, Section 34 states that “(1) Subject to the provisions of this Order, an expanding enterprise is entitled, during its tax relief period, to relief in the manner provided by this section...”

<sup>202</sup> Investment Incentive Order 2001, Part 6.

<sup>203</sup> Investment Incentive Order 2001, Section 36 states that

“(1) Where a company engaged in any qualifying activity as defined in section 17 intends to substantially increase the volume of that activity, it may make an application in writing to the Minister to be approved as an expanding service company.

(2) Where the Minister is satisfied that it is expedient in the public interest to do so, he may approve that company as an expanding service company and issue a certificate to the company, subject to such terms and conditions as he thinks fit.

(3) Every certificate issued under this section shall specify a date (not earlier than 1<sup>st</sup>. January, 2001) on or before which the expansion of the qualifying activity shall commence and that date shall be deemed to be the expansion day for the purpose of this Part.”

<sup>204</sup> Investment Incentive Order 2001, Section 37 states that

“(1) The tax relief period of an expanding service company shall —

(a) commence on its expansion day; or

(b) if the expansion day falls within the tax relief period specified in any certificate previously issued to the company for the same or similar qualifying activity under Part III, commence on the day immediately following the expiry of that tax relief period, and shall continue for such period, not exceeding 11 years, as the Minister may, in his discretion, determine.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of an expanding enterprise for such further period or periods, not exceeding 5 years at any one time, as he may determine, except that the tax relief period of the expanding enterprise shall not in the aggregate exceed 20 years.”

**Table 18: Tax Relief Period of Expanding Services Company**

Commencement Date	Period
Referring to the points above	11 years
Extension	5 years at one time but not exceeding 20 years in total

Investment Incentive<sup>205</sup>

- Tax relief and exemption from income tax of dividends from expansion income

**6) Product for Export**<sup>206</sup>

The Minister of Industry and Primary Resources may approve a company proposing to engage in agriculture, forestry and fishery activities either wholly or partly for export as an export enterprise and issues the certificate if he considers that it is in the public interest to do so.<sup>207</sup>

Every export company needs to specify the accounting period in which it is expected that the sales of the export product or produce:

- Will not be less than 20% of the value of its total sales
- Will not be less than 20,000 Brunei Dollars

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<sup>205</sup> Investment Incentive Order 2001, Section 37.

<sup>206</sup> Investment Incentive Order 2001, Part 7.

<sup>207</sup> Investment Incentive Order 2001, Section 40 states that

“(1) The Minister may, on the application in the prescribed form of any company which is manufacturing or proposes to manufacture any export product or is engaged or proposes to engage in agriculture, forestry and fishery activities, either wholly or partly for export, approve the company as an export enterprise and issue to the company an export enterprise certificate subject to such terms and conditions as he thinks fit.

(2) Every export enterprise certificate issued under this section shall specify the accounting period in which it is expected that the export sales of the export product or export produce —

(a) will be not less than 20% of the value of its total sales; and

(b) will not be less than \$20,000 ,and that accounting period shall be deemed to be the export year of the export enterprise for the purposes of this Part.

(3) For the purposes of this Part —

"export sales" means export sales (f.o.b.) whether made directly by the export enterprise or through an agent or independent contractor;

"f.o.b." means free on board.

**Table 19: Tax Relief Period of Product for Export**

<b>Company's pioneer status</b>	<b>Exemption Period</b>
Not a pioneer enterprise	8 years
Being a pioneer enterprise	6 years;
Extension	Not exceeding 11 years in total

However, where an export enterprise has incurred or is intending to incur a fixed capital expenditure of:

- Not less than 50 million Brunei Dollars; or
- Not less than 500,000 Brunei Dollars but less than 50 million Brunei Dollars and
- Where more than 40% paid-up capital of the export enterprise is held by local citizens or persons holding resident permits, and the export enterprise will promote or has enhanced the economic or technological development of Brunei Darussalam

The tax relief period given is as stipulated in Table 20 below:

**Table 20: Tax Relief Period of Product for Export (Second Scheme)**

<b>Company's pioneer status</b>	<b>Exemption Period</b>
Not a pioneer enterprise	15 years
Being a pioneer enterprise	15 years

<sup>208</sup> Investment Incentive Order 2001, Section 42.

## Investment Incentives<sup>209</sup>

- Tax relief on export profits
- Certain dividends exempted from income tax
- Exempt from import duties.
- Exempt from Import Duties on raw materials.

### **7) Export of Services**<sup>210</sup>

The following services have been qualified:<sup>211</sup>

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<sup>209</sup> Investment Incentive Order 2001, Section 47 states that

“(1) Where an amount of the export profit of an export enterprise qualifies under sections 47 and 48 for the relief provided by this section (referred to in this section as the qualifying export profit), there shall be deducted from that amount such part of the allowances provided for in sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act as may be attributable to the qualifying export profit; and the part of the allowances so attributable to the qualifying export profit shall be deemed to be such amount which bears the same proportion to the total allowances deductible by the export enterprise under sections 13, 14, 15, 16, 17 and 18 of the Income Tax Act as the amount of the qualifying export profit bears to the income of the export enterprise ascertained under subsection (1) of section 47.

(2) For each year of assessment the Collector shall issue to the export enterprise a statement for that year of assessment showing the balance of the qualifying export profit after deduction of the allowances under subsection (1) and the provisions of Parts XI and XII of the Income Tax Act (relating to objections and appeals) and any regulations made thereunder shall apply, with the necessary modifications, as if such a statement were a notice of assessment given under those provisions.

(3) Subject to subsection (7) of section 50, where any statement issued under subsection (2) has become final and conclusive, an amount equal to 100% of the balance of such qualifying export profit shall not form part of the statutory income of the export enterprise for that year of assessment and shall be exempt from tax.”

<sup>210</sup> Investment Incentive Order 2001, Part 8.

<sup>211</sup> Investment Incentive Order 2001, Section 55 states

“For the purposes of this Part, unless the context otherwise requires —

"commencement day", in relation to an export service company or export service firm, means the date specified under subsection (3) of section 56 in the certificate issued to that company or firm under that section;

"export service company" means a company which has been issued with a certificate under subsection (2) of section 56;

"qualifying services" means any of the following services undertaken with respect to overseas projects for persons who are neither residents of nor permanent establishments in Brunei Darussalam —

(a) technical services including construction, distribution, design and engineering services;

(b) consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business;

(c) fabrication of machinery and equipment and procurement of materials, components an equipment;

(d) data processing, programming, computer software development, telecommunications and other computer services;



- Technical services including construction, distribution, design and engineering services
- Consultancy, management supervisory or advisory services relating to any technical matter or to any trade or business
- Fabrication of machinery and equipment, and procurement of materials, components and equipment
- Data processing, programming, computer software development, telecommunications and other related ICT services
- Professional services including accounting, legal, medical and architectural services
- Educational and training service
- And any other services as the Minister of Industry and Primary Resources prescribe.

Tax Relief Period<sup>212</sup>

The tax relief period of an export service company shall begin on its day of commencement and shall not exceed 11 years. Any given extension shall not exceed 3 years at one time and not exceed 20 years in total.

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(e) professional services including accounting, legal, medical and architectural services;

(f) educational and training services; and

(g) any other services as the Minister may prescribe.”

<sup>212</sup> Investment Incentive Order 2001, Section 57 states that

“(1) The tax relief period of an export service company shall commence on its commencement day and shall continue for such period, not exceeding 11 years, as the Minister may, in his discretion, determine.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of any export service company or firm for such further periods, not exceeding 3 years at any one time, as he may determine, except that the tax relief period of the export service company shall not in the aggregate exceed 20 years.”

### Investment Incentives<sup>213</sup>

- Exempt from income tax
- Tax relief on export income
- Certain dividends exempted from income tax
- Deduction of allowances and losses

### **8) International Trade Incentives**<sup>214</sup>

These incentives are normally given to companies engaging in the following activities:<sup>215</sup>

- 1) International trade in qualifying manufactured goods or Brunei Darussalam domestic products where export sales, separately or combined, exceed or are expected to exceed B\$3 million per annum, or
- 2) International trade in any qualifying commodities and export sales of those qualifying commodities exceeding or expecting to exceed B\$5 million per annum.

### Tax Relief Period<sup>216</sup>

- The tax relief period of an international trading company, in relation to the any certificate issued to that company, shall begin on the day of commencement and shall continue for a period of 8 years.

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<sup>213</sup> Investment Incentive Order 2001, Section 62 states “The Minister may by regulations provide, in relation to an export service company, for the deduction of —

(a) any unabsorbed allowances provided for under sections 13 to 18 of the Income Tax Act attributable to income derived from qualifying services by it during its tax relief period otherwise than in accordance with section 20 of that Act; and

(b) losses incurred by it during its tax relief period otherwise than in accordance with subsection (2) of section 30 of the Income Tax Act.”

<sup>214</sup> Investment Incentive Order 2001, Part 9.

<sup>215</sup> Investment Incentive Order 2001, Section 64 (1) states that “Where a company is engaged in —

(a) international trade in qualifying manufactured goods or Brunei Darussalam domestic produce and the export sales of those goods or produce separately or in combination exceed or are expected to exceed \$3 million per annum; or

(b) entrepot trade in any qualifying commodities and the export sales of those qualifying commodities exceed or are expected to exceed \$5 million per annum, the company may apply in the prescribed form to the Minister for approval as an international trading company.”

<sup>216</sup> Investment Incentive Order 2001, Section 65. States that “The tax relief period of an international trading company, in relation to any certificate issued to that company, shall commence on the commencement day and shall continue for a period of 8 years.”

## Investment Incentive<sup>217</sup>

- Exemption from income tax

## **9) Foreign Loans for Productive Equipment**<sup>218</sup>

There is a 20% withholding tax for interest paid to non-resident lenders. However the government may grant tax exemption for any “approved foreign loan” if:<sup>219</sup>

- The loan is utilized for the purchase of production equipment or
- The credit facilities are obtained through financial agreement with the foreign lending company and
- The amount is not less than 200,000 Brunei Dollars

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<sup>217</sup> Investment Incentive Order 2001, Section 69 (1) states that “The total income of an international trading company, in respect of its trade or business which includes its relevant export sales, shall be ascertained (after making such adjustments as may be necessary in consequence of any direction given under section 66), for any accounting period during its tax relief period in accordance with the provisions of the Income Tax Act, and, in particular, the following provisions shall apply —

(a) income from any commissions and other non-trading sources shall be excluded and separately assessed”

<sup>218</sup> Investment Incentive Order 2001, Part 10.

<sup>219</sup> Investment Incentive Order 2001, Section 75 states that

“(1) Where a company engaged in any industry is desirous of raising a loan of not less than \$200,000 from a non-resident person (referred to in this Part as a foreign lender) by means of a financial agreement whereby credit facilities are granted for the purchase of productive equipment for the purposes of its trade or business, the company may apply to the Minister for a certificate certifying that foreign loan to be an approved foreign loan.

## Investment Incentive<sup>220</sup>

- Exemption from tax on any interest payable to non-resident lender

## **10) Investment Allowance**<sup>221</sup>

Subject to economic, technical and other merits of the project, an investment allowance may also apply in respect to the fixed capital expenditure for any of the following:<sup>222</sup>

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(2) The Minister may, where he thinks it expedient to do so, consider an application for a foreign loan certificate in respect of a foreign loan of less than \$200,000.

(3) The application shall be in such form and with such particulars as may be prescribed, and shall be accompanied by a copy of the financial agreement.

(4) Where the Minister is satisfied as to the *bona fides* of such an application and that it is expedient in the public interest to do so, he may issue a certificate certifying the loan specified in the application as an approved foreign loan.

(5) Every certificate issued under subsection (4) shall be in such form and contain such particulars as may be prescribed, and shall be subject to such terms and conditions as the Minister thinks fit.”

<sup>220</sup> Investment Incentive Order 2001, Section 77 states that

(1) Notwithstanding section 37 of the Income Tax Act, the Minister may, subject to subsection (2), if he is satisfied that it is expedient in the public interest to do so, by an endorsement to that effect on the approved foreign loan certificate, exempt from tax any interest on an approved foreign loan payable to a foreign lender.

(2) Where a company has contravened section 76 or any conditions imposed by the Minister under subsection (4) of section 75, the amount which, but for subsection (1), would have been deductible by the company from the interest paid by it to the foreign lender under section 37 of the Income Tax Act shall be deemed to have been deducted from that interest and shall be a debt due from the company to the Government and be recoverable in the manner provided by section 76 of the Income Tax Act.

(3) No action shall be taken by the Collector to recover any debt under subsection (2) without the prior sanction of the Minister.

<sup>221</sup> Investment Incentive Order 2001, Part 11.

<sup>222</sup> Investment Incentive Order 2001, Section 80 states that

(1) Where a company proposes to carry out a project —

- (a) for the manufacture or increased manufacture of any product;
- (b) for the provision of specialised engineering or technical services;
- (c) for research and development;
- (d) for construction operation;
- (e) for the recycling of domestic and industrial waste;
- (f) in relation to any qualifying activity as defined in section 17;
- (g) for the promotion of the tourist industry (other than a hotel) in Brunei Darussalam,

the company may apply in the prescribed form to the Minister for the approval of an investment allowance in respect of the fixed capital expenditure for the project.

- The manufacture or increased manufacture of any product
- The provision of specialised engineering or technical services
- Research and development
- Construction operation
- Recycling of domestic industrial waste
- In relation to any company qualifying under pioneer services
- Promotion of the tourist industry (other than a hotel) in Brunei Darussalam

Every certificate issued under this section shall specify a date from the day of investment.

Where a company proposes to carry out an approved project, the investment allowance granted shall be a specified percentage, not exceeding 100% of the amount of fixed capital expenditure incurred on each item specified, if the fixed capital expenditure is incurred within a period not exceeding 5 years commencing from the day of investment and, in the case of promoting the tourism industry, not exceeding 11 years commencing from the day of investment.

#### Investment Incentive<sup>223</sup>

##### Exemption from corporate income tax

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(2) Where the Minister considers it expedient, having regard to the economic, technical and other merits of the project, he may approve the project and issue the company with a certificate which shall qualify the company for an investment allowance (as stipulated in the certificate) in respect of the fixed capital expenditure for the approved project subject to such terms and conditions as he thinks fit...”

<sup>223</sup> Investment Incentive Order 2001, Section 84 states

“(1) Where for any year of assessment the investment allowance account of a company is in credit and the company has for that year of assessment any chargeable income —

(a) an amount of the chargeable income, not exceeding the credit in the investment allowance account, shall be exempt from tax and the investment allowance account shall be debited with such amount; and

(b) any remaining balance in the investment allowance account shall be carried forward to be used by the company in the first subsequent year of assessment when the company has chargeable income, and so on for subsequent year of assessment until the credit in the investment allowance account has been fully used.

(2) Any amount of chargeable income of a company debited from the investment allowance account shall be exempt from tax.”

## 11) Warehousing and Servicing Incentives<sup>224</sup>

These incentives are for any company intending to incur fixed capital expenditure of not less than 2 million Brunei Dollars for:

The establishment or improvement of warehousing facilities wholly or mainly for storage and distribution or manufacture of goods to be sold and exported by the company, this includes processing and other services related to the company; or

The purpose of providing technical or engineering services (or such other services as the Minister of Industry and Primary Resources may, by notification in the gazette, specify) wholly or mainly to a person not a resident in Brunei Darussalam.<sup>225</sup>

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<sup>224</sup> Investment Incentive Order 2001, Part 12.

<sup>225</sup> Investment Incentive Order 2001, Section 89 states

“(1) Any company intending to incur fixed capital expenditure of not less than \$2 million for —

(a) the establishment or improvement of warehousing facilities wholly or mainly for the storage and distribution of manufacture goods to be sold and exported by the company, with or without processing or the provision of related services; or

(b) the purpose of providing technical or engineering services (or such other services as the Minister may, by notification in the *Gazette*, specify) wholly or mainly to persons not resident in Brunei Darussalam, may apply in the prescribed form to the Minister for approval as a warehousing company or a servicing company.

(2) Where the Minister considers it expedient in the public interest to do so, he may approve the application and issue a certificate to the company subject to such terms and conditions as he thinks fit.

(3) Every certificate issued under this section shall specify —

(a) a date as the commencement day from which the company shall be entitled to tax relief under this Part; and

(b) the eligible goods or services for the purpose of tax relief under this Part.

(4) The Minister may, in his discretion, upon the application of a warehousing company or a servicing company, amend its certificate by substituting for the commencement day specified therein such earlier or later date as he thinks fit and thereupon the provisions of this Part shall have effect as if the date so substituted were the commencement day in relation to that certificate.”

## Tax Relief Period<sup>226</sup>

The relief period of a warehousing company shall begin on its day of commencement and shall continue for a period not exceeding 11 years. Any given extension shall not exceed 3 years at one time and not exceed 20 years in total.

Investment Incentive is an exemption from income tax

## **12) Investment in New Technology Companies**<sup>227</sup>

Any company incorporated in Brunei Darussalam which intends to use a new technology relating to a product, process or service, may apply using the forms provided to the Minister of Industry and Primary Resources if:<sup>228</sup>

- The technology, if introduced to Brunei Darussalam would promote or enhance the country's economic or technological development
- Not less than 30% of the paid-up capital is held by local citizens and/or persons holding resident permits, throughout the whole of the qualifying period of the technology company.

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<sup>226</sup> Investment Incentive Order 2001, Section 90 states that

“(1) The tax relief period of a warehousing company or a servicing company shall commence on its commencement day and shall continue for such period, not exceeding 11 years, as the Minister may, in his discretion, determine.

(2) The Minister may, where he is satisfied that it is expedient in the public interest to do so and subject to such terms and conditions as he may impose, extend the tax relief period of any warehousing company or servicing company for such further period or periods, not exceeding 3 years at any one time, as he may determine, except that the tax relief period of the warehousing company or servicing company shall not in the aggregate exceed 20 years.”

<sup>227</sup> Investment Incentive Order 2001, Part 13.

<sup>228</sup> Investment Incentive Order 2001, Section 99 states that

“(1) Any company incorporated in Brunei Darussalam which is desirous of using in Brunei Darussalam a new technology in relation to a product, process or service may make an application in the prescribed form to the Minister to be approved as a technology company.

(2) Where the Minister is satisfied that the technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development in Brunei Darussalam, he may approve the company as a technology company and issue a certificate to that company subject to such conditions as he thinks fit.

(3) Every certificate issued under this section shall specify a percentage, not exceeding 30%, of such amount of the paid-up capital of the technology company as is held by any eligible holding company for the purpose of determining the deduction under section 100.”

## Investment Incentive<sup>229</sup>

- Deduction allowable to eligible holding company

### **13) Overseas Investment and Venture Capital Incentives**<sup>230</sup>

Certificate as a venture company will only be issue if:<sup>231</sup>

- Any company incorporated in Brunei Darussalam intends to develop or use a new technology in Brunei Darussalam in relation to a product, process or service or
- The company incorporated and residing in Brunei Darussalam intends to invest in an overseas company which is developing or using a new technology in relation to a product, process or service or
- The new technology if introduced would promote or enhance the economic or technology development of Brunei Darussalam and
- The company incorporated and residing in Brunei Darussalam intends to invest in an overseas company in order to acquire and use a new technology from

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<sup>229</sup> Investment Incentive Order 2001, Section 100 states that

“(1) Where a technology company has incurred an overall loss in respect of its relevant trade or business at the end of its qualifying period, it may, within 6 years from that date, by notice in writing to the Collector elect for the overall loss (less any amount which has been deducted up to the date of the notice) and the amount of any unabsorbed capital allowances (less any amount which has been deducted up to the date of the notice) to be made available to an eligible holding company as a deduction against the statutory income of the eligible holding company.

(2) The deduction to be made available to an eligible holding company under subsection (1) shall be an amount to be ascertained by multiplying the overall loss (less any amount which has been deducted up to the date of the notice) or the unabsorbed capital allowances (less any amount which has been deducted up to the date of the notice), as the case may be, by the percentage of the paid-up capital of the technology company held by that eligible holding company throughout the whole of the qualifying period of the technology company.”

<sup>230</sup> Investment Incentive Order 2001, Part 14.

<sup>231</sup> Investment Incentive Order 2001, Section 104 states that

“(1) Any company incorporated in Brunei Darussalam which is desirous of developing or using in Brunei Darussalam a new technology in relation to a product, process or service may make an application in the prescribed form to the Minister to be approved as a venture company.

(2) Where the Minister is satisfied that the technology, if introduced in Brunei Darussalam, would promote or enhance the economic or technological development of Brunei Darussalam, he may approve the company as a venture company and issue a certificate to the company subject to such terms and conditions as he may impose.”



this company in Brunei Darussalam to gain access to overseas markets for its eligible holding company or any subsidiary.

#### Investment Incentive<sup>232</sup>

- Deduction of losses allowable to eligible holding company

### **3.2.2 Other Laws related to Investment**

Apart from the Investment Incentive Order (2001), there are other legislations concerning investment as followed:<sup>233</sup>

#### **1) Companies Act (Cap 39)**

This law provides rules concerning business registration, procedures in registering business, and other business matters including issuance of shares, registration of shares, and director's duties, etc.

#### **2) Miscellaneous License Act (Cap 127)**

This law provides rules concerning trade and services licenses, types of business which require a license, procedures for license application, and responsibilities of business owners in maintaining standards, etc.

#### **3) Industrial Coordination Order (2001)**

This law provides rules concerning standards of industrial sites and factories (e.g. license application, transfer of license, withdrawal of license, and so on).

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<sup>232</sup>Investment Incentive Order 2001, Section 106 states that

“(1) Where any eligible holding company has incurred any loss arising from —

- (a) the sale of shares held by it in a venture company; or
- (b) the liquidation of a venture company,

the loss shall be allowed as a deduction against the statutory income of the company in accordance with subsection 2 of section 30 of the Income Tax Act as if the loss were incurred from a trade or business carried on by it.

(2) Where any eligible holding company has incurred any loss arising from —

(a) the sale of shares held by it in a technology investment company or an overseas investment company; or

(b) the liquidation of a technology investment company or an overseas investment company, the loss shall be allowed as a deduction against its statutory income in accordance with subsection (2) of section 30 of the Income Tax Act as if the loss were incurred from a trade or business carried on by it.”

<sup>233</sup> ASEAN Investment Guidebook 2009, Jakarta: ASEAN Secretariat, February 2010, p.6.

#### **4) Telecommunication Order (2001)**

This law regulates telecommunications services. Areas of regulation include license approval, installing telecommunications equipment, code of practice and standard of performance, etc.

#### **5) Petroleum Mining Act (1984, cap 44)**

This law regulates an exploration and conducting of petroleum mining. Areas of regulation include mining rights, eligible areas for mining, responsibilities of concessionaire.

#### **6) Architects Professional Engineers and Quantity Surveyors Order (2008)**

This law regulates conducts of architects, engineers, and surveyors including qualification approval, professional license requirements, establishment of professional board, and provisions regarding a relationship between architects and engineers.

#### **7) Forest Act (Cap 46)**

This law aims to conserve forest area in the country. It also regulates logging license and sanction in case of violation. This law also establishes the national forest development fund.

#### **8) Fisheries Act (Cap 61)**

This law provides rules relating to fishery licenses, prohibition of chemical usage and explosive devices in fishery, sanctions and confiscation of equipment for wrongful fishery, and selling of confiscated fish.

#### **9) Fisheries Limit Act (Cap 130)**

This law regulates fishery areas. For example, fishery is not allowed beyond 200 nautical miles from the coast.

#### **10) Land Code (Cap 40)**

This law establishes rules governing land usage and land rights including registration requirements, documents displaying titles, land measuring and survey, land lease, boundary mark, transfer of titles, transfer of leasing rights, governmental authority's rights to enter and examine land.

#### **11) Land Strata Act (Cap 189)**

This law regulates possession of apartments (Strata). The law also regulates apartment plans, common property, and establishment of juristic person.

#### **12) Free Trade Zone Order (2014)**

The law establishes Free Trade Zones and provides tax incentives for goods brought in and out of the zones including an exemption of import duty.

### 3.3 Investment Procedures in Brunei

#### 1) Requirements and procedures in establishing an investment in Brunei

Requirements and procedures in establishing an investment in Brunei will be discussed in details in Chapter 4 (Rules in conducting business in Brunei) under section 4.2 (setting up a business in Brunei).

A foreign investor intending to set up an investment in Brunei should preliminarily contact the Brunei Economic Development Board (BEDB) to obtain information about setting up an investment in Brunei and also information about related organizations for specific business application. BEDB is a one-stop information agency established to facilitate investors with useful information about application requirements, responsible organization, and application period for setting up a business.

Principally, there are two ways to register a business in Brunei - the normal track and the MIPR track (application to be made under Ministry of Industry and Primary Resource). The normal track is for ordinary business registration to be set up as a company or a branch. The MIR track is for an investment project which involves exploitation of primary resources; for example, agriculture, fishery, forestry, and investment projects within the industrial zones.

### 3.4 Foreign business law

There is no direct law dealing with foreign business establishment in Brunei. However, there are laws relating to setting up a business in Brunei including the Companies Act (Cap 39), the Miscellaneous License Act (Cap 127), and other related government orders. Almost all business sectors allow 100% foreign share ownership except sectors involved with natural resources' exploitation such as agriculture and fishery. A business concerning food security restricts foreign shares to no more than 30% of the total share in a company along with other conditions. Depending on governmental rules in specific sectors, foreign investors may be allowed to wholly own a business or partly own a business, or engage in partnership with local companies.<sup>234</sup>

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<sup>234</sup> Information on ASEAN Countries' Business Registration, Department of Business Development, the Ministry of Commerce, 2013, p. 19.

The Investment Incentive Order (2001) has no definition of “foreigner” but has provisions on foreign share participation. Different sectors offer different rules on foreign share participation ranging from allowing foreign investors to own majority of shares to restrict foreign shares as minority.<sup>235</sup>

Foreign investors are allowed to own shares up to 100% in a company that engage in high-technology business or export-oriented business except business with an exploitation of local or primary resources or business with food security.

Foreign investors may register for a business at the Registry of Company and Business Name Division (ROBCN) which is located at Ministry of Finance. Some businesses require special permits from the government prior to operation such as banking, finance, insurance, leasing, and tour operation.

**Table 21: Requirements for Foreign Investors in Certain Business Sectors**

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
<b>Distribution</b>	A miscellaneous license, or ‘Rampaian’, is required by retail shops from the Municipal Department.	- to protect consumers, price controls are maintained on a number of products, including rice, sugar, plain flour, milk for infants, evaporated and condensed milk, tea, coffee, motor vehicles, petrol, diesel, kerosene, petroleum gas,	- No more than 30%: Distribution relating to packaging services - 100%: others

<sup>235</sup> Information on ASEAN Countries’ Business Registration, Department of Business Development, the Ministry of Commerce, 2013, p. 19.

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
		cooking oil, tobacco and cigarettes - Oil prices are subsidized by the Government since 1978 - The government imposes quotas on rice sold in retail shops	
<b>Education</b>	Approval from the Education Minister is required. The Minister may require as a condition precedent to the registration of any school that the number of managers and teachers shall be at least the number specified by the Minister.	- Branch registration: approval from the Education Minister is required. - Private higher education: approval from the Education Minister is required, and must be registered as a company limited. - All higher educational institutions must comply with the National Education Policy by incorporating the philosophy of the	No more than 49% (only for ASEAN investors) for: - Primary education - Secondary education - Private Institution for short programme (not exceeding 3 months) - Vocational institution - Foreign language institution

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
		<p>Malay Islamic Monarchy as a compulsory subject into its teaching syllabus.</p> <p>- Foreign employees must not exceed 10 per cent of the workforce in adult education services.</p>	
<b>Financial services</b>	An approval from the Minister of Finance is required	<p>- Commercial banks: minimum capital registration of 100 Million Brunei Dollars is required; at least 10% cash adequacy rate is required; the balance sheet needs to maintain cash at least 6% of the registered capital</p> <p>- Insurance: at least 8 Million Brunei Dollars registered capital is required</p>	<p>- Commercial banks: varying upon the Finance Minister's approval</p> <p>- Islamic Banks: no more than 50%</p> <p>- Insurance: no more than 51%</p>
<b>ICT</b>	An approval from the Communications	- The Ministry of Communications may	Broadcasting: no more than 49%

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
	<p>Ministry is required in the following types of licenses:</p> <ul style="list-style-type: none"> <li>- Broadcasting license</li> <li>- Broadcasting apparatus license</li> <li>- Dealer license</li> <li>- Operating license</li> <li>- Computer-related services</li> </ul>	<p>pose conditions on content</p> <ul style="list-style-type: none"> <li>- Broadcasting sectors: a managing director must be a Brunei citizen, and more than half of directors must be Brunei citizens</li> </ul>	
<b>Mining and Energy</b>	<ul style="list-style-type: none"> <li>- Energy sector is regulated by the government</li> <li>- Oil and gas sector is regulated by the Brunei Petroleum Company (PB) which is a state-owned enterprise. The PB can enter into a Petroleum Sharing Agreement (PSA) with a foreign investor. The term of PSA is normally 30 years.</li> </ul>	<p>In the 30 years term of PSA, an exploration period must not be extended more than 3 times, and the overall exploration period must not exceed 6 years. The operation period must not exceed 22 years.</p>	<p>Subject to the PSA</p>
<b>Professional services</b>	<ul style="list-style-type: none"> <li>- Professional services must be registered with relevant authorities</li> </ul>	<ul style="list-style-type: none"> <li>- To be an authorized auditor, a qualified applicant must possess a minimum</li> </ul>	<ul style="list-style-type: none"> <li>- Architecture and accounting: no more than 50% (only for ASEAN</li> </ul>

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
	<p>- Law firm is approved in a case-by-case basis</p>	<p>qualification as an associate member from one of the following bodies:  The Institute of Chartered Accountants (of Australia, Canada, England and Wales, Ireland, New Zealand, Scotland);  The Association of Chartered Certified Accountants; CPA Australia.  - Audit firms may be set up only as a sole proprietorship or a partnership.  - Architectural plans must be submitted through licensed practicing Architects in Brunei.  - Engineering plans must be submitted by licensed practicing engineers and a by registered</p>	<p>investors)  - Engineering in a turnkey contract for transportation, water, healthcare, and construction: no more than 55%  - Urban planning: no more than 50%</p>



Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
		company/partnerships in Brunei. - The maximum number of partners in an audit firm is twenty.	
<b>Telecommunications</b>	An approval from the Autoriti for Info-Communications Technology and Industry (AITI) is required in the following licenses: - Dealer license - Operating license - Telecommunications equipment	- A joint venture (JV) with local company is required and must be legally registered - AITI has power to regulate services by imposing conditions of services provided (e.g. prices)	- No more than 50% - Foreign investors are prohibited to control the business
<b>Transportation and Logistics</b>	Air transport and maritime transport: foreign investors are not allowed	- Owning of ships is only available for a Brunei citizen or a permanent resident or a registered company in Brunei - Foreign shipping companies are required to appoint a Brunei Shipping Agency Company to	- No more than 80% (only for ASEAN investors): aircraft leasing (with and without crew) services, maintenance and repair of aircraft services and computer reservation

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
		act as their general ship-agent to supply maritime agency services	<p>systems services</p> <p>- No more than 49% (only for ASEAN investors):</p> <p>maritime passenger transportation, freight transportation (excluding vessels for the carriage and transportation of energy goods), freight agency transportation, maritime cargo handling services, storage and warehousing services and maritime freight forwarding services</p> <p>- No more than 49% (only for ASEAN investors):</p> <p>passenger rail transportation, rail</p>

Sector	Requirements for Foreign Investor in Providing Services in Brunei		
	Licensing	Other restrictions	Foreign share ownership
			freight transportation, pushing and towing and maintenance of rail transport equipment services

Source: APEC Services Trade Access Requirements (STAR) Database, Asia-Pacific Economic Cooperation (2013).

### 3.5 Investment Protection

#### 1) Investment protection under ASEAN Comprehensive Investment Agreement (ACIA)

As a Country Member of the ACIA, Brunei is bound by the Agreement to accord the following benefits to ASEAN Members.

##### (1) Liberalization

The Agreement calls for liberalization of investment in agriculture, fisheries, forestry, manufacturing, mining and quarrying, and services incidental to the aforementioned sectors as well as other sectors as may be agreed by ASEAN Members. This creates more opportunities for ASEAN investors to invest and expand trade in goods and services in the liberalized sectors agreed by the Agreement.<sup>236</sup>

Brunei must accord to foreign investors the same treatment as accorded to local investors. However, realizing that ASEAN Members have different level of economic

<sup>236</sup> ASEAN Comprehensive Investment Agreement: A Guidebook for Business & Investors, p. 7, available at [http://www.asean.org/images/2013/news/ACIA/ACIA%20Guidebook2012%20\(14.3.13\).pdf](http://www.asean.org/images/2013/news/ACIA/ACIA%20Guidebook2012%20(14.3.13).pdf).

standings, the Agreement allows Members to make reservation lists on sectors that are not ready to be liberalized. Members must continue to progressively liberalize investment until meeting the liberalization target in 2015.<sup>237</sup>

## **(2) Investment Protection**

The Agreement calls for protection of ASEAN investors in agriculture, fisheries, forestry, manufacturing, mining and quarrying, and services incidental to the aforementioned sectors.<sup>238</sup> Investment protection includes granting fair and equitable treatment to foreign investors, compensating foreign investors to rectify damages occurred by expropriation by states, political unrest, riots, or declaration of state of emergency. Moreover, foreign investors are guaranteed of free transfer of money and profits, and transparency in dispute settlement process. Investors may bring a claim against a state in an investor-state dispute settlement clause if the state breaches some obligations under the Agreement and causes damages to foreign investors.

## **(3) Investment Promotion**

To meet an objective of becoming the investment hub, ASEAN Members must collectively promote ASEAN investment zone to become known globally in order to attract foreign investors. Both large-scale and medium and small-scale investors are encouraged to expand networks of industries and make more business collaborations. ASEAN investors will have forums to exchange information and ideas as well as gain opportunities to learn about rules and regulations concerning investment in all ASEAN Members.

## **(4) Investment Facilitation**

Brunei must create an environment suitable for investment including sound process of investment application and approval, efficient database, and availability of

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<sup>237</sup> The Board of Investment of Thailand, ASEAN Comprehensive Investment Agreement (ACIA), available at [http://www.boi.go.th/upload/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B9%80%E0%B8%9B%E0%B8%B4%E0%B8%94%E0%B9%80%E0%B8%AA%E0%B8%A3%E0%B8%B5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A5%E0%B8%87%E0%B8%97%E0%B8%B%E0%B8%99%E0%B8%A0%E0%B8%B2%E0%B8%A2%E0%B9%83%E0%B8%95%E0%B9%89%20ACIA%20%28revised%29\\_52346.pdf](http://www.boi.go.th/upload/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B9%80%E0%B8%9B%E0%B8%B4%E0%B8%94%E0%B9%80%E0%B8%AA%E0%B8%A3%E0%B8%B5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A5%E0%B8%87%E0%B8%97%E0%B8%B%E0%B8%99%E0%B8%A0%E0%B8%B2%E0%B8%A2%E0%B9%83%E0%B8%95%E0%B9%89%20ACIA%20%28revised%29_52346.pdf).

<sup>238</sup> ASEAN Comprehensive Investment Agreement: A Guidebook for Business & Investors, p. 9, available at, [http://www.asean.org/images/2013/news/ACIA/ACIA%20Guidebook2012%20\(14.3.13\).pdf](http://www.asean.org/images/2013/news/ACIA/ACIA%20Guidebook2012%20(14.3.13).pdf).

information essential to setting up an investment as well as rules and regulations concerning investment.<sup>239</sup> A one-stop services point must be provided to facilitate foreign investors wishing to set up an investment in the country and to provide consultancy services regarding the country's investment law as well as to liaise with private sectors in developing investment environment.<sup>240</sup>

## **2) Foreign Exchange Regime<sup>241</sup>**

Brunei Dollars are freely exchangeable. The government has no control or restrictions on currency used for loan or lease payment. Currency exchange rate is varied upon demand and supply in the market.

## **3) Expropriation and Compensation<sup>242</sup>**

Laws, regulations, and policies concerning expropriation and compensation are in accordance with the provisions of ACIA. Expropriation and compensation clauses are stipulated in investment protection treaties or bilateral investment treaties (BITs) concluded with several countries. There has not been a case concerning expropriation and compensation of foreign investment so far.

## **4) Bilateral Investment Treaties (BITs)<sup>243</sup>**

Bilateral Investment Treaties (BITs) are international agreement between two states agreeing to grant mutual benefits and privileges in investment protection by granting international minimum standard of treatment to a foreign investor, guaranteeing appropriate compensation against expropriation, guaranteeing free transfer of profits, and having a fair dispute settlement process. Brunei currently has BITs with the following states:

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<sup>239</sup> The Office of Industrial Economics, ASEAN Agreements, available at [www.iiu.oie.go.th](http://www.iiu.oie.go.th).

