

SPEECH BY THE HONOURABLE ATTORNEY GENERAL

Yang Berhormat Datin Seri Paduka Hajah Hayati Binti POKSDSP Hj Mohd Salleh

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
السَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللَّهِ وَابْرَكَاتِهِ

And a very good morning to all.

Your Royal Highness Princess Hajah Muta Wakkilah Hayatul Bolkiah binti Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, My Lord Honourable Chief Justice, Yang Amat Arif Chief Syarie Judge, Honourable Judges, President of the Brunei Darussalam Law Society, Members of the Bar, Excellencies, Distinguished Guests, Ladies and Gentlemen.

It gives me great pleasure to be able to address this distinguished gathering once again in my capacity as Attorney General.

With the blessing of Allah Subhanahu Wata'ala, we gather here again in an atmosphere of peace, harmony and tranquility, under the wise leadership of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.

Congratulations/Acknowledgement

I begin in joining Your Lordship, to congratulate the appointment of 6 Intermediate Court Judges; their names had been mentioned in full by Your Lordship. Their well-deserved appointments will no doubt enhance not only the strength but the efficiency and integrity of the Judiciary of Brunei Darussalam as required by their judicial oath.

We also extend our congratulation to Awg Hj Mohd Rozaiman bin Dato Seri Laila Jasa Awg Hj Abd Rahman on his re-appointment as the President of the Law Society. We count upon his leadership towards enhancing the public confidence on the legal profession within and beyond Brunei Darussalam. I also welcome the dialogues that had been held between the Law Society and Chambers to continue in a suitable and

correct fora. We do expect that due consultation has been made as the views discussed will be taken to represent the members of the Law Society as a whole.

Economic Challenges

My Lord,

At this point of time, we are alerted by the challenging and uncertain economic woes which has an impact globally and Brunei Darussalam is not spared.

His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, the Sultan and Yang Di-Pertuan of Brunei Darussalam in His Majesty's Titah for the New Year 2016 stated that the slow growth of the country's gross domestic product (GDP) in recent years requires us to redouble efforts to increase domestic products, especially outside the oil and gas sector.

The Honourable Pehin Orang Kaya Laila Setia Dato Seri Setia Awang Haji Abdul Rahman Bin Awang Hj Ibrahim, Minister at the Prime Minister's Office and Minister of Finance II had recently stated that the drastic fall in global oil prices has significantly affected the income of the country. The concerns are legitimate and timely.

In carrying out reforms to diversify the economy, His Majesty the Sultan and Yang Di-Pertuan has consented to the establishment of a committee responsible to execute reforms to make the country more attractive in attracting foreign investors. A new Small Medium Enterprise (SME) Centre has also been established to cater for the needs of domestic small and medium scale enterprises.

My Lord,

The inevitable question I would like to ask here today is how can we in the legal fraternity assist in this national effort to attract FDIs and encourage diversification and the growth of SMEs? There is emerging international consensus that the

establishment of a sound legal infrastructure – through upholding of the 'Rule of Law' - is a key element in the promotion of economic growth and foreign direct investment (FDI). My Lord has eloquently spoken on the Rule of Law in Your Lordship's speech.

Indeed, to create investor confidence, we must not only have a favourable political and economic environment, it is also vital to have an effective and independent legal infrastructure to protect the right of such investors.

At this juncture, it is perhaps an appropriate time to recall with much pride the words or words similar to that effect of the late C.J Sir Denys Roberts that reverberated in this very venue. He said:

“Perhaps the most valuable matter of all, is the manner in which the Judiciary itself has remained staunchly independent. No doubt some of its decision have not been to the liking of various Government Departments, but no attempt has been made to interfere with the Courts, or to influence them in any way, save to the extent permissible in hearings in open court. It is greatly to the credit of the Brunei Government, and of the Attorney General, who supervises all prosecutions, that no attempt has been made to bring any improper pressure on the Judiciary.”

We must also have laws that foster a pro-business and a pro-investor environment.

To this effect, the Attorney General's Chambers, led by the Solicitor General assisted by the Legal Draftsman and the officers, had actively assisted the PENGGERAK unit of the Prime Minister's Office and other relevant stakeholders in a number of legislative reforms related to the Ease of Doing Business. These included the Insolvency Order 2016, the draft Secured Transaction Order 2016, the Rules of Supreme Court (Amendment) Rules 2015, the draft Fire Safety Order 2015 and the draft Business Licenses Act (Amendment) Order 2015 amongst others. Many more are in the pipeline according to priority.

