



OECD Competition Assessment Reviews
BRUNEI DARUSSALAM
LOGISTICS SECTOR



OECD Competition Assessment Reviews: Logistics Sector in Brunei Darussalam

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Foreword

Southeast Asia, one of the fastest growing regions in the world, has benefited from a broad embrace of economic growth models based on international trade, foreign investment and integration into regional and global value chains. Maintaining this momentum, however, will require certain reforms to strengthen the region's economic and social sustainability. This will include reducing regulatory barriers to competition and market entry to help foster innovation, efficiency and productivity.

The logistics sector plays a significant role in fostering economic development. Apart from its contribution to a country's GDP, a well-developed logistics network has an impact on most economic activities. An efficient logistics system can improve a country's competitiveness, facilitate international trade and enhance its connectivity to better serve consumers and meet the needs of regionally-integrated production facilities for reliable delivery of inputs and outputs.

Undertaken within the framework of the ASEAN Competition Action Plan, the *OECD Competition Assessment Reviews: Logistics Sector in Brunei Darussalam* assesses the impact of regulation on competition in the sector. This report covers the five main subsectors of the logistics market: freight transportation, including transport by road, inland waterway and maritime, and rail; freight forwarding; warehousing; small-package delivery services; and value-added services. In parallel, the OECD has assessed the impact of state-owned enterprises on competition in Brunei Darussalam in the *OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Brunei Darussalam*.

The OECD assessment was conducted in consultation with the Bruneian authorities and local stakeholders, and with the support of the ASEAN Secretariat and the UK Prosperity Fund (UK Government). The assessment prioritises 63 pieces of legislation and identifies 47 regulatory barriers where changes could be made to foster greater competition in the logistics sector. This is especially important for Brunei Darussalam which has been attempting to diversify its economy to make it less dependent on the oil and gas sector that currently dominates the economy. This report offers policy recommendations that can help Brunei Darussalam's government address structural and regulatory shortcomings in this sector.

These structural reforms have become even more pressing as, similarly to other countries, Brunei Darussalam has suffered from the impact of the Covid-19 pandemic, with exports in June 2020 decreasing by 15.3% year-on-year, while the Asian Development Bank's forecasts expect a GDP growth of 1.4% in 2020 and 2% in 2021. These policy recommendations contribute to reforms that can help the Bruneian economy resume sustainable growth and job creation by enhancing competitiveness, encouraging investment and stimulating productivity in the logistics service sector, with knock-on economy-wide effects and benefits for its consumers.

I congratulate Brunei Darussalam's government, as well as the ASEAN Secretariat and the UK Prosperity Fund (UK Government), on their efforts to lift regulatory barriers to competition and to improve the business environment. The OECD looks forward to continuing and broadening its co-operation with ASEAN to support further its reforms to the benefit of its citizens.

Greg Medcraft



Director, OECD Directorate for Financial and Enterprise Affairs

Acknowledgements

The findings in this report are the result of an independent assessment by the OECD based on an analysis of selected (prioritised) Brunei Darussalam's legislation, stakeholder interviews and desk research. The recommendations are the result of this analysis and are non-binding.

The report was prepared in collaboration with the following authorities who participated in the meetings and provided information, advice and feedback throughout the project:

- Competition Commission Brunei Darussalam
- Ministry of Transport and Infocommunications
- Maritime and Port Authority of Brunei Darussalam
- Land Transport Department, MTIC
- Postal Services Department, MTIC
- Registry of Companies and Business Names, Ministry of Finance and Economy, MOFE
- Darussalam Assets, DA
- FDI Action and Support Centre, FAST.

The following trade associations and private and public companies were interviewed:

- Muara Port Company, MPC
- Brunei Darussalam Malay Chamber of Commerce and Industry
- Brunei Darussalam International Chamber of Commerce & Industry
- DHL Express
- Shipping Association of Brunei Darussalam (SABD)
- Bee Seng Shipping Sdn. Bhd
- Brunei Darussalam Freight Forwarders Association (BRUFA)
- Federation of Transportation and Stevedoring of Brunei Darussalam (FTSBD)
- MOC Sdn. Bhd.
- Archipelago Group
- Bollorè Logistics
- SDV Logistics
- Brunei Darussalam International Air Cargo Centre, BIACC
- Sivli Logistics.