<sup>240</sup> The Board of Investment of Thailand, ASEAN Comprehensive Investment Agreement (ACIA), available at, [http://www.boi.go.th/upload/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B9%80%E0%B8%9B%E0%B8%B4%0%B8%94%E0%B9%80%E0%B8%AA%E0%B8%A3%E0%B8%B5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A5%E0%B8%87%E0%B8%97%E0%B8%B8%E0%B8%99%E0%B8%A0%E0%B8%B2%E0%B8%A2%E0%B9%83%E0%B8%95%E0%B9%89%20ACIA%20%28revised%29\\_52346.pdf](http://www.boi.go.th/upload/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B9%80%E0%B8%9B%E0%B8%B4%0%B8%94%E0%B9%80%E0%B8%AA%E0%B8%A3%E0%B8%B5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%A5%E0%B8%87%E0%B8%97%E0%B8%B8%E0%B8%99%E0%B8%A0%E0%B8%B2%E0%B8%A2%E0%B9%83%E0%B8%95%E0%B9%89%20ACIA%20%28revised%29_52346.pdf).

<sup>241</sup> ASEAN Investment Guidebook 2009, Jakarta: ASEAN Secretariat, February 2010, p.10

<sup>242</sup> ASEAN Investment Guidebook 2009, Jakarta: ASEAN Secretariat, February 2010, p.10

<sup>243</sup> ASEAN Investment Guidebook 2009, Jakarta: ASEAN Secretariat, February 2010, p.10

- Germany
- Oman
- The Republic of Korea (South Korea)
- China
- Ukraine
- Bahrain
- India
- Kuwait

## **5) Intellectual Property Rights<sup>244</sup>**

There are laws that protect intellectual property rights in Brunei as follows:

- International law (Cap 72, 1984)
- Trade Mark Act (Cap 98, 2000)
- Emergency (Industrial Designs) Order (1999)
- Industrial Design Rules (2000)
- Brunei is a party to the following treaties concerning intellectual property rights:
- Berne Convention for the Protection of Literacy and Artistic Work (2006)
- The World Intellectual Property Organization (WIPO, 1995)
- Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement, 1995) under the World Trade Organization

## **6) Dispute Settlement<sup>245</sup>**

There are two main legislations dealing with arbitration at an international and domestic pane. The Arbitration Order (2009) provides rules for arbitration settled between domestic parties. For international arbitration claims, the International Arbitration Order (2009) deals with this issue.

Both legislations adopt the UNCITRAL model law which marks international standards in arbitration rules and procedures. Under the model law, Brunei's court has to recognize and enforce an international arbitral award rendered by arbitrators freely chosen between parties to the dispute. The duty to recognize and enforce an international arbitral

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<sup>244</sup> ASEAN Investment Guidebook 2009, Jakarta: ASEAN Secretariat, February 2010, p.10-11

<sup>245</sup> ASEAN Investment Guidebook 2009, Jakarta: ASEAN Secretariat, February 2010, p.11

award is also set out in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention, 1958) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (The ICSID Convention, 1965). Being a party to both Conventions, Brunei boosts foreign investors' confidence because they may seek to enforce an international arbitral claims under domestic courts should the situation arises.

### **3.6 Concerning Authorities in Foreign Investment**

#### **1) Ministry of Industry and Primary Resources (MIPR)**

MIPR is responsible for approving an investment project which engages in an exploitation of primary resources such as agriculture, fishery, and forestry. Moreover, it oversees the granting of incentives under the Investment Order (2001). The Project Implementation and Technical Committee set up under MIPR considers qualifications of an investment project applying for a pioneer status. The Brunei Industrial Development Authority (BINA) under MIPR establishes 9 industrial sites with 568 hectares and three industrial complexes for small and medium enterprises.

#### **2) Brunei Economic Development Board (BEDB)**

BEDB is established under the Brunei Economic Development Board Act (Cap 104) by the Sultan's initiative in November 2001 to be an organization that fosters the country's economic development. The main functions of BEDB are to attract foreign investors and create value-added investment as well as launch legal policies, institutional guidelines, and human development policies for an enrichment of investment promotion. BEDB also coordinates between concerning authorities to increase efficiency in investment facilitation.

#### **3) The Registry of Companies and Business Names (ROCBN)**

The ROCBN was first established under the Attorney General's Chamber Office in 1999 but later transferred to Ministry of Finance in April 2012. The ROCBN now operates under the Ministry of Finance.<sup>246</sup> Its main function is to register business that is establishing in Brunei.

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<sup>246</sup> The Government of Brunei, Ministry of Finance, the Registry of Companies and Business Names, <http://www.mof.gov.bn/index.php/divisions/registry-of-companies-and-business-names>, accessed 15 April 2015.

### 3.7 Conclusions and Recommendation about Foreign Investment in Brunei

Brunei offers a welcoming environment for foreign investors under the Investment Incentive Order (2001) detailing an array of investment benefits to foreign investors. Most benefits are tax-based including income tax exemption, import duty exemption (for building structural parts, equipment, compartments, raw materials which are unavailable in Brunei, etc.) and tax loss carryforward. Other non-tax benefits include free exchange rate of currency at market value and guarantee of compensation against expropriation.

Under investment benefits currently being offered, Thai investors are presented with good opportunities to invest in Brunei. Investors should consider types of investment and incentives offered by that type of investment. For example, if an investor intends to invest in computer-related services, it may request to a pioneer status for its investment which would exempt the business from income tax for 8 years and can receive tax loss carryforward.



## Chapter 4

### Brunei's Immigration Law

#### 4.1 Introduction

Most Thai immigrants in Brunei are working immigrants. Due to limitations of local workforce, Brunei has relaxed policy toward foreign workers. As a result, foreign employment constitute for one-third of overall employment in Brunei, especially in labor-scarce sectors. Foreign workers must apply for a 2-year permit at the Commissioner of Labour Brunei Darussalam. Securities (cash or bank's guarantee) at the equivalent amount of a return fare ticket are required prior to working in Brunei. After the Commissioner's approval, the Immigration Office may allow an entry to Brunei upon confirmation that a workplace which hires such person has been legally established and registered. Brunei has various types of visas to suit different purposes of entry. The Immigration Act (Cap 17, 1958) sets requirements for a foreigner who wishes to apply for a permanent residence.

#### 4.2 Useful information about Brunei's immigration law

- The Immigration Act (Cap 17, 1958) provides rules concerning immigration, restrictions to entry, visa granting, procedures in entry and leaving the country, reasons for deportation as well as an appointment of immigration officers and their duties.
- The Immigration Regulations (1958) supplement the Immigration Act in indicating procedures and necessary documentation for entry and re-entry permit, visit pass, student pass, special pass, covenant by employers, and crew list.
- The Passport Act (Cap 146, 1983) sets out rules concerning travelling documents and passports including approving or rejecting an entry, issuance of passports, renewal of passports, cancelling of passports, fees collected from crew operators, offences, and officer's power to order detention.
- The Passport Regulations (2005) establish details concerning an application, issuance, renewing and cancellation of passports. The regulations also empower a relevant authority to cancel a passport to a particular person. The regulations also provide for an appeal against a refusal to a Brunei passport.

- The Nationality Act (Cap 15, 1962) provides rules concerning nationality certification, becoming Brunei's nationals, losing of Brunei's nationality, registration of Brunei's nationals born overseas, etc.
- The National Registration Act (Cap 19, 1965) appoints and empowers officers to register and issue Brunei's national identification cards, revoke registration, and authenticate registration documents.

## 4.3 Entry into Brunei

### 4.3.1 Prohibited immigrants

Entry to Brunei is prohibited in the following cases:<sup>247</sup>

1) An immigrant who is unable to show evidence of financial support of himself/herself or dependents, or waiting to be employed, or who is likely to become a pauper or a charge on the public;

2) An immigrant who is suffering from mental disorder or being a mental defective;

3) An immigrant who is refusing to submit to a medical examination after being required to do so;

4) An immigrant who is certified by a Government medical officer to be suffering from a contagious or infectious disease which makes his presence in Brunei Darussalam dangerous to the community;

5) An immigrant who has been convicted in any country or state of an offence for which a sentence of imprisonment has been passed for any term;

6) An immigrant who has not received a free pardon;

7) An immigrant who is connected with such conviction is deemed by a Governmental official to be an undesirable immigrant;

8) An immigrant who involves, prior to entering Brunei Darussalam, with the proceeds of prostitution;

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<sup>247</sup> Laws of Brunei CAP 17 Immigration Act Section 9 (1) states that "The Minister of Home Affairs with the approval of His Majesty the Sultan and Yang Di-Pertuan may, by order –

(a) Where he deems it expedient so to do in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Brunei Darussalam –..."

9) An immigrant who procures or attempts to bring into Brunei Darussalam prostitutes or women or girls for the purpose of prostitution or other immoral purposes;

10) An immigrant who is a vagrant or habitual beggar;

11) An immigrant whose entry into or presence in Brunei Darussalam is, or at the time of his entry was, unlawful under this or any other written law for the time being in force;

12) An immigrant who believes in or advocates the overthrow by force or violence of the Government of Brunei Darussalam or of the government of any territory within the Commonwealth or of constituted law or authority;

13) An immigrant who is a member of or affiliated with any organisation entertaining or teaching disbelief in or opposition to organised government;

14) An immigrant who is deemed by a Government official to be an undesirable immigrant in consequence of information received from any reliable source or from a diplomatic channel;

15) An immigrant who has been removed from any country or state by the government of such country or state on repatriation for any reason;

16) An immigrant who is required by law to possess valid travelling documents, but is not in possession of such documents or is in possession of forged or altered travel documents which do not fully comply with any such written law;

17) An immigrant who, other than Brunei citizens, is unable to show that he is willing and can, of right, return to some country outside Brunei Darussalam;

18) An immigrant who is the family and/or dependant of a prohibited immigrant;

19) An immigrant who is any person prohibited by order made under section 9 (1)<sup>248</sup> from entering Brunei Darussalam.

#### **4.3.2 Persons exempted from possession of passports when entry to Brunei**

While an entry into Brunei required a presentation of a valid passport as stipulated in Section 6(1)(c)<sup>249</sup> of the Immigration Act and Section 3(1)<sup>250</sup> of the Passport Act, there is

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<sup>248</sup> Laws of Brunei CAP 17 Immigration Act Section 9 (1) states that “The Minister of Home Affairs with the approval of His Majesty the Sultan and Yang Di-Pertuan may, by order –

(a)Where he deems it expedient so to do in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Brunei Darussalam -...”

an exemption when His Majesty in Council may order otherwise to allow a specific person or a group of persons into the country irrespective of requirements imposed by law.<sup>251</sup>

### 4.3.3 Power of Immigration Officers

Immigration officers shall retain the following powers:

- 1) Power to examine documents and grant permission to entry<sup>252</sup>
- 2) Power to deny entry to prohibited immigrants in accordance with section 8 of the Immigration Act.<sup>253</sup> The prohibited immigrant is an immigrant who falls under one of the causes prescribed in 1) – 19) of heading 3.3.1 above.<sup>254</sup>
- 3) Power to enquire or require the production of evidence in connection to a visa application or extension.<sup>255</sup>

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<sup>249</sup> Laws of Brunei CAP 17 Immigration Act Section 6 (1) states that “No person other than a citizen of Brunei Darussalam shall enter Brunei Darussalam from any place outside Brunei Darussalam unless - ...

(a) He is in possession of a valid Pass lawfully issued to him to enter Brunei Darussalam”

<sup>250</sup> Laws of Brunei Revised Edition 1984 CAP 146 Passports Act Section 3 (1) states that “Every person entering Brunei Darussalam from any place beyond Brunei Darussalam shall produce to an immigration officer a passport; and that passport shall, in the case of a person other than a citizen of Brunei Darussalam have a valid visa for Brunei Darussalam issued on the authority of and by or on behalf of the Government of Brunei Darussalam...”

<sup>251</sup> Laws of Brunei CAP 17 Immigration Act Section 54 (1) states that “Notwithstanding anything contained in this Act, His Majesty in Council may, by order exempt, absolutely or conditionally, any person or class of persons from all or any of the provisions of this Act...”

<sup>252</sup> Laws of Brunei CAP 17 Immigration Act Section 6 (1) states that “No person other than a citizen of Brunei Darussalam shall enter Brunei Darussalam from any place outside Brunei Darussalam unless –

(a) He is in possession of a valid Entry Permit or Re-entry Permit lawfully issued to him under the provisions of section 10 or 11;...”

<sup>253</sup> Laws of Brunei CAP 17 Immigration Act Section 8 (1) states that “Any person who in the opinion of the Controller –

(a) Is not a citizen of Brunei Darussalam; and

(b) Is a member of any of the prohibited classes, as defined in subsection (2),...

(4) In any case where the Controller refuses to allow any person to enter Brunei Darussalam on the ground such person is a prohibited immigrant he shall if so requested by such person inform him of the class of prohibited immigrant of which, in the opinion of the Controller, he is a member...”

<sup>254</sup> Laws of Brunei CAP 17 Immigration Act Section 9 (1) states that “The Minister of Home Affairs with the approval of His Majesty the Sultan and Yang Di-Pertuan may, by order –

(a) Where he deems it expedient so to do in the interests of public security or by reason of any economic, industrial, social, educational or other conditions in Brunei Darussalam -...”

4) Power to cancel an issuance of a passport as stipulated in section 14 of the Immigration Act.<sup>256</sup>

5) Power to examine an immigration that arrives by sea and intends to disembark in Brunei Darussalam as stipulated in section 24 of the Immigration Act.<sup>257</sup>

6) Power to order an immigrant in doubt to proceed to a depot for a detention until permission to entry is made. In any case, a detention shall not exceed 7 days as stipulated in section 27 of the Immigration Act.<sup>258</sup>

7) Power to arrest a person reasonably believed to a person liable to removal from Brunei Darussalam without a warrant. A detention of such person liable to removal from the country shall not exceed 14 days as stipulated in section 35 of the Immigration Act.<sup>259</sup>

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<sup>255</sup> Laws of Brunei CAP 17 Immigration Act Section 13 states that “The Controller may before the issue of an entry or Re-entry Permit under this Act or before making any endorsement thereon under the provisions of section 12 make such enquiries or require the production of such evidence as he may think fit in order to satisfy himself as to the truth of any statement made in the application for such Permit.”

<sup>256</sup> Laws of Brunei CAP 17 Immigration Act Section 14 (1) states that “When the holder of any Entry Permit or Re-entry Permit seeks to enter Brunei Darussalam accompanied by any child whose name is not endorsed upon such Permit under the provisions of section 12 and who is not otherwise entitle to enter Brunei Darussalam under the provisions of this Act, the Controller may cancel the Permit issued to such person...”

<sup>257</sup> Law of Brunei CAP 17 Immigration Act Section 24 (1) states that “Every person arriving by sea intending to disembark in Brunei Darussalam shall appear before a Senior Immigration Officer at such time and place as such officer may direct, and such officer, after such examination as he may consider necessary, shall inform any person whom he considers to be prohibited from entering Brunei Darussalam under the provisions of this Act or of any regulations made thereunder of his finding...”

<sup>258</sup> Laws of Brunei CAP 17 Immigration Act Section 27 (1) states that “When a Senior Immigration Officer is in doubt as to the right of any person to enter Brunei Darussalam, it shall be lawful for such officer to direct such person to any immigration depot and, in such case, such person shall proceed forthwith to such depot and shall remain there until permitted to leave by such officer:...”

<sup>259</sup> Laws of Brunei CAP 17 Immigration Act Section 35 states that “Any person reasonably believed to be a person liable to removal from Brunei Darussalam under any of the provisions of this Act may be arrested without warrant by any Immigration Officer or police officer generally or specially authorized by the Controller in that behalf or by a police officer not below the rank of Inspector...”

8) Power to examine witnesses and require the production of documents for the purpose of any inquiry or appeal under section 39 of the Immigration Act.<sup>260</sup>

9) Power to authorize any Port Officer to detain any vessel or aircraft in connection with an offence against the Immigration Act under section 49.<sup>261</sup>

10) Power to collect fine from a person who commits an offence against the Immigration Act. Any sum of money collected under this section shall be dealt with as if it were a fine imposed by a Court as stipulated in section 49 of the Immigration Act.<sup>262</sup>

#### **4.3.4 Important information when travelling to Brunei**

Thai persons travelling to Brunei for leisure purposes are eligible to stay in Brunei for 14 days without visa. However, Thai persons travelling to Brunei for other purposes than leisure must request for visa at the Embassy of Brunei in Thailand. Upon arrival, an immigration form and customs declaration form must be filled and presented to immigration and customs officers (the forms are normally available on a plane). Non-Muslim persons can bring into Brunei a maximum of 2 bottles of alcoholic beverages (a maximum of 1 liter per bottle). Non-Muslim persons can bring into Brunei a maximum of 12 cans of beer on each entry for consumption purpose only. Alcoholic beverages brought into Brunei must be declared in the customs form and declared to customs officers at the customs declaration point (the red lane). There are sanctions under customs laws for any person failing to declare such goods. Cigarettes can be brought into Brunei at a maximum of 200 cigarettes (or 250 grams in case of tobacco). Cigarettes brought into Brunei must be declared at the customs point and pay cigarette tax at 25 Brunei Cent per cigarette.

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<sup>260</sup> Laws of Brunei CAP 17 Immigration Act Section 39 (1) states that “The Controller may, for the purpose of any inquiry or appeal under this Act, summon and examine witnesses on oath or affirmation, and may require the production of documents relevant to the inquiry or appeal...”

<sup>261</sup> Laws of Brunei CAP 17 Immigration Act Section 49 (1) states that “The Controller may by writing under his hand authorize any Port Officer to detain any vessel or aircraft in connection with which an offence against this Act is reasonably believed to have been or to be about to be committed...”

<sup>262</sup> Laws of Brunei CAPr 17 Immigration Act Section 58 A (1) states that. The Controller, and any Immigration Officer not below the rank of Senior Immigration Office specially authorized by name or by office by the Minister by notification in the Gazette for the purpose, may in his discretion –

- (a) In relation to any offence under section 5(3) and 15(2) or under any regulations made under this Act, if he is satisfied that any person has committed such offence, compound the offence by collecting from that person a sum not exceeding \$600...”

Perfume is allowed to bring into Brunei at a maximum of 60 milliliters per entry. A person bringing more than 15,000 Brunei Dollars (approximately 360,000 Baht) in or out of Brunei must declare at the customs point.<sup>263</sup>

#### 4.4 Types of Entry Permission

##### 4.4.1 Temporary stay

The Brunei Passport Act requires any person entering into Brunei or leaving Brunei to present a valid passport to an immigration officer.<sup>264</sup> A person must tell the truth when asked by an immigration officer.<sup>265</sup> Except for Brunei's nationals, failure to comply with any provision under the Brunei Passport Act can result in a deportation order.<sup>266</sup> The deportation order includes detaining the non-compliant person for some time before deportation.<sup>267</sup>

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<sup>263</sup> Royal Thai Embassy at Brunei Darussalam, <http://www.thaiembassy.org/bsb/th/thai-people/50952-%E0%B%82%E0%B9%89%E0%B8%AD%E0%B8%84%E0%B8%A7%E0%B8%A3%E0%B8%A3%E0%B8%B9%E0%B9%89%E0%B8%81%E0%B9%88%E0%B8%AD%E0%B8%99%E0%B9%80%E0%B8%94%E0%B8%B4%E0%B8%99%E0%B8%97%E0%B8%B2%E0%B8%87%E0%B8%A1%E0%B8%B2%E0%B8%9A%E0%B8%A3%E0%B8%B9%E0%B9%84%E0%B8%99.html>, accessed on 20 February 2015.

<sup>264</sup> Laws of Brunei Revised Edition 1984 CAP 146 Passports Act, Section 3 (1) states that “every person entering Brunei Darussalam from any place beyond Brunei Darussalam shall produce to an immigration officer a passport; and that passport shall, in the case of a person other than a citizen of Brunei Darussalam have a valid visa for Brunei Darussalam issued on the authority of and by or on behalf of the Government of Brunei Darussalam.”

<sup>265</sup> Laws of Brunei Revised Edition 1984 CAP 146 Passports Act, Section 3 (2), (3) states that “(2) Every person leaving Brunei Darussalam for a place beyond Brunei Darussalam shall, if required so to do by an immigration officer produce to that officer a passport.

(3) An immigration officer may, in relation to any passport produced under this section, put to any person producing that passport such questions as he thinks necessary; and the person shall answer the questions truthfully.”

<sup>266</sup> Laws of Brunei Revised Edition 1984 CAP 146 Passports Act, Section 5 states that “without prejudice to any penalty that may be imposed upon him by this Act, a person entering Brunei Darussalam contrary to this Act shall be liable, upon an order in that behalf being made by the Controller, to be removed from Brunei Darussalam ... provided that no such order shall apply to a citizen of Brunei Darussalam...”

<sup>267</sup> Laws of Brunei Revised Edition 1984 CAP 146 Passports Act, Section 5 (2) states that “an order made by the Controller under subsection (1), may provide for the detention in custody, for such period as may be necessary for the purpose of making arrangements for his removal, of the person to whom the order applies; and that person may pursuant to the order be detained either in a prison or in any other place appointed by the Controller for that purpose.”

## 1) Prohibited person from entry into Brunei

The following persons are prohibited from entry into Brunei:

- Any person travelling to Brunei must refrain from the following actions prohibited by Section 12(1) of the Passport Act<sup>268</sup>
- Forging, altering or tampering with any passport or internal travel document, or attempting to use a forged, altered, or tampered passport
- Making any false document intending to use the document as a passport
- Falsely representing himself to be or not to be a person to whom a passport or internal travel document has been duly issued
- Knowingly making any false statement or produces any document which is to his knowledge false in any particular
- Having in his possession any passport or internal travel document which has been obtained as a result of making any material statement which was false or misleading
- Allowing any person to have possession of any passport issued for his use alone, intending or knowing that the passport may be used by any other person
- Without lawful authority, having in his possession any passport or internal travel document issued for the use of some person other than himself
- Willfully assisting any person to enter Brunei Darussalam contrary to this Act
- Willfully assisting any person to contravene this Act
- Obstructing or hindering any immigration officer, police officer or officer of customs in the discharge of his duty under this Act
- Attempting to commit or abets the commission of any offence against this Act

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<sup>268</sup> Laws of Brunei Revised Edition 1984 CAP 146 Passports Act, Section 12 (1) Any person who –

- (a) Forges, alters or tampers with any passport or internal travel document, or any visa or endorsement thereon, or without lawful authority uses or attempts to use, or has in his possession, any passport or internal travel document which has been so forged, altered or tampered with...



## 2) Types of stay

### A) Short business visit

#### Guidelines for Visit Visa

A holder of the following passports is not required a visa when entering Brunei for leisure, business, or employment for a specific time period<sup>269</sup>

- Eligible to stay up to 14 days in Brunei: Thailand, Canada, Indonesia, Japan, Philippines, France, Switzerland, Liechtenstein, Netherlands, Belgium, Luxemburg, Maldives, Denmark, Norway, Sweden, Spain, Italy, and Peru.
- Eligible to stay up to 30 days in Brunei: Malaysia, Singapore, United Kingdom, Germany, Oman, Republic of Korea, and New Zealand.
- Eligible to stay up to 90 days: United States of America

The holder of passport of the above nations must apply for a visa if he/she wishes to stay in Brunei beyond the eligible period.<sup>270</sup>

A Transit Visa can be issued at the Brunei International Airport for a maximum of 72 hours. The applicant must present a valid travelling document destined at the third country and must comply with the Immigration Act.<sup>271</sup> A Transit Visa is not a document granting the rights of stay in Brunei as it merely allows the holder to Enter Brunei within the period and subject to the conditions stated in the Transit Visa.<sup>272</sup>

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<sup>269</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration Department, Visiting, <http://www.immigration.gov.bn/visiting.htm>, accessed on 15 December 2014.

<sup>270</sup> Law of Brunei Immigration Act CAP 17 Section 9 (1) states that “A Visit Pass may be issued by the Controller to any person other than a prohibited immigrant who satisfies the Controller that he wishes to enter Brunei Darussalam –

(i) On a social, business or professional visit; or

(ii) As a tourist.”

<sup>271</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration Department, <http://www.immigration.gov.bn/visiting.htm>, accessed on 15 December 2014.

<sup>272</sup> *Ibid.*

In case of a single visit, the immigration officer may issue a visa on arrival with an eligible period of stay, but the applicant is not allowed to make multiple entries on such visa.<sup>273</sup>

## **B) Multiple Entries**

Visa for multiple entries is available for the following periods of stay:<sup>274</sup>

- (1) Not exceeding 3 months
- (2) Between 3-12 months
- (3) More than 12 months
- (4) Multiple entries for APEC Business Travel Card (ABTC)<sup>275</sup> for a period of stay not exceeding 3 years

## **C) Work Visa**

A work visa is required for a foreigner working in Brunei. A work visa is issued by the immigration office and the national registration office.

## **D) Other types of entries**

- (1) Transit visa
- (2) Collective or group visa
- (3) Diplomatic, official or courtesy visa

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<sup>273</sup> Law of Brunei Passports Act CAP 146 Section 20 states that “The visa referred to in these Regulations shall, unless otherwise states therein, be valid for a single journey within the period of its validity.”

<sup>274</sup> Laws of Brunei Immigration Act CAP 17 Section 9 states that

“(2) The Controller may in his discretion require any person applying for a Visit Pass to make application therefor in Form 8 in the First Schedule and to furnish the Controller with 2 recent photographs for the purposes of such Form.

(3) A Visit Pass shall authorize the holder thereof to enter Brunei Darussalam within the period and subject to the conditions states in such Pass and to remain in Brunei Darussalam for such period as may be states in such Pass...”

<sup>275</sup> The ABTC allows business travelers pre-cleared, facilitated short-term entry to participating member economies. The ABTC removes the need to individually apply for visas or entry permits, saving valuable time, and allows multiple entries into participating economies during the three years the card is valid. Card holders also benefit from faster immigration processing on arrival via access to fast-track entry and exit through special APEC lanes at major airports in participating economies.

### 3) Required documents and procedures of visa application

#### A) Short Business Visit

##### Required documents

- A passport or internationally recognized travelling documents affirming a definite return to the country of origin. The passport must not expire within 6 months from the date of entry into Brunei. If an applicant is sponsored by a Bruneian resident, supporting documents may be requested when applying for a visa.
- A letter of recommendation or a sponsor letter from concerning companies, business representatives, governments or other organizations
- Two passport photographs
- Air tickets (both inbound and outbound)

##### Visa application process

An applicant may apply for a visa and submit required documents to an Embassy of Brunei at an applicant's country (or a designated agency at an applicant's country) or have a sponsor who is a Bruneian resident contact the National Registration Office. An applicant may be asked for an interview.

##### Application period

It takes the National Registration Office and the Immigration Office approximately 1-3 working days to process an application.<sup>276</sup>

##### Dependant members of an applicant

Only a business visa holder is allowed to bring dependant family members to Brunei. Dependant family members are issued a tourist visa.

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<sup>276</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration Department, <http://www.immigration.gov.bn/visiting.htm>, accessed on 15 December 2014.

## Fees

A fee for a single entry visa is 20 Brunei Dollars.<sup>277</sup>

## **B) Multiple Entries**

### Period of Stay and Extension

A business visa has a period of stay up to 1 year. An extension of a period of stay is allowed by making a request (submitting form no. 8) at the Immigration Office accompanied by sponsors.

## Fees

- 30 Brunei Dollars for a visa with 3-months period of stay (only cash payment)
- 50 Brunei Dollars for a visa with 1-year period of stay (only cash payment)
- 50 Brunei Dollars for a visa with more than 1-year period of stay (only cash payment)

## **C) Work Visa**

### Required documents

- A letter of recommendation from a sponsor or an employer
- A work permission form
- A visa application form
- A copy of passport or other documents equivalent to passports
- An employer's letter confirming an employment
- A form no. 500 from the Commissioner of Labour Brunei Darussalam (form no. 500)

### Visa application process

A sponsor or an employee of an applicant can submit required documents on behalf of an applicant to the National Registration Office.

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<sup>277</sup> Law of Brunei Passports Act CAP 146 Schedule Appendix regulation 26(1): Fees.

#### Application period

5 days

#### **4) Approval Process for Foreign Workers**

An employer must retain a work permit issued by the Commissioner of Labour Brunei Darussalam before hiring a foreign worker in all professions at all levels (from basic officers to executive directors) except administrative officers, drivers, and security officers. A foreign worker must have a proper visa issued by the Director of Immigration of Brunei Darussalam.<sup>278</sup> An employer must be a company that is legally registered with the Legal Department of Brunei Darussalam.<sup>279</sup>

#### Criteria for Approval

A foreign worker must have a work permit retained by an employee. Unless being categorized as a person exempted from a visa in entering Brunei, a foreign worker must acquire a visa before working in Brunei.

A foreign worker whose work permit lasts for more than 3 months must register to receive a Brunei Darussalam (Green) Identity Card which expires in accordance with the duration of the work permit. The Green Card is renewable in accordance with the work permit. A normal work permit expires in 2 years (renewable). A foreign is required to go back to the country of his/her origin after 2-years working contract expires.

The Commissioner of Labour Brunei Darussalam will require a foreign worker to deposit an amount equivalent to a return air ticket prior to working. A work permit cannot be amended within 6 months from the issue date. A foreign worker is not allowed to work

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<sup>278</sup> ASEAN investment guide book: BRUNEI DARUSSALAM, Department of Trade Negotiations, Ministry of Commerce, 1<sup>st</sup>, 2014, p. 102

<sup>279</sup> Law of Brunei, CAP 93 Labor, Section 118 (1) states that “ No person shall knowingly employ any immigrant worker unless he has obtained a licence from the Commissioner to do so in such form and subject to such conditions as may be prescribed unless such worker has been brought before the Commissioner for the purpose of subsection (2) of section 50”

until a company of an employer is approved by the Commissioner of Labour Brunei Darussalam.<sup>280</sup>

#### Duration of Work Permit

A work permit expires in 2-3 years depending on the conditions stipulated in the permit.

#### Fees

There is a 15 Brunei Dollars for a single-entry visa application. There is no fee in requesting for a work permit.

#### Renewing a work permit

A work permit is renewable up to 2-3 years each time. A foreign worker must return to the country of origin before renewing a work contract. An employer or a sponsor of a foreign worker may renew a work permit without any fee.

#### Dependant members

Dependant family members of a foreign worker (spouse and children) are allowed to accompany a foreign worker who has a work permit in Brunei. Dependant members will be issued dependant permits.

### **4.4.2 Obtaining a Brunei residency status**

There are two residency statuses in Brunei, which are Permanent Residence (PR) and Long Term Residential Pass.

#### **1) Qualification of Applicants**

(1) A foreign national who constitutes prosperity and economic development in Brunei, and a foreign national who resides in Brunei for at least 10 years (for a person who is born in Brunei) or 15 years (for a person who is born elsewhere). Criteria for approval include economic activity and profession of an applicant as well as an

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<sup>280</sup> ASEAN investment guide book: BRUNEI DARUSSALAM, Department of Trade Negotiations, Ministry of Commerce, 1<sup>st</sup>, 2014, p. 103

applicant's value of assets in Brunei and value-added impact to industry. Donation is not taken into account in granting a status.

(2) In case of a male applicant having a Bruneian spouse, irrespective of being born in Brunei, he must reside in Brunei for at least 10 years and be legally married to a Bruneian. In addition, this applies to a stateless person.<sup>281</sup>

## **2) Application process**

An applicant must submit Form 1 along with details and documents as follows:

- (1) name and surname as well as Chinese surname
- (2) nationality, ethnicity, and sex
- (3) date of birth and place of birth
- (4) permanent address
- (5) occupation
- (6) marital status, name and address of spouse and children, date of birth of children
- (7) details of residency 10 years before an implementation of the Immigration Act (further details may be required)
- (8) other supporting documents for residency application
- (9) copy of passport and photos
- (10) other documents as may be required

An officer assigned by the Immigration Act will obtain these documents and process the application. An applicant must attach 2 recent photographs.

## **3) Approval criteria**

The criteria for approving a residency permit will be in accordance with the Immigration Act (Chapter 17) and the Immigration (Residence Permit) Regulations Revised Edition (2002). Details of personal information of an applicant must be filled in Form 1. An officer appointed by the Immigration Act will process the application. Once approved, an applicant will receive a residency permit which enables him/her to request for a Bruneian national under the Brunei Nationality Act. A Long Term Residential permit is also available

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<sup>281</sup> A guide to applying for Permanent Resident (PR) status as well as Long Term Residential Pass in Brunei.

for those unable to apply for a permanent residency permit or those who are willing to stay for a longer period for business.

#### 4.5 Deportation of foreigners

If a foreigner in Brunei committed an offence under the Passport Act, a responsible officer has a power to order such foreigner to leave Brunei under Section 5 (2) of the Act. Such foreigner may also be detained for as long as necessary to be deported out of the country. Such detention may take place in a prison or a correction facility as ordered by the responsible officer.<sup>282</sup> A foreigner to be deported must be detained within a territory of Brunei or within its internal water.<sup>283</sup>

#### 4.6 Authorities concerning immigration

The Immigration and National Registration Office is a governmental authority under the Ministry of Internal Affairs responsible for an enforcement of the following legislations:<sup>284</sup>

- Immigration Act (Chapter 17, 1989)
- The Immigration Regulations (1958)
- The Passport Act (Chapter 146, 1983)
- The Passport Regulation (1983)
- The Nationality Act (Chapter 15, 1962)
- The Nationality Regulation (1962)
- The National Registration Act (Chapter 19, 1965)

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<sup>282</sup> Laws of Brunei Revised Edition 2013 CAP 146 Passports Act Section 5(2) states that “An order made by the Controller under subsection (1) may provide for the detention in custody, for such period as may be necessary for the purpose of making arrangements for his removal, of the person to whom the order applies; and that person may pursuant to the order be detained either in a prison or in any other place appointed by the Controller for that purpose...”

<sup>283</sup> Laws of Brunei Revised Edition 2013 CAP 146 Passports Act Section 5(3) states that “Any person to whom an order under subsection (1) applies may be conducted across the frontier or placed on board a suitable vessel by an immigration officer, police officer or officer of custom, and may be lawfully detained on board the vessel during the period that the vessel is within Brunei Darussalam or the territorial waters thereof.”

<sup>284</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration, <http://www.immigration.gov.bn/about.htm>, accessed on 15 December 2014.



- The National Registration Regulations (1965)
- The Registration of Births and Deaths Act (Chapter 79, 1923)
- The Registration of Birth and Death Regulation (1957)

#### Structure of the Immigration and Registration Office

The director acts as head of the Immigration and Registration Office. There are two deputy directors. The first deputy director is responsible for immigration affairs. The second deputy director is responsible for registration. There are two assistant directors under the immigration affairs. The first assistant director is responsible for visas and diplomatic affairs. The second assistant director is responsible for enforcement of visas.

#### **4.7 Case Study: Illegal Stay in Brunei**

Case study of Thai nationals evicted by Brunei courts for illegal overstay in Brunei  
In February 2011, a crackdown on illegal immigrants was enforced by many authorities such as the Brunei royal police, the customs authority, the narcotic control bureau and the immigration and registration office. A Thai person age 53 with an expired passport was found residing in a wooden hut in Kilanas without a work permit. After an investigation, he was charged with an illegal overstay for 2,731 days since the work permit was expired which was the offence under Section 15 (1) of the Immigration Act<sup>285</sup> with a sentence of 3 months to 2 years imprisonment and at least 3 sets of consecutive strokes under Section 15 (2) (b).<sup>286</sup>

Since the defendant was 53 years of age, the stroking was exempted. The fine was initially imposed for 6,000 Brunei. Since the defendant pledged guilty to his first crime, the court sentenced him for 6 months and imposed a fine for 2,000 Brunei Dollars instead of

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<sup>285</sup> Immigration Act CAP 17 section 15(1) states that “It shall be unlawful for any person to remain in Brunei Darussalam after the cancellation of any Entry Permit or Re-entry Permit or after the making of a declaration under section 14(4) or the expiration or cancellation of any Pass relating to or issued to him unless he is otherwise entitled or authorised to remain in Brunei Darussalam under the provisions of this Act or of any regulation made thereunder.”

<sup>286</sup> Immigration Act CAP 17 section 15(2)(b) states that “in the case where he remains unlawfully for a period exceeding 90 days, shall be liable on conviction to imprisonment for a term of not less than 3 months and not more than 2 years and

whipping with not less than 3 strokes cumulatively:

Provided that no sentence of whipping shall be imposed on any person charged in court before 12th June 2004.”

stroking. If the defendant is unable to pay the fine, he will be imprisoned for 4 months in addition of his original sentence.<sup>287</sup>

#### **4.8 Conclusion and recommendations concerning immigration laws in Brunei**

The Immigration Act specifies a list of prohibited persons from entering into Brunei. Every person entering into Brunei must present a valid passport to an immigration officer or an officer appointed by the Immigration Act. The Sultan may exempt any person from carrying a passport or any travelling document when entering into Brunei. In meeting a certain criteria, a foreigner may apply for a permanent resident status or a long term residential pass. A Thai national is entitled to stay in Brunei for a purpose of leisure without a visa for a maximum of 14 days. A visa is required for a Thai national entering into Brunei for other purposes. A visa can be requested at the Brunei Embassy in Thailand. Upon arrival, an immigration form and a customs form must be filled and submitted to an officer before entering the country.