Regular stocktake meetings of the various stakeholders related to EODB, benefitted greatly from the guidance and leadership of His Royal Highness Crown Prince Haji Al-Muhtadee Billah, Senior Minister in the Prime Minister's Office as Chairman of PENGGERAK. His Royal Highness's unwavering drive uphold His Majesty the Sultan and Yang Di-Pertuan's aspiration to make the country pro-business.

Alhamdulillah, these ongoing co-ordinated efforts contributed to the improvement of Brunei Darussalam's ranking in EODB from 105 in 2015 to 84 in 2016 and with all the current initiatives, we have no doubt will continue to improve. We should be aware however that it's not just business friendly legal and regulatory frameworks which are required to facilitate business development, innovation and economic growth, but also of greater importance is the close attention to compliance and effective enforcement of laws and regulations. At this juncture, we applaud the various moves by AMBD and other relevant agencies to counter growth of money laundering, terror financing and financial crimes.

My officers had also assisted relevant Government Ministries and Departments in the lengthy negotiations for the Trans Pacific Partnership (TPP) which was concluded on 5th October 2015, particularly in ensuring that it is on our terms and not contrary to the national policy, sovereignty and Constitution of Brunei Darussalam. We will continue to assist especially in drafting laws and amendments of laws required for implementation.

We have been assured by our economic experts that Brunei Darussalam would benefit economically as this agreement provides for a more robust trade regime and investment regulatory framework as well as enhanced intellectual property protection. While the benefits may not be felt immediately nor be quantifiable, it is hoped that it will create a more favourable infrastructure for businesses and thereafter enable the economy to flourish further.

I welcome the establishment of the commercial court as was just announced by Your Lordship, I share Your Lordship's hope that it will fulfill the country's aspiration to attract more foreign direct investment and create a more conducive business environment

and at the same time ensuring that commercial disputes are resolved justly, fairly and efficiently. It may be useful to share here the 3 important features of the composition of commercial courts which are, international outlook, commercial skills and knowledge and arbitration sympathetic.

On a positive note, it is often said that, where there are challenges, there will fortunately be opportunities.

With cross border flows of trade and investment in Asia, TPP and others, that hopefully can reinvigorate trade and investment, there are many issues that the region's legal fraternity and business community including Brunei Darussalam can work on, such as legal convergence, uniformity of laws and finding acceptable legal solutions to factors that undermined transnational trade and business.

Therefore, we look forward to an increase of demand on the legal services and there is therefore need to continuously upgrade the range and quality of the legal services and partnership with other established experts beyond Brunei Darussalam. Policy issues are best left to the Government of His Majesty who always have the best interest of his subjects at heart. What is considered to be the best policy in other jurisdiction may not be suitable for Brunei Darussalam and vice versa.

Promoting Integrity

My Lord also touched on the importance of "unassailable integrity" amongst the judiciary and the legal fraternity. As Your Lordship has aptly reiterated despite all the good intention of legal technology, it is eventually our own people who makes the difference. We are indeed grateful for their commitment and dedications. We also welcome aboard the young lawyers who had joined us. Their enthusiasm to learn is very enriching and holds great promise for the future of the legal profession in Brunei Darussalam. My humble advice is to always be true to yourself and to the law as our honourable calling.

On the subject of integrity, another important consideration that affect investor decision in choosing a destination for investment is the level of corruption in a country.

Studies have shown corruption has a negative impact on the level of investment, economic growth and affect the growth of SMEs.

Many studies have also shown that countries with a low level of corruption attract more per capita FDI.

Corruption can take many forms including practices such as bribery, extortion, influence, fraud, and embezzlement. One particularly insidious form of corruption may not necessarily entail financial gain for the perpetrator. This is corruption in the form of abuse of power.

His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, the Sultan and Yang Di-Pertuan of Brunei Darussalam during a working visit at Royal Brunei Police Force Headquarters, Gadong on 31 March 2015 had expressed His Majesty's concern of corruption in the form of abuse of powers for personal interest.