The OECD project team consisted of Ruben Maximiano, ASEAN Project Co-ordinator, Michael Saller, Competition Assessment Project Leader, Gaetano Lapenta, Competition Analyst, Sophie Flaherty, Competition Analyst, Wouter Meester, Competition Expert and Competitive Neutrality Project Leader, and Matteo Giangaspero, Competition Expert, all from the OECD Competition Division. The report was drafted by Gaetano Lapenta under the supervision of Michael Saller, and prepared for publication by Eleonore Morena and Claudia Gemmel.

Antonio Capobianco, Acting Head of the OECD Competition Division and Federica Maiorano, Senior Competition Expert provided valuable comments throughout the process and on the final report.

The project was funded by the UK Prosperity Fund (UK Government).

The information and figures in this report are updated as of December 2019, while economic forecasts have been updated with more recent figures reflecting the impact of the COVID-19 pandemic.

Fostering competition in ASEAN

ASEAN Member States have agreed to implement significant reforms towards market liberalisation and elimination of competition distortions as part of the ASEAN Competition Action Plan 2016-2025 (ACAP 2016-2025) which provides strategic goals, initiatives and outcomes to fulfil the competition-related vision of the AEC Blueprint 2025. In order to increase awareness of the benefits and role of competition in ASEAN, the ACAP 2016-2025 provides for an assessment to be conducted on the impact of non-tariff barriers on competition in the markets of ASEAN Member States followed by recommendations.

The logistics sector was chosen by the ASEAN Secretariat and ASEAN Experts Group on Competition (AEGC) as it can play a significant role in increasing ASEAN's economic development, and is included in the AEC Blueprint's 12 priority integration sectors. Indeed, efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. By developing an efficient logistics system, a country can enhance its connectivity to better serve its importers and exporters, and satisfy the needs of regionally integrated production facilities for reliable just-in-time delivery of inputs and outputs.

Against this background, the ASEAN Secretariat, with funding from the UK Prosperity Fund (UK Government), tasked the OECD to assist with the implementation of Initiatives 4.1 and 4.2 of the ACAP 2016-2025. These two initiatives require an assessment of the impact of competition law and policy on the markets of all 10 ASEAN Member States, both in general (4.1) and with a focus on state-owned enterprises (4.2).

This report contributes to ACAP Outcome 4.1.2 (Impact of non-tariff barriers on competition), building on a competition assessment of regulatory constraints on competition in the logistics services sector. More specifically, the agreed scope for the project is to cover:

- Freight transportation, including transport by road, inland waterways and maritime, and rail.
- Freight forwarding.
- Warehousing.
- Small-package delivery services.
- Value-added services.

The current report is part of a series of 10 similar assessments, one for each ASEAN Member State.

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Abbreviations and acronyms

| | |
|----------------|-------------------------------------------------------------------------|
| ACAP | ASEAN Competition Action Plan |
| AEGC | ASEAN Experts Group on Competition |
| AFAFGIT | ASEAN Framework Agreement on the Facilitation on Goods in Transit |
| AFAFIST | ASEAN Framework Agreement on Facilitation of Inter-state Transport |
| AMS | ASEAN Member States |
| ASEC | ASEAN Secretariat |
| BEDB | Brunei Darussalam Economic Development Board |
| BIMP | Brunei Darussalam, Indonesia, Malaysia, the Philippines |
| BRUFA | Brunei Darussalam Freight Forwarders Association |
| CAGR | Compound Annual Growth Rate |
| CAT | Competition Assessment Toolkit |
| DEPS | Department of Economic Planning and Statistics |
| EAGA | East ASEAN Growth Area |
| FDI | Foreign Direct Investment |
| FIATA | Fédération Internationale des Associations de Transitaires et Assimilés |
| FTA | Free Trade Agreement |
| FTSBD | Federation of Transportation and Stevedoring of Brunei Darussalam |
| GLC | Government-linked company |
| GDP PPP | GDP measured at purchasing power parity |
| ICD | Inland Container Depot |
| IMF | International Monetary Fund |
| IMO | International Maritime Organisation |
| KLTSP | Kuala Lumpur Transport Strategic Plan |
| LPI | Logistics Performance Index |
| MFP | Multifactor productivity |
| MOFC | Minister for Finance Corporation |
| MOFE | Ministry of Finance and Economy |
| MPABD | Maritime and Port Authority of Brunei Darussalam |
| MPC | Muara Port Company |
| MTIC | Ministry of Transport and Infocommunications |
| PSD | Postal Services Department |
| SABD | Shipping Association of Brunei Darussalam |
| TBR | Trans-Borneo Railway |
| TEU | Twenty-foot equivalent |
| USO | Universal Service Obligation |

