

IMPLICATIONS OF SYARIAH LAWS

IN BRUNEI DARUSSALAM

The term, “Syariah law” is often associated with harsh lashings and other similarly dated modes of punishment. In reality however, the harsh punishment associated with Syariah law is often hugely exaggerated, and has little impact on businesses in a Syariah-based State like Brunei. Mohamad Rozaiman Abdul Rahman, Managing Partner of Rozaiman Abdul Rahman (a member of ZICO Law), shares his take on the realities of a Syariah-Brunei.

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Since the Sultan of Brunei declared the country's adoption of the Syariah Penal Code in October 2013, there have been negative perceptions about conducting business in Brunei.

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however, the harsh punishment associated with Syariah law is often hugely exaggerated, and has little impact on businesses in a Syariah-based State like Brunei.

In this article, we explore the realities of a Syariah-Brunei, and dust off misconceptions associated with the term.

HISTORY OF SYARIAH LAW IN BRUNEI

Although Brunei has only recently announced its adoption of Syariah penal law in 2013, in reality, Syariah law has long been embedded into the country's system of governance. Since the 1930s, Brunei's Heads of State have promoted Islam by way of subsidising the costs for Hajj, the building of Islamic monuments and places of worship (mosques), as well as encouraging the

expansion of the Ministry of Religious Affairs. In the 1990s, Islamic influence grew within this small Southeast Asian State, and its Muslim inhabitants were forbidden from establishing and entering bars, or dealing in alcoholic products. Additionally, Syariah law found dominion in family matters, through the establishment of a Syariah Court in 1999.

SYARIAH PENAL LAW

The Sultan's controversial declaration in October 2013 was followed through in May 2014 with the introduction of the Syariah Penal Code Order, 2013 ("SPC"). The SPC lays out specific offences and punishments for crimes prescribed by the Al-Quran and Sunnah (i.e. the traditions and practices of the prophet

Muhammad, PBUH), as well as some offences and punishments that are not prescribed by the Al-Quran and Sunnah (e.g. making it mandatory for Muslim men to attend Friday prayers and the offence of disrespecting the month of Ramadhan).

The SPC is being introduced to the nation in the following 3 phases:

Phase 1 (came into force on 1 May 2014)	This phase concerns all the offences found under Part IV Chapter IV that are punishable only by fine or imprisonment e.g. failure to perform Friday prayer, disrespecting the month of Ramadhan etc.
Phase 2 (to be enforced 12 months after the SPC is gazetted)	The enforcement of all provisions under Part IV Chapter I, II and III that are punishable by Hadd, Qisas, Diyat, Badal-Al-Sulh or Arsy, except offences punishable by death.
Phase 3 (to be enforced 24 months after the Syariah Criminal Procedure Code is gazette)	Full adoption and enforcement of SPC.

The following legislation support the enforcement of the SPC:

The Syariah Criminal Procedure Code which was enacted and passed on 5 March 2018. Note however, that as of the date of this article, the Syariah Criminal Procedure Code has not yet come into force; and

The **Syariah Evidence Order** which was passed in 2001. The Syariah Evidence Order contains evidentiary rules for cases brought under the Syariah courts. Note however, that as of the date of this article, the Syariah Evidence Order is currently undergoing revision.

WHO DOES THE SPC APPLY TO?

The SPC applies to both Muslims and non-Muslims. However, many specific offences laid out in the SPC apply only to Muslims.

Below are some examples of offences laid out in the SPC:

Offences	Application
Theft, robbery, causing death, causing hurt, contempt of Prophet Muhammad, deriding verses of Quran or Hadith, indecent behavior, disrespecting the fasting month of Ramadhan.	Applicable to both Muslims and non-Muslims.
Apostasy, worship, non-payment of Zakat or Fitrah, failure to perform Friday prayers.	Applicable only to Muslims.
Adultery if committed with a Muslim, consuming alcohol in a public place, close proximity if committed with a Muslim.	Non-Muslims could be implicated.