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<sup>287</sup> The Royal Thai Embassy in Brunei Darussalam,

<http://www.thaiembassybrunei.org/index.php?lay=show&ac=article&id=539309474&Ntype=1> accessed on 20 March 2015.

## Chapter 5

### Domestic Regulations concerning Business

#### 5.1 Introduction

Most businesses with participations of Thai entrepreneur are in construction and architectural sectors. A few companies are well known such as Brunei Construction, and the architectural firm, Booty Edwards & Rakan-Rakan. Normally, a partnership with local business is required for a foreigner intending to establish a business in Brunei. Foreign equity participation limit varies upon business sectors. There are also a few small-scale Thai businesses such as convenience stores, restaurants, and car maintenance business.<sup>288</sup> There are two tracks to register a business in Brunei: the normal track and the track where registration is made with Ministry of Industry and Primary Resources (MIPR). The normal track is a business registration for operating a business in the country in a form of a company or a representative office. A business that registers with the MIPR normally concerns with the exploitation of primary resources such as agriculture, fisheries, forestry and other businesses located in the industrial sites.

#### 5.2 Foreign Business Registration in Brunei

##### 5.2.1 Natural Person

###### Sole Partnership

There is no income tax imposed on a sole partnership, but a sole partnership takes a full liability on debts incurring from conducting business. A foreigner is not allowed to register for a sole partnership.<sup>289</sup>

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<sup>288</sup> The Royal Thai Embassy in Brunei Darussalam, <http://www.thaiembassy.org/bsb/th/thai-people/50987-%E0%B8%82%E0%B9%89%E0%B8%AD%E0%B8%A1%E0%B8%B9%E0%B8%A5%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B9%80%E0%B8%97%E0%B8%A8%E0%B8%9A%E0%B8%A3%E0%B8%B9%E0%B9%84%E0%B8%99%E0%B8%AF.html> accessed on 20 March 2015.

<sup>289</sup> See the Brunei Economic Development Board, The Prime Minister's Office website.

## Partnership

A partnership may consist of partnerships which are natural persons, registered companies in Brunei, or representatives of foreign companies. The maximum of 20 partnerships are allowed to register for a partnership. At least one partnership must be a national of Brunei or having a residence in Brunei.

### **5.2.2 Juridical Persons**

#### Private Company

A private company is regulated by the Companies Act (Cap 39). Under the Act, the Registry of Companies and Business Names Division (ROCBN) have power to approve name of a company prior to registration. A memorandum of association and other registration documents are to be prepared in accordance with the ROCBN's rules.<sup>290</sup> A subscriber of memorandum of association must not take less than one share.<sup>291</sup> At least half of the directors must be nationals of Brunei or ordinarily residents of Brunei.<sup>292</sup> A company shall keep proper accounts with respect to all sums of money received and expended by the company.<sup>293</sup> An incorporated company must state the word "Berhad" or the abbreviation of "Bhd" as the last word of the name. In a case of private limited company, the word "Sendirian" or the abbreviation of "Sdn" is to be inserted before the word "Berhad" or

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<sup>290</sup> Companies Act CAP 39 Section 4 (1) states that "Any 7 or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability."

<sup>291</sup> Companies Act CAP 39 Section 4(b) states that "no subscriber of the memorandum ma takes less than one share."

<sup>292</sup> Companies Act CAP 39 Section 138 (2) states that "One of the two directors; or where there are more than two directors, two or not less than half of the number of such directors whichever is the greater shall be nationals of Brunei."

<sup>293</sup> Companies Act CAP 39 Section 121 (1) states that "Every company shall cause to be kept proper books of account with respect to –

- (a) All sums of money received by the company and the matters in respect of which the receipt and expenditure takes place.."

“Bhd”.<sup>294</sup> A company is required to submit financial reports and other balance sheets audited by registered auditor who is a Brunei’s national to the ROCBN.<sup>295</sup> A registration fee varies upon an amount of registered capital. For example, a registration fee is 300 Brunei Dollars for a company with a registered capital of 25,000 Brunei Dollars exclusive of other documentation fees and other fees for governmental forms.

### Public Company

Similar to a private company, a public company is regulated by the Companies Act. A public company may issue shares to public under securities market rules. A public company shall consist of at least seven shareholders. At least half of the directors must be nationals of Brunei or ordinarily residents of Brunei. An affiliated company can hold shares in a parent company which is a public company. A registration form for a public company costs 25 Brunei Dollars. A registration fee depends on the amount of registered capital. There is no minimum share subscriber’s value.

### Foreign Branch

Any foreign company wishing to establish a presence in Brunei Darussalam but not incorporated as a local company can register as a branch of foreign company in Brunei. A representative of a foreign branch must be appointed at time of registration. Once registered, a foreign branch shall have rights and powers as a private company. A foreign branch is required to submit its financial reports and financial reports of its headquarter to the ROCBN annually.

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<sup>294</sup> Companies Act CAP 39 Section 5(1) states that “The memorandum of every company incorporated after the commencement of this Act must state –

(a) The name of the company, with “Berhad” or the abbreviation “Bhd” as the last word of the name in the case of a company limited by shares or by guarantee;

(b) In the case of a private limited company, with the word “Sendirian” or the abbreviation “Sdn” as part of its name, inserted immediately before the word

“Berhad” or before the abbreviation “Bhd” or, in the case of a private unlimited company, at the end of its name...”

<sup>295</sup> Companies Act CAP 39 Section 16 states that “On the registration of the memorandum of a company the Registrar shall under his hand that the company is incorporated and, in the case of a limited company, that the company is limited.”

## 1) Information for investors on types of business

There are six types of a business organization in Brunei. Restrictions to foreign investor's eligibility vary among each type.

Table 22: Types of Business Organization and Foreign Eligibility

Business Organization	Foreign Registration Eligibility
Sole Proprietor	No
Partnership	Case by case approval
Private Company	Yes
Public Company	Yes
Foreign Branch	Yes
Joint Venture	Case by case approval

Source: Brunei Economic Development Board

(BEDB,2015)[http://www.bedb.com.bn/doing\\_guides\\_taxation.html](http://www.bedb.com.bn/doing_guides_taxation.html) (accessed 22 January 2015)

### (1) Business Registration Authority

The Registry of Companies and Business Names Division (ROCBN) was first established in 1959 under the Attorney General's Chamber Office. The ROCBN was later transferred to the Ministry of Finance in April 2012 and is presently operating under the Ministry of Finance.<sup>296</sup>

#### A) Functions of the ROCBN

The main function of the ROCBN is to register a business in Brunei along with the following responsibilities.

- register a business in accordance with the Companies Act 1984 (Cap 39) and register a name of a company in accordance with the Business Names Act 1984 (Cap 92)
- establish a comprehensive business registration process

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<sup>296</sup> The Government of Brunei, Ministry of Finance, the Registry of Companies and Business Names, <http://www.mof.gov.bn/index.php/divisions/registry-of-companies-and-business-names>, accessed 15 April 2015.

- promote roles of the ROCBN to public
- represent the government of Brunei in matters regarding business registration and the regulation of business organization

## **B) Contacts**

Registry of Companies and Business Names Division

Level 1, Island Block

Ministry of Finance

Commonwealth drive, BS 3910

Brunei Darussalam

Website: [www.eregistry.agc.gov.bn](http://www.eregistry.agc.gov.bn), [www.roc.gov.bn](http://www.roc.gov.bn)

Telephone: +673 238 0505

Fax: +673 238 0503

Office hours: Monday-Friday 8.00-15.30

### **(2) Company Registration Process**

There are four stages in a company registration process.

1. Check for an availability of a company name
2. Reserve a company name
3. Register a company with Registrar of Companies
4. A company is issued a Certificate of Registration

#### **a) Checking and reserving a company name**

An applicant who wishes to register a company in Brunei must first check a company name and reserve a company name with the Registrar of the Companies at the ROCBN which can be done online. The ROCBN reserves the right to deny a name which is similar to an existing name of a company or a name which is impolite, improper or violent.

A company name that has the following words must request for further approval: “bank”, “finance”, “company”, “insurance”, and “school”, “university”, “travel agent”. The word “the mall” is prohibited to be part of a company name.

b) Time used for approval of a company name 1-2 weeks

c) Required documents and forms

1) Memorandum and articles of association

2) Statutory Declaration of Compliance (signed by the company's secretariat as appeared in the memorandum of understanding)

3) Form 1 (Approval of Company Name)

4) Other documents such as Form X (list of director's form), consent act as a director form, and notice of situation of registered office form

The registration process normally takes 5-6 weeks prior to an issuance of Certificate of Incorporation

d) Registration fee

A registration fee for a company varies upon a registered capital. The fee is around 300 Brunei Dollars for a company with a registered capital of 25,000 Brunei Dollars. The registration fee is normally inclusive of other documentation fees such as document verification fee and document collection fee.

**Table 23 : Registration Forms and Fees**

Forms	Fees (Brunei Dollars)
Document Fess	
1. Reservation of Business Name Form	5
2 Form X (List of Directors)	10
3. Stamp duties	10
Registration Fees	
1. Business name approval	30
2. Business name registration	
2.1 registered capital less than 25,000 Brunei Dollars	300
2.2 For every additional 5,000 Brunei Dollars of registered capital	20
3. Memorandum and articles of association	20
4. Consent letter to act as director (per each letter)	10



Forms	Fees (Brunei Dollars)
5. Notice of the situation of registered office	10
6. Certificate of incorporation	25

Source: Brunei Economic and Development Board (BEDB)

[http://www.bedb.com.bn/doing\\_guides\\_setting\\_companyadd.html#fee](http://www.bedb.com.bn/doing_guides_setting_companyadd.html#fee) (accessed 22 January 2015)

e) Special license

Certain businesses are required to apply for special licenses from the government prior to registration, especially financial services, because they interfere with public interests. These businesses are banking, securities, finance, insurance, tour operations, and credit foncier. A company wishing to engage in any of these sectors must request for a special license prior to registering a business. It normally takes 5-6 weeks to process the license.

f) Miscellaneous license (Rampaian)

Business sectors in the table below are required miscellaneous license (Rampaian) prior to registration. An application form can be purchased at the District Office.

**Table 24 : Business sectors that require Miscellaneous Licenses (Rampaian)**

Business	Fees (Brunei Dollars)				
	1 year	2 years	3 years	4 years	5 years
Coffee shop	25	50	75	100	125
Eating house	50	100	150	200	250
<b>Boarding house</b>					
With 10 rooms or more	100	200	300	400	500
With less than 10 rooms	50	100	300	400	500
Lodging	25	50	75	100	125

house					
Resort and entertainment	100	200	300	400	500
Hawker	10	20	30	40	50
<b>Motor vehicle dealer</b>					
Main dealer	5,000	10,000	15,000	20,000	25,000
Branch	3,000	6,000	9,000	12,000	15,000
Agent	1,000	2,000	3,000	4,000	5,000
Petrol station	100	200	300	400	500
Retail shop	50	100	150	200	250
Timber store, furniture factory	100	200	300	400	500
Work shop	50	100	150	200	250

Source: Miscellaneous Licenses Act, Amendment (Cap 127)

g) Restrictions on directors and shareholders

Under the Brunei Companies Act (Cap 39), a company established in Brunei is required to have a composition of directors and shareholders as follows.

- A company must have at least two directors, half of which (50%) must be ordinarily Brunei residents.
- A company must have at least two shareholders. Although there is no restriction on shareholder nationality, the government may impose nationality restrictions of shareholders in some business sectors.

h) Annual requirements

- appoint an auditor and have its accounts audited. A company need not submit its audited accounts to the Registrar of Companies. However, audited accounts are required to be submitted to the Collector of Income Tax with its Income Tax Returns
- hold an annual general meeting (AGM)

- file annual returns with the Registry of Companies within 28 days after the Annual General Meeting (AGM)
- submit corporate income tax form and withholding tax

### **(3) Branch of foreign business**

There are a few differences between setting up a company (incorporated) and setting up a branch of foreign business in Brunei.

#### a) Reservation of a branch's name

A branch that wishes to use the parent company's name as a branch's name must seek for an approval from the Registrar of the Companies at the ROCBN. The process takes around 1-2 weeks.

#### b) Required documents for a foreign branch registration

Once approved the name of business, the following documents need to be submitted to the Registrar of the Companies.

- resolution of Boards of Directors approving a branch registration in Brunei
- a copy of a parent company's Certificate of Registration
- a copy of a parent company's memorandum and articles of association
- a letter of undertaking
- Form IV (F) detailing directors of a parent company
- Form of the appointment of authorized person
- statutory declaration executed by the authorized person

#### c) Time used for approving a foreign branch registration

The procedure of approving a branch registration normally takes 5-6 weeks. Once approved, a Certificate of Registration will be issued.

#### d) Fee for a branch registration

A branch registration's fee varies upon an amount of registered capital. A fee is around 450-500 Brunei Dollars for a branch with a registered capital of 100,000 Brunei Dollars.

Normally, other documentation fees (e.g. document verification fee, document collection fee, etc.) are included in the registration fee.

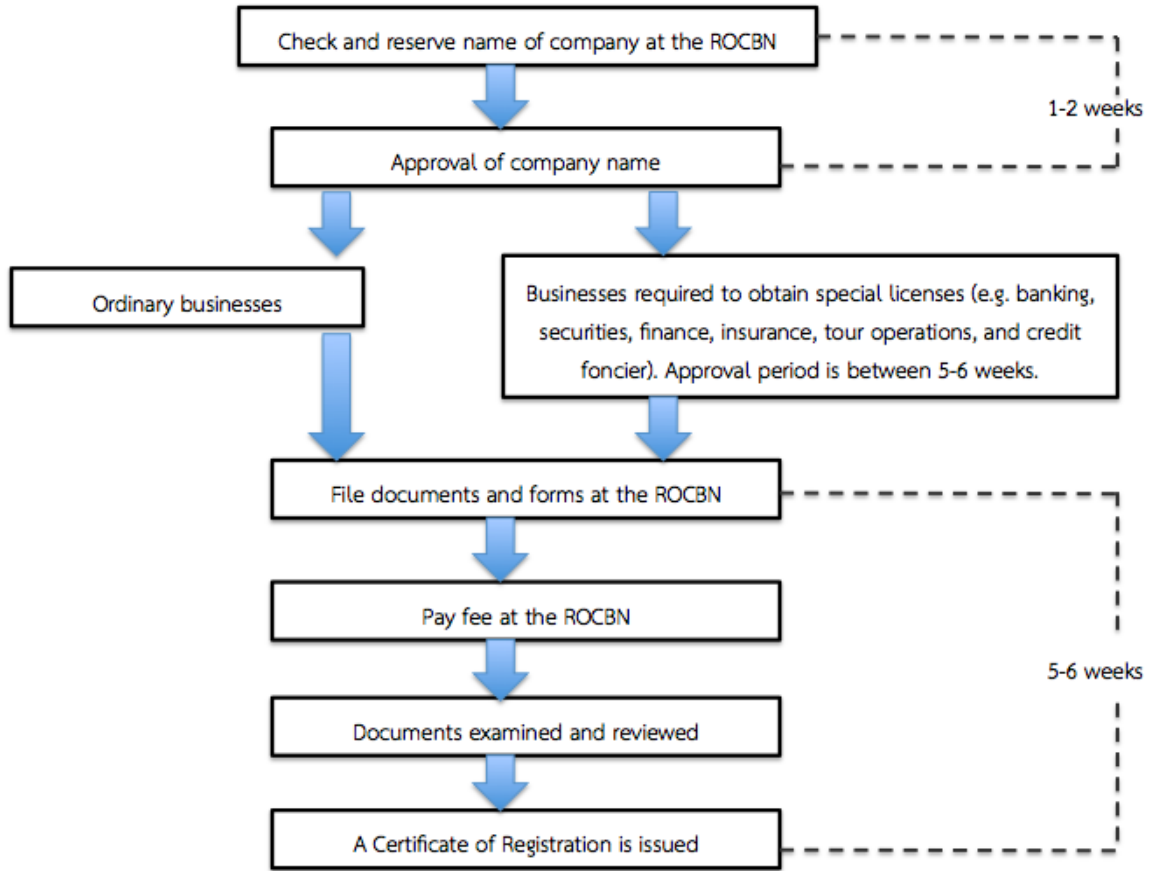
e) Special licenses

Certain businesses are required to apply for special licenses from the government prior to registration, especially financial services, because they interfere with public interests. These businesses are banking, securities, finance, insurance, tour operations, and credit foncier. A company wishing to engage in any of these sectors must request for a special license prior to registering a business. It normally takes 5-6 weeks to process the license.

f) Annual requirements

- file annual returns
- report amendments (if any) regarding memorandum and articles of association, directors, name and address of attorney, business premises, or other matters within a time period specified by the ROCBN
- submit corporate income tax form and withholding tax

Diagram 6 : of business registration process in Brunei



The table below summarizes time and costs of processing an application for a business registration from the first process of name reservation to the last process of receiving a Ranpaian license.

Table 25: Business registration process in Brunei<sup>297</sup>

Process	Time	Cost (Brunei Dollars: BND)
1) Check uniqueness of company name and reserve the name	1 day	BND 5 for name application +

<sup>297</sup> World Bank Group, Doing Business: Starting Business in Brunei Darussalam, <http://www.doingbusiness.org/data/exploreeconomies/brunei/starting-a-business>, accessed on 14 December 2014.

Process	Time	Cost (Brunei Dollars: BND)
		<i>BND 15 for name reservation</i>
2) Submit incorporation documents and pay registration fees	7 days	See registration details above
3) Certify the Memorandum of Articles of Association and the Articles of Association	1 day	See registration details above
4) File the Return of Allotment Shares	1 day, simultaneous with previous procedure	BND 10
5) Stamp share certificates at the Ministry of Finance	1 day, simultaneous with previous procedure	No charge
6) Make a company seal or stamp	3 days	BND 185
7) Register for Employees Provident Fund	1 day, simultaneous with previous procedure	No charge
For businesses which require Miscellaneous license (Rampaian) and other licenses		
8) Purchase license application forms at the Municipal Board of Bandar Seri Begawan	1 day	BND 2
9) License approval	2 months	BND 50 per license application (additional BND 50 for miscellaneous license: Rampaian)

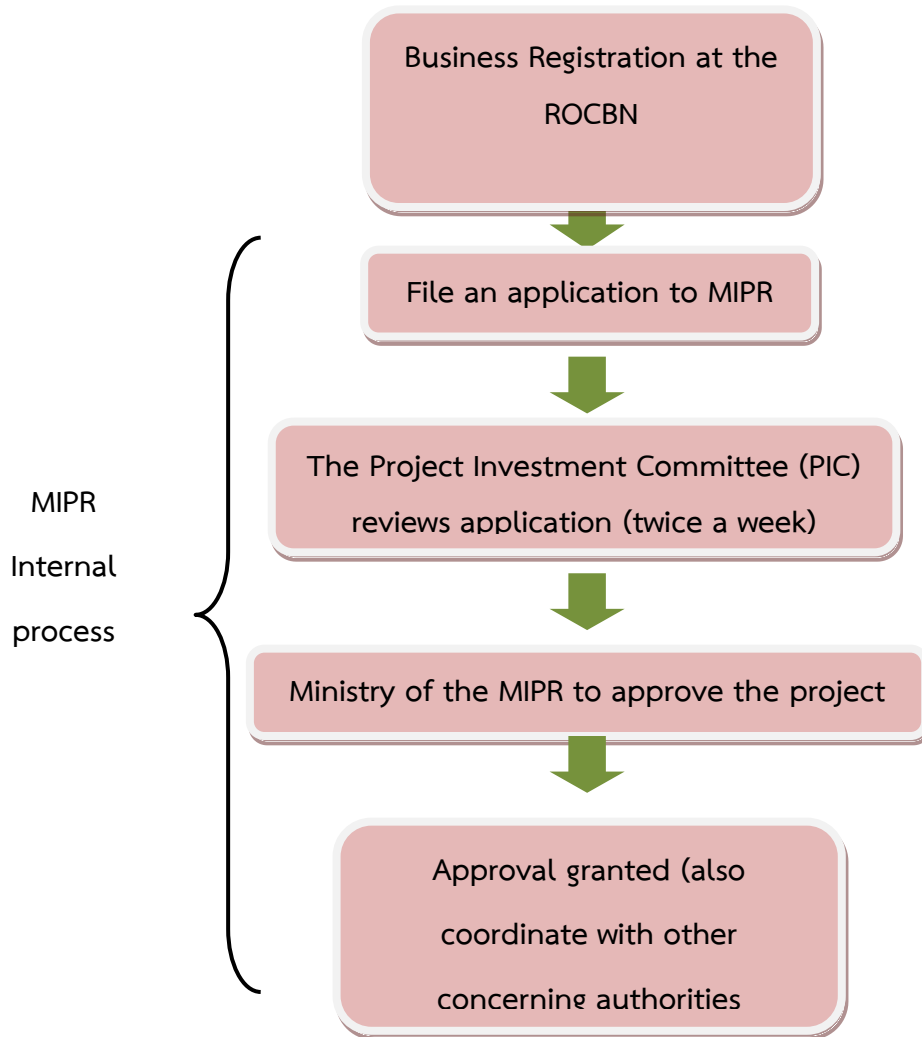
Process	Time	Cost (Brunei Dollars: BND)
10) File a request for examining business safety at the Fire Services Department (only in case of Rampaian application)	1 day, simultaneous with previous procedure	No charge
11) File a request for examining health safety at the Ministry of Health (only in case of Rampaian application)	1 day, simultaneous with previous procedure	No charge
14) Receive a certificate from the Fire Services Department (only in case of Rampaian application)	1 day, simultaneous with previous procedure	No charge
15) Receive a certificate from the Ministry of Health (only in case of Rampaian application)	1 day, simultaneous with previous procedure	No charge
16) Submit certificates to the Municipal Board of Bandar Seri Begawan	1 day, simultaneous with previous procedure	No charge
17) Approving and receiving a Rampaian license at the Municipal Board of Bandar Seri Begawan	21 Days	BND 100

2) Application process for an investment project under the Ministry of Industry and Primary Resources (MIPR)

The MIPR receives an application for an investment project that engages with primary resources such as agriculture, fisheries, forestry, including investment projects located in industrial zones. Prior to submitting an application to the MIPR, a business registration at the ROCBN is required.

The MIPR has a one-stop-service facility in processing applications. An investor only need to submit an investment proposal at the MIPR and then it will coordinate with other relevant authorities and inform an applicant of a result. Interested investors can access the MIPR services at <http://www.bruneimipr.gov.bn>.

Diagram 7 : MIPR application process

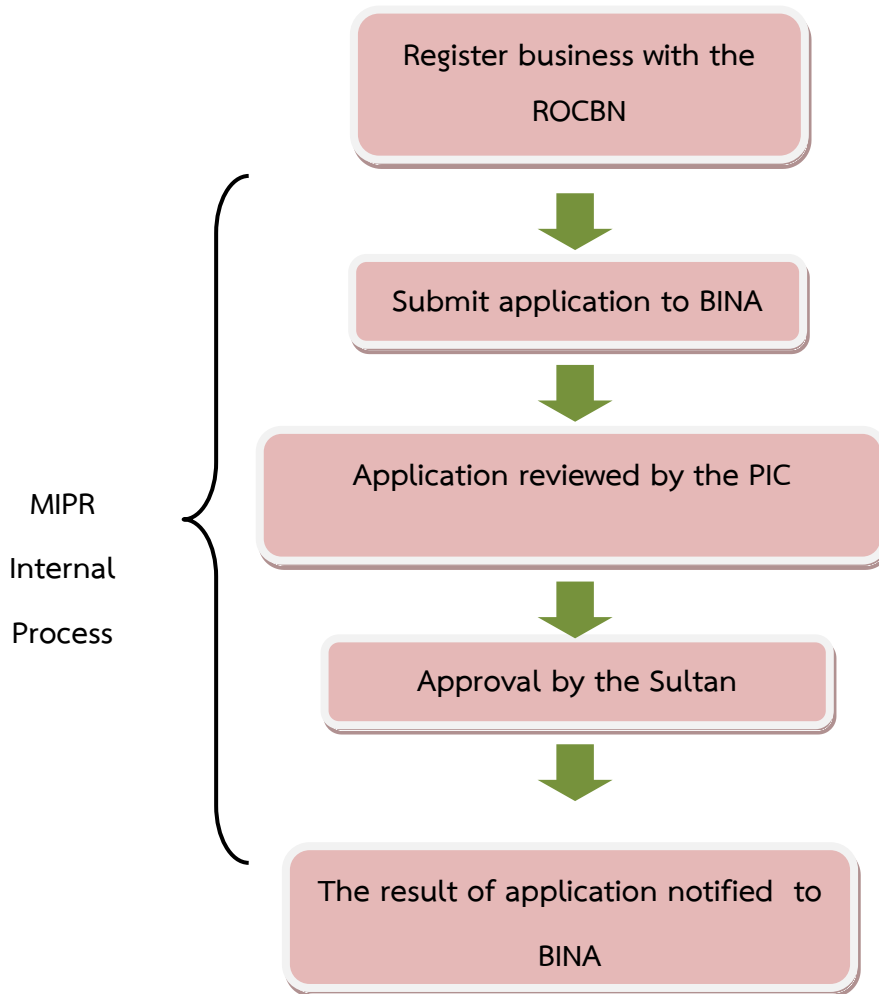


An investor wishing to carry on an investment project in industrial sites or industrial complexes may submit an investment proposal to the Brunei Industrial Development Authority (BINA). The BINA can provide information regarding various types of industrial sites and complexes to prospective investors as well as coordinating with the Labour Department in regards to labour registration and the Immigration Office in regards to work permits and visa.

An investment proposal submitted to the BINA will be preliminarily reviewed by the Pre Project Implementation Committee (Pre PIC) Meeting before sending to the Project Implementation Committee (PIC) under the MIPR for the final review.



Diagram 8 : The BINA reviewing process



### 5.2.3 Public-Private Partnership (PPP)

A joint venture is an option of investment which may be established as a private company or a partnership depending on nature of business. In a joint venture private company, liability is limited to an amount of contribution that it brings into a joint venture. However, a joint venture partnership's liability is unlimited. In Brunei, a foreign investor may not invest as a sole proprietor but may invest as a joint venture private company or a joint venture partnership subject to an approval by the Brunei Economic Development Board (BEDB). A foreign investor may invest as a private company, public company, or a branch of a foreign company.

Besides joint ventures, Private-Public Partnership (PPP) is also another means of investment where the government and a private investor can co-invest, especially in the

commercialization of public services. The impact of globalisation has urged the government to accelerate the diversification process and develop a sustainable and competitive economy driven by the private sector. This suggests that there is a need to find various options of investment to build up the capacity of the private sector. There is a need to consider other forms of privatization such as public issue or sale of minority or even majority shares in public company, joint venture between private sector and government sector and competitive bidding to break monopolies.<sup>298</sup>

In the country's vision 2035, Brunei indicates the importance of promoting Public-Private Partnership (PPP) to develop basic social infrastructure, especially education, public health, and industry. Presently, all the PPP projects are sponsored by budgets of the Department of Economics Planning and Development (DEPD). A proposal must be sent to the DEPDP for approval. The DEPDP approves a project that aligns with the country's vision 2035. Once the project is approved, the DEPDP will allocate budget to a relevant authority directly involved with the project.

Currently, PPP in Brunei receives less popularity compared to other developed countries such as the United Kingdom, Australia, Singapore, and Malaysia. The DEPDP is directly responsible for driving PPP in the country. One of the PPP projects in the country is refurbishment of three apartments in Ong Sum Ping area. Also, there is a development project of 2,000 commercial buildings in Kuala Belait area, which intends to attract private commercials in the area, and the government receives the rents.

Brunei should strengthen its law and policy on competition since it plays a major part in developing private sectors' efficiency and productivity. Therefore, law and policy in competition need to move in the right direction. Competition policy is vital in transforming Brunei's economy from oil and gas oriented economy to hydro-carbon economy to be able to compete in the long run in the global market. In addition, the ASEAN Economic Blueprint emphasizes on the importance of competitiveness by encouraging an enactment of relevant competition law within 2015. The competitiveness of Brunei's private sectors is inferior to other ASEAN countries such as Malaysia, Singapore, Philippines, Thailand, and

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<sup>298</sup> Hjh Zainab binti Hj Morshidi, Proceedings Paper Presentations Session : Privatisation and Corporatisation: Brunei Darussalam's Experience, Department of Policy and Coordination, Economic Planning and Development Department, Brunei Darussalam, [http://www.csstc.org/reports/egm/p4/presentation\\_Brunei.htm](http://www.csstc.org/reports/egm/p4/presentation_Brunei.htm), accessed on 19 December 2014.

Vietnam.<sup>299</sup> Brunei needs to emphasize on building a competitive environment in major sectors such as banking and telecommunications since the World Bank's Global Financial Development report indicates that there is less competition in Brunei's banking sector compared to other Southeast Asian countries.<sup>300</sup> There is neither competition law nor a direct competition policy in Brunei. The only relevant law is the Monopolies Act (Chapter 73) which has not been revised since its launch in 1932. The law has become obsolete to apply to modern businesses. Brunei has recently initiated promulgating a competitive framework for promoting competitive rules for telecommunications sectors overseen by the Authority for Info-Communications Technology Industry (AITI).<sup>301</sup> The AITI has been the regulator of communications and technology sectors since 2006. Prior to the AITI, these sectors were regulated by the Telecommunications Department under the Ministry of Communications.

### 5.3 Regulations concerning Foreign Business Conducts

#### 5.3.1 Bringing Money in and out of the country

The Authoriti Monetari Brunei Darussalam (AMBD) provides that any person bringing cash, check, bond, or exchange note worth more than 15,000 Brunei Dollars in or out of the country must declare to an authorized officer.<sup>302</sup> This is compliant with international standards for a prevention of money laundering and finance of terrorist's activities. Any person carrying money exceeding 15,000 Brunei Dollars into Brunei is required to, at the arrival terminal, submit a declaration form to the Customs Department and the Excise Department, and contact the Immigration and Registration Office on departure. Sanctions

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<sup>299</sup> The World Economic Forum's Global Competitiveness Report 2012-2013.

<sup>300</sup> Organisation for Economic Co-operation and Development , Structural Policy Country Notes Brunei Darussalam, the Economic Outlook for Southeast Asia, China and India 2014: Beyond the Middle-Income Trap, <http://dx.doi.org/10.1787/saeo-2014-en>, p.8. accessed on 17 March 2015.

<sup>301</sup> Organisation for Economic Co-operation and Development , Structural Policy Country Notes Brunei Darussalam, the Economic Outlook for Southeast Asia, China and India 2014: Beyond the Middle-Income Trap, <http://dx.doi.org/10.1787/saeo-2014-en>, p.9. accessed on 17 March 2015.

<sup>302</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Section 41 (1) states that "An authorized officer may, with such assistance as is reasonable and necessary, examine any article or baggage which a person has with him if he...for the purpose of finding out whether he has with him any cash in respect of which a report under section 37 is required or to determine the accuracy of the information contained in the report..."

of minimum 50,000 Brunei Dollars fine and 3 years imprisonment are imposed for non-compliance.<sup>303</sup>

### 5.3.2 Taxation

Brunei's taxation is courteous to investors. The income tax rates are attractive for business which encourages economic growth and development of the country.

**Table 26 : Income Tax Rates on Different Business Type<sup>304</sup>**

Type of Business	Income Tax Rate	
	Fiscal Year (2012-2015)	Fiscal Year (2015 onwards)
Sole proprietor	Exempted	
Partnership	Exempted	
Company	20% on net profit	18.5% on net profit
Public Company	20% on net profit	18.5% on net profit
Foreign Branch	20% on net profit	18.5% on net profit
Joint Venture	20% on net profit	18.5% on net profit

#### Personal Income Tax

There is no personal income tax in Brunei.<sup>305</sup> In addition, a person is not taxed on capital gains and profits from property sale. A person not resident in Brunei does not have income tax burden.

#### Income Tax on Partnership

A sole proprietor and a partnership are exempted from paying income tax because the government intends to encourage establishments of small and medium enterprises.<sup>306</sup> Dividends paid to a partner are not taxed.

<sup>303</sup> Protection of Thai Natuobnals (Protect Thai Citizen Blog), Bringing Money In and Out of Brunei [http://protectthaicitizen.blogspot.com/2011/08/blog-post\\_04.html](http://protectthaicitizen.blogspot.com/2011/08/blog-post_04.html) accessed on 15 December 2014

<sup>304</sup> Ministry of Finance, Income tax rate, <http://www.mof.gov.bn/index.php/type-of-taxes/income-tax> accessed on 11 February 2015

<sup>305</sup> Income Tax Act, CAP 35, 127, First Schedule Section 1(2) states "Extent to which Act applies, (a) Tax shall be charged, levied and collected only in respect of the incomes of companies within the meaning of section 2, and the provisions of the Act shall not have effect in respect of incomes of any other persons or bodies of persons."

## Income Tax on Registered Company

The Brunei Income Tax Act imposes a tax obligation on a juridical person (a company) that gains income from business carried on in Brunei. The Act applies to a juridical person registered in Brunei under the Brunei Darussalam Companies Act (Chapter 39) or other relevant legislations. Any company intending to carry on business in Brunei must contact the Registry of Companies and Business Names (ROCBN) for a business registration and for a registration of taxpayer with a Collector of Income Tax.

A tax obligation occurs when a company has a residency in Brunei. A residency test depends on whether a company has a place of control and management in Brunei rather than whether a company is registered in Brunei. The place of control and management includes a place where the annual general meeting and directors' meetings are held and a place where a direction of business has been executed.

### **Income**

A company carrying on business activities in Brunei which income is derived from, or received in Brunei, is to be taxed irrespective of whether such company is registered in Brunei or elsewhere or registered as a foreign branch.<sup>307</sup>

### **Capital gain**

There is no capital gain tax in Brunei. However, where it can be established by the tax authority that the gains form part of the normal trading activities of the business, the gains become taxable as income gains.

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<sup>306</sup> Oxford Business Group, The Report: Brunei Darussalam 2011.

<sup>307</sup> Income Tax Act CAP 35 Section 8 (1) states that "Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in, derived from, or received in Brunei Darussalam in respect of –

(a) Gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;..."

## Foreign income

A registered company in Brunei is taxed on its worldwide income provided that such foreign income is received in Brunei.

## Intercompany dividends

Dividends received in Brunei by a company are included in its taxable income except dividends received from a company taxable in Brunei. Brunei does not impose any withholding tax on dividends paid by a company registered in Brunei.

## Withholding Tax<sup>308</sup>

Nature of Payment	Withholding Tax Rate
Interest, commission, fee or other payment in connection with any loan or indebtedness	15%
Royalties or other lump sum payments for the use of movable properties	10%
Payment for the use of or the right to use scientific, technical, industrial or commercial knowledge or information	10%
Rendering Technical assistance and Service in connection with the application or use of such knowledge or information	20%
Management Fees	20%
Rent or other payments for the use of movable property	10%
Non-resident Directors' Remuneration	20%

Source: Ministry of Finance, Brunei Darussalam (2015)

<sup>308</sup> Income Tax Act CAP 35 Section 37 (1) states that "Where any person is liable to pay to another person, not known to him to be resident in Brunei Darussalam, any

## **Non-Resident Company**

A non-resident company is taxed solely on income that has a source in Brunei Darussalam or on profits from business in Brunei operated through a branch or permanent establishment. If a non-resident company jointly conducts business with a resident company for a purpose of disguising real net profits of the resident company, the non-resident company shall be taxed for the profits incurred as a branch of foreign company. Should net profits of the non-resident company cannot be accurately identified, appropriate net profits derived from businesses of both non-resident and resident companies shall be estimated.

### **Branch of foreign company**

A branch of foreign that receives income in Brunei shall be taxed at 18.5% of net profits from business activities carried on in Brunei. A non-audited financial report is required to accompany a tax payment form.<sup>309</sup>

### **Income Tax Benefits**

Exemption will be granted to a newly incorporated company in Brunei for the first 100,000 Brunei Dollars of the chargeable income during the first 3 consecutive Years of Assessment. For the next 150,000 Brunei Dollars of chargeable income (if any), tax shall be charged at 50% of the applicable tax rate. The current tax rate is at 18.5% of net profits.<sup>310</sup>

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interest which is chargeable to tax under this Act, the person paying the interest shall deduct therefrom tax at the rate of 20 per cent on every dollar of the interest, and shall immediately give notice of the deduction of tax in writing and pay to the Collector the amount so deducted and every such amount shall be a debt due from him to the Government and shall be recoverable as such.”

<sup>309</sup> Fidfinvest, Doing Business in Brunei, [http://www.fidfinvest.com/pdf/Doing%20business%20in%20Brunei\\_english.pdf](http://www.fidfinvest.com/pdf/Doing%20business%20in%20Brunei_english.pdf), P.9/9, accessed on 11 December 2014.

<sup>310</sup> Income Tax Act CAP 35 Section 35 (1) states that “There shall be levied and paid for —  
... (e) the year of assessment 2012 and the subsequent years of assessment upon the chargeable income of every company, tax at the rate of 20 per cent, on every dollar of the chargeable income thereof..”

## Allowable Deductions<sup>311</sup>

All expenses wholly or exclusively incurred in the production of taxable income are allowable as deductions for tax expenses as follows.