Executive summary

Logistics sector in Brunei Darussalam

Brunei Darussalam's economy is significantly dependent on oil and gas. Its extensive natural resources have allowed Brunei Darussalam to become one of the wealthiest countries in the world. At the same time, this specific sector's dominance makes Brunei Darussalam more vulnerable to oil and gas price fluctuations. To avoid such shortcomings, in the last two decades Brunei Darussalam has introduced comprehensive reforms to diversify its economy and logistics was included as one of the priority sectors to in the Tenth Year Development Plan (2012-2017).

In 2019, the freight and logistics market was valued at approximately USD 670 million. In the same year, maritime transport accounted for 53% of the total transport-related nominal GDP and most of the goods entering in Brunei Darussalam arrived through the port of Muara. The government is making significant investments to make Brunei Darussalam become a logistics hub in ASEAN and has established one Free Trade Zone (namely the Terunjing Free Trade Zone managed by the Darussalam Enterprise) while cooperating with neighbouring countries to establish an ASEAN single shipping market and facilitate movement of goods across borders.

Key recommendations by sub-sector

The final report makes 47 recommendations on specific legal provisions that should be removed or amended. The main recommendations are summarised below.

Road freight transport

- Remove the provision allowing the introduction of limitations on the number of motor vehicle licences in certain areas. Although congestion and environmental concerns are legitimate objectives, they can be achieved in different ways, for instance by introducing truck bans at peak hours;
- Reduce the administrative burden stemming from vehicle inspections, for instance by requiring roadworthiness tests only every year instead of every six months, or by requiring inspections every six months only for older vehicles;
- Allow registration of as many trailers as the truck operator applies for independently of the number of prime movers and trucks;
- Describe in the law or guidelines the specific cases where an exemption from road traffic laws and regulations can be granted with a view to giving more certainty to market participants.

Maritime freight transport

- Remove the possibility for the Minister of Transport and Infocommunications to give directions "as he thinks fit" resulting in regulatory and operational overlap within the Maritime and Port Authority of Brunei Darussalam (MPABD). After a transition period, the government should ensure full separation of responsibilities as the general rule;