According to Section 6(3) of the Syariah Courts Act Cap. 184, courts have extraterritorial jurisdiction over SPC offences committed abroad by Brunei's citizens and permanent residents.

HOW DOES THE SPC APPLY VIS-À-VIS THE EXISTING PENAL CODE, CHAPTER 22?

The current Penal Code, Chapter 22 of the Laws of Brunei Darussalam still continues to apply to all Muslims and non-Muslims despite the new introduction of the SPC. The Penal Code, Chapter 22 will run in parallel with the SPC. In

circumstances of duplicity of offences, such offence could be tried in both Civil and Syariah Courts, e.g. the offence of theft, robbery, statutory rape, unlawful carnal knowledge, criminal defamation, homicide, causing hurt, etc.

FEAR OF PROSECUTION AND MISCONCEPTIONS SURROUNDING SYARIAH LAW

Investors and businesses may pass on Brunei's potential for investment out of fear of prosecution by Syariah standards. What investors and businesses may not understand however is the fact that Syariah law has little to do with business.

All matters between businesses are subject to civil legislation derived from common law. In addition, Syariah courts have no jurisdiction over disputes arising between businesses.

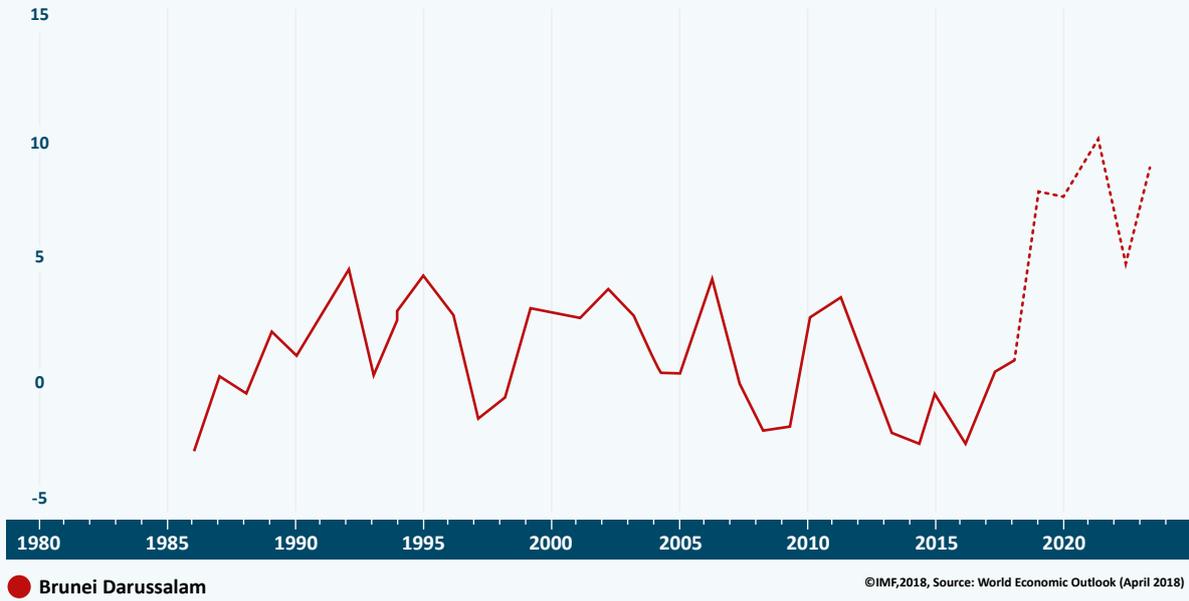
BRUNEI'S POTENTIAL FOR GROWTH

Despite the fears surrounding Brunei's adoption of Syariah law, recent reports from the International Monetary Fund (IMF) World

Economic Outlook show that Brunei remains a healthy foreign investment destination with a relatively stable economic outlook.