- Interest on borrowed money used in acquiring income<sup>312</sup>
- Rent on land and buildings used in trade or business
- Costs of repair or premises, plant and machinery
- Bad debts and specific doubtful debts, with any subsequent recovery being treated as income when received
- Employers' contributions to approved pensions or provident funds; eg Tabung Amanah Pekerja (TAP) or Supplement Contributory Pension Fund (SCP)
- Zakat, fitrah or any religious dues, payment of which is made under any written law.

## Expenses not allowed as deductions for tax purposes include<sup>313</sup>

- Expenses not wholly or exclusively incurred in acquiring income
- Domestic private expenses
- Any capital withdrawal or any sum used as capital
- Any capital used in improvements apart from replanting or plantations
- Any sum recoverable under an insurance or indemnity contract
- Rent or repair expenses not incurred in the earning of income
- Any income tax paid in Brunei or in other countries
- Payments to any unapproved pension or provident funds

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<sup>311</sup> The Brunei Economic Development Board, The Prime Minister's Office, Business Guide: Taxation, [http://www.bedb.com.bn/doing\\_guides\\_taxation.html](http://www.bedb.com.bn/doing_guides_taxation.html), accessed on 19 December 2014.

<sup>312</sup> Income Tax Act CAP 35 Section 11(1) states that "For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Act (in this Part referred to as the income), there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income, including — (a) any sum paid by way of interest upon any money borrowed by such person where the Collector is satisfied that the interest was payable on capital employed in acquiring the income;..."

<sup>313</sup> Income Tax Act, CAP 35 Section 12 states that "Subject to the provisions of this Act, for the purpose of ascertaining the income of any person, no deduction shall be allowed in respect of — (a) domestic or private expenses;..."



- Donations are not allowable but claimable if they are made to approved institutions

### Capital allowances

Depreciation is not an allowable expense and is replaced by capital allowances for qualifying capital expenditure.

### Qualifying capital expenditure

An initial allowance of 10% of the cost given in the year of expenditure, and an allowance of 2% of the qualifying expenditure is provided on a straight line basis until the total expenditure was written off. A company has an option to claim annual allowance for a period of three years in respect of a capital expenditure in computers, stationery, plant and machinery (altogether not exceeding 30,000 Brunei Dollars). This capital expenditure can be carried forward in the next year.<sup>314</sup> Tax credit is also granted since 2012 when a company invests in new plant and machinery for balancing, modernisation and replacement of the business. It is entitled to 15% of the amount invested which is allowed against the tax payable.<sup>315</sup>

### Loss Carryovers

Losses incurred by a company can be carried forward for six years for set-off against future income and can be carried back one year provided it is claimed in writing within one year after the year of assessment.

### Tax Credits

The tax credits are only available to a registered company in Brunei. Unilateral tax credits are also granted to a company which receives income in a Commonwealth country in which such Commonwealth country also grants the reciprocal tax credits. The total

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<sup>314</sup> Income Tax Act CAP 35 Section 16B (1) states that “Notwithstanding section 16, where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of that trade, profession or business, he shall, in lieu of the allowances provided by section 16, be entitled for a period of 3 years to an annual allowance of 33½ per cent in respect of the capital expenditure incurred...”

<sup>315</sup> Oxford Business Group, Deloitte, Tax Overview, The Report: Brunei Darussalam 2011,p.203.

amount of tax credits cannot exceed 50% of total tax payable in one year, excluding credit for foreign tax paid.<sup>316</sup>

### Stamp Duty

Stamp duties are collected on a variety of documents. Certain types of documents are subject to ad-valorem duty, whereas with other documents, the duty varies with the nature of the documents.

### Petroleum Tax

Special legislation exists in respect of income from petroleum operations, which is taxable under Section 35A of the Income Tax (Petroleum) Act 1963 (Cap 35).<sup>317</sup> This legislation follows the general pattern of most Middle East oil-producing countries. The petroleum tax rate is a fixed rate of 55 percent.<sup>318</sup>

### Inheritance Tax

The Inheritance Tax is levied on inherited amounts that exceed 2 million Brunei Dollars and the rate is 3%. This tax is applicable on the inheritance after 15 December 1988.

### Custom Tax

The Custom Order (2006) is the main legislation that regulates the customs tax. Under the Custom Order, the Minister under the approval of the Sultan has the power to set custom taxes to be paid by an importer or an exporter on any products imported into or exported from Brunei by publishing them on the Gazette.<sup>319</sup> The Custom Order deals

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<sup>316</sup> Income Tax Act CAP 35 Section 42 (1) states that “The provisions of this section shall have effect where, under arrangements having effect under section 41, tax payable in respect of any income in the territory, with the Government, of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Brunei Darussalam; and in this section ...”

<sup>317</sup> Income Tax Act CAP 35 Section 35A. states that “Notwithstanding the foregoing, where chargeable income of any company derives from — (a) the liquefaction of gas in its natural state;...”

<sup>318</sup> [www.bedb.com.bn/print.html](http://www.bedb.com.bn/print.html)

<sup>319</sup> Customs Order 2006 Section 9 (1) states that states “The Minister may, with the approved of His Majesty the Sultan and Yang Di-Pertuan, by order published in the Gazette, fix the customs duties to be levied on any goods imported into or exported from Brunei Darussalam and to be paid by the importer or exporter, as the case may be.”

with matters including power of customs officials, importation and exportation formalities, customs procedures, warehousing, declaration of goods, customs tax returns, confiscation of products, inquiry, sanctions and punishment.<sup>320</sup> Principally, food and products for industrial use are exempted from customs tax. The customs tax rate of 20% applies to electronic devices, apparatus, timber products, camera-related devices, furniture, vehicles and car parts. Perfumes and cosmetics are levied at 30%.<sup>321</sup> However, since Brunei and Thailand are members of the ASEAN free trade agreement, the customs tax of many products has been significantly reduced to 0-5%. While the majority of products are subject to 0% customs tax, there are some products which remain to be taxed at 5% such as lubricant, cosmetics, soap and shampoo, detergent, camera-related products, car and motorcycle tires, certain clothes and textiles. A few products are subject to higher customs taxes such as alcoholic beverages and tobacco.

The table below displays products that still are subject to customs taxes<sup>322</sup>

**Table 27 : Dutiable products and rates**

Dutiable products	Custom Import Tax Rate
Coffee (not roasted)	11 cents / 1 kg
Coffee (roasted)	22 cents / 1 kg
Tea	22 cents / 1 kg
Instant coffee / tea (Extract, essences and concentrates) / coffee mate	5%
Grease	11 cents / 1 kg
Lubricants	44 cents / 1 kg
Carpet and other textile floor covering	5%
Mat and matting	10%
Wood and articles of wood	20%
Footwear, slippers and the like	5%

<sup>320</sup> Customs Order, 2006, Part 2-15

<sup>321</sup> Ibp Usa, Brunei Business Law Handbook, International Business Publications, USA, updated 2011, P.172.

<sup>322</sup> Custom Import Duty, Custom Matters, KEMENTERIAN KEWANGAN, Ministry of Finance, <http://www.mof.gov.bn/index.php/royal-custom-matters/customs-procedures/custom-import-duty>, accessed on 7 December 2014.

Dutiable products	Custom Import Tax Rate
Headgear and parts thereof	10%
Cosmetic, perfumes, toilet waters, soap, hair shampoo and other washing preparations	5%
Other preparations for use on the hair	30%
Electrical goods	5% or 20%
Auto parts	20%
Articles of apparel and clothing accessories, of leather OR of composition leather	10%
Jewellery including imitation jewellery	5%
Clocks and watches and parts thereof	5%
Musical instruments	10%

### Excise Tax

The Excise Order (2006) is the main legislation that regulates excise tax matters. The Order provides rules concerning functions and appointments of excise tax officials, power of the Minister to set excise taxes on particular goods, importation, transportation, production, warehousing of goods, declaration of goods, products exempted from excise tax, inspection and seizure power, prosecution power as well as sanctions and punishments.

There are two types of excise taxes in Brunei – ad valorem tax and specific tax. The excise tax bearer is a manufacturer and an importer of product.<sup>323</sup> Products subject to excise taxes are tobacco (Chapter 24), liquors (Chapter 22), vehicles (Chapter 87). After 1 April 2012, the excise taxes also apply to nuclear reactors, boilers, machinery, mechanical appliances, and medical appliances (Chapter 84) as well as medical and surgical

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<sup>323</sup> Constitution of Brunei Darussalam -Excise Order, 2006, Section 9(1) states that “The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the Gazette, fix the excise duties to be levied and paid on –

- (a) Any goods manufactured in Brunei Darussalam; or
- (b) Any goods imported into Brunei Darussalam...”

instruments (Chapter 90).<sup>324</sup> Details of excise tax rates for each product are explained below.

### Tobacco

**Table 28 : Tobacco Excise Tax Rate**

Tobacco	Excise Tax Rate (Brunei Dollars)
Clove cigarettes	0.25 per stick
Unmanufactured tobacco	60 per kg.
Beedies Cigarettes	120 per kg.
Cigars, cigarillo, cheroot	200 per kg.
Other manufactured tobacco	120 per kg.
Tourist permission	No

Source: Excise Duties (Amendment) Order 2012 (S65/21)

A distributor of tobacco is required to obtain a distribution license prior to selling. Similarly, an importer of tobacco is required to obtain an import license prior to selling. In 2012, there were 243 distribution license applications and only 70 licenses were granted. There were two import licenses for tobacco granted in 2012.<sup>325</sup> The annual distribution license fee is 300 Brunei Dollars per year. The annual import license fee is 2,500 Brunei Dollars per year.<sup>326</sup>

### Liquors and Vinegar

Brunei is a strict Islamic nation. Possession and consumption of alcohol beverages in public are strictly prohibited. Alcoholic beverages sale is also unavailable in hotels and other retail stores. Non-Muslim is eligible to bring into Brunei the maximum two bottles of liquors/vinegar and 12 bottles of beer by notifying the customs department at the airport.<sup>327</sup> The excise tax base for liquors and vinegar varies upon quantity of alcohol.

<sup>324</sup> Excise Duties Order 2007 (S 26/07) amended by amendment order S 114/08, S 91/10, and S 65/12.

<sup>325</sup> ASEAN Tobacco Tax Report Card, May 2013

<sup>326</sup> *Ibid*

<sup>327</sup> Excise department, Tax Planning Office, Brunei Darussalam

Table 29 : Excise Tax Rate for Liquors and Vinegar

Liquors and Vinegar	Excise Tax Rate (Brunei Dollars)
Beer made from malt	30 per 10 litres
Wine and Grape Must	55-120 per 10 litres
Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	55-90 per 10 litres
Fermented beverages	30-90 per 10 litres
Spirits, liqueurs, and other spirituous beverages ≥ 80% alcohol content	250 per 10 litres
Spirits, liqueurs, and other spirituous beverages < 80% alcohol content	90-250 per 10 litres

Source: Excise Duties (Amendment) Order 2012 (S65/21)

#### Vehicles

Brunei sees the importance of environmental protection by launching policies that discourage the use of environmentally degrading products. Since vehicles are products that cause harm to environment, tax measures have been employed to discourage the use of heavily emitted vehicles.

Table 30 : Excise Tax Rate for Vehicles

Product Headings	Vehicle	Excise tax rate (%) of total value
87.01	Tractors	15
87.02	Motor vehicles for transport of 10 or more persons	20
87.03	Motor cars and other vehicles (other than 87.03) including station wagons and	20

<http://aec.excise.go.th/cs/groups/public/documents/document/mjaw/mdm4/~edisp/webportal16200038871.pdf>  
 accessed on 4 may 2015

Product Headings	Vehicle	Excise tax rate (%) of total value
	racings cars	
87.04	Motor vehicles for transport of goods	20
87.05	Special purposes motor vehicle (for examples, breakdown lorries, crane lorries, fire-fighting vehicles, concrete-mixing lorries)	20
87.06	Chassis fitted with engines for vehicles 87.01 to 87.05	20
87.07	Bodies (including cabs) for vehicles 87.01 to 87.05	20
87.11	Motorcycles (including motorcycles with engines less than 50 cc.)	20

Source: Excise Duties Order, 2006 (S40/06) and Excise Duties Order, 2007.

Nuclear reactors, boilers, machinery, mechanical appliances as well as medical and surgical instruments

The excise tax rate is at 5% of the product's value.

#### Indirect Tax

There are no indirect taxes such as services tax, value-added tax, and sales tax.

#### Taxes for Brunei International Finance Center

Generally, Brunei International Finance Center is conducting businesses outside the country and not subject to income tax, capital gain tax, stamp duty, or other direct taxes. However, it is still required to submit tax return forms and unaudited financial reports. Audited financial report is only required when such International Finance Center is a business that engages in banking, fund management, insurance, or financial consultant. The

International Finance Center is not allowed to conduct businesses with Brunei residents unless approved by a concerning authority.<sup>328</sup>

### Double Tax Agreements

Brunei has concluded double tax agreements with the United Kingdom (1950), Indonesia (2003), Bahrain (2009), China (2007), Hong Kong (2011), Japan (2010), Kuwait (2012), Malaysia (2011), Oman (2010), Pakistan (2010), Singapore (2005), Vietnam (2010), Laos (2011) and Tajikistan (2010).<sup>329</sup> For an elimination of double tax, the double tax agreements exempt taxes imposed on a company under Brunei's laws where taxes are already been paid in the other contracting party of the double tax agreement. Alternatively, Brunei offers tax credits to offset tax payment already promulgated in the other contracting party. Unilateral tax relief is also available for a company that derives income in a Commonwealth country on a reciprocal basis, but such relief shall not exceed 50% of applicable tax rate in Brunei.<sup>330</sup> To conform to obligations of information exchange in double taxes stipulated by the Organisation for Economic Co-operation and Development (OECD), Brunei is required to negotiate information exchanges provisions in current and future double tax agreements. In 2009, Brunei negotiated with Singapore to develop information exchanges provisions in a double tax agreement between the two countries in conformity with international standards. Double tax agreements signed from 2009 will include information exchanges provisions (for instances, double tax agreements with Malaysia, Hong Kong, and Tajikistan).<sup>331</sup>

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<sup>328</sup> Oxford Business Group, Deloitte, Tax Overview, The Report: Brunei Darussalam 2011, p.205.

<sup>329</sup> Ministry of Finance, Brunei, "Avoidance of Double Taxation Agreement" <http://www.mof.gov.bn/index.php/tax-treaties> accessed on 26 February 2015.

<sup>330</sup> Income Tax Act CAP 35 Section 40 (1) states that "If any person resident in Brunei Darussalam who has paid, by deduction or otherwise, or is liable to pay tax under this Act for any year of assessment on any part of his income, proves to the satisfaction of the Collector that he has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of his income, he shall be entitled to relief from tax in Brunei Darussalam paid or payable by him on that part of his income at a rate thereon to be determined as follows —..."

<sup>331</sup> Ministry of Finance, Brunei, "Avoidance of Double Taxation Agreement" <http://www.mof.gov.bn/index.php/tax-treaties> accessed on 26 February 2015.



## 5.4 Other Rules relating to Operating a Business in Brunei

### 5.4.1 Finance

#### The Autoriti Monetari Brunei Darussalam (AMBD)

The AMBD is established by law<sup>332</sup> to function in a similar way as a central bank. The functions of the AMBD include 1) maintaining domestic price stability, 2) ensuring the stability of the financial system by launching financial regulations and prudential standards, 3) assisting in the establishment and functioning of efficient payment systems and to oversee them, and 4) fostering and developing a sound and progressive financial services sector.<sup>333</sup> The law also establishes roles of the AMBD as a banker to the government,<sup>334</sup> prohibits the AMBD from granting a loan to a governmental agency or a state-owned enterprise,<sup>335</sup> and hold regular meetings with the government to develop monetary and fiscal policies.<sup>336</sup> In addition, there are provisions prescribing the AMBD's relationships with other financial institutions as prescribed in Part VI of the Autoriti Monetari Brunei Darussalam Order (2010).<sup>337</sup> The AMBD maintains regulatory functions to issue licenses, oversee, and promulgate rules over financial institutions (both Islamic financial

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<sup>332</sup> The Autoriti Monetari Brunei Darussalam Order (2010)

<sup>333</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 36(1) states that “In implementing its objects, the Authority may, exercise and discharge the following functions, powers and duties –

(a) Act as the central bank of Brunei Darussalam, including the conduct of monetary policy, the issuance of the currency of Brunei Darussalam, the oversight of payment systems and serving as banker to and financial agent of the government...”

<sup>334</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 49 (1) states that “The Authority may act as a banker to, and a financial agent of, the Government...”

<sup>335</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 50(a) states that “The Authority shall not grant credit to the Government or State-owned entity provided but-...”

<sup>336</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 51(1) states that “Without prejudice to sections 3(5) and 11(4) and in pursuit of its objects and functions, the Authority shall hold regular meetings with the Government on monetary and fiscal policies and other matters of common interest, and both the Authority and the Government shall keep one another fully informed of all matters that affect them jointly...”

<sup>337</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Part VI Relations with banks and Financial Institutions.

institutions and conventional ones),<sup>338</sup> foreign banks, currency exchanges and transfer services companies, as well as credit fonciers. The following instruments assist the AMBD in regulating monetary and financial sectors.

- Banking Order (2006)
- This Order sets requirements for licensing of banks, rules on reserves, financial reports, dividends, prohibited activities, controlling powers over bank branches and representatives within Brunei.
- Islamic Banking Order (2008)
- This Order consists of provisions on appointment of authorized persons, approving a new bank, capital requirements, reserves, financial reports, dividends, prohibited activity, minimum asset requirements, and controlling power over Islamic banks.
- The International Banking Order (2000)
- This Order has provisions concerning licensing requirements to establish an international bank, controlling power of the Minister and other concerning authorities in reviewing conducts, power to issue a preventive order when a money laundering activity or related crimes are suspected, consumers' data protection and exemptions, financial reporting requirements, and exemption of taxes.
- The Finance Companies Act (Chapter 89)
- This Act deals with matters in controlling and examining financial businesses, issuance of license for a finance company, reserve requirements, dividend payment and financial reports.
- The Hire Purchase Act (2006)
- This Act deals with formation and substantive rules of a hire purchase contract. It also has provisions on consumer protection from engaging in a hire purchase contract and legal obligations of hirer and insurer.
- The Pawnbrokers Order (2002)
- This Act oversees activities of pawnbroker businesses. A license is required for an establishment of a pawnbroker business. The Act also sets criteria for a

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<sup>338</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 36(1) states that "...(b) manage the exchange rate regulation regime, in particular by entering into foreign exchange arrangements..."

revocation of license. The Act deals with legal obligations derived from a pawn contract, issuance of a pawn ticket, types of credit and repayment period, duty to take care of pledged property, expenses in taking care of pledged property, liability of pawnbroker, liability for failure to meet a redemption period for a pawn, and power of police to notify pawnbroker of stolen property.

- The Money-Changing and Remittance Business Act (Chapter 175)
- This Act requires a money-changing business to have a permit. It sets rules concerning permit application, fees, processing time, revocation of permit, power of relevant authorities to examine and review a money-changing business, liability of shareholders and director of a money-changing business, compensation against wrongful acts, controlled activities and exceptions.
- In implementing relevant legislations, the AMBD assumes regulatory powers in accordance with the Basel Core Principles stipulated by the Basel Committee on Banking Supervision<sup>339</sup> and the Islamic Financial Services Board (IFSB).<sup>340</sup>

Currently, the Brunei Currency and Monetary Board (BCMB), previously an organization under the Ministry of Finance to stabilize Brunei currency, has been annexed to the AMBD in 2011. In addition, the AMDB has annexed three more organizations previously under the Ministry of Finance; the Financial Institution Division (FID), the Brunei International Financial Center (BIFC), and the Research and International Division (RID).<sup>341</sup>

The Brunei Currency and Monetary Board (BCMB) manage currency notes and coins in the country.<sup>342</sup> The main responsibility is to stabilize Brunei currency by securing every single production of one Brunei Dollar with an equivalent real estate investment abroad. Brunei always manages to maintain 1-1.5% inflation rate. The BCMB oversees two domestic

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<sup>339</sup> The Basel Committee on Banking Supervision provides a forum for regular cooperation on banking supervisory matters. Its objective is to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide.

<sup>340</sup> Autoriti Monetari Brunei Darussalam, Banking and Specialized Market Supervision, <http://www.ambd.gov.bn/regulatory/banking-specialized-markets>, accessed on 18 December 2014.

<sup>341</sup> Autoriti Monetari Brunei Darussalam (AMBD), <http://www.ambd.gov.bn/about-ambd>

<sup>342</sup> Constitution of Brunei Darussalam (Order under section 83(3)) Currency and Monetary Order, 2004, Section 13 (1) states that “The Board shall have the sole right to manage and to issue currency notes and coins in Brunei Darussalam and only currency notes and coins issued by the Board shall be legal tender in Brunei Darussalam.”

banks (Baiduri Bank and TAIB) and six foreign banks (HSBC, Standard Chartered, UOB, Citibank, MAYBANK, and RHB).

The Brunei Financial Center is supported by the BCMB in areas of examining essential inbound investment applications in industries such as food, commodity trading, raw materials, and services.<sup>343</sup>

The main function of the Financial Institution Division (FID) is to approve licenses for financial institutions as well as regulate banking functions including maintaining appropriate level of reserve for consumer's interests. At the moment, the Banking Association of Brunei fixes daily interest rate. However, it is likely that an all-in-one organization will be set up in the near future to fix the interest rate.<sup>344</sup>

Since the foreign direct investment in Brunei has gradually decreased over the years, the country hence applies strict fiscal policies emphasizing on stabilized economy with certain flexibility in an unexpected event. Brunei insists to respect and comply with ASEAN resolutions.<sup>345</sup> There is no exchange control policy in Brunei. Commercial banks allow foreign accounts and do not have regulations on foreigners' loan. The country is attempting to adopt international financial standards in the face of ASEAN Economic Community in 2015.

#### **5.4.2 Insurance and Takaful (Co-Surety)**

There is a department under the Autoriti Monetari Brunei Darussalam (AMDB) that deals with registration, licenses, and regulation of insurance businesses and co-surety businesses (Takaful). This department also acts as an intermediary between a securities market and both conventional and Islamic-compliant mutual fund operators under guidelines of the International Associations of Insurance Supervisors (IAIS) and the International Organization of Securities Commissions (IOSCO).

The following legislations are overseen by this department.

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<sup>343</sup> East Asia Watch, Brunei Currency and Monetary Board <http://www.eastasia watch.in.th/article.php?id=6665> 10November 2010 accessed on 27 February 2015

<sup>344</sup> Ibp Usa, Brunei Business Law Handbook, International Business Publications, USA, updated 2011,P.170

<sup>345</sup> East Asia Watch, Brunei Currency and Monetary Board <http://www.eastasia watch.in.th/article.php?id=665> information dated 10 November 2010 accessed on27 February 2015

## The Insurance Order (2006)

This legislation regulates matters in operating an insurance business including auditing requirements, investigations on liquidation and rights to transfer.

- The International Insurance and Takaful Order (2002)
- This legislation provides rules concerning licensing requirements for establishing international insurance and related company, financial requirements, duties and restrictions of a license holder, rights to transfer, liquidation, notification of changes in a company, and tax exemption.
- The Motor Vehicle Insurance (Third Party Risks) Act (Chapter 90)
- This legislation requires a car owner to insure against a third party and provides rules concerning policy of insurance, causes of action where an insurance is inapplicable, duties of an insurance company, rights of a third party in relation to an insured person.
- The Mutual Funds Order (2001)
- This legislation provides rules concerning an operation of a mutual fund business including establishment, controlled activities and compliance, auditing requirements, duties of a fund manager, confidentiality requirements, disclosure requirements to relevant authorities, and a revocation of license.
- The Securities Order (2001)
- This legislation regulates various licenses granted to securities companies, operations of securities companies, confidentiality requirements, auditing requirements, book keeping and auditing requirements, securities trading rules and compliance.
- The Takaful Order (2008)<sup>346</sup>

This legislation provides rules concerning Takaful business registration, insured money requirements, use of Takaful license, capital requirements, establishment of new business, auditing requirements, rights to transfer, business management and controlling power.

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<sup>346</sup> Autoriti Monetari Brunei Darussalam, Insurance / Takaful and Capital Market Supervision, <http://www.ambd.gov.bn/regulatory/insurance-takaful-capital-markets>, accessed on 18 December 2014.

## Credit Ratings and Credit Payment Ratings (Credit Bureau)

For credit approval, a financial institution is required to review credit and repayment records of an applicant in order to prevent non-performance loan. Credit records of an applicant are to be treated as confidential and not to be disclosed as between banks. Therefore, the Credit Bureau is only trusted organization that holds credit records and discloses to a financial institution upon request.

The Credit Bureau is established under the Section 42 of the Autoriti Monetari Brunei Darussalam Order (2010)<sup>347</sup> to operate under the AMBD to collect credit and repayment records of individuals. The Credit Bureau first operated in September 2012 to provide credit ratings information to financial institutions and Islamic trusts in Brunei as follows.

- Baiduri Bank Berhad
- Baiduri Finance Berhad
- Bank Islam Brunei Darussalam (BIBD)
- BIBD At-Tamwil Berhad
- Hong Kong and Shanghai Banking Corporation Limited (HSBC)
- HSBC Finance (B) Berhad
- Malayan Banking Berhad (Maybank)
- United Overseas Bank Limited (UOB)
- RHB Bank Berhad
- Standard Chartered Bank
- Perbadanan Tabung Amanah Islam Brunei (TAIB)

In addition to being a collector of credit ratings of individuals, the Credit Bureau also supplies statistical information for financial institutions for analytical-related purposes. However, the Credit Bureau does not offer personal recommendations in relations to credit worthiness of a loan applicant.<sup>348</sup>

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<sup>347</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 42(1) states that “ The Authority shall be exclusively responsible for the regulation, licensing, registration and supervision of banks and financial institutions operating in Brunei Darussalam...”

<sup>348</sup> Autoriti Monetari Brunei Darussalam, About the Credit Bureau, <http://www.ambd.gov.bn/birokredit/overview-of-credit-bureau>, accessed on 18 December 2014.

### 5.4.3 Securities Market

The AMBD issues guidelines for the securities market order (SMO) in order to prepare for an establishment of a stock exchange market in Brunei. For this, the Securities Market Regulations (SMR) 2014 will be effective on 1 February 2016. The SMR was borne by Section 268 (1) of the SMO.<sup>349</sup> The SMO is drafted in compliance with objectives and principles of the International Organization of Securities Commissions. The SMO aims to effectively regulate securities market and its stakeholders to protect investors and enhance market confidentiality. The SMO supersedes the Securities Order (2001) and the Mutual Funds Order (2001).<sup>350</sup> In carrying its functions to regulate the securities market, the SMO recently concluded an MOU with the Malaysian Securities Commission to cooperate in matters concerning securities regulation between both countries.<sup>351</sup>

### 5.4.4 Money Laundering

Brunei enacted anti-money laundering legislations granting government agencies with expansive power to seize suspected businesses, freeze bank accounts, and force a suspected business to declare unexplained wealth.<sup>352</sup> The government is empowered by the Constitution of Brunei Darussalam (Order made under Article 83 (3)), the Criminal Asset Recovery Order (2012), and Amendments to Anti-Terrorism Order, to investigate financial crimes.<sup>353</sup> Money laundering offence arises when a person is engaged directly or indirectly in a transaction that involves money or property that is the proceeds of crime

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<sup>349</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 268(1) states that “The Authority may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as it considers necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of any fees or other things required to be or which may be prescribed.”

<sup>350</sup> Autoriti Monetari Brunei Darussalam Policy Statement 2/2013 dated 31 December 2013.

<http://www.ambd.gov.bn/images/policy/AMBD%20Policy%20Statement%202-2013.pdf> accessed on 20 February 2015.

<sup>351</sup> The Brunei Times, AMBD issues Securities Market Regulations 2014, Bandar Seri Begawan, , <http://www.bt.com.bn/news-national/2015/02/03/ambd-issues-securities-market-regulations-2014> accessed on 3 February 2015.

<sup>352</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012, Unexplained wealth, Section 86 (1) For the purposes of this Order, a person has unexplained wealth if the value of the person’s total wealth as described in subsection (2) is greater than the value of the person’s lawfully acquired wealth as described in subsection (3)...

<sup>353</sup> According to a statement of the Attorney General’s Chambers, interviewed on 19 June 2012

including concealing sources of money or assets, assisting other persons involving in money laundering or facilitating people to evade the crime.<sup>354</sup> Financial institutions are also required to review and verify international accounts and transactions.<sup>355</sup>

The Criminal Asset Recovery Order (2002) empowers the Financial Intelligence Unit (FIU) to suppress suspected transactions, access and examine information of the government, financial institutions, non-financial institutions as well as other professions<sup>356</sup> including real estate agents, lawyers, accountants, jewelry traders.<sup>357</sup> A person engaging in transacting assets or money exceeding a statutory prescribed amount is required to report the FIU.<sup>358</sup> Failure to report such transaction results in a maximum of three years imprisonment and a fine up to 50,000 Brunei Dollars.<sup>359</sup>

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<sup>354</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Section 3 (1) states that “A person commits the offence of money laundering if the person (a) engages, directly, or indirectly in a transaction that involves money, or property, that is the proceeds of crime;...”

<sup>355</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Section 10 states “When entering into cross-border correspondent banking relationships, financial institutions shall- (a) identify and verify the identification of respondent institutions with which they conduct correspondent banking relationships;...”

<sup>356</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Section 6 (1) states that “Financial institutions or designated non-financial businesses and professions shall, with respect to each customer, obtain and verify, as part of their obligation under section 5...”

<sup>357</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Access to information Section 31 (1) states that “ In relation to any information it has received in accordance with its functions, the Financial Intelligence Unit is authorized to obtain from any entity or person, subject to the reporting obligations required by sections 15 and 16, any additional information that the Financial Intelligence Unit deems necessary to carry out its functions and such information requested shall be provided within the time limits set and in a form specified by the Financial Intelligence Unit...”

<sup>358</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Reports about cross border movements of cash Section 37 (1) states that “A person shall not move or attempt to move into or out of Brunei Darussalam cash the total value of which exceeds the prescribed amount, without giving a report in respect of the movement accordance with this section...”

<sup>359</sup> Constitution of Brunei Darussalam (Order made under Article 83(3)) the Criminal Asset Recovery Order 2012 Reports about cross border movements of cash Section 37 (2) states that “A person who contravene subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5000, imprisonment for a term not exceeding 3 years or both...”



### 5.4.5 Government Procurement

Compliance with rules concerning government procurement is borne to relevant authorities having functions of procuring with private sectors. The government procurement compliance is secured by guidelines from the government auction committee with an approval of the Minister of Finance.

The Financial Regulations of 1983 requires that government procurement be implemented in a fair, open, and competitive environment. The government policy concerning government procurement must emphasize on transparency and efficiency. The auction winner is a person who makes the best tender in accordance with auction rules for the benefits of the nation. According to the Financial Regulations of 1983<sup>360</sup>, the public tender is not required for works or services under 5,000 Dollars. Where works or services exceed 5,000 Dollars, the tender procedure must be done in accordance with the Circular Letter Ref: 3/2004 dated 26 October 2004.<sup>361</sup> The government conducts government procurement based on cost-effectiveness of price, open and fair procedure, and transparent, accountable and honest auction. The procurement procedure adopted could be by way of a small value purchase, by inviting quotations, or by tender. Types of tender consist of an open tender, a selective tender, and a limited tender/waiver of normal procedures.<sup>362</sup>

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<sup>360</sup> Financial Regulation Article 327 states that “Works, services and stores not exceeding \$5,000 in cost may be indented without recourse to public tender. However, if the cost is expected to exceed \$1,000 the Controlling Officer shall invite written quotations from a reasonable number of rebuttable suppliers and shall accept the quotation most favourable to the Government. Reference to the correspondence shall be shown on the payment voucher. Indents for works or services shall show the full specification of the works or services required and of the agreed charges, and it shall also show the agreed time of completion. Indents for stores shall be drawn up as is provided in Regulation 517.”

<sup>361</sup> Financial Regulation Article 328 states that “Where works, services, and stores exceed \$5,000 in cost, tenders procedure shall be followed.” (Please refer to Circular Letter ref:3/2004 dated 26October 2004 for updated regulation.) See more at: <http://www.mof.gov.bn/index.php/tender-process/financial-regulation#sthash.PZiC8EMv.dpuf> accessed on 17 March 2015.

<sup>362</sup> Kementerian Dewangan, Ministry of Finance, Brunei Darussalam, State Tender Board, Guidelines for Government Procurement, Brunei Darussalam Government, <http://www.mof.gov.bn/index.php/general-information-state-tender-board>, accessed on 17 December 2014.

## 5.4.6 Others

### Privatization

Most of the infrastructure development projects are allocated budgets from the government. During the Seventh National Development Plan (1996-200), 70% of the 8,000 Million Brunei Dollars investment comes from the investment of the government and 29.2% from the private investment. Minor portion of private investment constitutes setbacks in the country's economic development in the long run since 80% of the country's DDP comes from oil and gas sector which is the investment of the government. Reliance on oil and gas investment is troublesome since it is an exhaustible and non-substitutable resource. The price is also dependent on the world's oil market. The government of Brunei has realized about this shortcoming and sought for an alternative option to improve public services and opt for more participation from private sectors to increase competition and diversity in the market.

Brunei has incorporated privatization measures in the Fifth National Development Plan (1986-1990) to enhance economic development of the country. At the moment, the privatization initiatives are being implemented by the government.<sup>363</sup> The privatization process in Brunei usually starts with intra-government cooperation before fully transformed into a private-owned enterprise. Initially, the privatized entity is registered under the Companies Act without changing the control and ownership. Depending on the organizational type, the transitional period will be specified in order to transfer the ownership from the government's hand to the private hands in order to effectively shift the management in the privatization process.

In Brunei, a corporatization or privatization process is implemented on a case-by-case basis. The Economic Planning and Development Department is the main governmental body to review and examine proposals based on capacity to maximize profits and growth as well as meeting public interests as set by the original agency. There are other issues to consider such as impacts on the existing workers and officials as well as cost and benefits from the privatization. In reviewing a proposal to privatize, an ad hoc

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<sup>363</sup> Hjh Zainab binti Hj Morshidi, Proceedings Paper Presentations Session : Privatisation and Corporatisation: Brunei Darussalam's Experience, Department of Policy and Coordination, Economic Planning and Development Department, Brunei Darussalam, [http://www.csstc.org/reports/egm/p4/presentation\\_Brunei.htm](http://www.csstc.org/reports/egm/p4/presentation_Brunei.htm), accessed on 19 December 2014.

committee will be established. The ad hoc committee was previously chaired by the Minister of Finance before transferring to be under the responsibility of the Prime Minister's Office in 2001. The ad hoc committee consists of eight members including senior officials of the concerning governmental agencies. The Secretary of the Prime Minister's Office chairs the ad hoc committee. An example of a successful case is the privatization of the Communications Department which became an organization under the Successor Company Act, regulated by the Telecommunication Act.<sup>364</sup>

## 5.5 Conclusion and Recommendations

In order to register a business in Brunei, there are a number of requirements and procedures to be followed. The BEDB provide a one-stop information portal in which online information is available at [www.bedb.com.bn](http://www.bedb.com.bn). For investment projects involving agriculture and natural resources, the main agency to accept and review an investment application is the Ministry of Industry and Primary Resources located in 3<sup>rd</sup> floor, Jalan Menteri Besar, Bandar Seri Begawan BB3910, contact number 673-2380026, website [www.industry.gov.bn](http://www.industry.gov.bn). Even without a physical presence in Brunei, companies are required to obtain a license to do businesses. An exception would be if the products are marketed door to door by a local sales person. It is not required that a representative of business be a Bruneian citizen when selling directly to the government.<sup>365</sup> In a distribution business, there is no defined rule on the distribution contract. Any contract is regulated by the Contracts Act (Chapter 106), the Unfair Contract Terms Act (Chapter 171) and the Sale of Goods Act (Chapter 170) which oversees the sale of goods contract.

The rights of foreign investors to do businesses in Brunei can be summarized in the table below.

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<sup>364</sup> Hjh Zainab binti Hj Morshidi, Proceedings Paper Presentations Session : Privatisation and Corporatisation: Brunei Darussalam's Experience, Department of Policy and Coordination, Economic Planning and Development Department, Brunei Darussalam, [http://www.csstc.org/reports/egm/p4/presentation\\_Brunei.htm](http://www.csstc.org/reports/egm/p4/presentation_Brunei.htm), accessed on 19 December 2014.

<sup>365</sup> Ibu Usa, Business Intelligence Report, Vol 1, Strategic Information and Opportunities, International Business Publications, USA, 2000, p. 119.