- Consider whether there is a private interest in providing pilotage services. If so, create appropriate legal framework so that piloting services can be effectively tendered based on fair and non-discriminatory terms to guarantee competition for the market;
- Allow pilots to choose between deposit and insurance to guarantee the performance of their duties and possibly reconsider the maximum liability amount that the insurance will cover;
- Allow registering foreign-vessels that are smaller than 1 600 tonnes, following an individual assessment of the application and conditions of the vessel;
- Ensure that reasons for rejection of a ship registration application are given in any decision and that any decision can be challenged before a court;
- Ensure legal certainty and predictability by defining either in the law or in separate guidelines the circumstances in which a ship licence can be withdrawn. Also ensure that decisions can be challenged, for instance before a national court;
- Remove minimum prices and only keep maximum prices for handling and storage of goods within ports. MPABD, the tariff-setting committee and/or the Ministry of Finance and Economy (MOFE) that eventually approves prices should request the opinion of the Competition Commission Brunei Darussalam regarding the justified nature and level of such tariff regulation, in order to ensure consistency with the objectives of the Competition Order;
- Remove the power of Minister of Transport and Infocommunications to grant discounts on port charges so that only MPABD as the closest authority has this power;
- Clarify either in the law or in separate guidelines the criteria for and circumstances in which MPABD can grant financial grants, aid or assistance to any person for the purposes of the MPABD Order;
- Allow transfer of the ownership of the ship, although there is an unsatisfied mortgage. If, based on current regulations, this were to result in the cancellation of the mortgage (as a result of the ship losing the Brunei Darussalam flag), allow recognition of mortgages also on foreign ships;
- Remove precise prescriptions on the number of marine officers and provide instead standards for safety and security on the ship that the owner or operator of the ship must comply with. This should include for instance maximum number of working hours for seafarers in order to avoid damages to their health or safety;
- Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement;
- Issue guidelines that reflect the current practice on granting exemptions from the provisions of the Merchant Shipping Order with the aim of giving more legal certainty to market participants
- Accept bank guarantees as an alternative to upfront payment of minimum paid-up capital.

Freight forwarding

- Align the requirements so that sea freight forwarders are not subject to more stringent or onerous licensing requirements than road freight forwarders.

Warehousing

- Allow companies to own land, at least as long as the majority share of the legal person is owned by Brunei Darussalam citizens;
- Permit longer leasing contracts for the logistics sector;
- Facilitate the procedure to transfer land ownership with the goal of significantly reducing the number of days required for transferring land. This could be done for example by introducing statutory time limits for the whole process or by removing certain phases from the current process.

Small package delivery

- Clarify the boundaries of the Postal Services Department's monopoly so as to exclude expressly small package delivery and express delivery. This could be done for instance by defining precisely what falls within the notion of "letter" and exclusive privilege. The OECD supports Brunei Darussalam's efforts to provide more clarity in the Post Office Act. As an alternative, consider lifting the monopoly granted to the Postal Services Department and, after assessing universal service obligation (USO) costs, if needed, introduce a mechanism to provide compensation for the additional costs stemming from such USO;
- Apply the same liability limitations to the Postal Services Department and private operators with regards to the activities conducted in competition with each other. The Post Office Act should be amended to fully reflect the UPU standards and international conventions on liability to PSD non-express delivery services.

Horizontal legislation

- Ensure that authorities publish all consolidated relevant pieces of legislation (including all subsequent amendments) within their responsibility on their respective websites. As an alternative, organise the legal database in an easily accessible way. Authorities should revise all legislation to include new amendments in the original main piece of legislation or, alternatively, list the main legislation and then provide a link to any amendments. This could be done for instance by the Attorney-General's Chambers that is currently responsible for improving and updating the existing legal online system.

International agreements

- Introduce specific provisions or amend existing provisions to implement the ASEAN Framework Agreement on Multimodal Transport into the national legal order;
- Regarding the maximum number of licences laid down in the BIMP (Brunei Darussalam, Indonesia, Malaysia, the Philippines) EAGA (East ASEAN Growth Area) Memorandum of Understanding (MOU) on Transit and Inter-State Transport of Goods and Protocol 3 of the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT), either remove these limitations and grant a licence to all those that request it (based on qualitative criteria to be clearly defined) or regularly assess the market's need and demand, and consider increasing the maximum number of licences;
- Introduce online applications and remove the requirement to submit hard copies of applications for cross-border transport permit for trucks.

1 Introduction

1.1. Introduction to the ASEAN competition assessment project

Logistics plays a significant role in increasing a country's economic development. The Association of Southeast Asian Nations (ASEAN) chose the logistics sector as one of its 12 priority sectors in its ASEAN Framework Agreement for the Integration of Priority Sectors, signed in 2004. As part of the *ASEAN Competition Action Plan 2016-2025*, the ASEAN Secretariat asked the OECD to carry out: 1) an independent competition assessment of legislation in the logistic sector; and 2) prepare a regional report assessing the impact on competition of state-owned enterprises (SOEs) and government-linked companies in selected markets in ASEAN.