To address this admirable concern, my Chambers in cooperation with the Anti-Corruption Bureau and the Prime Minister's Office drafted the Prevention of Corruption (Amendment) Order, 2015 which came into force on to 22 September 2015. This Order is intended to enhance integrity and honesty amongst public officers.

The new section 12A makes it an offence for public officers to use public funds for private purposes, giving undue preferential treatment, misuse information acquired in the course of his duties or conduct himself in such a manner as to bring his private interests into conflict with his public duties. Section 12B introduces the offence of wilful misconduct or neglect of duty which amounts to an abuse of public trust in the office holder.

Offences under these sections can be committed without the receipt of gratification or monetary benefit. A public officer can be found guilty for these offences if he is found

to be involved in the abuse of powers or discretion, misuse of official functions or failure to declare any conflicts of interest.

The list of Public Bodies in the Schedule of the Prevention of Corruption Act (Chapter 131) and the interpretation of 'public body' in Section 2 of the same Act have also been amended to include Government Linked Companies (GLC) and statutory bodies.

The new Order also ensures Brunei Darussalam's compliance to United Nations Convention Against Corruption (UNCAC) which Brunei Darussalam ratified on 2 December 2008.

My Lord

Although, understandably, the prevailing economic uncertainty has impacted our legal training and capacity building plans, (hopefully temporarily), we will continue to do what we can to enhance the knowledge and skill of our officers. After all, they are our future investment. For example in October 2015 my Chambers collaborated with the Royal Brunei Police Force to jointly organize a seminar aimed at enhancing professionalism in prosecution and investigations of criminal cases. We were honoured to have distinguished speakers namely the Honourable Mr Justice Andrew Macrae, Justice of Appeal of the Court of Appeal in Hong Kong and Mr Sekher Warriar, Deputy Director of Criminal Investigations Department, Singapore Police Force who shared with us their vast experiences as well as best practices that we hope to emulate in the near future.

Recently, the Civil Division organised a seminar entitled "Public Private Partnerships (PPPs) in Relation to Government Projects". The seminar was attended by officers from the Chambers, Brunei Economic Development Board, Ministry of Finance, Department of Economic Planning and Development. The participants were introduced to issues relating to delivering infrastructure projects through PPPs including development of PPP policies and required legislative and regulatory framework by two experienced speakers from Singapore, Mr KC Lye and Ms Nicky Davies from Norton Rose Fulbright (Asia) LLP. We are grateful to the Prime Minister Office for their support.

My Lord

In the interest of time, I will not as in previous years give a detailed account of the numerous work done by the various divisions in my Chambers in discharging our responsibility under the Constitution to His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government, be it as legal adviser or PP. Suffice here for me to assure Your Lordship that my officers and staff had and will continue to discharge our duties with commitment, integrity, perseverance and professionalism to the best of our ability. We will together continue to explore and implement improvements where we can. We will also carry on with our outreach initiatives to show to society that WE CARE. We of course always warmly welcome credit, where credit is due, and hold them close to our heart as encouragement whilst also willing to accept constructive feedbacks and suggestions to do better.

Conclusion

The legal profession will face its own challenges in the years ahead. However a whole of nation approach is called for whereby agencies have to look at their laws, rules or regulation as well as policies that can support and not obstruct this new direction. Chambers is always ready to offer its legal services to the agencies to the best of our ability and capacity.

In conclusion, Your Lordship has our highest assurance that Chambers and its officers will cooperate with the Judiciary, often regarded highly as the respected 'lead' in the administration of justice, to preserve and maintain the Rule of Law while always assuring that nothing will compromise the security, sovereignty of Brunei Darussalam and the Constitution. I must at this juncture highlight the important and challenging role in our system of justice also played by the Judiciary, the Royal Brunei Police Force and other law enforcement agencies such as the Narcotic Control Bureau, Anti-Corruption Bureau, Customs and Excise, Immigration and others. All too often their roles may be taken for granted.

Let us all put our hearts and energy together irrespective of creed, race and religion, to contribute in any small way towards the continued prosperity, harmony and security of our beloved country, for the sake of our future generation.

Finally, I and all in Chambers, wish my Lord, members of the legal fraternity and all present a happy, healthy and successful 2016.

وا بيلاه آل توفيق والهدايا، السلام عليكم ورحمة الله وبركاته

Thank You.