Table 31: Rights and Limitations of Foreign Investors to do Businesses in Brunei

Types of Organization	Requirements	Eligibility of Foreigners
Sole Proprietor	Sole owner with unlimited liability	Only local investors
Partnership	2-20 individuals/ one of which must be a Bruneian or a Brunei Permanent Resident	Foreign investors are allowed subject to approval by relevant authorities
Private Company	2-50 individuals/ At least half the directors in a company must be Brunei citizens or Brunei Permanent Residents	Foreign investors are allowed
Public Company	Public companies must have at least seven shareholders/ At least half the directors in a company must be Brunei citizens or Brunei Permanent Residents	Foreign investors are allowed
Branch of a Foreign Company	Any foreign company that wishes to establish a business in Brunei Darussalam and does not incorporate as a local company must register as a branch of the foreign company.  A foreign company is entitled to the same powers and authority as a local company.	Foreign investors are allowed

Types of Organization	Requirements	Eligibility of Foreigners
Joint Venture	A company or partnership can create joint venture among them or between a local company and a foreign company	Foreign investors are allowed subject to approval by relevant authorities

Source: APEC Services Trade Access Requirements (STAR) Database, Asia-Pacific Economic Cooperation (2013)



## Chapter 6

### Land Law of Brunei

#### 6.1 Introduction

Islam became influential in Brunei during the 14th century. Soon afterwards, the Brunei Sultanate was dominant in the 15th and 16th centuries when it controlled coastal areas of North-West Borneo, parts of Kalimantan and the Philippines. The Dutch, Portuguese and Spanish arrived after the 16th century to begin colonization. Brunei lost to the Spanish and the Dutch. However, it was the British and the Dutch who expanded the colonial empires in Brunei.<sup>366</sup> In the 19th century the Sultan of Brunei received British support in defending the country from Dayak pirate invasion. After the defense, James Brooke, a British adventurer, was dubbed as Rajah of Sarawak in 1839. The British proceeded to annex the island of Labuan in 1846. North Borneo became a British protected state in 1888. Brunei voluntarily accepted the status of a British protectorate under the Sultan, with Britain taking charge of its foreign relations. The loss of Limbang district to Malaysia's Sarawak in 1890 split Brunei into two parts. As a consequence, it causes problematic relations between Brunei and Malaysia ever since.<sup>367</sup>

In terms of land ownership, Brunei subscribed to land feudalism before 1906 where main rivers (Tulin, Kuripan, and Kerajaan) were distributed to several elite owners. The owners were entitled to all rights over allocated parts of river as well as animals living in the area. This system was abolished when Brunei became a protected state of the British.

In the period before 1906, the Kerajan River located near the Sultan's palace belong to the Sultan. Skilled labours and other resources are drawn to develop the area. In an event of Sultan's death, the ownership will pass to the Sultanate Asset Office, which later will pass on to the Sultan's successor.<sup>368</sup>

The Kuripan River belongs to four Ministers (Wazir) in which they can exploit for economic gains. Each Wazir is entitled to his/her own river. However, the Sultan is entitled

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<sup>366</sup> The Commonwealth, Brunei Darussalam: History, <http://thecommonwealth.org/our-member-countries/brunei-darussalam/history>, accessed on 15 March 2015.

<sup>367</sup> *Ibid.*

<sup>368</sup> Jatswan S. Sidhu, *Historical Dictionary of Brunei Darussalam*, Scarecrow Press, 2009, p.ii

to some parts of economic gains derived from such exploitation. Similar to the Kerajan River, the ownership can pass to Wazir' successors.

The Tulin River's ownership is allocated to the Sultan, Wazir, and the Queen (Pengiran).

Permissions from the Sulan as well as one or two Ministers were required to distribute ownership of rivers. There was a decentralised system of property ownership in which the ultimate control was from the Sultan at the seat of the Kingdom (Kampong Ayer). The Sultan appointed delegates to manage ownership of rivers (Sungai) and colonized territory (Jajahan) in areas such as Borneo and Sulu. These rivers and colonized territory were primarily subject to management of community leaders who were subject to authority of the Sultan's delegates.<sup>369</sup> Most of the property utilization was for agricultural purposes.

In 1906 a treaty was signed between Britain and Brunei making Brunei a full protectorate. The treaty provided for the succession of the reigning Sultan, with the arrangement that the British would advise the Sultan on all matters except those concerning local customs and religion. The Land Code 1909 was subsequently enacted which granted management power to the British residents and His Majesty the Sultan in Council. Since 1929, Brunei has gained more wealth from oil and gas business. The Constitution of 1959 proclaimed domestic sovereignty through the Legislative Council and abolished the Residency Agreement of 1906. The executive power was transferred from the British residents to the Sultan and many of his delegates. The 1971 agreement between Brunei and Britain relinquished Brunei's status of protectorate. The Constitution was amended to grant all domestic powers to the Sultan with the British remaining power in defense and foreign affairs. Brunei declared independency on 1 January 1985.<sup>370</sup>

Since 1959, the first Constitution has empowered the Sultan with executive power advised by the Religious Council, the Privy Council, the Council of Ministers, the Legislative Council and the Council of Succession.<sup>371</sup> In terms of land management, the Sultan delegates power to appointed Ministers in matters relating to enacting rules concerning

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<sup>369</sup> *Ibid.*

<sup>370</sup> The Commonwealth, Brunei Darussalam: History, <http://thecommonwealth.org/our-member-countries/brunei-darussalam/history>, accessed on 15 March 2015.

<sup>371</sup> John O'Shaughnessy, Clifford J. Shultz, Anthony Pecotich, Handbook of Markets and Economies: East Asia, Southeast, M.E. Sharpe, New York, 2006,p.52.



land administration, land transfer, approving criteria, fines, appointment of compliant officers, collection of rental and annual fee.<sup>372</sup>

## 6.2 Types of Land

There are four districts in Brunei. The district of Brunei/Muara is the smallest but dense with developed lands. The capital city, Bandar Seri Begawan, is located in the Brunei/Muara district. The district of Tutong is home to several indigenous people. The district of Belait is an oil producing area of the country. The district of Temburong is separated from the main land Brunei. Limbang of Sarawak, Malaysia, separates the district of Temburong from the main land Brunei. Temburong is the least populated district of the country. 75% of the land in the district remains undeveloped and is covered with tropical forest. There are four types of land in Brunei as categorized by the Land Acquisition Act (Cap 41).<sup>373</sup>

### 6.2.1 Land for a public purpose

One of the main policies regarding the use of land in the country is a forest reservation. Timber production and deforestation are required to be implemented in a sustainable way in order to preserve forest areas of the country. Since Brunei's economy depends mostly on oil and gas exports, using lands for agriculture is less popular.<sup>374</sup> Nevertheless, the government encourages farming and agriculture such as poultry, eggs,

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<sup>372</sup> Ministry of Development Brunei Darussalam, Land Administration System in Brunei Darussalam "Towards a Progressive Land Administration and Management", Presented by Haji Rahmad Haji Japar (Acting Commissioner of Land) Negara Brunei Darussalam Geospatial Forum 17-19 September 2012, Hanoi, Vietnam

<sup>373</sup> Land Acquisition Cap 41 Article 3(1) Land may be acquired under the provisions of this Act whenever it is needed –

- (a) For a public purpose; or
- (b) For a residential site area; or
- (c) For a factory area; or

For any person, association of persons or company undertaking a work of public utility.

<sup>374</sup> Virginia H. Dale, Effects of Land-Use Change on Atmospheric CO<sub>2</sub> Concentrations-South and Southeast Asia as a Case Study, Springer-Verlag New York, Inc, New York, 1994, p.39.

vegetables, fruits, and coffee. In addition, timber production is one of the main sources of the country's revenue thanks to a large area of tropical forest.<sup>375</sup>

The government owns an approximate 95.94% of lands in the country as the Land Code of 1907 (Section 4) provides that all forest or unoccupied lands shall be deemed to be properties of the government except indicated otherwise by the Land Code.<sup>376</sup> A land transfer shall fall under a discretion and authorization of the Sultan's Council for national interests as required by law.<sup>377</sup>

### **6.2.2 Land for a residential site area**

The government specifies areas of the country to be for residential purposes.

### **6.2.3 Land for a factory area**

There are areas allocated for manufacturing sectors such as oil and gas.<sup>378</sup>

### **6.2.4 Land for any person, association of persons or company undertaking a work of public utility**

This type of land is allocated for constructions for national interests or public infrastructures such as sea port, roads, oil and gas pipelines, telecommunication networks, etc.

## **6.3 Land ownership and land rights**

In the 19th century, land rights were divided into three categories as indicated below. Most of the rights belonged to Royal Members (Pengirans) who owned lands and gained revenues from exploitations of the lands. The Pengirans not only governed the areas that they owned but also collected taxes from inhabitants living in the areas. The

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<sup>375</sup> John O'Shaughnessy, Clifford J. Shultz, Anthony Pecotich, Handbook of Markets and Economies: East Asia, Southeast Asia, Australia, New Zealand, M.E. Sharpe, New York, 2006, 1995, p.48.

<sup>376</sup> Land Code Cap 40 Section 4 All forest, waste unoccupied or uncultivated land shall be presumed, subject to the establishment of any claim thereto registered in accordance with the provisions of the Land Code 1907 to be state land and all cultivated lands which have been abandoned or suffered to lie waste shall be deemed to be forest or waste land within the meaning of this section:...

<sup>377</sup> Land Code Cap 40 Section 3 His Majesty in Council may alienate Government land for such interest and in such manner as is authorised by this Code.

<sup>378</sup> Marshall Cavendish Corporation, World and Its Peoples: Malaysia, Philippines, Singapore, and Brunei, Marshall Cavendish Corporation, New York, 2008, p.1208.

Pengirans were allocated lands by reference of geographical features (e.g. mountains and rivers). The wealth of the governor was therefore dependent on the amount of people living in the area.<sup>379</sup> The three categories of land rights are as follows.

- (1) Kerajaan: the Sultan is entitled to judicial, financial, and commercial rights over the land.
- (2) Kuripan: the Ministers (Wazirs) are entitled to judicial, financial, and commercial rights over the land.
- (3) Sungei and Hamba Tulin (Pusaka) are lands to be owned by private entities and are transferrable as an inherited property.

Brunei uses a modified system in registering property. There are different types of land rights in Brunei as explained below.

### **6.3.1 Title**

Title is a freehold ownership of a registered land. The owner shall have exclusive rights for a lifetime. A transfer of title can be done with an approval of the Sultan's Council.

In the past few years, the government carried on a revocation of land title of foreigners who owned lands through nominees. To that effect, on 1 October 2011, about 47,000 land title certificates were modified to 60 years leasehold and were required to register with a land office. Previously, these land title certificates issued by power attorney were not required to undergo any registration.

Only Brunei's nationals are entitled to own lands under the new land ownership scheme. This change affected foreign investors living in Brunei who purchase lands and assets through lawyers. This new scheme is criticised to create obstacles to foreign investment.

To lease out lands, a memorandum of transfer (MOT) must be concluded between a landowner and a lessee. A lessee must pay lease in full before the 60 years leasehold period or immediately after the 60 years leasehold period ends. In practice, a leasehold property can be a collateral to secure a bank's loan even though this is not prescribed

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<sup>379</sup> R. Haller-Trost, Edited by Clive Schofield and Martin Pratt, *The Brunei-Malaysia Dispute Over Territorial and Maritime Claims in International Law*, Maritime Briefing, Vol 1 No. 3, International Boundaries Research Unit, United Kingdom, 1994. p.9.

under any law. However, the government has the power to revoke the land rights if the lessee uses the land contrary to the objective initially notified with the government. The government may notify the lessee 10 days in advance before the revocation without compensation.

### **6.3.2 Possessory rights**

There are two types of possessory rights on lands.

- The first is Strata which grants possessory rights over buildings on lands as per the Land Code (Strata) S 29/99 Revised Edition 2000.<sup>380</sup> The Strata lasts for 99 years.
- The second is a temporary permit issued by the government. The government may lease out lands for purposes of agriculture, commerce, residential use, or industry. There is no registration requirement for this permit and it must be renewed annually.

### **6.3.3 Rights to lands reserved for the state**

Article 9 of the Land Code provides that every registered land title remains a property of the person named in a surface of the title. That person shall have a permanent transmissible and transferable estate, interest and occupancy of his land subject to the provisions of this Act unless there are reservations stipulated in the Act that specific land rights are reserved for the government. The followings are reservations provided by the Act that the government shall enjoy:<sup>381</sup>

- 1) The right to all minerals and mineral products (including mineral oil) contained within lands alienated after the commencement of this Code, and all necessary facilities for exercising such right, on payment of compensation of actual damage.

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<sup>380</sup> Land Code (Strata) S19/99 Revised Edition 2000 Section 3 This Act applies only to registered land.

<sup>381</sup> Laws of Brunei Chapter 40 Land Code Article 9 (1) Every title by entry in the Register shall vest in the person named therein a surface right only to the land specified therein and such person shall have a permanent transmissible and transferable estate, interest and occupancy of his land subject to the provisions of this Act or such lesser estate as shall be specified in the entry...

- 2) The right to resume for public purposes such portions of the land as His Majesty in Council may determine on payment of compensation.
- 3) The right to remove earth, clay, gravel, sand, stone or any other material which may at any time be required for the roads, public buildings or other public purposes of Brunei Darussalam without compensation save for actual damage done to growing crops, fruit trees, or buildings.
- 4) The right to control all water courses for irrigation, navigation and mining or industrial purposes and for all purposes of general utility.
- 5) The right for the Government, its servants or agents, to make a road upon and over land alienated after the 1st day of July 1955 and to cross and recross such lands on such road on foot or in carriage with or without animals and with or without vehicles of any size or description whatsoever, and to construct and take under upon or over such lands pipelines and telegraph and telephone lines, posts and wires, and to do all things necessary for the carrying out of such making, construction or taking provided that in respect of any one title only one strip of land no more than 150 links wide at any point may be used, and provided further that reasonable compensation be paid by the Government to the registered owner for any damage done to crops or the surface of the land by any exercise of the said right.

#### **6.3.4 Land lease**

- The government may approve leasehold registration of land for a period of 25, 50, or 99 years. The leasehold may be transferred or may be extended with an approval of the Sultan's Council. A lessee shall pay lease fee and annual fee as indicated by the government.
- The owner of the land shall retain rights to gains arising out of a lease or long-term lease agreement for commercial purposes. The commercial lease of land can be registered for 60 years. A lessee can sub-let the land. Any lease of land more than 7 years is subject to registration and an approval from the Sultan's Council.

- A company can lease a land for operating a business in agriculture, forestry, fishery, or others for 30 years (extendable). The lease rate is dependent on the land's value.<sup>382</sup>

## 6.4 Land registration and transfer

### 6.4.1 Land Registration System

Brunei uses a Torrens system. It is a system of land title in which a register of land holdings maintained by the state guarantees an indefeasible title to those included in the register. Land ownership is transferred through registration of title instead of using deeds.<sup>383</sup> A land owner enjoy full rights to a registered land appeared on the system unless such land is acquired illegally or fraudulently. The Torrens system is not a system of registration of title but a system of title by registration.<sup>384</sup> The system was first employed in Australia by Sir Robert Torrens in 1858.<sup>385</sup> The system intends to protect rights of land owners and minimizes costs of tracing and managing title records. Its main purpose is to simplify land transactions and to certify to the ownership of an absolute title to land.<sup>386</sup> However, the system is applied differently in Brunei. Due to a lack of transparency in a responsible organization, a transfer of lands, buildings, and commercial properties between Brunei citizens is filled with difficulties. Non-Brunei citizens are unable to have names on the land title. Therefore, non-Brunei citizens previously retained land ownership through trustees and appointed nominees but the process took a great amount of time to be verified by a state official. This caused adverse effects in operating a business when there were uncertainties on land registration. However, the government has recently annulled the

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<sup>382</sup> Association of Southeast Asian Nations, ASEAN Investment Guidebook 2009, Indonesia, 2010, p.29.

<sup>383</sup> Land Code Article 7. The officer in charge of the Land Office shall keep a Register of all land alienated under the provisions of this Code in the Form A in the Schedule with such variations as circumstances may require. The Register shall contain an entry of the special conditions (if any) imposed in respect of any lands. The officer shall also keep a Journal in the Form B in the Schedule of all transactions with regard to land entered in the Register.

<sup>384</sup> According to *Breskvar v Wall* (1971) 126 CLR 376, 385 (Barwick CJ), "It is not a system of registration of title but a system of title by registration".

<sup>385</sup> Please look at P Mocrlin Fox, *The Story behind the Torrens System* (1950) 23 Australian Law Journal 489. Cf S Robinson, *Transfer of Land in Victoria* (1979) ch.1 For the background of Torrens and development and adoption

<sup>386</sup> Kelvin F K Low "The Nature of Torrens Indefeasibility: Understanding the Limits of Personal Equities" Melbourne University Law Review, Vol.33, pp.205-206.

foreigners' land titles and abolished land title registration through trustees and appointed nominees. Compared with other countries, the real estate market is less competitive in Brunei. However, current hurdles in land registration could affect long-term investment.<sup>387</sup>

The Torrens system used in Brunei is paper-based which is different from other countries which use a computer-based system. A well-designed computer-based system can detect suspicious and fraudulent transaction easily and effectively.<sup>388</sup>

A land registration in Brunei can begin by soliciting a lawyer to check whether the land is being owned by another person or whether the land has an outstanding lien on it in from bankruptcy or a liquidation period. Once the lawyer verifies that the land is clean, a land purchase agreement must be signed by both parties at the land office. Form A and Form B must be fully filled and submitted at the land office. An appointed date will then be issued by the land office, normally within 2 weeks after a submission date of the Forms. The parties then return to the land office at the appointment date to sign the memorandum of transfer (MOT). Before registering the land to the purchaser, an approval must be sought from delegates of the Sultan's Council. After the MOT is signed, the land office will conduct an evaluation of the land's value and at the site of the land, and will inform the parties of stamp duty, registration fee, and land tax to be paid at the land office. The last process is a land title registration at the land office.

**Table 32: Displaying process and costs in registering a land in Brunei<sup>389</sup>**

No.	Process	Time	Cost (Brunei Dollar: BND)
1	Lawyer checking outstanding land ownership and lien Responsible organization: The Land Office	1 day	1
2	Signing land purchase agreement	1 day	100-300

<sup>387</sup> Oxford Business Group, The Report: Brunei Darussalam 2013, Oxford Business Group, 2013, p.198.

<sup>388</sup> Greg Taylor, The Law of the Land: The Advent of the Torrens System in Canada, University of Toronto Press, Canada, 2008, p.167.

<sup>389</sup> The collecting information is a part Doing Business Project, comparing rule about domestic business circle of small size and medium size 189 countries. The lasted collecting information dated on June 2014 Doing Business-World Bank Group, Registering Property in Brunei Darussalam, <http://www.doingbusiness.org/data/exploreeconomies/brunei/registering-property/> accessed on 20 January 2015.

No.	Process	Time	Cost (Brunei Dollar: BND)
	Responsible organization: The Land Office		
3	Submitting Form and Form B at the Land Office Responsible organization: The Land Office	7 days	1 BND/1 Form
4	Signing the memorandum of transfer (MOT) Responsible organization: The Land Office	1 day	None
5	Obtaining the signed memorandum of transfer (MOT) Responsible organization: The Land Office	6 days to 1 year (occur simultaneously with No. 6)	6 BND per every 100 BND of land value and 1 BND registration fee and land tax of 150 BND per ¼ acres of land for commercial use per year
6	Evaluating land value at site by the land office Responsible organization: The Land Office	1 day (occur simultaneously with No. 5)	None
7	Registering title of the land at the Land Office Responsible organization: The Land Office	15 days	None

#### 6.4.2 Land transfer registration

Only Brunei's nationals are eligible to transfer lands. Foreign companies are not entitled to own lands and transfer lands in Brunei. Registered Brunei companies can register for a land transfer at the Brunei Economic Development Board (BEDB) and can only transfer lands which are in Economic Development Zones.



## 6.5 Land ownership of foreigners

### 6.5.1 Title

Foreigners are prohibited from owning lands in Brunei in accordance with the Regulation on Acquisition of Land and Buildings except permission is granted by the government of Brunei.<sup>390</sup> However, foreigners and Brunei's residents can own units in a building (Strata units). Foreign companies are prohibited from owning lands and transfer of land.

### 6.5.2 Possessory rights

Foreigners are prohibited from possessing lands in Brunei except permission is granted by the government of Brunei.

### 6.5.3 Leasing

Land lease is available for foreigners only in industrial and agricultural zones. A leasehold period is subject to discretion of the government which can be offered up to 60 years.<sup>391</sup> Extension of leasehold period is subject to the government's permission.

## 6.6 Regulations concerning

### 6.6.1 Relevant regulations on land management

#### Main regulations:

- The Land Code (Cap 40) provides rules concerning expropriation of land, categorization of land, land documents, land registration, compensation, and appointment of officials.
- The Land Acquisition (Cap 4) provides rules concerning management of different land types, definition of public lands, power of land officers, court procedures, and land's evaluation.
- The Strata (Unit in the building) Regulation (Cap 189) provides rules concerning common property in Strata, transfer of property, construction and

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<sup>390</sup> Paul Davidson, Franca Ciambella, *Investment in South East Asia*, Routledge, Singapore, 1995. p.30.

<sup>391</sup> *Ibid.*

operation of Strata, appointment and duties of juristic persons, insurances, regulations of juristic persons, and cessation of Strata business.

- The Land Code Supplements (Cap 101) provides rules concerning enforcement of land regulations, land documents and permits, non-court process of land document's verification.

#### **Regulations indirectly affected land management:**

- The Probate Act (Cap 11) contains certain provisions on management of inherited lands.
- The Stamp Duty Act (Cap 34) imposes stamp duties on certain land transactions such as leasing and inheritance of land.
- The Town and Country Planning Act (Cap 143) identifies land zones in urban and rural parts of the country to serve national benefits.
- The Licensed and Surveyors Act (Cap 100) provides rules concerning an appointment of land surveyor committee, approved person to survey lands, surveyor's license, and actions deemed as offences under the Act.
- The Sharia law also contains certain parts on property management.

#### **6.6.2 Regulation on land survey**

Article 8 of the Licensed and Surveyors Act (Cap 100) provides that only a registered surveyor who has paid the annual license fee in respect of the current year shall be entitled to practice his profession as a land surveyor and shall be authorized to undertake land title surveys. In addition, Article 4 of the Act provides that any person who, not being a licensed land surveyor or a Government surveyor, certifies to the accuracy of any title survey or signs or initials any survey plan or, not being a person acting under immediate personal direction and supervision of a licensed land surveyor, carries out any work in connection with a title survey shall be guilty of an offence. A fine of 5,000 BND for each offence and 50 BND will be imposed for each day during the continuance of such offence.<sup>392</sup>

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<sup>392</sup> Laws of Brunei, Cap 100 LICENSED LAND SURVEYORS 6 of 1980.

### **6.6.3 Roles of the Land Office in property development**

The Land Office is a department under the Ministry of Development. Its role is to complement the Ministry's vision in leading the country to prosperity, high standard of living, and sustainable development. The vision of the Land Office is to maximize the use of lands. Main functions include land registration, land administration and management, engaging in land transaction to maintain social and economic stability of the country.<sup>393</sup>

### **6.6.4 Town and country planning**

Town and country planning is the planning system by which the government seeks to maintain a balance between economic development and environmental quality. It is rooted in the history of Brunei. In 1972, the Town and Country Department was established so as to prepare a physical plan for the whole country. With Brunei's independence in 1984, the Department came under the auspices of the Ministry of Development until today. In 1985 the Government announced the National Master Plan and called out for one to be commissioned. The preparation of this plan was carried out by an international consultant and was completed at the end of 1987. The main aims included the preparation of a comprehensive physical and conceptual framework to meet the national objectives, optimize locations for a full range of land uses, and prepare statutory physical development plans covering the whole of Brunei. It intends to maximize the use of the country's scarce land resource, and to establish a framework for physical development over a 20 year period. With an expansion of the capital, the government is forced to design what the capital should be and whether the old plans are still viable and workable. The plan requires contribution, unity, creativity and commitment to attain goals and achievements in maintaining security and stability of the nation.<sup>394</sup>

### **6.6.5 Taking of property by the government**

Article 5 of the Land Acquisition Act (Cap 41) allows the government to publicly announce the taking of property (expropriation) whenever it appears to the government

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<sup>393</sup> Lands Department, Ministry of Development, <http://www.csdila.unimelb.edu.au/projects/tehran/Presentations/pdf/Ppt0000003.pdf>, accessed on 10 January 2015

<sup>394</sup> The Brunei Times, Town and Country Planning in Brunei, Rozan Yunos BR, 23 March 2008, [http://www.bt.com.bn/life/2008/03/23/town\\_and\\_country\\_planning\\_in\\_brunei](http://www.bt.com.bn/life/2008/03/23/town_and_country_planning_in_brunei), accessed on 20 January 2015.

that any particular land is needed for any purpose as stipulated in article 3 of the Act. The government's announcement of taking of property needs to indicate a land's status, objective of taking the land, size of the land, and surveying areas.<sup>395</sup>

#### **6.6.6 Policy on real estate development: the long-term development plan of Brunei (2007-2017)**

The long-term development plan has three main goals: (1) well-educated and highly skilled people, (2) high quality of life and, (3) dynamic and sustainable economy. To achieve the aspiration quality of life for the people, the main strategy is to develop and maintain social infrastructure with special emphasis on public housing, education and health. An approximately 1.556 Billion BND was allocated for the construction of public housing, including infrastructural works, and developing new public housing areas. More than 700 hectares of land has been developed for public housing. The 2013-2017 Development Plan aims to deliver about 10,000 homes and more than 1400 land lots in new residential areas. As housing is a fundamental need to living, the government intends to adopt this strategy as a long-term national policy to provide safe and quality housing at an affordable price.<sup>396</sup>

#### **6.6.7 Warehouse permit**

There are 17 processes for a warehouse permit application. The process begins with an application for a construction permit at the Authority of Building Construction Industry (ABCI). An applicant then must have a premises inspected by the Public Health Department and the Public Work Department (JKR). Next, an applicant needs to contact the Fire Services Department for inspection. This process incurs a service fee. Then, the Department of Electrical Services will conduct the last inspection and compile all documents from relevant authorities to be submitted to the ABCI. The ABCI will issue an Occupancy Permit to an applicant.

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<sup>395</sup> Laws of Brunei Cap 41 Land Acquisition, Article 5(1) Whenever it appears to the Minister that any particular land is needed for any of the purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land if any has been made may be inspected...

<sup>396</sup> *Ibid.*

Table 33 : Displaying procedures and cost of getting a warehouse construction permit<sup>397</sup>

No.	Procedure	Time	Costs
1	Obtain planning approval from Town and Country Planning Department Agency: The Authority of Building Construction Industry (ABCI)	14 days	421 BND
2	Obtain development approval of building works from ABCi Agency: ABCi	14 days	55 BND
3	Obtain permit to carry out building works from ABCi Agency: ABCi	30 days	No charge
4	Request and obtain temporary permit for hoarding Agency: Public Works Department (ABCI)	7 days	No charge
5	Qualified person submits commencement notice Agency: ABCi	1 days	No charge
6	Qualified person submits the notice of completion of the setting out and awaits confirmation Agency: ABCi	7 days	No charge
7	Receive inspection of setting out and approval Agency: ABCi	7 days	No charge
8	Qualified person submits the notice of completion of excavation for the foundation and awaits confirmation Agency: ABCi	7 days	No charge
9	Receive excavation inspection and approval Agency: ABCi	7 days	No charge
10	Receive excavation inspection and approval	7 days	No charge

<sup>397</sup> World Bank Group, Doing Business, Dealing with Construction Permits in Brunei Darussalam, <http://www.doingbusiness.org/data/exploreconomies/brunei/dealing-with-construction-permits>, accessed on 21 January 2015.

No.	Procedure	Time	Costs
	Agency: ABCi		
11	Receive inspection for sewage connection and approval to proceed with final connection Agency: Water Services of JKR (ABCi)	1 day	No charge
12	Obtain water connection from JKR Agency: Water Services of JKR (ABCi)	3 days	3,000 BND
13	Request final inspection and occupancy permit and await confirmation Agency: ABCi	7 days	No charge
14	Receive final inspection and occupancy permit Agency: ABCi	14 days	750 BND

## 6.7 Tax relating to real estate

### 6.7.1 Taxes on possession and operation and real estate

Registered owner of land must pay annual rent to the government depending on condition of use on such land as follows:<sup>398</sup>

**Table 34 : Displaying Conditions of Use on Land and Annual Rent Rates**

Condition of Use	Annual Rent Rates
Padi	BND 2 (USD 1.438)/acre
Agriculture	BND 5 (USD 3.46) /acre
Rubber	BND 5 (USD 3.70)/acre
Residential	BND 10 (USD 76.92) per 1/4 acre (Outside Development Control Competent Authority Area (DCCA)), BND 50 (USD 34.60) per 1/4 acre (Within DCCA)
Residential and minor commercial	BND 12.50 (USD 8.65) per 1/4 acre (Outside DCCA), BND 62.50 (USD 43.25) per 1/4 acre

<sup>398</sup> Jones Lang LaSalle, Brunei Property Investment Guide 2013, p.4.

Condition of Use	Annual Rent Rates
	(Within DCCA)
Residential and commercial	BND 125 (USD 86.50) per 1/4 acre
Flats	BND 100 (USD 69.20) per 1/4 acre
Flat and commercial	BND 125 (USD 86.50) per 1/4 acre
Commercial	BND 150 (USD 103.80) per 1/4 acre
Commercial and industrial	BND 150 (USD 103.80) per 1/4 acre
Industrial	BND 150 (USD 103.80) per 1/4 acre
Institutional building	BND 62 (USD 43.25) per 1/4 acre
Institutional building, commercial and industrial	BND 150 (USD 103.80) per 1/4 acre
Hotel	BND 150 (USD 103.80) per 1/4 acre
Filling/petrol station	BND 125 (USD 86.50) per 1/4 acre
Diplomatic	BND 62.50 (USD 43.25) per 1/4 acre

### 6.7.2 Property tax

A property used for commercial purpose is subject to a property tax. The rate of a property tax is based on the value of the property evaluated by the municipal office.

### 6.7.3 Inheritance tax (abolished)

Before 1 January 2556, an inheritance worth from 3,000 to 5,000 BND is subject to 1% tax. For an inheritance worth more than 10 million BND, the tax rate is 20%. The tax is levied on property of a testator in which the testator is domiciled and property of a testator located in Brunei (even though the testator is domiciled outside Brunei at time of death). The inheritance tax is now abolished.

## 6.8 Conclusion on land laws and foreigner's rights to own lands in Brunei

Most of the lands in Brunei belong to the state. Private entities only own about 4% of all the lands in the country. Only 1% of the lands is used for commercial purposes while the majority of the lands are reserved for conserving forests. Therefore, a large proportion of lands are available to be developed for industrial and commercial use. In

fact, the government has supported the development of industrial zones. The land laws of Brunei have been launched since 1904 without any major revisions although the attempt had been made by the Ministry of Development in 2000. Outdated land laws create hurdles to business and the country's economy due to large restrictions on foreign investors' utilization of lands. Currently, foreign investors are not allowed to own lands but they can obtain leasehold lands for 20-30 years which are extendable up to 60 years. These restrictions have caused difficulties to engage in loan securities for private investors, financial institutions, and financial guarantors.



# Chapter 7

## Labor Law of Brunei

### 7.1 Introduction

Even though Brunei has not ratified eight main conventions of the International Labor Organization (ILO: Conventions No. 29, 87, 98, 100, 101, 105, 138, and 182), it has constantly revised its labor laws in conformity with many of the ILO conventions, especially law on child protection. Brunei's law now prohibit child workers aged below 16 and a permission from a child's guardian is required if hiring an employee aged below 18. In addition, severe punishment is imposed for human trafficking and smuggling (the Trafficking and Smuggling Persons Order). An offender is liable up to 600,000 BND fine and 30 years imprisonment if he/she smuggles a person into the country for trade or other purposes which post threats to a smuggled person.

### 7.2 Labor law

There are several laws concerning labor. Main legislations dealing directly with labor rights are enacted as Acts. Other subsidiary legislations are often enacted as regulations.

#### 7.2.1 Relevant laws on labor

##### 1) Main legislations

There are five main legislations (Acts) concerning labor rights.<sup>399</sup>

(1) The Employment Order (2009) regulates rights and obligations between employers and employees as well as foreign employees working in Brunei.

(2) The Trade Union Act (1961, amended in 1972) regulates an establishment and roles of labor unions which are required to register with the stat. All labors are eligible to join a labor union except militants and police. Employers are required to grant a non-discriminatory treatment to employees who are members of a labor union. Several labor union can form a labor confederation although they are prohibited to join an international labor union.

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<sup>399</sup> Asia pacific labour law review, Asia monitor resource centre, 2003, p.3

(3) The Trade Disputes Act (1961) provides ways to settle disputes between an employer and a labor union through conciliation and adjudication. The Act also provides measures to safeguard interests of labor union's members.

(4) The Workmen's Compensation Act (1957) requires an employer to bring measures concerning an employee's compensation in conformity with the law.

## **2) Subsidiary legislations**

Brunei has many subsidiary regulations concerning standards and treatments of labor protection as follows.<sup>400</sup> Some of the regulations have been cancelled by the Employment Order (2009).

(1) Labour Regulations – Maternity Benefits (1955) define maternity benefits entitled when taking maternity leave such as full payment of wages and other welfares (e.g. transportation). (This legislation is now annulled by the Employment Order 2009.)

(2) Labour (Special Places of Employment) Notification (1956) requires an employer to provide adequate sanitation to workers who are allocated to work at another place rather than an employee's main business premise if that place is in operation for industrial undertaking and has at least 25 workers. (This legislation is now annulled by the Employment Order 2009.)

(3) Labour Regulations – Public Holidays (1956) announce mandatory public holidays. (This legislation is now annulled by the Employment Order 2009.)

(4) Labour (Domestic Servants) Rules (1971) apply several provisions of the Labour Act (Chapter 93) 1954 to workers who work as servants.<sup>401</sup> (This legislation is now annulled by the Employment Order 2009.)

(5) Labour (Public Contracts) Rules (1971) require an employer to accord minimum standards of labour treatment to a party who enters into a contract with the government.

(6) Labour (Immigrant Workers' Employment License) Rules (1971) require an employer to complete relevant forms in applying for a foreigner's work permit.

(7) Labour Regulations – Limitations of Duties and Powers (1971) define scope of powers of appointed officers from the Commissioner of Labour.

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<sup>400</sup> *Ibid.*

<sup>401</sup> It as superseded by the Employment Order (2009).

(8) Labour Regulations – Salary Payment in Cheque (1975) provide details on salary payment by cheque which requires consent from an employee. (This legislation is now annulled by the Employment Order 2009.)

## 7.2.2 Labour protection

The Employment Order (2009) is the main legislation regulating an employment contract in Brunei. The Order covers most types of labours except those under specific regulations such as labours in fishery sectors, servants, high-ranked executives. The Order provides the following standards and treatment of labours.

### 1) Employment contract

An employer and an employee may enter into an employment contract whether in writing or verbal and conditions in the contract shall not be less favorable to an employee than those stipulated in the Order.<sup>402</sup>

The contract is terminated when both parties mutually agree so or the nature of work is finished or the period of employment ends. One of the parties may give the notice to the other party to end the contract despite no breach of contract. The notice to terminate the contract shall not be less than:<sup>403</sup>

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<sup>402</sup> Employment Order 2009, Section 12 stated that “Every term of a contract of service, whether made before or after the commencement of this Order, which provides a condition of service which is less favourable to an employee than any of the conditions of service prescribed by this Order shall be illegal and not valid to the extent that it is so less favourable.

<sup>403</sup> Employment Order 2009, Section 22 stated that

“(1) Either party to a contract of service may at any time give to the other party notice of his intention to the contract of service.

(2) The length of such notice shall be determined by the contract of service or, in the absence of any provision, in accordance with subsection (3)

(3) Subject to subsection (2), the notice to terminate a contract of service shall not be less than –

- (a) one day’s notice, if the employee has been employed for less than 26 weeks;
- (b) one week’s notice, if the employee has been employed for at least 26 weeks but less than 2 years;
- (c) 2 week’s notice, if the employee has been employed for at least 2 years but less than 5 years;
- (d) 4 week’s notice, if the employee has been employed for at least 5 years

(4) The section does not prevent either party from waiving his right to notice on any occasion.

(5) The notice to terminate shall be in writing and may be given at any time, and the day on which the notice is given shall be included in calculating the period of the notice.”

One day's notice if the employee has been employed for less than 26 weeks;

One week's notice if the employee has been employed for at least 26 weeks but less than 2 years;

Two weeks' notice if the employee has been employed for at least 2 years but less than 5 years;

Four weeks' notice if the employee has been employed for at least 5 years.

The contract can be terminated without notice if one of the parties intentionally or willfully breaches the contract in the following causes:<sup>404</sup>

Breach of contract by an employer: when he fails to pay salary in accordance with the law.

Breach of contract by an employee: when he has been continuously absent from work for more than 2 days without prior leave or without reasonable excuse or without informing or attempting to inform his employer of the reason for the absence.<sup>405</sup>

An employee can terminate the contract with an employer without notice where he or his dependant is immediately threatened by danger or by violence or disease in a way that the employee can no longer perform the service promulgated under the contract.

A contract may be terminated by the Labour Commissioner if the employee has been mistreated in person or property. The Commissioner may order the employer to pay reasonable compensation to the employee for such mistreatment.<sup>406</sup>

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<sup>404</sup> Employment Order 2009, Section 19 stated that

“(1) An employer shall be deemed to be in breach of his contract of service with the employee if he fails to pay his salary in accordance with this Order.