An OECD team has been conducting competition assessments of laws and regulations in ten ASEAN Member States (AMS), as well as a global study for the ASEAN region. It has worked in close co-ordination with the ASEAN Secretariat (ASEC), the ASEAN Experts Group on Competition (AEGC), as well as with the responsible authorities within each AMS, in particular, competition authorities. For Brunei Darussalam, the analysis was carried out with the support of the Competition Commission Brunei Darussalam and funded by the UK government's Prosperity Fund.

The following study covers the first component of the project, the competition assessment of laws and regulation in the logistic sector in Brunei Darussalam.

1.2. Introduction to the logistic sector

According to a common definition, logistics is the process of planning, implementing, and controlling procedures for the efficient and effective transportation and storage of goods including services, and related information from the point of origin to the point of consumption for the purpose of conforming to customer requirements. This definition includes inbound, outbound, internal, and external movements. (Mangan and Lalwani, 2016, p. 9^[1]).

Other authors define logistics as the process of strategically managing the procurement, movement and storage of materials, parts and finished inventory (and the related information flows) through an organisation and its marketing channels in such a way that current and future profitability are maximised through the cost-effective fulfilment of orders (Christopher, 2016, p. 2^[2]).

Using twenty-foot equivalent (TEU) containers is nowadays a fundamental feature of all major national and international transport modes. TEUs can be stacked on top of each other on board a ship, allowing the efficient use of space and better cargo handling. Containerisation makes the so-called "intermodal system of freight transport" possible, which enables the uncomplicated movement of bulk goods from one mode of transport to another. TEU containers and container systems also allow a number of small packages to be consolidated into a large single unit, leading to a reduction in transport and handling costs.

Generally, logistics is a cluster of activities with each area involving a range of different actors and services.¹ This report will focus on five subsectors of logistics:

- Freight transportation (excluding air transport).
- Freight forwarding.
- Warehousing.
- Small-package service delivery.
- Value-added logistics.

The exact scope of the logistics sector was agreed with the ASEAN Secretariat and each ASEAN Member States in the context of the ASEAN Experts Group on Competition.

The report does not cover customs issues.

1.2.1. Freight cargo transport

Five principal modes of transport of freight are generally defined: 1) road; 2) water; 3) rail; 4) air; and 5) pipelines (Mangan and Lalwani, 2016, p. 103^[1]). This report only covers the first three modes of freight transport. Transport by air usually makes up a small percentage of overall freight transport in the ASEAN region; in 2019 in Brunei Darussalam, for example, it represented 16.8% of the total transport-related nominal GDP. Transport by air also raises a set of different questions which are often regulated in bi- or multilateral agreements. Transport by pipelines is usually not counted as logistics and is legislated for under energy law. For that reason, this report does not cover the transport of oil and gas.

Road freight transport

The road freight transport sector encompasses the transportation of goods between economic enterprises and between enterprises and consumers, including bulk goods and goods requiring special handling, such as refrigerated and dangerous goods. The law covering road transport usually distinguishes between transport for own-account, which is freight transportation between establishments belonging to the same business, and transport for hire or reward. In Brunei Darussalam, land transport represented 3.2% of the total GDP originating from the transport sector in 2019. However, in many countries, road freight transport continues to be the dominant mode of transport. Fixed costs are low as the physical transport infrastructure, such as motorways, is usually in place and publicly funded; variable costs include fuel costs, and maintenance charges, road use and congestion. Road is also often the most suitable or efficient mode of transport since it allows door-to-door transport without any transfers of cargo between different vehicles, which results in lower costs for senders and recipients, as well as in reduced risks of possible loss or damage from cargo transfers.