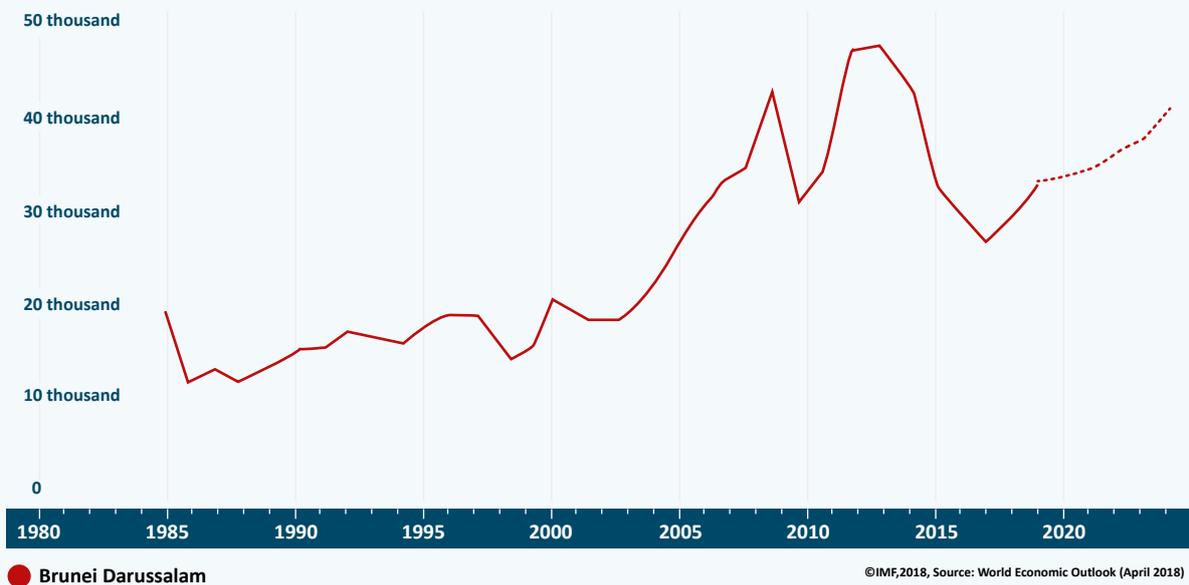
IMF DataMapper

Real GDP growth (Annual percent change)



IMF DataMapper

GDP per capita, current prices (U.S. dollars per capita)



In recent years, the internal push from Brunei’s government has significantly relaxed foreign investment regulations for new businesses. Foreigners may now possess 100% ownership in a company established in Brunei, and there are plenty of monetary

and non-monetary based incentives for foreigners to benefit from. In line with its decision to reduce reliance on the country’s rich oil and gas resources, Brunei’s government also welcomes economic and technical cooperation with foreign companies.

IN CONCLUSION

In conclusion, while Brunei's adoption of Syariah law gives rise to a negative perception and may have some adverse impact on its economy, most criticism surrounding this move does not truly reflect the overall business environment of the country.

Foreign companies such as Hengyi, Mitusbishi, Bank of China, International Banks (Maybank, Standard Chartered, RHB Bank) continue investing in Brunei Darussalam in the fields of banking, construction, and oil and gas.

Businesses in Brunei are not subject to the SPC and are still very much rooted in a common law system of government. Despite the economic setback it currently faces and the criticism it receives, Brunei's government is confident that the country's economy will pick up in the coming years.

If you have any questions or require any additional information, you may contact the following person or the ZICO Law partner you usually deal with.



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Rozaiman is the founder and managing partner of Rozaiman Abdul Rahman, and has close to 24 years of experience in civil and criminal litigation, corporate commercial law, intellectual property and real estate matters. He has advised a wide range of clients ranging from large and mid-sized corporations, banks and financial institutions, government linked entities as well as high net worth individuals.

A former deputy public prosecutor with the Attorney General's Chambers (AGC), Rozaiman has also worked as legal adviser and corporate secretary for several of Brunei's largest banks and financial institutions, and is well versed in various banking and Islamic finance transaction and matters.

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