(2) An employee shall be deemed to be in breach of his contract of service with the employer if he has been continuously absent from work for more than 2 days –

(a) without prior leave from his employer or without reasonable excuse; or

(b) without informing or attempting to inform his employer of the reason for the absence.”

<sup>405</sup> Employment Order 2009, Section 18 stated that “An employee may terminate his contract of service with his employer without notice where he or his dependant is immediately threatened by danger to the person by violence or disease such as the employee did not by his contract of service undertake to run.”

<sup>406</sup> Employment Order 2009, Section 17 stated that “A contract of service may be terminated by the Commissioner if the employee has been mistreated in person or property, and in such event the Commissioner may order the employer to award the employee reasonable compensation for such mistreatment.”

## 2) Salary

An employer must pay salary to an employee at least once a month. A salary, other than additional payments for overtime, shall be paid before the expiry of 7<sup>th</sup> day after the last day of the salary period stipulated in the contract. Additional payments for overtime shall be paid no later than 14 days after the last day of the salary period. The total salary due to an employee on completion of contract shall be paid on completion of contract.<sup>407</sup> The total salary must be paid to an employee who terminates the contract without notice no later than 7 days on which the contract is terminated.<sup>408</sup> Generally, an employer is unable to deduct an employee's salary except where employee's actions are allowed by law to be deducted such as absence from work, damages to goods or services caused by an employee, or salary deduction allowed by order of courts.<sup>409</sup>

## 3) Minimum wage

There is no minimum salary in Brunei. It is subject to negotiation between employers and employees.<sup>410</sup>

## 4) Working hours

For a non-shift worker, the hours of work shall not be more than 8 hours a day or more than 44 hours a week. For a shift worker, the hours of work shall not be more than

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<sup>407</sup> Employment Order 2009, Section 39 stated that

“(1) Salary earner by an employee under a contract of service, other than additional payments for overtime work, shall be paid before the expiry of the 7<sup>th</sup>. Day after the last day of the salary period in respect of which the salary is payable.

(2) Additional payments for overtime work shall be paid not later than 14 days after the last day of the salary period during which the overtime work was performed.

(3) The total salary due to an employee on completion of his contract of service shall be paid to him on completion of the contract.”

<sup>408</sup> Employment Order 2009, Section 40(2) stated that “Subject to the provisions of this Order, the total salary due to an employee who —

(a) terminates his contract of service without giving prior notice to his employer as required under section 22; or

(b) has already given prior notice under section 22, but the employee terminates his contract of service without waiting for the expiry of the notice,

Shall be paid to him not later than 7 days after the day on which the contract of service is terminated.”

<sup>409</sup> Brunei Darussalam Country Report, Ministry of Health, Labor and Welfare of Japan, 2011, p. 11

<sup>410</sup> *Ibid*, p. 11

an average of 44 hours a week over any continuous period of 3 weeks subject to a minimum of 12 hours a day. All work in excess of the above hours shall be considered as overtime work.<sup>411</sup>

### 5) Working days

An employee must not work more than 6 days a week.<sup>412</sup>

### 6) Public and traditional holidays

An employee is entitled to 1 rest day (the rest day can be a continuous period of 30 hours for non-shift workers). An employee is entitled to 11 public holidays in a year.<sup>413</sup>

### 7) Annual leave

An employee is entitled to take paid annual leave for each year of service. The amount of annual leave days depends on the employment contract which shall not be less than the following:<sup>414</sup>

Table 35 : Annual Leave Days

Years of Work	Minimum Days of Annual Leave
1	7
2	8
3	9
4	10
5	11
6	12
7	13
8 years or above	14

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<sup>411</sup> *ibid*, p. 12

<sup>412</sup> *ibid*.

<sup>413</sup> *ibid*.

<sup>414</sup> *ibid*, p. 13

## 8) Leave

### Sick Leave

An employee is entitled to 14 day's outpatient sick leave and 60 day's hospitalization leave (14 days outpatient sick leave included) provided he satisfies conditions e.g. he must have worked for more than 6 months, and has obtained a medical certificate from the doctor.<sup>415</sup>

### Maternity leave

All public and private female employees are entitled to 105 days of maternity leave<sup>416</sup> in accordance with the Maternity Leave Regulation (2011)<sup>417</sup>.

## 9) Overtime

A non-shift employee is not allowed to work for more than 12 hours in a day (inclusive of overtime work) except in the following circumstances i.e. work which is essential to the life of the community, work which is essential to national defence or security, and urgent work. In the case of a shift worker, he is not allowed to work more than 12 hours a day under any circumstances. Overtime work cannot be forced on an employee.<sup>418</sup> Payment for overtime work must be paid within 14 days after the last day of the salary period. A limit of 72 hours is imposed for an overtime work in a month. However, this limit may be exceeded if approval has been granted by the Commissioner of Labour.

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<sup>415</sup> *ibid.*

<sup>416</sup> Brunei Darussalam Country Report, Bangkok Thailand, 2014, p. 5

<sup>417</sup> Under the Employment Order (Amended in 1984), all female employees are entitled to 9 weeks of maternity leave i.e. 4 weeks immediately before the delivery of her child, 5 weeks immediately after the delivery of her child. Only 8 weeks are entitled to receive payment benefit. By mutual consent, the last 4 weeks of the maternity leave can be taken within 6 months from the date of delivery. A female employee must satisfy that she has worked for more than 6 months.

<sup>418</sup> Employment Order 2009, Section 64 (1) stated that "Subject to section 65(2), no employer shall be compelled to work on rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts"

There are two scenarios of overtime work (on rest day or public holiday): (1) overtime work at a request of an employee and (2) overtime work at a request of an employer.<sup>419</sup>

**Table 36 : Overtime Work Rate at Request of Employee**

<b>Duration of Overtime Work</b>	<b>Rate</b>
Not exceeding one-half of normal hours of work	50% of basic rate of pay
Exceeding one-half of normal hours of work but not exceeding normal hours of work	Basic rate of pay
Exceeding normal hours of work	Basic rate of pay

**Table 37 : Overtime Work Rate at Request of Employer**

<b>Duration of Overtime Work</b>	<b>Rate</b>
Not exceeding one-half of normal hours of work	Basic rate of pay
Exceeding one-half of normal hours of work but not exceeding normal hours of work	2 times of basic rate of pay
Exceeding normal hours of work	2 times of basic rate of pay

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<sup>419</sup> Employment Order 2009, Section 64 (3) stated that

“(3) Any employee who at his own request works on a rest day or a public holiday shall be paid for that day –

(a) if the period of work does not exceed one-half of his normal hours of work, a sum at the basic rate of pay for half a day’s work;

(b) if the period of work is more than one-half but does not exceed his normal hours of work, a sum of the basic rate of pay for one day’s work;

(c) if the period of work exceeds his normal hours of work for one day –

(i) a sum at the basic rate of pay for one day’s work; and

(ii) a sum at the rate of not less than one and one-half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.”



A conversion from a monthly rate of pay to an hour rate of pay (for an overtime rate calculation) is:<sup>420</sup>

12 x basic monthly salary

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52 x 44 hours

## 10) Severance payment

Brunei has no law on severance payment. It depends on negotiation between employers and employees. It may be indicated in a termination clause of a contract e.g. an employer may give an employee one-month notice and compensation is paid as agreed in the contract.<sup>421</sup>

## 11) Child labour

Although Brunei has not ratified conventions concerning child labour protection, the country has emphasized greatly on basic education of children. With respect to the Compulsory Education Order (2007), basic education is free on both public and private schools. Primary school education is mandatory for a citizen for at least 9 years (from age 6-15 years). However, the national education policy requires at least 12 years of mandatory education.<sup>422</sup> The labour law prohibits an employment of a person aged below 16. Permissions from a child's guardian and the Labour Commission are required if hiring a person aged below 18.<sup>423</sup> A female employee aged below 18 is prohibited from working at night or in an off-costal oil drilling facility. The Department of Labour under the Ministry of Home Affairs has duty of enforcing laws concerning child labour.

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<sup>420</sup> Employment Order 2009, Section 65 (6) (a) stated that "in the case of a person employed on a monthly rate of pay —

<sup>421</sup> Information from interview, interviewer informs that "Severance pay: no direct laws on severance payment but governed by a termination clause of the contract e.g., 1 month notice and compensation as agreed in the contract.

<sup>422</sup> SECOND HIGH LEVEL MEETING (HLM) ON SOUTH-SOUTH COOPERATION FOR CHILD RIGHTS IN ASIA AND THE PACIFIC "FULFILLING CHILD RIGHTS WITH EARLY CHILDHOOD DEVELOPMENT" NEW DELHI, INDIA, October 2013, p. 4

<sup>423</sup> *Ibid*, p. 8

## 12) Female employment

An employer is prohibited from dismissing an employment of a female employee if she is absent from work due to maternity.<sup>424</sup> Brunei's law does not have specific provisions prohibiting discrimination based on race, sex, disability, language, or social status. Women do not enjoy equal access to employment and occupation although there is a lack of statistical support. It is also reported that men are selected for permanent positions in government service whether or not they hold a university degree.<sup>425</sup>

Foreign workers represent between 30 to 40 per cent of the total workforce or over 100,000 foreign workers, and 10,000 of which work in garment sectors. Many have complained of poor working conditions and a failure to respect their terms of employment. Migrant women domestic workers have complained of beatings, long working hours, and pay being suspended. Some migrant workers have reportedly halted work in protest, which are illegal under the labour law. In September 2005, more than 300 foreign migrant workers in a garment factory publicly protested claiming that they had not been paid for six months. Later, Brunei government officials reportedly worked to find alternative employment for the workers while prosecuting the company's representatives.<sup>426</sup>

Often times, foreign female domestic servants are reportedly subject to abuse by their employers. Several cases the servants are beaten or refused the right to leave the house on rest days. Since most foreign female domestics are highly dependent on their employers, they are unwilling or unable to lodge complaints.

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<sup>424</sup> Employment Order 2009, Section 98 stated that "Subject to the provisions of this PART, When a female employee absents herself from work in accordance with the provisions of this Part it shall not be law full for her employer to give her notice of dismissal during her absence or on such a day that the notice will expire during her absence."

<sup>425</sup> INTERNATIONALLYRECOGNISED CORE LABOUR STANDARDS IN BRUNEI DARUSSALAM, WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF BRUNEI DARUSSALAM, February 2008, p.6

<sup>426</sup> INTERNATIONALLYRECOGNISED CORE LABOUR STANDARDS IN BRUNEI DARUSSALAM, WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF BRUNEI DARUSSALAM, February 2008, p.6

### 13) Welfare in workplace

An employer is required by the Workplace Safety and Health Order (2009) to procure adequate safety measures such as machinery, equipment, plant, article of process used by employees.<sup>427</sup>

### 14) Compensation

In accordance with the Workmen's Compensation Act (1957), an employer is required to pay compensation to an employee who is injured by accident arising out of and in the course of the employment unless there are certain scenarios where the employer is not liable, for example, the employee is injured while consuming alcohol. The amount of compensation differs in various causes. An employee (non-minor) who has disabilities arising out of employment duty is eligible for 54 months compensation or 30,000 BND whichever is the less. An employee (minor) who has disabilities arising out of employment duty is eligible for 108 months compensation or 30,000 BND whichever is the less.<sup>428</sup>

### 15) Social security fund

There is no direct social security law in Brunei but social security is regulated by the following laws: (1) employees' trust fund of 1992; (2) supplementary pension scheme of 2009, implemented in 2010; and old-age and (3) disability pensions of 1955 as amended in 1984.<sup>429</sup>

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<sup>427</sup> Workplace safety and health order, 2009, Section 12 (b) stated that "ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article of process used by those persons;"

<sup>428</sup> 8(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely—

...

(b) where permanent total incapacity results from the injury—

(i) in the case of an adult, a sum equal to 54 months' wages or \$ 30,000 whichever is the less;

(ii) in the case of a minor, a sum equal to 108 months' wages or \$ 30,000 whichever is the less; ...

<sup>429</sup> Brunei, Pension & Development Network, <http://www.pensiondevelopment.org/51/brunei.htm> , accessed on 3 March 2015

## 16) Employees' trust fund

In accordance with the Employees' trust fund of 1992, funds are contributed by both an employee and its employer in the following proportions: (1) 5% of monthly earnings of employee; and (2) 5% of monthly payroll of employer. The supplementary pension is payable at age 60 for 150 BND per month provided that the employee has at least 35 years of continuous contributions. In order to receive the pension, the Brunei-born employee must have live in Brunei for at least 10 years. For the employee who was not born in Brunei, he must have lived in Brunei for at least 30 years.<sup>430</sup>

## 17) Protection of homeworkers

Currently, there is no regulation on the protection of homeworkers.

## 18) Working regulations

There is no specific law on working regulations. However, an employment contract between an employer and an employee must be in accordance with the Employment Order (2009).<sup>431</sup>

### 7.2.3 Regulatory measures

The Labour Commissioner and authorized officers have power to enter and investigate a working premise believed to have persons employed for working or any building used for a purpose of employment, on a matter concerning labour treatment in accordance with the Employment Order (2009).<sup>432</sup>

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<sup>430</sup> Brunei, Pension & Development Network, <http://www.pensiondevelopment.org/51/brunei.htm> , accessed on 3 March 22015

<sup>431</sup> See Part 2 Contracts of Service, Employment Order 2009

<sup>432</sup> Employment Order 2009, Section 118 stated that "The commissioner and any authorized officer may –

- (a) enter and inspect, without previous notice at any hour of the day or night –
  - (i) any place where he has reasonable cause to believe that any employee resides or is employed;
  - or
  - (ii) any building occupied or used for any purpose connected with that employment: and
- (b) make any enquiry which he considers necessary in relation to any matter within the provisions of this Order.

The Commissioner has power to inquire and decide a dispute between an employee and an employer concerning an employment contract or any matter falling within provisions of the Employment Order (2009).<sup>433</sup> Any party who is dissatisfied with a decision of the Commissioner in connection with financial interests may appeal to the High Court.<sup>434</sup>

### **7.3 Foreign workers**

#### **7.3.1 Protection of foreign workers**

Foreigners who are permitted to work in Brunei are protected by labour laws of Brunei, at least in principle. In practice, foreign workers maybe discriminated against in some areas.

#### **7.3.2 Work permit**

A two-year work permit must be acquired by a foreign employee. A holder of a work permit, which is valid for than 3 years, is required to register for Brunei Darussalam (Green) Identity card, which is valid for the same period as the work permit. A foreign employee is required to return to his/her home country after the two-year working contract expires.

A foreign worker may apply for a three-year working permit at the Department of Labour. Once approved, the application will be transferred to the Immigration Office to affirm that the applicant has the right to entry and work in Brunei. The permitted foreign worker is required to deposit of a minimum amount equal to a fare of homebound-single air ticket. A work permit cannot be modified for the first 6 months. A work permit will not

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<sup>433</sup> Employment Order 2009, Section 124 (1) stated that “The Commissioner may inquire into and decide any dispute between an employee and his employer or any person liable under the provisions of this Order to pay any salary due to the employee, where the dispute arises out of –

- (a) any term the contract of service between the employee and his employer; or
- (b) any of the provisions of this Order or any regulations made there under”

<sup>434</sup> Employment Order 2009, Section 133 (1) stated that “If any person whose financial interests are affected is dissatisfied with the decision or order of the Commissioner under sections 124, 125 or 129, he may appeal to the High Court.

be effective unless a company, which employs the foreign worker, recognizes a registration of the permit.<sup>435</sup>

### **7.3.3 Labour union**

Brunei has not ratified the ILO's Freedom of Association and Protection of the Right to Organise Convention, and the Right to Organise and Collective Bargaining Convention. In respect to trade union recognition, Brunei has the Trade Union Act of 1961 which authorizes the creation of trade unions, which must be registered with the government. Employers are prohibited from any discriminatory action against workers connected to trade union activities. Trade unions are allowed to form federations. However, the law prohibits unions and federations from joining international trade unions unless they receive written consent from both the Minister of Home Affairs and the Labour Department.

Despite having the law on trade union, there are only three trade unions in the country. All of the three unions are in the oil sector, representing about 1,500 workers. Two of the unions are inactive even though they have present offices. The only union active is limited in activities. These unions are barely independent from government authority. In principle, civil servants are permitted to form and join unions, except for those in the army, police, and prisons. However, none of the civil servants have joined any union in practice.

### **7.4 Dispute settlement**

There is no provision in law that recognizes the right to collective bargaining. This issue is normally addressed in an individual contract between an employer and each employee. Trade union activities are not allowed to violate these individual employee contracts.

Most labour laws only apply to Brunei citizens. The provisions of law do not extend to cover migrant workers, who take up around 30% to 40% of the total workforce. However, the Muara Export Zone is the only place where labour laws fully apply.

To summarize, Brunei has not ratified any convention relating to trade union rights. From the outset, trade unions in Brunei are largely inactive. There are no labour laws

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<sup>435</sup> ASEAN INVESTMENT GUIDE BOOK : BRUNEI DARUSSALAM, department of Trade Negotiations, Ministry of Commerce, 1<sup>st</sup>, 2014, p. 103

recognizing the collective bargaining or workmen's strike. Moreover, the suspension of democratic rights hinders trade union activities. Non-Brunei citizens are excluded from the labour law benefits in most parts.<sup>436</sup>

## 7.5 International labour standards

Despite joining the ILO in 2007, Brunei has not yet ratified the ILO's eight main Conventions on labour rights (Conventions No. 29, 87, 98, 100, 101, 105, 138, and 182).<sup>437</sup>

The ILO encourages and monitors an implementation of the aforementioned eight Conventions with or without ratification by states. Standards of labour treatment from these Conventions reflect the ILO Declaration on Fundamental Principles and Rights at Work. These conventions recognize labour rights in different areas.<sup>438</sup>

### **The first area:** Freedom of association and collective bargaining

It is the basic right which leads to other recognition of rights for social prosperity, sustainable development, equality, and poverty eradication.

#### **(1) The Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948)**

The Convention recognizes the rights of both workers and employers to join organizations of their own choosing without previous authorization and discrimination. The government power or its affiliates must refrain from interfering or obstructing an establishment of workers' and employers' organization. The workers' and employers' organizations can establish and join federations, confederations, and affiliate with international organizations of workers and employers.<sup>439</sup>

#### **(2) The Convention No. 98 on the Right to Organise and Collective Bargaining (1949)**

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<sup>436</sup> INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN BRUNEI DARUSSALAM, WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF BRUNEI DARUSSALAM, February 2008, p.4-5

<sup>437</sup> *Ibid*, p.1

<sup>438</sup> Aungkana Techagoman, International Labour Organization : ILO, p.4-5

<sup>439</sup> Niramon Sutummakid, Labour Standard and International Trade Law, Research Document No. 6, WTO Watch, p.31

The Convention protects workers against discrimination from joining a union (i.e. conditions imposed by an employer for a worker not to join a union, forced dismissal of a union membership or prejudice for having a union membership). It also recognizes the rights of union members to organize independently, without interference by employers. In addition, it promotes the development and utilization of machinery for voluntary negotiation between worker organizations and employer groups to regulate employment by means of collective agreements.<sup>440</sup>

**The second area:** Elimination of discrimination in employment and professionals

Discrimination means actions of deterring, barring, or favouring any particular individual or groups of individuals for reasons based on race, sex, religious, or political opinion.

**(1) The Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value (1951)**

The Convention requires member states to consider granting equal remuneration for work of equal value for men and women, or treating male and female workers equally in terms of remuneration. Remuneration includes basic wages or salary and additional payment payable directly or indirectly, whether in cash or in kind, by the employer to the worker arising out of the worker's employment.<sup>441</sup>

**(2) The Convention No. 111 on Discrimination (Employment and Occupation) (1958)**

The Convention prohibits all forms of discrimination in employment in order to create equal opportunities for all workers. Discrimination includes separation or exclusion on any basis including of race or color, sex, religion, political opinion, national or social origin in employment which undermine or nullify opportunities to an employment or occupation.<sup>442</sup>

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<sup>440</sup> *Ibid*, p.31

<sup>441</sup> *Ibid*, p.34

<sup>442</sup> *Ibid*, p.35



**The third area:** Elimination of child labour

The following Conventions seek to protect a child from any economic exploitation and dangerous work.

**(1) The Convention No. 138 on Minimum Age for Admission to Employment (1973)**

The Convention pursues a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work. The minimum age for admission to work must not be below the age in which the person completes compulsory education. In all cases, a minimum age for labour is 15 years. A declaration of 14 years is also possible with reasonable cause provided. The minimum age of 18 years is specified for work which is likely to jeopardize the health, safety or morals of young persons, except domestic work, small-scale production without permanent staff for local consumption, work conducted in schools or education institutions for education purposes.<sup>443</sup>

**(2) The Convention No. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)**

The Convention prohibits and eliminates the worst forms of child labour. It stresses on the role of member states to take into account the importance of education by ensuring access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour. A child is taken to mean a person aged below 18.<sup>444</sup>

**The fourth area:** Elimination of forced labour

A forced labour means work or any services assigned to a person under threat or punishment, and such person does not consent to such work.

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<sup>443</sup> *ibid*, p. 33

<sup>444</sup> *ibid*.

### **(1) The Convention No. 29 on Forced Labour (1930)**

The Convention prohibits the use of forced labour among member states. Forced labour is defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.<sup>445</sup>

### **(2) The Convention No. 105 on Abolition of Forced Labour (1957)**

The Convention eliminates certain forms of forced labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, labour disciplines, having participated in strikes, or racial, social, national or religious discrimination.<sup>446</sup>

Brunei's labour laws are largely inconsistent with the commitments adopted at the first Ministerial Conference of the World Trade Organization (WTO) in Singapore in 1996 and the fourth Ministerial Conference in Doha in 2001. In addition, many of the Brunei's laws fail to meet the standards under the Declaration on Fundamental Principles and Rights at Work adopted in June 1998 in the following areas.<sup>447</sup>

#### **7.5.1 Freedom of association and collective bargaining**

Brunei has not ratified the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948) and the ILO Convention on the Right to Organise and Collective Bargaining (1949).

#### **7.5.2 Non-discrimination and equal remuneration**

Brunei has not ratified the ILO Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value (1951) and the ILO Convention No. 111 on Discrimination (Employment and Occupation) (1958). Therefore, most women do not enjoy equal access to remuneration as men. Women are often placed as temporary workers. This is also the case for migrant workers. Migrant workers are often treated discriminatorily as

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<sup>445</sup> *Ibid.*

<sup>446</sup> *Ibid.*

<sup>447</sup> INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN BRUNEI DARUSSALAM, WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF BRUNEI DARUSSALAM, February 2008, p.1

they fall outside the scope of labour laws. Even though in some cases the government has shown willingness to impose sanctions to migrant female domestic workers who commit illegal acts, the situation of migrant workers still posts great concerns.<sup>448</sup>

In addition, the government once expressed that the Convention on Elimination of All Forms of Discrimination Against Women may contradict with the Constitution and Islamic beliefs.

### 7.5.3 Child labour

Brunei has not ratified the ILO Convention No. 138 on Minimum Minimum Age for Admission to Employment (1973), and the ILO Convention No. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).<sup>449</sup>

### 7.5.4 Forced labour

Brunei has not ratified the ILO Convention No. 29 on Forced Labour (1930), and the ILO Convention No. 105 on Abolition of Forced Labour (1957).

Although no ratification on these two Conventions has been made, the domestic law prohibits forced and compulsory labour. However, there are reports that some migrant domestic workers are forced to work in unacceptable conditions tantamount to forced labour. Most of these labours are from Indonesia, the Philippines, Pakistan, India, and Bangladesh. Some workers sign employment contracts with domestic work agents in order to find work and agree to have the agents deduct part of salaries.

To summarize, Brunei has not ratified any ILO Conventions relating to basic labour rights. Although Brunei is equipped with a domestic law on prohibition of forced labour, some workers endure unacceptable conditions tantamount to forced labour. There are very few cases on human trafficking, which are mostly perpetrated for purposes of labours.<sup>450</sup>

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<sup>448</sup> *Ibid.*

<sup>449</sup> *Ibid.*, p.8

<sup>450</sup> *Ibid.*, p.9

## **7.6 Conclusion on Brunei's labour laws and recommendations for investors**

### **7.6.1 Conclusion on Brunei's labour laws**

Brunei's laws recognize basic labour rights in wages, working hour, rest days, leaves, sick leaves, child labour, and women's labour in the same way as Thai laws. Brunei grants better working conditions than Thai laws in maternity leave. The maternity leave regulation 2011 allows up to 105 days maternity leaves. However, some standards are lower than Thai laws (e.g. strikes are prohibited under the Trade Dispute Acts 1961).

### **7.6.2 Recommendations for investors**

For investors, there are several benefits from the labour laws as employers in businesses. For examples, there is no fixed minimum wage and the strikes are not allowed.

For Thai labours seeking for employment in Brunei, compliance with an immigration law and work permit application procedures is important. Female workers are likely to access work and receive less benefits than men due to the social context of the country.

## Chapter 8

### Intellectual Property Law of Brunei

#### 8.1 Introduction

Brunei laws protect intellectual property rights including inventions, product designs, trademarks, copyrights, and integrated circuits. Brunei joins several Intellectual Property Rights' conventions including the Berne Convention for the Protection of Literary and Artistic Works (1886, amended 1979), the Paris Convention for the Protection of Industrial Property (1883, amended 1979), the Patent Cooperation Treaty (PCT, 1970), and the Hague Agreement concerning the International Registration of Industrial Designs (1925). Brunei has an obligation to bring domestic laws in conformity with provisions of the above Conventions.

In 2015, Brunei is expected to join two more conventions.<sup>451</sup> First, Brunei plans to join the Convention on International Union for the Protection of New Varieties of Plants (UPOV, 1961), which aims to protect new breed of plants in the future. Second, Brunei plans to join the Protocol relating to the Madrid Agreement concerning the International Registration Marks (Madrid Protocol, 1891).

#### 8.2 Contexts of Brunei's Laws on Intellectual Property Rights

##### 8.2.1 Protection of Inventions (The Inventions Act of 1925)

The Inventions Act (Cap 72), the Patents Order (2011), and the Patent Rules (2012) grant protections to inventions under the re-registration system, which allows a person who has obtained a patent grant from the United Kingdom, Malaysia, or Singapore to apply to the Registrar for patent registration in Brunei within three years from the date of issue of such grant. An inventor is required to register for patent rights in one of these countries before he can seek to have his invention protected in Brunei.<sup>452</sup>

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<sup>451</sup> Hariz Khalid, RECENT DEVELOPMENTS IN IP IN BRUNEI DARUSSALAM, 2014, BRUNEI DARUSSALAM INTELLECTUAL PROPERTY OFFICE, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 3 March 2015, p. 5

<sup>452</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ipdevelopment/en/pdf/asean/brunei.pdf](http://www.wipo.int/ipdevelopment/en/pdf/asean/brunei.pdf), accessed on 5 January 2015

The certificate of registration issued by the Brunei Registrar gives the applicant the same privileges and rights previously accorded to the applicant in the United Kingdom, Singaporean or Malaysian patent laws. Such privileges and rights begin from the date of the grant in any of these countries and continue in force as per the protection period granted in the respective countries. General terms of patent protection are similar to those of the United Kingdom, Malaysia, or Singapore.

### **1) Application criteria**

An invention must satisfy the following criteria to claim protection:<sup>453</sup>

- (1) An invention must be new at the date of filing a request or, in case of filing a request overseas, a priority date (the date of request for registration at a foreign country). Such invention must never be publicly announced or registered or used or sold anywhere prior to registration;
- (2) An invention must involve an inventive step;
- (3) An invention must be capable of industrial application.

### **2) Application procedure**

An applicant must file documents that prove eligibility for patent protection. The Brunei patent office has no responsibility in checking for the eligibility of documents. Brunei is a country member of the Patent Cooperation Treaty (PCT) under the World Intellectual Property Organization (WIPO). As a result, an applicant may apply for a patent grant in Brunei or file an application under the Paris Convention track whereby an applicant first files an application in Brunei and choose a designated country in which an applicant wishes to have a patent grant recognized (both filing countries and designated countries must be PCT members).

In case of applying for a patent grant in Brunei, the procedures are as follows:<sup>454</sup>

- (1) Filing for a patent grant at Brunei Darussalam Intellectual Property Office (BruiPO). A date of filing will be announced in Patent Journal A;

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<sup>453</sup> Brunei IP Handbook, Pintas IP Group, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 15 January 2015, p. 4

<sup>454</sup> *Ibid*, p.5

- (2) The BrulPO reviews whether documents are completed. Then, the BrulPO will publicize a request for patent grant in Patent Journal B within 18 months after a filing date;
- (3) The BrulPO has no responsibility in checking for the eligibility of documents. However, the BrulPO may register a patent for an applicant who brings a certificate of grant from overseas to register in Brunei;
- (4) Once a patent grant is approved overseas, the BrulPO will grant a patent to an applicant.

If an applicant wishes to gain protection in many countries (international application), an applicant may file an application under the PCT system as follows:<sup>455</sup>

- (1) Filing an application with the BrulPO. An applicant must be a national or a resident of a PCT member country;
- (2) An applicant wishing to file an international application must file a PCT application within 12 months after filing an application in Brunei. After filing a PCT application, an applicant can use the filing date in Brunei as the date of filing in a foreign country (priority claim);
- (3) An international application will be sent to the International Searching Authority. An applicant may modify the terms of application within 2 months after receiving the international search report and written opinion. If an application is not similar or identical to an existing patent grant, the International Bureau of WIPO will internationally announce the grant of patent within 18 months after a date of first filing;
- (4) After the international announcement, an applicant can choose whether to file a demand for international preliminary examination in which the International Preliminary Examining Authority will issue a report on patentability within 6 months after filing a demand. The International Bureau of WIPO will send the report on patentability to a designated country. However, a competent authority of a designated country is not required to grant a patent to an applicant in accordance with the report of the International Preliminary Examining Authority;

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<sup>455</sup> Trade policy review, World Trade Organization, 2014, p. 51

- (5) An applicant must choose a designated country within 30 months after first filing. After choosing, an international application will enter a national phase of a designated country. A grant of patent will be processed in accordance with national rules and regulations.

The PCT application enables an applicant in Brunei to be able to choose a designated country desired to be granted a patent protection. This saves costs and time of an applicant. However, the PCT application is not guaranteed a successful patent grant in a designated country since the PCT is an interim filing cooperation not registration cooperation. The registration of patent remains within the national competent of each contracting state.<sup>456</sup>

### **3) Terms of protection**

An invention is protected for 20 years after filing date. In case of an infringement (illegally manufacture or sell products that have protections), a patent holder can file a court proceeding against the infringer.<sup>457</sup>

#### **8.2.2 Laws on industrial designs (the Industrial Designs Order of 1999)**

The Industrial Design Order of 1999 and the Industrial Designs Rules of 2000 came into force on 1 May 2000, and comprised of the following parts:<sup>458</sup>

- Part 1 - Interpretation and Application Provision
- Part 2 - Registration of Industrial Designs
- Part 3 - Rights in Industrial Designs
- Part 4 - Use by the Government of Industrial Designs
- Part 5 - Legal Proceedings
- Part 6 - Administrative and Miscellaneous Provisions
- Part 7 - Rules and Regulations
- Part 8 – Offences

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<sup>456</sup> *Ibid*, p. 50

<sup>457</sup> Dr. Burcu Kilic and Peter Maybarduk, Comparative Analysis of the United States' Intellectual Property Proposal and the law of Brunei Darussalam, 2011, p.2

<sup>458</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.



## 1) Application criteria

The criteria for registrable industrial designs are as follows:<sup>459</sup>

- (1) An industrial design must be new at the date of filing of the application or the priority date (if applicable). An industrial design is new if it has not been registered, published, used or sold in Brunei Darussalam or elsewhere before the date on which the application for registration was lodged;
- (2) An industrial design must be industrially applicable.

According to the Industrial Design Order, “Industrial design” means features of shape, configuration, pattern or ornament applied to an article by an industrial process, being features which in the finished article appeal to and are judged visually, but does not include:

- (1) A method or principle of construction;
- (2) Features of shape or configuration of an article which are dictated solely by the function which the article has to perform;
- (3) Features that are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part.

The following works are excluded from registrability of industrial designs:

- (1) Works of sculpture (other than casts or models used or intended to be used as models or patterns to be mass-produced by any industrial process);
- (2) Wall plaques, medals and medallions;
- (3) Printed matter primarily of literary or artistic character.

Any person who has filed an application for registration in a Paris Convention country, or a WTO member country, has a right of priority for a period of six months from the filing date of the first application.<sup>460</sup>

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<sup>459</sup> Brunei IP Handbook, Pintas IP Group, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 15 January 2015, p. 8

<sup>460</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.

## 2) Application process

Here are the application procedures under the Industrial Design Order:<sup>461</sup>

- (1) Filing an application with the BruIPO;
- (2) The Registrar examines the application. The applicant will be notified if further documents or corrections are needed;
- (3) Once documents are completed, the application will be publicly announced;
- (4) After the announcement, the Registrar will review if requirements on application are met. Once the requirements are met, the Registrar will register the application.

Since Brunei is a country member of the Hague Agreement concerning the International Registration of Industrial Designs (1925), an applicant may opt for a registration procedure under the Hague Agreement which reduces costs and time of registration as follows:<sup>462</sup>

- (1) An application must be a resident or a national of a contracting party of the Hague Agreement. The application is filed at the WIPO and must indicate member countries of the Hague Agreement in which the applicant wishes to have protection granted;
- (2) The WIPO examines for formality requirements. Once passed examination, the application is registered and published;
- (3) The WIPO sends a registration to the intellectual property authority in each designated state;
- (4) The designated intellectual property authority determines if the international registration meets the requirements under national laws.

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<sup>461</sup> Brunei IP Handbook, Pintas IP Group, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 15 January 2015, p. 8

<sup>462</sup> Venner Shipley, The Hague Agreement, [http://www.vennershipley.co.uk/uploads/files/Venner\\_Shipley\\_LLP\\_-\\_the\\_hague\\_agreement.pdf](http://www.vennershipley.co.uk/uploads/files/Venner_Shipley_LLP_-_the_hague_agreement.pdf), accessed on 20 January 2015, p. 1

### 3) Terms of protection

The maximum protection is 15 years after the filing date. The initial protection is 5 years and is extendable for 5 years each. An applicant can extend up to two times.<sup>463</sup>

Should an infringement arises (by manufacturing or selling a merchandise that uses design which is already registered), the registered owner of the industrial design may seek legal recourse to an infringer in the following ways:<sup>464</sup>

- (1) Damages;
- (2) Court injunction;
- (3) Other compensation (such as loss of profit)
- (4) Delivery of confiscated products;
- (5) The court can order destruction or forfeiture and can order other remedies to the registered owner.

#### 8.2.3 Laws on merchandise mark (the Merchandise Marks Act of 1953)

The Merchandise Marks Act protects marks on products which are for commercial purposes, although many call the merchandise mark as “Trade Mark”<sup>465</sup> since they both function in a similar way. The Trade Mark Act and the Copyright Act refer to certain provisions of the Merchandise Marks Act. As for the Trade Mark Act, it gives power to custom officials in confiscating a product that uses a registered mark without permission.<sup>466</sup>

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<sup>463</sup> *Ibid.*

<sup>464</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.

<sup>465</sup> Merchandise Marks Act of 1953, Section 3 stated that “A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark.”

<sup>466</sup> Trade Mark Act (Cap 98) of 1999, Section 104 (1) stated that “Where there has come into the possession of any person in connection with the investigation or prosecution of an offence under section 94 of this Act or under the Merchandise Marks Act (Chapter 96), or any offence involving dishonesty or deception —

(a) goods which, or the packaging of which, bear a sign identical to or likely to be mistaken for a registered trade mark;

(b) material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods; or

(c) articles specifically designed or adapted for making copies of such a sign, that person may apply to the court under this section for an order for the forfeiture of those goods, material or articles.”

The Copyright Act also makes reference to the Merchandise Marks Act in power of the customs official to disclose information in a case of copyright infringement.<sup>467</sup>

The Merchandise Marks Act deals with the prosecution of an offence for using a false trademark or false property mark, counterfeit trademark or property mark, making or possession of any items which are used to counterfeit a trademark or property mark, importing or selling goods marked with a counterfeit trademark or property mark and tampering with or defacing a property mark.<sup>468</sup> The Act also deals with the prosecution of false trade descriptions of goods. Depending on the nature of the offence, the penalty imposed in this Act ranges from a fine and/or imprisonment of up to three years. The Court may direct the forfeiture of all goods in connection with the offence that has been committed.<sup>469</sup>

#### **8.2.4 Laws on trade mark (the Trade Mark Act of 1999)**

The Trade Mark Act (Cap 98) of 1999 and the Trade Mark Rules of 2000 came into force on 1 June 2000. Prior to these Acts, the Trade Mark Act of 1953 was in force. Brunei has plans to join the Protocol relating to the Madrid Agreement concerning the International Registration of Marks or “the Madrid Protocol 2005”. Therefore, Brunei’s registration system of trade mark remains within a scope of national laws.<sup>470</sup>

#### **The Trade Mark Act of 1999 is comprised of the following parts:**

Part 1 deals with the registration of trademarks which includes grounds for refusal of registration, the effects of registered marks, infringement proceedings, assignment,

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<sup>467</sup> Emergency (Copyright) Order 1999, Section 118 stated that Where information relating to infringing copies of any work, sound recording or film mentioned in subsections (1) or (3) of section 108 has been obtained by the Controller of Customs for the purpose of, or in connection with, the exercise of his functions under that section, or under any other law relating to imported goods, he may authorise the disclosure of that information to facilitate the exercise by any person of any function in connection with the investigation or prosecution of an offence under sections 204 or 205 of the Order or under the Merchandise Marks Act.”