Inland waterway and maritime freight transport

Waterborne freight transport refers to goods transported on waterways using various means, including boats, steamers, barges and ships, both within and outside the country. When the goods are transported by using inland waterways such as rivers or canals, transport is referred as inland waterway transport. Maritime transport refers to seaborne movement of goods on ships, linking a large number of origin and destination points, either within the country's territorial waters, for instance within an archipelago or in case of coastal trading (known as cabotage) or, more often, to other countries² (OECD, 2016, p. 141^[3]). Of global international trade, 90% is transported by sea. In Brunei Darussalam, maritime transport constituted 53% of the total GDP originating from the transport sector in 2019. Transporting cargo by sea is ideal for high-volume cargo that is not necessarily time sensitive or which has long lead times for delivery (Rushton, Croucher and Baker, 2017, p. 447^[4]). Fixed costs for waterborne freight transport include vessels, handling

equipment and terminals; variable costs are low due to economies of scale based on large volumes of freight (Mangan and Lalwani, 2016, p. 105^[1]).

On the global level, 60% of the goods by value moved by sea are carried by liner vessels.³ Shipping liners are carriers providing shipping services to shippers on fixed routes with regular schedules between ports (International Transport Forum, 2018, p. 10^[5]). In the past, liners were often organised into conferences, formal groups of shipping lines operating on shipping routes that brought together all lines operating in a specific geographic zone to set common freight rates and regulate capacity. This practice has been under scrutiny in some regions of the world, such as in the EU,⁴ and its relevance has decreased in the last decades, mostly as a result of the United States' 1998 Ocean Shipping Reform Act and the repeal of the EU Block Exemption to liner shipping conferences in 2006 (International Transport Forum, 2018, p. 11^[5]).

Ports in maritime and inland waterway transport serve as infrastructure to a wide range of customers including freight shippers, ferry operators and private boats. One of the main functions of ports is facilitating domestic and international trade of goods, often on a large scale. Most ports have an extensive network of infrastructure including quays, roads, rails tracks, areas for storage and stacking, repair facilities, as well as fences or walls to securely enclose the port. In addition, ports include superstructures constructed above main infrastructure, which comprise terminal buildings, warehouses and cargo-handling equipment, such as lifting cranes and pumps. Major shipping lines usually organise their services as hub-and-spoke networks with hubs centred on large container ports.

The main and only deep-water port in Brunei Darussalam is the Muara Port.

Typical port services include:

- Cargo-handling, which involves both cargo-loading operations, commonly known as stevedoring, and marshalling services, such as storage, assembly and sorting of cargo. Charges for cargo handling vary from port to port and by the type of cargo handled. Not all ports are capable of handling all types of cargo and some ports are established to handle only one type of cargo, such as crude-oil terminals.
- Piloting, which is a specialised service provided by pilots with local knowledge who assist ship captains navigating and manoeuvring vessels inside the port area. Maritime pilots tend to be navigation experts with high skill levels (often former captains) and specialised knowledge of the particular navigation conditions of a port, such as tide, wind direction and sea depth. These skills enable them to manoeuvre ships through the narrow channels of a port, reduce the speed of heavy vessels, and to avoid dangerous areas.
- Towage, which is the service of moving ships within the port using tugboats, small but powerful vessels used to assist much larger ships to manoeuvre in a port's limited space. Tugboats are capable of both pushing and towing vessel.
- Other services such as bunkering (fuel supplies) and providing water and electricity.

Some shipping services, as well as shipping-related activities taking place in ports, are provided by the port administration under monopoly conditions, while others are subject to competition. In some geographical regions, there is fierce competition between ports as well as within ports (OECD, 2018^[6]). In others, however, enhancing competition would be difficult, especially when ports are local natural monopolies with limited space and so subject to heavy national regulations. The state of port competition would need to be assessed in the context of ports facing global shipping alliances with strong bargaining power (International Transport Forum, 2018^[5]), especially since certain shipping sectors such as container shipping have recently become much more concentrated (OECD, 2018, p. 181^[6]).