<sup>468</sup> The mark displays specific ownership of a particular person.

<sup>469</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ipdevelopment/en/pdf/asean/brunei.pdf](http://www.wipo.int/ipdevelopment/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.

<sup>470</sup> Hariz Khalid, RECENT DEVELOPMENTS IN IP IN BRUNEI DARUSSALAM, 2014, BRUNEI DARUSSALAM INTELLECTUAL PROPERTY OFFICE, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 3 March 2015, p. 5

licensing, claims for priority, registration procedure, duration, renewal and alteration of the marks, surrender, revocation and invalidity, collective marks and certification marks.

Part 2 deals with the protection of well-known marks, emblems, Article 6ter and acts of agents or representatives.

Part 3 deals with the registration, the powers and duties of the Registrar, legal proceedings and appeals, fees, business hours, publication, appointment of trademark agents.

Part 4 deals with proceedings relating to importation of infringing goods, offences, and forfeiture of counterfeit goods.

Part 5 deals with miscellaneous and general provisions.

### **1) Application criteria**

The mark must pass the following requirements in order to be registrable:<sup>471</sup>

- (1) The mark must be new (or not similar or identical with the mark used for the same kind of product)
- (2) The mark must be distinctive

The following marks are eligible for registration:<sup>472</sup>

- (1) Trademark for goods
- (2) Trademark for services
- (3) Collective mark
- (4) Certification mark
- (5) Three-Dimensional mark
- (6) Shape mark
- (7) Color(s) as trademark
- (8) Packaging
- (9) Slogan
- (10) Series mark

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<sup>471</sup> Brunei IP Handbook, Pintas IP Group, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 15 January 2015, p. 1

<sup>472</sup> IPR Toolkit for Brunei Darussalam, 2006, [http://brunei.usembassy.gov/uploads/images/FtR\\_7ZJl6W6pmLZkxPlrA/2006IPRTOOLKIT.pdf](http://brunei.usembassy.gov/uploads/images/FtR_7ZJl6W6pmLZkxPlrA/2006IPRTOOLKIT.pdf), accessed on 8 January 2015.

In a case of multiple applications filing for the same mark, an applicant with the longest usage of the mark is preferable for registration.

## 2) Application process

The registration of trademark entails the following process:<sup>473</sup>

- (1) Filing an application at the BrulPO;
- (2) The Registrar examines the formal requirements and may order a particular mark to be modified. The applicant, in turn, may clarify the mark to the Registrar;
- (3) Once passes the examination, the mark will be published;
- (4) A stakeholder may object the mark registration within three months after the mark has been published. The applicant may object the objection made by the stakeholder.
- (5) After the objection period has passed, the Registrar will register the mark.

## 3) Terms of protection

An initial protection is 10 years after the filing date and may be extended for another 10 years each time.<sup>474</sup>

### 8.2.5 Laws on copyright (the Emergency (Copyright) Order of 1999)

The Emergency (Copyright) Order of 1999 came into force on 1 May 2000. Before this law became into force, copyright protection was regulated by the Copyright Act of 1911.

The Emergency (Copyright) Order of 1999 is comprised of the following parts:

Part 1 - deals with subsistence, ownership and duration of copyright which cover areas on rights of the copyright owner, acts permitted to copyright works, moral rights, dealing with rights in copyright works, remedies for infringement, copyright licensing, copyright tribunals and qualification for and extent of copyright protection.

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<sup>473</sup> Brunei IP Handbook, Pintas IP Group, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 15 January 2015, p. 2

<sup>474</sup> IPR Toolkit for Brunei Darussalam, 2006, [http://brunei.usembassy.gov/uploads/images/FtR\\_7ZJl6W6pmLZkxPlrA/2006IPRTOOLKIT.pdf](http://brunei.usembassy.gov/uploads/images/FtR_7ZJl6W6pmLZkxPlrA/2006IPRTOOLKIT.pdf), accessed on 8 January 2015.

Part 2 - deals with rights in performances.

Part 3 - deals with general provisions and offences.

### 1) Application criteria

Copyright protection is automatic. The Act of 1999 protects three groups of original works, namely, (1) original literary, dramatic, musical or artistic works; (2) sound recordings, films, broadcasts or cable programs; and (3) typographical arrangement of published editions.

### 2) Application process

Copyright protection is automatic. Thus, there is no formal procedure for registration in Brunei.

### 3) Terms of protection

Each type of original works are entitled to different terms of protection.<sup>475</sup>

**Table 38 : Summary of copyright protection terms**

Type of copyrighted works	Terms of protection
Literary, artistic, dramatic and musical works	50 years from the end of the calendar year in which the author died
Sound recordings and films	50 years from the year in which they were made or released
Broadcast and cable programs	50 years from the end of the year in which they were first broadcast or transmitted
Typographical arrangement	25 years from the end of the calendar year in which the edition was published

An action for infringement is actionable by the copyright owner. The key issue in deciding whether infringement has occurred is whether such action by the defendant was

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<sup>475</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.

carried out in relation to the work or a substantial part of the work. The court will compare the claimant's work with that of the defendant to verify whether both works are the same or substantially similar.<sup>476</sup>

### **8.2.6 Laws on layout designs (the Emergency (Layout Designs) Order of 1999)**

The Emergency (Layout Designs) Order of 1999 came into force on 1 May 2000.

#### **1) Application criteria**

A Layout design protection is automatic as there is no requirement for registration. A layout design of an integrated circuit must be original in that it is the result of its creator's own intellectual effort. An example of a layout design is a microchip.

#### **2) Application process**

A layout design is automatically protected. There is no requirement for registration or deposit of the layout.

#### **3) Terms of protection**

A layout protection is protected for 10 years after the first commercial exploitation.<sup>477</sup>

Should an infringement occur (e.g. reproduction, import, distribution of an integrated circuit without permission), the owner shall be entitled to the following remedies:

- (1) Payment of damages;
- (2) An account of profits;
- (3) Delivery up – the products of infringement;
- (4) Any article delivered up be forfeited to the lawful owner, destroyed or disposed of.

However, certain acts are exempted from infringement:

- (1) If it is copied solely for private use;

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<sup>476</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.

<sup>477</sup> IPR Toolkit for Brunei Darussalam, 2006, [http://brunei.usembassy.gov/uploads/images/FtR\\_7ZJl6W6pmLZkxPlrA/2006IPRTOOLKIT.pdf](http://brunei.usembassy.gov/uploads/images/FtR_7ZJl6W6pmLZkxPlrA/2006IPRTOOLKIT.pdf), accessed on 8 January 2015.



- (2) For research and teaching purposes;
- (3) Use by the Government for defense security provided that the Government has informed the owner and the owner is paid by the government.

### **8.3 Intellectual Property Rights of Foreigners**

Generally, foreigners and Brunei nationals are granted the same terms of protection regarding intellectual property rights. They are required to undergo the same registration process in accordance with relevant laws.

However, certain rights are accorded to nationals of country members of particular international conventions. For example, the patent registration system under the Patent Cooperation Treaty of 1970 (PCT) is available only for an applicant who is a resident or a national of the PCT party.<sup>478</sup> The industrial design registration under the Hague Agreement concerning the International Registration of Industrial Designs (the Hague Agreement) is only available for an applicant who is a resident or a national of a member country of the Hague Agreement.<sup>479</sup>

### **8.4 International Conventions on Intellectual Property Rights in which Brunei is a member**

#### **8.4.1 Overview**

#### **1) Paris Convention for the Protection of Industrial Property of 1883 (Brunei became a member on 17 February 2012)**

A formation of the Paris Convention began with a diplomatic conference in Paris in 1878. A proposal for a Union for the protection of industrial property was offered to the conference in 1880. The proposal was accepted by the conference, and the Paris Convention was materialized and adopted as the Paris Convention, of March 20, 1883, for the Protection of Industrial Property. The Convention applies to industrial property in the widest sense, including patents, trademarks, industrial designs, and geographical indications.

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<sup>478</sup> Trade policy review, World Trade Organization, 2014, p. 51

<sup>479</sup> Venner Shipley, The Hague Agreement, [http://www.vennershipley.co.uk/uploads/files/Venner\\_Shipley\\_LLP\\_-\\_the\\_hague\\_agreement.pdf](http://www.vennershipley.co.uk/uploads/files/Venner_Shipley_LLP_-_the_hague_agreement.pdf), accessed on 20 January 2015, p. 1

The Convention provides some essential principles such as national treatment, right of priority, and compulsory license.<sup>480</sup>

## **2) The Patent Cooperation Treaty of 1970 (Brunei became a member on 24 July 2012)**

The Patent Cooperation Treaty (PCT) allows inventors to file international patent applications in order to have their inventions protected simultaneously in several countries. Inventors are able to file an application in their own jurisdictions and indicate a designated country in which they want to be granted protection. The IP authority in a national jurisdiction will file relevant documents to the WIPO under the PCT procedures that deal with filing of application, international search, and preliminary examinations. The WIPO International Authority will produce an opinion on whether the invention is patentable, and send to the designated IP authority of a member country.<sup>481</sup>

## **3) The Hague Agreement concerning the International Registration of Industrial Designs of 1925 (Brunei became a member on 24 September 2013)**

The Hague Agreement provides channels for an applicant who wishes to be granted protection on industrial designs in many jurisdictions. The applicant is required to file a single international application with a designated jurisdiction in which they want to be granted protection or several designated jurisdictions to the WIPO. The system can save time and costs of registration. There are three instruments under the Hague Conventions; (1) the Geneva Act of July 2, 1999; (2) the Hague Act of November 28, 1960; and (3) the London Act of June 2, 1934.<sup>482</sup>

## **4) The Protocol relating to the Madrid Agreement concerning the International Registration of Marks of 1989 or “the Madrid Protocol” (Brunei has plans to become a member)**

The Madrid Protocol is a registration system of marks under the Madrid System which provides a centrally administered system of registering trademarks in separate jurisdictions. It provides a mechanism for obtaining trademark protection in many countries around the world which is more effective than seeking protection separately in

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<sup>480</sup> Jakkrit Kaunpoth, *International Law on Copyrights, Patent, and Trademarks* (4<sup>th</sup> Edition: Nititham), p.36.

<sup>481</sup> About the Patent Cooperation Treaty (PCT), FindLaw, <http://smallbusiness.findlaw.com/intellectual-property/about-the-patent-cooperation-treaty-pct.html> accessed on 1 March 2015

<sup>482</sup> The Hague Agreement Concerning the International Registration of Industrial Designs: Main Features and Advantages, WIPO, [http://www.wipo.int/edocs/pubdocs/en/designs/911/wipo\\_pub\\_911.pdf](http://www.wipo.int/edocs/pubdocs/en/designs/911/wipo_pub_911.pdf) accessed on 2 March 2015

each individual country or jurisdiction of interest. An applicant may file a request at his/her jurisdiction, and the domestic authority will send the request to the International Authority at WIPO, which then sends the report on registrability to the designated jurisdiction.

There are two filing approaches under the Madrid System. The Madrid Agreement (1981) provides international registration system but maintains restrictions on membership qualifications, timeframe, and language (which can create obstacles to an applicant). The Madrid Protocol (1989) provides more flexibility in filing and registration. Both approaches require filing and registration of an applicant who is from a country member of the Paris Convention.<sup>483</sup>

#### **5) Berne Convention for the Protection of Literacy and Artistic Works of 1886 (Brunei became a member on 30 August 2006)**

The Berne Convention established the Berne Union aiming to standardize several aspects of modern copyright law. The Convention laid down universal principles of copyright protection such as country of origin rules, national treatment, copyright term, eligibility for protection, minimum protection, and duration of protection.<sup>484</sup>

#### **6) Convention on the International Union for the Protection of New Varieties of Plants of 1961: UPOV (Brunei has plans to become a member)**

The Convention aims to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society. The protection is granted where the variety is new, distinct, uniform, stable and has a suitable denomination. The registration procedure is indicated in guidance instruments such as UPOV/EXN series and UPOV/INF series.<sup>485</sup>

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<sup>483</sup> Watchara Peakeaw, Trademark Registration in Madrid Protocol,

[www.ipthailand.go.th/dmdocuments/content\\_madrid.pdf](http://www.ipthailand.go.th/dmdocuments/content_madrid.pdf), accessed on 2 March 2015

<sup>484</sup> Jakkrit Kaunpoth, International Law on Copyrights, Patent, and Trademarks (4<sup>th</sup> Edition: Nititham), p.68-70

<sup>485</sup> INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS, Publication No.437 (EN), 2014, [www.upov.int/about/en/pdf/pub437.pdf](http://www.upov.int/about/en/pdf/pub437.pdf), accessed on 2 March 2015

## 8.4.2 Relationship between International Conventions on Intellectual Property Rights and Domestic Laws

Brunei has joined several international conventions on intellectual property rights, which in turn obligates the country to bring domestic laws in compliance with international commitments.<sup>486</sup>

**Table 39: International Commitments on Intellectual Property Rights and Relevant Domestic Laws**

Subject	International Commitments	Relevant Domestic Laws
Patents	<ul style="list-style-type: none"> <li>- Paris Convention for the Protection of Industrial Property of 1883 (Brunei became a member on 17 February 2012)</li> <li>- The Patent Cooperation Treaty of 1970 (Brunei became a member on 24 July 2012)</li> </ul>	<ul style="list-style-type: none"> <li>- The Patents Order of 2011</li> <li>- The Patent Rules of 2012</li> </ul>
Industrial Designs	<ul style="list-style-type: none"> <li>- Paris Convention for the Protection of Industrial Property of 1883 (Brunei became a member on 17 February 2012)</li> <li>- The Hague Agreement concerning the International Registration of Industrial Designs of 1925 (Brunei became a member on 24 September 2013)</li> </ul>	<ul style="list-style-type: none"> <li>- The Industrial Designs Order of 1999</li> <li>- The Industrial Designs Rules of 2000</li> </ul>

<sup>486</sup> Facilitating Technology Transfer & Management of IP Assets, BEDB, August 2014, p.7

Subject	International Commitments	Relevant Domestic Laws
Trademarks	<ul style="list-style-type: none"> <li>- Paris Convention for the Protection of Industrial Property of 1883 (Brunei became a member on 17 February 2012)</li> <li>- The Protocol relating to the Madrid Agreement concerning the International Registration of Marks of 1989 or “the Madrid Protocol” (Brunei has plans to become a member)</li> </ul>	<ul style="list-style-type: none"> <li>- The Trade Mark Act (Cap 98) of 1999</li> <li>- The Trade Mark Rules of 2000</li> </ul>
Copyrights	Berne Convention for the Protection of Literacy and Artistic Works of 1886 (Brunei became a member on 30 August 2006)	<ul style="list-style-type: none"> <li>- The Emergency (Copyright) Order of 1999</li> <li>- The Emergency (Layout Designs) Order of 1999</li> </ul>
Plant variety protection	Convention on the International Union for the Protection of New Varieties of Plants of 1961: UPOV (Brunei has plans to become a member)	(Draft) Plant Variety Protection Act

In addition to main legislations, there are other legislations furnishing commitments on intellectual property rights of Brunei, namely, the Inventions Act (Cap 72) of 1925 and the Merchandise Marks Act of 1953.<sup>487</sup>

<sup>487</sup> General Overview of Items (A) – (F), COUNTRY: BRUNEI DARUSSALAM, [www.wipo.int/ip-development/en/pdf/asean/brunei.pdf](http://www.wipo.int/ip-development/en/pdf/asean/brunei.pdf), accessed on 5 January 2015.

## 8.5 Conclusion remarks and recommendations for investors

### 8.5.1 Conclusion

Brunei maintains legislations which grant adequate protection on intellectual property rights such as inventions, industrial designs, trademarks, copyrights, and layout designs. Domestic laws are in conformity with international commitments in which Brunei became a member. Inventions, industrial designs, and trademarks are granted protection upon successful registration. Meanwhile, copyright and layout designs are automatically protected.

Terms of protection on intellectual property rights under domestic laws can be summarized as the below table.

**Table 40 : Summary of Brunei’s Laws on Intellectual Property Rights**

Legislations	Time of Entering into Force	Overview	Responsible Authority
<b>1. Laws on Patents and Invention Protection</b>			
1.1 The Inventions Act (Cap 72)	1925	A patent grant obtained within 3 years since registration date in the United Kingdom, Malaysia, or Singapore, or a licensed right by an agreement is eligible for registration in Brunei with same terms of protection. The patent protection lasts for 20 years since the filing date.	Registrar of BrulPO
1.2 The Patents Order and Patent Rules	2011		
<b>2. Laws on Industrial Designs</b>			
2.1 The Industrial Designs Order and the Industrial Design Rules	1999	A new industrial design is eligible for registration with protection up to 15 years. Once registered, the owner can seek legal recourse and remedies in case of infringement.	Registrar of BrulPO

Legislations	Time of Entering into Force	Overview	Responsible Authority
<b>3. Laws on Trademarks</b>			
3.1 The Merchandise Marks Act	1953	A criminal prosecution can be initiated against an offender when using a false trademark or false property mark, counterfeit trademark or property mark, making or possession of any items which are used to counterfeit a trademark or property mark, importing or selling goods marked with a counterfeit trademark or property mark and tampering with or defacing a property mark.	Registrar of BruIPO
3.2 The Trade Mark Act (Cap 98) and the Trade Mark Rules	1999	Trademarks are protected upon registration. Registrable trademarks are available for trademark for goods, trademark for services, and collective mark. A well-known trademark is protected without registration. An initial protection period is 10 years since the filing date and extendable for another 10 years each. A criminal sanction is imposed in case of infringement.	Registrar of BruIPO
<b>4. Laws on Copyright</b>			
4.1 The Emergency (Copyright) Order	1999	Automatic protection is available for original works including literary, dramatic, musical or artistic works; sound recordings, films, broadcasts	Registrar of BruIPO

Legislations	Time of Entering into Force	Overview	Responsible Authority
		or cable programs; and typographical arrangement of published works. Protection period varies upon types of original works (e.g. literary work is 50 years from the end of the calendar year in which the author died). A criminal sanction is imposed in case of infringement.	
4.2 The Emergency (Layout Designs) Order	1999	Layout designs are automatically protected with 10 years period of protection starting from the date of commercial exploitation. Remedies are available to the owner in case of infringement.	Registrar of BruiPO
<b>5. Others: Draft Plant Variety Act (under review)</b>			

### 8.5.2 Recommendations for investors

Thai investors are eligible to have their inventions, original works, trademarks, or industrial designs protection by undergoing a registration process (if required) under Brunei's laws. In addition, the international protection of patent under the PCT system is available since Brunei and Thailand are country members of the Patent Cooperation Treaty (1970) which enables Thai investors to lodge a patent protection claim under the PCT system and designate Brunei as a country in which protection is desired. The process under the PCT system provides a convenient and a cost-saving way to protect inventions in other jurisdictions.



# Chapter 9

## Dispute Settlement Mechanism in International Trade and Investment

### 9.1 Introduction

Brunei is a contracting state of the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”). In addition, Brunei joins the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (2004), which provides rules and guidance on dispute resolutions concerning economic matters among ASEAN members. Brunei also signed a handful of agreements relating to investment promotion and protection as well as investment dispute settlement with other ASEAN nations. Alternative dispute settlement has long been practiced in the country as a traditional way of dispute settlement such as conciliation, negotiation, and mediation. Dispute settlement by way of arbitration is encouraged due to its swift process, certainty and time efficiency in settling a dispute. However, court proceedings have been prevalent among citizens and foreign investors. The court fee is reasonable and the process does not take too long.

### 9.2 Disputes concerning trade and investment in Brunei

#### 9.2.1 Type of disputes

##### (1) Disputes from commercial contracts

These are the disputes arising out of ordinary course of business. Claims are normally brought to the court of justice.

##### (2) Disputes relating to consumers

There is no specific consumer protection authority in Brunei (e.g. the Office of the Consumer Protection Board of Thailand). However, the Sales of Goods Act of 1979 has relevant provisions on consumer protection.

### **(3) Disputes relating to investment**

Large private companies and states often stir up investment disputes, especially on a large infrastructure investment contract between a private investor and a state. Several investment projects are public-private partnerships (PPP).

### **(4) Disputes between employers and employees**

The Trade Disputes Act (Cap 129) calls for an establishment of trade unions to protect interests of employees, and also provides means of dispute settlements such as conciliation and arbitration (as the last resort). Trade unions can be formed even by employees from small-scale businesses. Most labor-related claims are negotiable except in oil and gas business where most claims proceed to litigation. There appears to be a handful of labour cases. There have been almost no records on collective bargaining in relation to salary and terms of employment.<sup>488</sup>

### **(5) Disputes on administrative actions**

There appears to have no claim on administrative actions. There is also no administrative court in Brunei.

### **(6) Example of trade and investment dispute: Royal Brunei Airlines SDN v. Philip Tan Kok Ming<sup>489</sup>**

The centrality of the dispute is a breach of trust law. Royal Brunei Airlines SDN nominated Borneo Leisure Travel Company as its agent to provide reservation services for passenger flights and cargo flights in Sabah and Sarawak. Mr. Tan is a director and a major shareholder of Borneo Leisure Travel Company. They agreed to establish trust to receive revenue generated by Borneo Leisure Travel Company before paying to Royal Brunei Airlines SDN. Mr. Tan, knowingly about the trust arrangement, managed and used money in the trust account for the sake of Borneo Leisure Travel Company's business without paying to Royal Brunei Airlines SDN. The trust contract was then terminated and leading to insolvency of Borneo Leisure Travel Company. Royal Brunei Airlines SDN brought a legal suit against Borneo Leisure Travel Company claiming compensation from Mr. Tan based on

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<sup>488</sup> IBP USA, Brunei Business Intelligence Report: Strategic Information and Opportunities, International Business Publications, United States, 2000, P.40.

<sup>489</sup> Privy Council Appeal No, 52 of 1994 Royal Brunei Airlines Sdn. Bhd. v Philip Tan Kok Ming

a violation of the trust contract. The court of first instance held Mr. Tan liable as a trustee. However, the appeal court ruled that Mr. Tan and Borneo Leisure Travel Company's action did not instigate a fraudulent claim. The Privy Council upheld the appeal court's ruling.<sup>490</sup>

## 9.2.2 Disputed parties

### (1) Disputes between states

A territorial dispute in South China Sea provides a great example of a dispute between states. By the map of Sansha, China claims the ownership of the archipelago stretching over the area of South China Sea. Many parts of the archipelago, however, have been claimed by five other states; Brunei, Malaysia, the Philippines, Vietnam, and Taiwan. The disputed area is strategically significant for three reasons. First, it is one of the most convenient and effective routes of transportation. Second, it is abundant with resources such as fish, living animals, and oil and natural gas. Third, it is a strategic site for military purposes.<sup>491</sup>

China and Brunei mutually agreed to settle the dispute by mediation, yet the mechanism of mediation is ambiguous.<sup>492</sup> Since the early 1990s, there have been several attempts to resolve the conflict. From 2002 onwards, country leaders of both countries

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<sup>490</sup> Royal Brunei Airlines Sdn Bhd (Appellant) v Philip Tan Kok Ming (Respondent) [1995] UKPC 4, [1995] 2 AC 378  
"Whatever may be the position in some criminal or other contexts (see, for instance, R v Ghosh [1982] QB 1053), in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstances. This is an objective standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour."

<sup>491</sup> B. Taylor and D. E. Hayes, "Origin and history of the South China Sea basin", Geophysical Monograph Series, Vol.27, pp.23-56, 1983,<http://www.agu.org/books/gm/v027/GM027p0023/GM027p0023.shtml>.

<sup>492</sup> Shicun Wu, Solving Disputes for Regional Cooperation and Development in the South China Sea: A Chinese Perspective, United Kingdom, 2013, p.149.

have been exchanging visits and signed a bilateral treaty on energy cooperation and offshore oil and gas exploration. They also signed a joint communiqué to work alongside with ASEAN to restore peace and security in the region.<sup>493</sup> At the APEC meeting in Beijing, the Chinese president Xi Jinping and Sultan of Brunei Haji Hassanal Bolkiah mutually agreed to uplift the relationship of both countries stressing on high-level exchanges, strategic cooperation, and cooperation in oil and gas including new energy industries.

## **(2) Investor-state disputes**

Most investor-state disputes involve large-scale investments on infrastructure. Many investments are public-private partnership. Based on the interview with local lawyers, investor-state disputes will be referred to the Attorney General Chamber for negotiation.

## **(3) Disputes between private parties**

Disputes between private parties are mostly referred to court proceedings.

### **9.3 Laws relating to dispute settlements on trade and investments**

Brunei is a contracting state of the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”). In addition, Brunei joins the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (2004), which provides rules and guidance on dispute resolutions concerning economic matters among ASEAN members. In 1987, an investment protection treaty was signed between Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei enacted the International Arbitration Order (2009) to adopt international arbitration standards. Generally, court proceedings are transparent and in compliance with the rule of law.<sup>494</sup>

#### **9.3.1 Disputes concerning administrative law**

The government may bring a legal suit against a government official for misconduct. A person may not lodge a court proceeding against state. However, a complaint may be lodged when a government official fails to perform his duty. Misconduct by any of the royal members will be sanctioned in accordance with the Sultan’s opinion but not by a

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<sup>493</sup> *Ibid.*

<sup>494</sup> IBP USA, Brunei Business Intelligence Report: Strategic Information and Opportunities International Business Publications, Washington DC, 2000, p.135.

court order.<sup>495</sup> Based on the interview with local lawyers, it may be difficult to prove that a government official fails to perform. Practically, there has never been a legal claim lodged by a private party against a state official.

### **9.3.2 Dispute settlement by courts**

The Sultan assumes a role as head of the judges. The court hierarchy begins with Magistrates Courts, High Courts, Appeal Courts, and the Privy Council in London (only in civil cases with special agreements). The Kathi Courts adjudicate cases involving Muslim community. Syariah Courts have jurisdictions over Islamic law cases. Brunei's court system upholds rule of law and impartiality. The government and the monarchy accept being trialed in foreign courts as well as being a party in an arbitral process in trade and investment disputes.<sup>496</sup>

### **9.3.3 Alternative dispute resolution**

Alternative dispute resolution (ADR) is not new in Brunei. Before magistrates and judges were given powers to settle disputes, ADR was rooted in settlement process among communities through village leaders (Ketua Kampong, Penghulus), head of hill tribes (Longhouse), community leaders (Kapitans), religious leaders (Kadis) and by the Sultan. Traditional ways of dispute settlement involve consultation and negotiation whereas modern ADR comprises of mediation and conciliation.

Formal court proceedings have influenced modern ADR in a number of areas:

- Rules of courts follow customary laws, which leads to a formalization of a judicial system
- Records of proceedings and precedence create certainty in adjudication
- Enforceability of judgments is formalized and recognized among international lawyers

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<sup>495</sup> N. John Funston, *Government and Politics in Southeast Asia*, Institute of Southeast Asian Studies, United Kingdom, 2001, pp.23-24.

<sup>496</sup> N. John Funston, *Government and Politics in Southeast Asia*, Institute of Southeast Asian Studies, United Kingdom, 2001, pp.23.

- Independency and impartiality of judges enrich fairness and justice, which results in independence of magistrates and judges in Brunei courts

On the contrary, conventional ADR in Brunei was informal. Adjudication was not influenced by precedence. Social status and orders of elites were highly influential in adjudicating a claim. Moreover, personal connections in a community affected independency of judges and rulers.

### (1) Conciliation

The justice system of Brunei has been influenced from the common law of England and Islamic law (Sharia Law). Conciliation has long been employed as a traditional way of settling disputes (informal procedures). Conciliation consists of negotiation and mediation. Conciliation became predominant in dispute resolution, and received more popularity than the Western way of alternative dispute settlement. The traditional conciliation is deemed to reflect the Melayu Islam Beraja (MIB) or the values of Malay Islamic Monarchy, which helps maintain traditions and integrity of the nation. Similar to Brunei, conciliation has been widely practiced in many ASEAN countries.<sup>497</sup> Malaysia shares similar conciliation practice as Brunei.<sup>498</sup> Traditionally, a conciliator was a leader of a village (Kampong or Penghulu or Ketua Kampong). The leader of the village was nominated from respectable and powerful persons in a community in order to effectively enforce a ruling on a losing party. The leader of the village was also the person with experience and equipped with knowledge to settle a dispute.<sup>499</sup> Conciliation has been widely practiced in disputes about family affairs and consumer protection. Both the Consumer (Fair Trading) Order of 2011 and the Islamic Family Law Order of 1999 contain ADR clauses, which indicate a growing recognition of a non-court dispute settlement.<sup>500</sup>

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<sup>497</sup> Lee & Teh (Ed.): *An Asian Perspective on Mediation*: 2009 SMC, Academy Publishing.

<sup>498</sup> Dato PG Lim, 'Mediation-A Slow Starter in Alternative Dispute Resolution' (2004) 1 MLJ xv.

<sup>499</sup> Ahmad Jefri Rahman, *Developments in Arbitration and Mediation as Alternative Dispute Mechanisms in Brunei Darussalam*, Conference: A Modern Legal Framework to Enable Global Trade: The New Legislation on Arbitration and on Electronic Transactions, University of Queensland, Brisbane, Australia, 5 February 2013, pp.19-20.

<sup>500</sup> *Ibid*, p.25.

## **(2) Conciliation process**

Disputed parties are taken into the conciliation process where a conciliator attempts to reach a mutual agreement from both parties in an amicable way. In some cases, conciliation is annexed as a part of an arbitration process. Should both parties wish to enforce an agreement reached at the conciliation process as an arbitral award, the agreement must be in writing and signed by both parties.

## **(3) Arbitration process**

Parties who have chosen to opt for arbitration always expect an efficient, fast and certain conclusion of their disputes culminating in an arbitral award that is rendered by both domestic and international tribunal.<sup>501</sup> While Brunei has been heavily and largely dependent on oil and gas exports to support its economic growth, economic sustainability has now become a concern. Brunei now wishes to diversify its economy and try to attract some of the large sums of direct foreign investment that have flowed into the economies of the other countries in the ASEAN region. Therefore, it is extremely vital to guarantee investors with a fast, cost effective and efficient manner to resolve a dispute.<sup>502</sup> Arbitration is also widely practiced in commercial and construction disputes. Given the general level of satisfaction on court proceedings, this mitigates against the use of arbitration as a preferred method of resolving disputes. Even when the contract with the government provides for an arbitration clause, parties have tendency to seek for other viable means of dispute settlements due to the absence of legislation providing for proceedings against the government. There are also other issues hindering growth of arbitration such as high fees and costs of arbitration venues.<sup>503</sup>

Brunei enacted an arbitration law in 2010 based on the UNCITRAL Model Law, making Brunei the first ASEAN country to adopt interim measures based on 2006 UNCITRAL Model which eliminate the power of domestic courts to make any revision on an arbitral

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<sup>501</sup> Ahmad Jefri Rahman, *Developments in Arbitration and Mediation as Alternative Dispute Mechanisms in Brunei Darussalam*, Conference: A Modern Legal Framework to Enable Global Trade: The New Legislation on Arbitration and on Electronic Transactions, University of Queensland, Brisbane, Australia, 5 February 2013, p.1.

<sup>502</sup> ASEAN Investment Guidebook 2009, Brunei Darussalam,

<sup>503</sup> Ahmad Jefri Rahman, *Developments in Arbitration and Mediation as Alternative Dispute Mechanisms in Brunei Darussalam*, Conference: A Modern Legal Framework to Enable Global Trade: The New Legislation on Arbitration and on Electronic Transactions, University of Queensland, Brisbane, Australia, 5 February 2013, pp.24-25.

award. In addition, based in the arbitration law, an arbitrator is able to issue injunction. A party is unable to appeal against an arbitral award. An arbitrator who is appointed as a chair must be impartial. The Brunei's Arbitration Act (Cap 173) is based on; (1) the Hong Kong Arbitration Ordinance (Cap 341), incorporating Hong Kong Ordinance of 1963, 1974 and 1982; (2) the Singapore Arbitration Act (Cap 10) and the Arbitration (Foreign Awards) Act (Cap 10 A); and (3) the UK Arbitration Acts of 1950, 1975, and 1979.<sup>504</sup> The Arbitration Act (Cap 173) also reflects principles of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Brunei is also a member of the International Centre for Settlement of Investment Disputes (ICSID).<sup>505</sup>

The Attorney General's Chambers is working with the Arbitration Association of Brunei Darussalam (AABD) to develop and enhance the infrastructure and human resource capabilities to facilitate arbitration in Brunei, and to engage a network of qualified professionals for a development of arbitration.<sup>506</sup> In 2004, the Sultan approved the establishment of Brunei Darussalam Arbitration Centre. The centre will promote the adoption of arbitration and mediation services in resolving commercial issues and disputes as a speedier alternative to the usual settlement through civil proceedings in court. The centre is an independent and non-profit.<sup>507</sup>

As for mediation, it receives less popularity since parties still prefer court proceedings in trade and investment disputes. Costs and fees of court proceedings remain at satisfactory level.<sup>508</sup>

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<sup>504</sup> Haji Mohammad Rosli binHaji Ibrahim, Brunei Darussalam Attorney Generals' Chambers, "Improving on Enforcement of International Commercial Arbitration Awards in ASEAN Countries (Brunei Darussalam Perspectives)", ASEAN Law Association 10th General Assembly, p.4.

<sup>505</sup> ASEAN Investment Guidebook 2009, Brunei Darussalam,

<sup>506</sup> Ahmad Jefri Rahman, Developments in Arbitration and Mediation as Alternative Dispute Mechanisms in Brunei Darussalam, Conference: A Modern Legal Framework to Enable Global Trade: The New Legislation on Arbitration and on Electronic Transactions, University of Queensland, Brisbane, Australia, 5 February 2013, p.16.

<sup>507</sup> The News Centre of Radio Television Brunei, Brunei Darussalam Arbitration Center [http://www.rtbnews.rtb.gov.bn/index.php?option=com\\_content&view=article&id=24665:brunei-darussalam-arbitration-center&catid=34:local&Itemid=66](http://www.rtbnews.rtb.gov.bn/index.php?option=com_content&view=article&id=24665:brunei-darussalam-arbitration-center&catid=34:local&Itemid=66) accessed on 23 April 2015.

<sup>508</sup> Hjh Nor Hashimah Hj Mohd Taib, Alternative Dispute Resolution in ASEAN: Brunei Darussalam, Attorney-General Chambers, Brunei Darussalam, P.15, [http://www.aseanlawassociation.org/9GAdocs/w4\\_Brunei.pdf](http://www.aseanlawassociation.org/9GAdocs/w4_Brunei.pdf), accessed on 3 April 2015



## 9.4 Enforcing of Judgment in Brunei

The procedures for judgment enforcement in Brunei are as follows:<sup>509</sup>

1. Plaintiff's hiring of lawyer: Plaintiff hires a lawyer to enforce the judgment or continues to be represented by a lawyer during the enforcement of judgment phase.
2. Plaintiff's approaching of court enforcement officer or (private) bailiff to enforce the judgment: To enforce the judgment, Plaintiff approaches a court enforcement officer such as a court bailiff or sheriff, or a private bailiff. Plaintiff applies to the court to obtain the enforcement order ('seal' on judgment).
3. Plaintiff's advancement of enforcement fees: Plaintiff pays the fees related to the enforcement of the judgment. Attachment of enforcement order to judgment: The judge attaches the enforcement order ('seal') to the judgment.
4. Delivery of enforcement order: The court's enforcement order is delivered to a court enforcement officer or a (private) bailiff.
5. Plaintiff's identification of Defendant's assets for attachment: Plaintiff identifies Defendant's assets for attachment.
6. Attachment: Defendant's movable goods are attached (physically or by registering, marking or separating assets).
7. Report on execution of attachment: A court enforcement officer or private process server delivers a report on the attachment of Defendant's movable goods to the judge.
8. Valuation or appraisal of attached movable goods: The court or court appointed valuation expert evaluates the attached goods.
9. Enforcement disputes before court: The enforcement of the judgment is delayed because Defendant opposes aspects of the enforcement process before the judge.
10. Sale through public auction: The Defendant's movable property is sold at public auction.

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<sup>509</sup> Ahmad Isa & Partners, Diagnostic Study on Enforcing Contracts in Brunei Darussalam, October 2013, p.27.

11. Reimbursement of Plaintiff's enforcement fees: Defendant reimburses Plaintiff's enforcement fees which Plaintiff had advanced previously.
12. Payment: Court orders that the proceeds of the public auction or the direct sale be delivered to Plaintiff.