Rail freight transport

Rail freight refers to freight, cargo or goods transported by railways and does not include parcels or baggage transport services associated with railway passenger services. Fixed costs for rail tend to be high due to expensive requirements such as locomotives, wagons, tracks and facilities such as freight terminals; variable costs are, however, mostly low (Mangan and Lalwani, 2016, p. 105^[1]). The OECD has stated regulatory authorities should ensure competition development in the provision of services and non-discriminatory access to infrastructure, while providing for the right incentives for investment in the network, ensuring public-service needs and safeguarding consumers' rights (OECD, 2018, p. 158^[6]).

1.2.2. Freight forwarding

Freight forwarding means organising the transportation of items, on behalf of customers according to their needs; this can also include ancillary activities, such as customs clearance, warehousing, and ground services. Unlike the providers of cargo transport services, freight forwarders do not generally own any part of the network they use and normally hire transportation capacity from third parties. Freight forwarders instead specialise in arranging storage and shipping of merchandise on behalf of shippers. They usually provide a full range of services such as tracking inland transportation, preparation of shipping and export documents, booking cargo space, negotiating freight charges, freight consolidation, cargo insurance, and filing of insurance claims. Other services include arranging order collection from the point of origin to the shipping port, customs clearance, final delivery at the destination country, and providing knowledge of the different costs associated with different modes and destinations (Rushton, Croucher and Baker, 2017, p. 444^[4]).

Foreign companies, such as DB Schenker, DHL, Yusen Logistics, Kerry Logistics, Archipelago, and Ceva have a strong position in Brunei Darussalam's freight-forwarding market.

1.2.3. Warehousing, small-package delivery services, and value-added services

The last three subsectors investigated in this report comprise warehousing, small package delivery services and value-added services.

Warehousing encompasses the storage (holding) of good in bonded warehouses (where dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty) or non-bonded warehouses. Often, the main problem for building and operating new warehouses is accessing land in central locations.

Small-package delivery services deliver small packages from pick-up location to drop-off location. They can include express or deferred delivery, both domestically and internationally, by any mode of transport. A separate OECD report analyses more in-depth possible distortions to competition for postal services related to SOEs and so they will not be covered here (OECD, 2020^[7]).

Value-added logistics are services related to physical activities, including quality-control services, packing and packaging, labelling and tagging, configuration and customisation, and assembly and kitting.

1.3. Benefits of competition

The Competition Assessment of Laws and Regulations project aims to identify regulations that may unduly restrict market forces and, by doing so, may harm a country's growth prospects. In particular, the project identifies regulatory provisions that:

- are unclear, meaning they lack transparency or may be applied in an arbitrary fashion
- prevent new firms, including small- and medium-sized businesses from accessing markets

- allow a limited number of firms to earn greater profits than they otherwise would, for reasons unrelated to their underlying productivity or the quality of their products
- cause consumers to pay more than they otherwise would.

Each restriction is likely to have an impact well beyond individual consumers in the sectors assessed. When consumers can choose and shop around for a variety of products and services, firms are forced to compete, innovate more, and improve their productivity (Nickell, 1996^[8]; Blundell, 1999^[9]; Griffith, 2006^[10]). Industries in which there is greater competition experience faster productivity growth. These conclusions have been demonstrated by a wide variety of empirical studies and summarised in the OECD's "Factsheet on how company policy affects macro-economic outcomes" (OECD, 2014^[11]). Competition stimulates productivity primarily because it provides the opportunity for more efficient firms to enter and gain market share at the expense of less efficient firms.

In addition to the evidence that competition fosters productivity and economic growth, many studies have shown the positive effects of more flexible product market regulation (PMR), the area most relevant to this report.⁵ These studies analyse the impact of regulation on productivity, employment, research and development, and investment, among other variables. Differences in regulation also matter and can reduce significantly both trade and foreign direct investment (FDI)⁶ (Fournier and alia, 2015^[12]; Fournier, 2015^[13]). By fostering growth, more flexible PMR can help the sustainability of public debt.