The Arbitration Act (Chapter 173 of the Laws of Brunei) ensures that both Brunei Darussalam's arbitration laws and rules are arbitration friendly and that it is in line with the latest developments and trends taking place in international arbitration arena. Brunei is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June 1958 (hereinafter called the "New York Convention").<sup>510</sup>

Reciprocity in recognition and enforcement of a foreign award is applied in section 44 (1) (Part IV) of the Act<sup>511</sup> which conforms with Section 36 of the New York Convention.<sup>512</sup> Brunei will recognize and enforce an arbitral award rendered from a state which accepts to recognize and enforce an arbitral award from Brunei (sections 45 and 46 of the Act). This complies with Article 35 (1) of the UNCITRAL Model Law on International Commercial Arbitration 1985 (revised in 2006).<sup>513</sup>

#### **With respect to the recognition and enforcement of foreign judgments,**

Brunei has introduced the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177 of the Laws of Brunei) mainly to provide for the enforcement in Brunei of judgments given in foreign countries which afford reciprocal treatment to judgments given in Brunei Darussalam and for facilitating the enforcement in foreign countries of judgments

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<sup>510</sup> Haji Mohammad Rosli bin Haji Ibrahim, Improving on Enforcement of International Commercial Arbitration Awards in ASEAN Countries (Brunei Darussalam Attorney Generals' Chambers, ASEAN Law Association, 10th General Assembly, <http://www.aseanlawassociation.org/10GAdocs/Brunei6.pdf>, accessed on 2 April 2015.

<sup>511</sup> Arbitration Act (Cap 173) Section 44 (1) states (l) A Convention award shall subject to this Part, be enforceable either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 36.

<sup>512</sup> Arbitration Act (Cap 173) Section 36 states An award on an arbitration agreement may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

<sup>513</sup> The UNCITRAL Model Law on International Commercial Arbitration 1985 (modify 2006) Article 35(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

given in Brunei. “Judgment” under the Reciprocal Enforcement of Foreign Judgments Act includes an award in proceedings on arbitration.<sup>514</sup>

However, where it appears to the Attorney General that the recognition and enforcement accorded by the courts of any foreign country to judgments given in Brunei’s courts is substantially less favourable than that accorded by Brunei’s courts to judgments of the courts of that country, the Attorney General may by order direct that no proceedings shall be entertained in any court in Brunei for the recovery of any sum alleged to be payable under a judgment given in a court of that country (section 10 of the Reciprocal Enforcement of Foreign Judgment Act).<sup>515</sup>

### **Challenges in judgment enforcement**

Most of the challenges are in an area of enforcing a foreign arbitral award in ASEAN countries. Due to diverse backgrounds on arbitration and ADR laws, it is highly possible that an award from one country may not be enforceable in another country. In terms of Brunei’s laws, arbitration award enforcement is on par with international standards. However, a dispute settlement involving sharia laws has a limited scope as it only applies to a dispute concerning personal status. The country has plans to develop dispute settlement mechanisms in sharia laws.

### **9.5 Conclusion**

Brunei’s laws regarding ADR remain scattered. However, arbitration laws are formalized in conformity with international standards. In December 2014, the Sultan approved an establishment of the Association of Brunei Darussalam (AABD) to develop and enhance the infrastructure and human resource capabilities to facilitate arbitration in Brunei. ADR still receives little attention from lawyers and disputed parties even though they can choose a forum of arbitration in a contract. Court proceedings are prevalent

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<sup>514</sup> The Reciprocal Enforcement of Foreign Judgment Act Cap 177 Section 10 (1) If it appears to the Attorney General that the recognition and enforcement accorded by the courts of any foreign country to judgments given in the High Court of Brunei Darussalam substantially less favourable than that accorded by the courts of Brunei Darussalam to judgments of the superior courts of that country, the Attorney General may by order apply this section to that country.

<sup>515</sup> Haji Mohammad Rosli binHaji Ibrahim, Brunei Darussalam Attorney Generals’ Chambers, “Improving on Enforcement of International Commercial Arbitration Awards in ASEAN Countries (Brunei Darussalam Perspectives)”, ASEAN Law Association 10th General Assembly, p. 5.

choices due to its certainty, affordable fees and reasonable timeframe. In some cases, arbitration incurs more costs than court proceedings, especially on costs relating to an appointment of arbitrators. Brunei's courts have vital roles in resolving conflicts prior official court trials through informal meetings, which increase effectiveness in dispute settlement.

# Chapter 10

## Public and Private Organizations concerning Trade and Investment

### 10.1 Public organizations

#### 10.1.1 Immigration and permission of foreign workers

##### 10.1.1.1 The Immigration and National Registration Department

The Immigration and National Registration Department regulates immigration entrance into the country, passports, visas, and employment of foreign workers.<sup>516</sup> To be able to employ foreign workers, an employer must request a work permit from the Commissioner of Labour Brunei Darussalam located at The Immigration and National Registration Department.

An employer is eligible to appeal to the Commissioner of Labour Brunei Darussalam within 14 days after an order has been made by the Deputy Commissioner denying an issuance of a work permit.<sup>517</sup>

Should the Commissioner of Labour Brunei Darussalam denies an issuance of a work permit on appeal, the employer can appeal to the ministry of Home Office within 14 days after a receipt of an order of the Commissioner.<sup>518</sup>

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<sup>516</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration, <http://www.immigration.gov.bn/about.htm>, accessed on 15 December 2014.

<sup>517</sup> Section 3 (2) of the Labour Act (Cap 93) stated that “if any employer is dissatisfied with any decision or order of a Deputy Commissioner of Labour or an Assistant Commissioner of Labour made or given by virtue of the provisions of the preceding subsection, he may appeal from such decision or order to the Commissioner within 14 days of the date of such decision or order being communicated to him.”

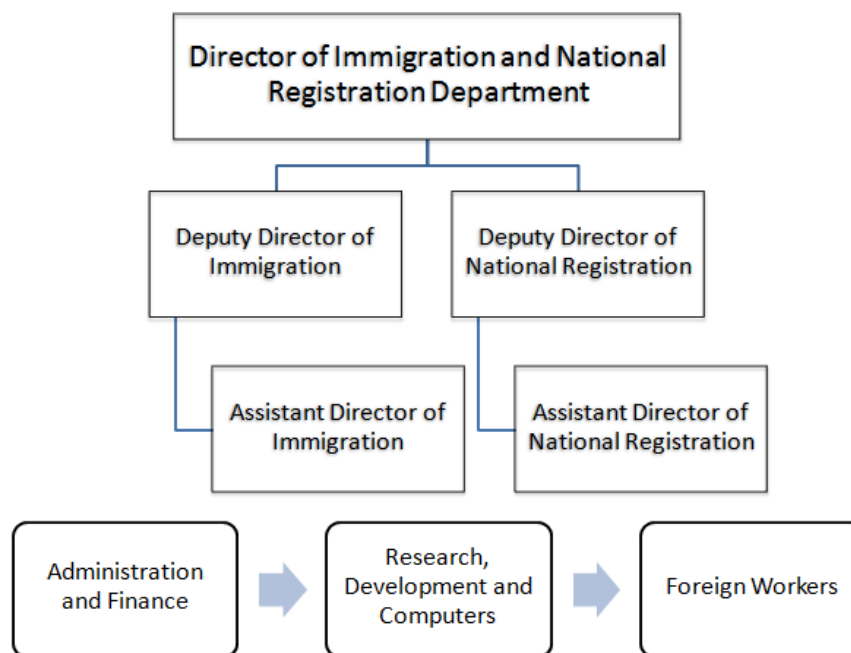
<sup>518</sup> Section 3 (3) of the Labour Act (CAP 93) stated that “if any employer is dissatisfied with any decision or order made or given by the Commissioner either original or by virtue of the preceding subsection, he may appeal from such decision or order to the Minister within 14 days of the date of such decision or order being communicated to him.”

## (1) Organizational structure

Director of Immigration and National Registration Department acts as a chair and has two deputies; the Deputy Director of Immigration and the Deputy Director of National Registration. Each deputy has two assistant directors.<sup>519</sup>

The Immigration and National Registration Department consists of three divisions:

- Administration and Finance Division
- Research, Development and Computers Division
- Foreign Workers Division



## (2) Functions and powers

The Administration and Finance Division has the following functions and powers:<sup>520</sup>

- Administering resources and finance of the office including payment of salary and office budget
- Propose budget of the office to the council

<sup>519</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration, <http://www.imigresen.gov.bn/IM%20WSS/SO.html>, accessed on 15 April 2015.

<sup>520</sup> The Government of Brunei Darussalam Official Website, Immigration and National Registration, <http://www.imigresen.gov.bn/IM%20WSS/SO.html>, accessed on 15 April 2015.

The Research, Development and Computers Division has the following function and power:

- Making short-term and long-term planning on the office's operation
- Researching and developing long-term IT plans
- Developing human resources
- Developing and improving services
- Finding and keeping research information and studies

The Foreign Workers Division has the following function and power:

- Granting visas and work permits
- Granting visas to dependents
- Overseeing foreign employment including work permits, re-entry visas, and withdrawing working visas

### **(3) Contact information**

Department of Immigration & National Registration

Road Minister of BB 3910

Bandar Seri Begawan

Brunei Darussalam

Tel: +673 238 3106 - 08

Fax: +673 238 1045

Email: [info@immigration.gov.bn](mailto:info@immigration.gov.bn)

#### **10.1.2 Foreign business registration**

##### **10.1.2.1 The Brunei Economic Development Board (BEDB)**

BEDB is established under the Brunei Economic Development Board Act (Cap 104) by the Sultan's initiative in November 2001 to be an organization that fosters the country's economic development. The main functions of BEDB are to attract foreign investors and create value-added investment as well as launch legal policies, institutional guidelines, and human development policies for an enrichment of investment promotion. BEDB also coordinates between concerning authorities to increase efficiency in investment facilitation.

## (1) Organizational structure

BEDB is under the Sultan who has the power to appoint boards of the organization.<sup>521</sup>

Board members consist of:

- Chairman, appointed by the Sultan (3 years term)
- Deputy chairman, appointed by the Sultan (3 years term)
- Three Ex-Officio Members, appointed by the Sultan which are selected from the Office of the Permanent Secretary of the Ministry of Industry and Primary Resources and the Ministry of Finance (2 years term)
- 3-5 Appointed Members who are qualified as experts in trade, finance, banking, manufacturing, or administration, appointed by the Sultan (2 years term)

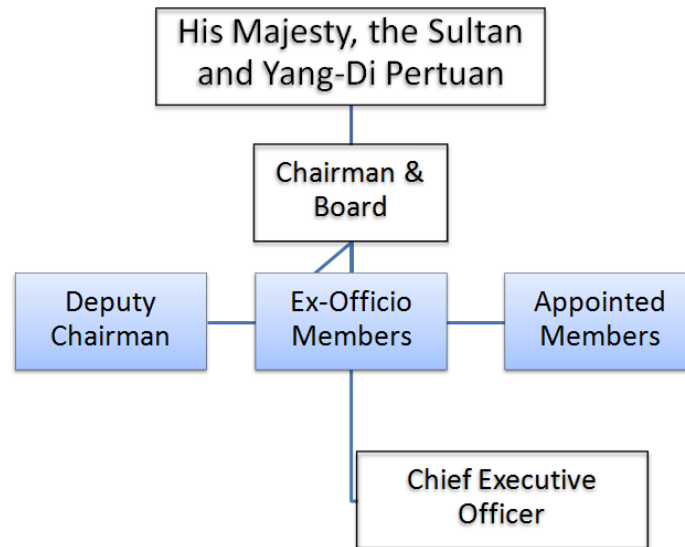
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<sup>521</sup> Section 4 of the Brunei Economic Development Board Act (Cap 104) stated that “The Board shall consist of (a) a chairman, who shall be appointed by His Majesty the Sultan and Yang Di-Pertuan, (b) a deputy chairman, who shall be appointed by His Majesty the Sultan and Yang Di-Pertuan, (c) three ex-officio members who shall be the persons for the time being holding the office of the Permanent Secretary of the Ministry of Industry and Primary Resources, the Chief Executive Officer and a representative of the Ministry of Finance, appointed by the Permanent Secretary of the Ministry of Finance, the Minister of Finance or by His Majesty the Sultan and Yang Di-Pertuan; and (d) not less than three and not more than five other members (hereinafter referred to “as appointed members”) to be appointed by His Majesty the Sultan and Yang Di-Pertuan from amongst persons appearing to him to be qualified as having wide experience of and shown capacity in matters relating to banking, manufacturing, housing, commerce, finance or administration, or to be otherwise suitable for appointment by virtue of their special knowledge and experience... [t]he chairman shall hold office for a term of 3 years from the date of his appointment... [e]very appointed member shall hold office for a term of 2 years from the date of his appointment unless his appointment is sooner resigned or revoked”.



Chief Executive Officer:<sup>522</sup>

- Appointed by the Sultan to perform duties as the Board may entrust to him



## (2) Functions and powers

The Board shall have the following functions:<sup>523</sup>

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<sup>522</sup> Section 7 of the Brunei Economic Development Board Act (Cap 104) stated that “His Majesty the Sultan and Yang Di-Pertuan shall appoint a Chief Executive Officer of the Brunei Economic Development Board, who shall perform such duties as the Board may entrust or delegate to him.”

<sup>523</sup> Section 8 of the Brunei Economic Development Board Act (Cap 104) stated that “The Board shall have the following functions (a) to promote undertake, form or participate in any residential, industrial, agricultural or commercial development on areas in Brunei Darussalam designated for such purposes; (b) to promote or undertake any kind of business, trading and commercial enterprises including agricultural, industrial, housing and mining enterprises in Brunei Darussalam as the Board may think fit; (c) promote, wherever necessary any company or companies for any of the purposes specified in paragraph (b); (d) with the written approval of the Minister and Minister of Finance to establish a bank or a financial institution; (e) to stimulate the growth, expansion and development of Brunei Darussalam economy by promoting Brunei Darussalam as an investment destination; (f) to formulate investment promotion policies and plans, promotional incentives and marketing strategies to attract foreign and local investments in advanced technology industries and skillintensive services which enjoy good export market prospects; (g) to promote, facilitate and assist in the development of industrial activities including export oriented business activities; (h) to encourage foreign and local industries to upgrade their skill and technological levels through investment in new technology, automation, training, research and product development activities; (i) support the development of local entrepreneurs and small and medium businesses and assist local companies to expand and upgrade their operations; and (j) to do all such other acts and

- Promote undertake, form or participate in any residential, industrial, agricultural or commercial development on areas in Brunei Darussalam designated for such purposes;
- Promote or undertake any kind of business, trading and commercial enterprises including agricultural, industrial, housing and mining enterprises in Brunei Darussalam as the Board may think fit;
- Promote, wherever necessary any company or companies;
- Establish a bank or a financial institution with a permission from the Ministry of Finance;
- Stimulate the growth, expansion and development of Brunei as an investment destination;
- Formulate investment promotion policies and plans, promotional incentives and marketing strategies to attract foreign and local investments in advanced technology industries;
- Promote, facilitate and assist in the development of industrial activities including export oriented business activities;
- Encourage foreign and local industries to upgrade their skill and technological levels through investment in new technology, automation, training, research and product development activities;
- Support the development of local entrepreneurs and small and medium businesses and assist local companies to expand and upgrade their operations;
- Do all such other acts and things as are necessary for the exercise of the powers or performance of all or any of the functions and duties of the Board.

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things as are necessary for the exercise of the powers or performance of all or any of the functions and duties of the Board under this Act or to perform such other functions as a body or authority if appointed as such by His Majesty the Sultan and Yang Di-Pertuan in Council in accordance with any written law.”

The Board shall have the following powers:<sup>524</sup>

- Acquire, purchase, exchange, sell or lease and hold land, buildings and other immovable property;

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<sup>524</sup> Section 9 of the Brunei Economic Development Board Act (Cap 104) ระบุไว้ว่า “For the purposes of performing any of its functions...the Board may (a) acquire, purchase, exchange, sell or lease and hold land, buildings and other immovable property; (b) build houses, flats, tenements, shops and shop-houses, convert any house, shop or shop-house into flats or tenements; (c) acquire, purchase, exchange, lease and hold land for the purpose of development and resale to the public and building lots, or industrial land and for the purposes of providing open spaces and recreation grounds; (d) do all other things as may be necessary or expedient for the purposes of carrying into effect the provisions of this Act; (e) do any work on land necessary for the purposes of its development, as building or industrial land; (f) acquire, purchase, exchange, lease and hold mining, agricultural and timber land for purposes of mining, agricultural development and logging respectively; (g) sell land, building or other immovable property; (h) lease to other persons in accordance with the provisions of any law in force in Brunei Darussalam relating to land or dealings in land, from month to month or otherwise, any land or building or other immovable property at such rent and subject to such terms and conditions as the Board shall think fit; (i) enter into contracts with other persons such persons should build or do any work on behalf of the Board; (j) enter into contracts or do any other act or matter necessary and proper for carrying into effect the purposes of this Act; (k) with the written approval of the Minister and the Minister of Finance, underwrite the issue of stocks, shares, bonds or debentures by business enterprises; (l) with the written approval of the Minister and the Minister of Finance, guarantee on such terms and conditions as may be agreed upon, loans raised by business enterprises which are floated in the public market; (m) with the written approval of the Minister and the Minister of Finance, grant loans or advances to business enterprises for the purpose of industrial development; (n) manage, control or supervise business enterprises by nominating directors or advisers or otherwise collaborating with them; (o) with the written approval of the Minister and the Minister of Finance, establish, sell shares of, invest in and manage business enterprises; (p) provide technical service and assistance to business enterprises and to build up a corps of engineering and managerial staff to provide such assistance; (q) receive in consideration of the services rendered by it such commission as may be agreed upon; (r) act as agents for any business enterprises; (s) subscribe to stocks, shares, bonds or debentures of industrial enterprise; (t) lay out, develop and manage sites, parks, estates, identified zones and other premises for industries and businesses in Brunei Darussalam or elsewhere via sale or lease of specific site; (u) foster the growth of the service industry by developing the appropriate infrastructure and formulating and implementing investment promotion plans, promotional incentives and marketing strategies to support local and international firms and businesses in the services sector in Brunei Darussalam; (v) facilitate new and existing companies in the implementation and operation of their projects, and offer assistance through direct consultation and co-operation with the relevant authorities; (w) exercise all functions and powers and perform all duties which, under or by virtue of any written law, are or may be or become vested or delegated to it; and (x) generally do all such matters and things as may be incidental to or consequential upon the exercise of its duties under this Act.”

- Build houses, flats, tenements, shops and shop-houses, convert any house, shop or shop-house into flats or tenements;
- Acquire, purchase, exchange, lease and hold land for the purpose of development and resale to the public and building lots, or industrial land and for the purposes of providing open spaces and recreation grounds;
- Do any work on land necessary for the purposes of its development, as building or industrial land;
- Acquire, purchase, exchange, lease and hold mining, agricultural and timber land for purposes of mining, agricultural development and logging respectively;
- Sell land, building or other immovable property;
- Lease to other persons in accordance with the provisions of any law in force in Brunei relating to land or dealings in land, from month to month or otherwise, any land or building or other immovable property at such rent and subject to such terms and conditions as the Board shall think fit;
- Enter into contracts with other persons such persons should build or do any work on behalf of the Board;
- Enter into contracts or do any other act or matter necessary and proper for carrying out its duties;
- With the written approval of the Minister and the Minister of Finance, underwrite the issue of stocks, shares, bonds or debentures by business enterprises;
- With the written approval of the Minister and the Minister of Finance, guarantee on such terms and conditions as may be agreed upon, loans raised by business enterprises which are floated in the public market;
- With the written approval of the Minister and the Minister of Finance, grant loans or advances to business enterprises for the purpose of industrial development;
- Manage, control or supervise business enterprises by nominating directors or advisers or otherwise collaborating with them;
- With the written approval of the Minister and the Minister of Finance, establish, sell shares of, invest in and manage business enterprises;

- Provide technical service and assistance to business enterprises and to build up a corps of engineering and managerial staff to provide such assistance;
- Receive in consideration of the services rendered by it such commission as may be agreed upon;
- Act as agents for any business enterprises;
- Subscribe to stocks, shares, bonds or debentures of industrial enterprise;
- Lay out, develop and manage sites, parks, estates, identified zones and other premises for industries and businesses in Brunei or elsewhere via sale or lease of specific site;
- Foster the growth of the service industry by developing the appropriate infrastructure and formulating and implementing investment promotion plans, promotional incentives and marketing strategies to support local and international firms and businesses in the services sector in Brunei;
- Facilitate new and existing companies in the implementation and operation of their projects, and offer assistance through direct consultation and co-operation with the relevant authorities;
- Exercise all functions and powers and perform all duties which, under or by virtue of any written law, are or may be or become vested or delegated to it;
- Generally do all such matters and things as may be incidental to or consequential upon the exercise of its duties.

### **(3) Contact information**

The Brunei Economic Development Board (BEDB)

Block 2 D, Jalan Kumbang Pasang

Bandar Seri Begawan BA 1311

Brunei Darussalam

Tel: +673-223 0111

Fax: +673-223 0082

Website: [www.bedb.com.bn](http://www.bedb.com.bn)

### 10.1.2.2 The Registry of Companies and Business Names (ROCBN)

The ROCBN was established in 1959 as a unit under the Attorney General's Chamber Office. Currently, the ROCBN has been transferred to become a unit under the Ministry of Finance in April 2012.<sup>525</sup>

#### (1) Functions and powers

Main responsibilities of the ROCBN are as follows:

- Register a company in accordance with provisions of the Companies Act 1984 (Cap 39) and register a company name as in accordance with provisions under the Business Names Act 1984 (Cap 92)
- Establish a registration system which is easily accessible
- Promote roles of the RCBN
- Act as a government's representative in matters relating to business registration and business regulation

#### (2) Contact information

Registry of Companies and Business Names Division

Level 1, Island Block

Ministry of Finance

Commonwealth drive, BS 3910

Brunei Darussalam

Website: [www.eregistry.agc.gov.bn](http://www.eregistry.agc.gov.bn), [www.roc.gov.bn](http://www.roc.gov.bn)

Tel: +673 238 0505

Fax: +673 238 0503

Counter Operating Hours

Monday – Thursday & Saturday

8.00 am – 3.30 pm

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<sup>525</sup> The Government of Brunei, Ministry of Finance, the Registry of Companies and Business Names, <http://www.mof.gov.bn/index.php/divisions/registry-of-companies-and-business-names>, accessed on 15 April 2015.

### 10.1.3 Investment promotion

#### 10.1.3.1 The Ministry of Industry and Primary Resources (MIPR)

The main responsibility of the MIPR is to approve investment projects which involve primary resources including agriculture, fishery and forestry. In addition, the MIPR is in charge of investment incentives under the Investment Incentive Order (2011).

The main difference between the MIPR and the DEDB is while the former deals with large-scale investment contracts between the government and private investors in projects concerning primary resources, agriculture, fishery and forestry, the latter deals with investment coordination and facilitates foreign investors with business registration.<sup>526</sup>

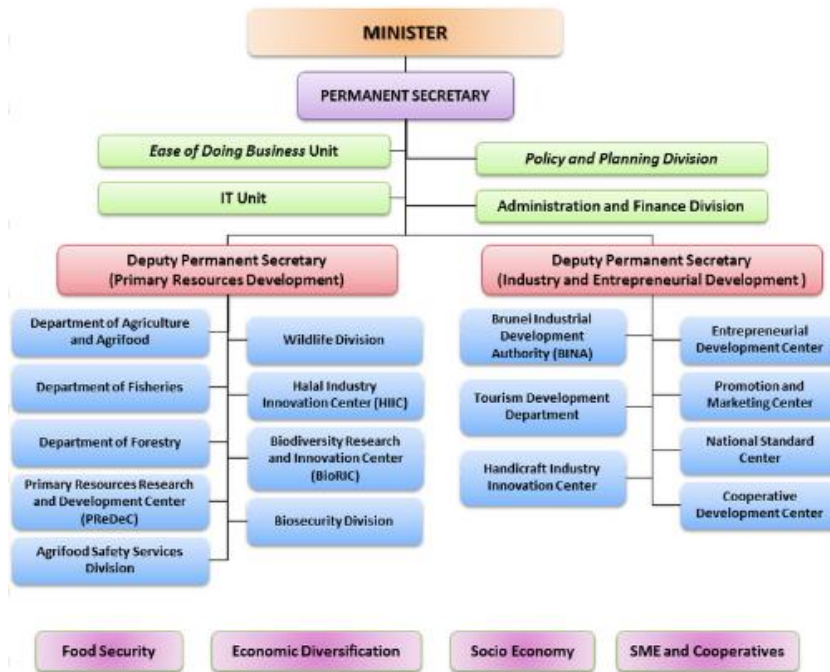
##### (1) Organizational structure

The MIPR is headed by the Ministry of Industry and Primary Resources (MIPR). The Permanent Secretary reports directly to the Minister. There are four units under the Permanent Secretary; (1) the Ease of Doing Business Unit; (2) the Information and Technology Unit; (3) the Policy and Planning Division; and (4) the Administration and Finance Division.

The Permanent Secretary carries two functions; (1) the primary resources development; and (2) the industry and entrepreneurial development. Both functions are overseen by the Permanent Secretary.

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<sup>526</sup> interview Felicity Chan, Innovation and New Initiatives Division, Brunei Economic Development Board (BEDB) at iCenter, Brunei Economic Development Board (BEDB), 10 April 2015.



Source: The Government of Brunei, Ministry of Industry and Primary Resources, [http://www.industry.gov.bn/index.php?option=com\\_content&view=article&id=49&Itemid=67](http://www.industry.gov.bn/index.php?option=com_content&view=article&id=49&Itemid=67)

## (2) Functions and powers

The MIPR carries the following functions:<sup>527</sup>

- Increase GDP and revenue of the nation
- Enhance local participation in investments for sustainable development
- Increase national employment rate
- Facilitate and develop industries which exploit natural resources for domestic trade and exports
- Improve investment climate to attract foreign investors
- Improve capabilities of human resources in the Ministry

<sup>527</sup> The Government of Brunei, Ministry of Industry and Primary Resources, [http://www.industry.gov.bn/index.php?option=com\\_content&view=article&id=48&Itemid](http://www.industry.gov.bn/index.php?option=com_content&view=article&id=48&Itemid)



### (3) Contact information

Jalan Menteri Besar,  
Bandar Seri Begawan BB 3910,  
Brunei Darussalam  
Tel: +673 238 2822  
Fax: +673 238 2474  
Email: helpdesk@industry.gov.bn  
Website: www.bruneimipr.gov.bn

#### 10.1.4 Labour

Please refer to the Immigration and National Registration Department in Section 1.1.1 above

#### 10.1.5 Complaint channels available to foreign investors

Generally, there is no complaint channel available to aggrieved foreign investors.<sup>528</sup> However in a large-scale investment, the Attorney General's Chamber, as a legal advisor of the state, seeks a negotiation with the parties in an attempt to resolve a conflict in an amicable way rather than resorting to litigation.

In terms of foreign workers, an employer can lodge an appeal if a foreign work permit is denied. If a work permit is denied by the Deputy Commissioner, the employer can appeal to the Commissioner within 14 days after a receipt of a decision.<sup>529</sup>

If the Commissioner denies a foreign work permit, the employer can appeal to the Minister of Home Office within 14 days after a receipt of a decision.<sup>530</sup>

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<sup>528</sup> It does not have the Administrative Court in Brunei. Appeal command that released by state agency does not have supported legal. Furthermore, administration command from state agency regard as a command from unit, receiving the highest authority from sultan, for serving country and receiving immunity from all jurisdictions, constitution 84(c). Interview from legal expert of Brunei on 9 April 2015

<sup>529</sup> Section 3 (2) of the Labour Act (Cap 93) stated that "if any employer is dissatisfied with any decision or order of a Deputy Commissioner of Labour or an Assistant Commissioner of Labour made or given by virtue of the provisions of the preceding subsection, he may appeal from such decision or order to the Commissioner within 14 days of the date of such decision or order being communicated to him."

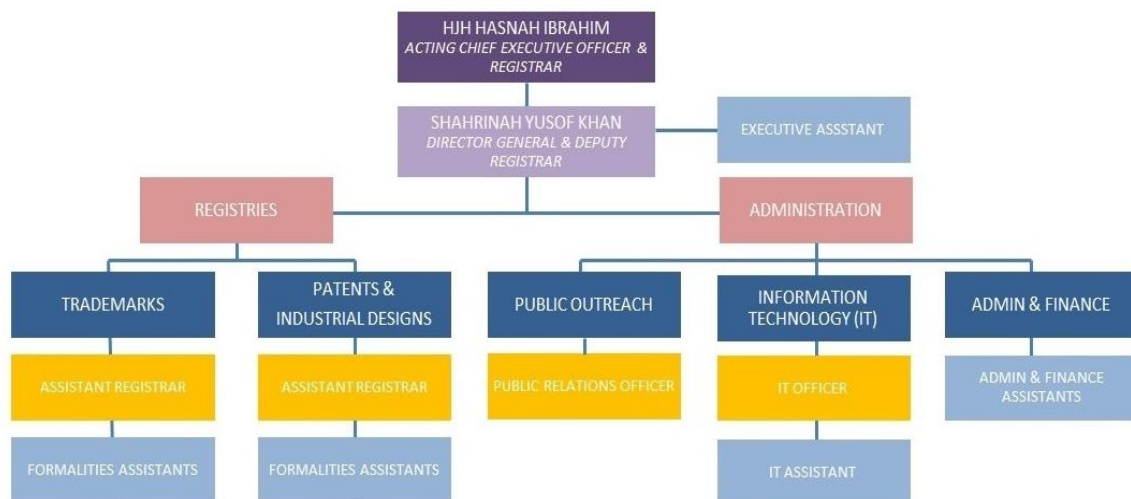
## 10.1.6 Other relevant organizations

### 10.1.6.1 The Brunei Darussalam Intellectual Property Office (BruIPO)

The BruIPO is an organization under the BEDB, which has main functions in registration and protection of intellectual property rights in Brunei.

#### (1) Organizational structure

The BruIPO is chaired by Chief Executive Officer and Registrar. The Director General and Deputy Registrar works under Chief Executive Officer and Registrar. The Director General and Deputy Registrar oversees the registrar's unit and the administration unit. The registrar's unit has main responsibilities in registration of trademarks, patents, and industrial designs. The administration unit is in charge of public relations and raising awareness as well as administering information, the use of IT, finance and general administration.



Source: Brunei Darussalam Intellectual Property Office, Brunei Economic Development Board, <http://www.bruipo.com.bn/index.php/about-us/organization>

<sup>530</sup> Section 3 (3) of the Labour Act (Cap 93) stated that “if any employer is dissatisfied with any decision or order made or given by the Commissioner either original or by virtue of the preceding subsection, he may appeal from such decision or order to the Minister within 14 days of the date of such decision or order being communicated to him.”

## **(2) Functions and powers**

The BrulPO has the following functions:<sup>531</sup>

- To provide a clear, accessible and widely understood patent system that protects ideas and inventions whilst encouraging innovation, Research and Development (R & D) and commercialisation;
- To raise awareness on the benefits and protection of trademarks and industrial designs and to use them to enhance business growth and competitiveness;
- To promote and develop an 'IP Culture' where creativity and innovation can flourish; and
- To establish partnership with the relevant stakeholders in support of the national innovation ecosystem.

## **(3) Contact information**

Brunei Intellectual Property Office (BrulPO)  
The Brunei Economic Development Board  
Block 2 D, Bangunan Kerajaan Jalan Kumbang Pasang  
Bandar Seri Begawan BA 1311  
Negara Brunei Darussalam  
Tel: +673 223 0111, +673 238 0545

### **10.1.6.2 Arbitration Centre**

#### **(1) Functions and powers**

The Arbitration Centre was established in 2014 under the BEDB. The Centre aims to promote the adoption of arbitration and mediation services in resolving commercial issues

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<sup>531</sup> Brunei Darussalam Intellectual Property Office, Brueni Economic Development Board, <http://www.bruiipo.com.bn/index.php/about-us/objectives>

and disputes as a speedier alternative to the usual settlement through civil proceedings in court. The centre is an independent and non-profit.<sup>532</sup>

## (2) Contact information

Arbitration Centre  
Floor 8 BEDB Building  
The Brunei Economic Development Board (BEDB)  
Block 2 D, Jalan Kumbang Pasang  
Bandar Seri Begawan BA 1311  
Brunei Darussalam  
Tel: +673 223 0111  
Fax: +673 223 0082  
Website: [www.bedb.com.bn](http://www.bedb.com.bn)

### 10.1.6.3 The Autoriti Monetari Brunei Darussalam (AMBD)

#### (1) Functions and powers

The AMBD is established by the Autoriti Monetari Brunei Darussalam Order (2010)<sup>533</sup> to act as a central bank of the country and carry out four main functions; (1) stabilization of monetary system; (2) regulation of monetary policy; (3) oversight of payment systems; and (4) regulation of banks and financial institutions.<sup>534</sup> In addition, the AMBD serves as banker to and financial agent of the government.<sup>535</sup> It can prescribe conditions on granting

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<sup>532</sup> The News Centre of Radio Television Brunei, Brunei Darussalam Arbitration Center [http://www.rtbnews.rtb.gov.bn/index.php?option=com\\_content&view=article&id=24665:brunei-darussalam-arbitration-center&catid=34:local&Itemid=66](http://www.rtbnews.rtb.gov.bn/index.php?option=com_content&view=article&id=24665:brunei-darussalam-arbitration-center&catid=34:local&Itemid=66) accessed on 23 April 2015.

<sup>533</sup> The Autoriti Monetari Brunei Darussalam Order (2010)

<sup>534</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 36(1) stated that “In implementing its objects, the Authority may, exercise and discharge the following functions, powers and duties –

(b) Act as the central bank of Brunei Darussalam, including the conduct of monetary policy, the issuance of the currency of Brunei Darussalam, the oversight of payment systems and serving as banker to and financial agent of the government...”

<sup>535</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 49 (1) stated that “The Authority may act as a banker to, and a financial agent of, the Government...”

credit to governmental agencies.<sup>536</sup> It also holds meeting with the government on monetary and fiscal policies.<sup>537</sup>

In 2011, the AMBD incorporated the Brunei Currency and Monetary Board (BCMB), previously a unit under the Ministry of Finance in charge of stabilization of Brunei currency. In addition, the AMBD has recently incorporated three other units previously under the Ministry of Finance; (1) the Financial Institution Division (FID); (2) the Brunei International Financial Center (BIFC); and (3) the Research and International Division (RID).<sup>538</sup>

#### (2) Contact information

Autoriti Monetari Brunei Darussalam  
Level 14, Ministry of Finance Building  
Commonwealth Drive  
Bandar Seri Begawan BB 3910  
Negara Brunei Darussalam  
Tel: +673 238 4626  
Fax: +673 238 3787  
Email: [info@ambd.gov.bn](mailto:info@ambd.gov.bn)

## 10.2 Private organizations

### 10.2.1 The National Chamber of Commerce and Industry of Brunei Darussalam

The National Chamber of Commerce and Industry of Brunei Darussalam is a local organization of businesses and companies with the intention to develop and further the interests of local companies and businesses in Brunei.

Main activities of the National Chamber of Commerce and Industry are, among others, safeguarding business interests and sharing business experiences and business

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<sup>536</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 50(a) stated that “The Authority shall not grant credit to the Government or State-owned entity provided but-...”

<sup>537</sup> The Autoriti Monetari Brunei Darussalam Order 2010 Section 51(1) stated that “Without prejudice to sections 3(5) and 11(4) and in pursuit of its objects and functions, the Authority shall hold regular meetings with the Government on monetary and fiscal policies and other matters of common interest, and both the Authority and the Government shall keep one another fully informed of all matters that affect them jointly...”

<sup>538</sup> Autoriti Monetari Brunei Darussalam (AMBD), <http://www.ambd.gov.bn/about-ambd>

interests, contact with governments, civil society, local media and the press and organizing trade shows and events.<sup>539</sup>

### **(1) Contact information**

National Chamber of Commerce and Industry  
P.O. Box 1099  
Bandar Seri Begawan 1910  
Brunei Darussalam  
Tel: +673 222 7297  
Fax: +673 222 7298

## **10.2.2 International chamber of commerce**

### **10.2.2.1 The Brunei International Chamber of Commerce**

#### **(1) Contact information**

Brunei International Chamber of Commerce and Industry  
c/o Artitek Ibrahim  
P.O.Box 2285  
Bandar Seri Begawan  
Brunei Darussalam  
Tel: +673 222 6000

### **10.2.2.2 The Brunei Malay Chamber of Commerce and Industry**

#### **(1) Contact information**

Brunei Malay Chamber of Commerce and Industry  
Suite 411, Bangunan Guru Guru Melayu Brunei  
Jalan Kianggeh  
P.O. Box 1099  
Bandar Seri Begawan 1910  
Brunei Darussalam  
Tel: +673 222 7297, 220649

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<sup>539</sup> [http://www.bruneidirecths.net/about\\_brunei/chambers\\_of\\_commerce.html](http://www.bruneidirecths.net/about_brunei/chambers_of_commerce.html)

Fax: +673 222 7298

Tlx: Bu 2445

### **10.2.2.3 The Chinese Chamber of Commerce**

#### **(1) Contact information**

Chinese Chamber of Commerce

Chinese Chamber of Commerce Building

72, Jalan Roberts

Bandar Seri Begawan 2085

Tel: +673 223 5494 - 6

Fax: +673 223 5492 - 3





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