There is a particularly large body of evidence on the productivity gains created by more flexible PMR. At the company and industry level, restrictive PMR is associated with lower multifactor productivity (MFP) levels⁷ (Nicoletti and Scarpetta, 2003^[14]; Arnold, Nicoletti and Scarpetta, 2011^[15]). The result also holds at aggregate level (Égert, 2017^[16]).⁸ Anti-competitive regulations have an impact on productivity that goes beyond the sector in which they are applied and this effect is more important for the sectors closer to the productivity frontier (Bourlès et al., 2013^[17]).⁹ Specifically, a large part of the impact on productivity is due to investment in research and development (Cette, Lopez and Mairesse, 2013^[18]). Moreover, lowering regulatory barriers in network industries can have a significant impact on exports (Daude and De la Maisonnette, 2018^[19]).

Innovation and investment in knowledge-based capital, such as computerised information and intellectual property rights (IPRs), are also negatively affected by stricter PMR. A number of studies show that competitive pressure, as measured by lower regulatory barriers (for example, lower entry costs to a market), encourages firms in services sectors, such as retail and road transport, to adopt digital technologies. (Andrews and Criscuolo, 2013^[20]; Andrews and Westmore, 2014^[21]; Andrews, Nicoletti and Timiliotis, 2018^[22]). Pro-competition reforms to PMR are associated with an increase in the number of patent awards (Westmore, 2013^[23]). More stringent PMR is shown to be associated with reduced investment and amplifies the negative effects of a more stringent labour market (Égert, 2017^[24]).¹⁰

Greater flexibility can also lead to higher employment. A 2004 study found that after deregulating the road transport sector in France, employment levels in the sector increased at a faster rate than before deregulation¹¹ (Cahuc and Kamarz, 2004^[25]). A 10-year, 18-country OECD study published in 2014 concluded that small firms that are five years old or less on average contribute about 42% of job creation (Criscuolo, Gal and Menon, 2014^[26]).¹² As noted in the OECD report *Economic Policy Reforms 2015*: "such a disproportionately large role by young firms in job creation suggests that reducing barriers to entrepreneurship can contribute significantly to income equality via employment effects" (OECD, 2015^[27]).

There is also some evidence on the benefits of lifting anticompetitive regulations for reducing income inequality. One study found that less restrictive PMR improved household incomes and reduced income inequality.¹³

Finally, one 2018 study looked at the impact of PMR on the persistence of profits in the long term (Eklund and Lappi, 2018^[28]). It concluded that regulations that raise barriers to entry can protect incumbents' above

average profits and more stringent product market regulation, as measured by the OECD PMR indicator, is associated with persistent profits.

The results described above hold in a variety of settings, but the specific estimates may differ depending on the country. For instance, a 2017 study quantified the impact of structural reforms, including PMR and labour reform, in a large sample including both OECD and non-OECD countries, and found that: “stringent product market regulations will have a three-time larger negative impact on MFP in countries with per capita income lower than about USD 8 000 (in PPP terms)” (Égert, 2017_[16]).¹⁴

Increased market competition may also reduce gender discrimination and equality (Pike, 2018_[29]; Cooke, 2018_[30]). Further, the 2018 OECD Roundtable on Competition Policy and Gender noted that restrictive or discriminatory laws or policies against women’s economic participation may be interpreted as anticompetitive regulations. Consequently, pro-competitive regulations following from a pro-competition policy that takes gender into account can help to address issues of gender equality. For this reason, this project will also address any laws that specifically hinder the involvement of women in the logistics business, resulting in the creation of anti-competitive barriers. Such laws could indeed restrict competition by limiting the ability of some suppliers (women) to provide a good or service or by significantly raising the cost of entry or exit by a supplier (women).

In summary, anti-competitive regulations that hinder entry into and expansion in markets may be particularly damaging for a country’s economy because they reduce productivity growth, limit investment and innovation, harm employment creation, and may favour a certain group of firms over other firms and consumers, with consequences for income inequality.

1.4. Introduction to Brunei Darussalam

Brunei Darussalam is situated in a strategic location, at the crossroad between some of the ASEAN biggest member States (Malaysia, Indonesia, Philippines and Viet Nam) and in the middle of China’s connections with Middle Eastern and central Asian countries. Thanks to this favourable position, the opening of the *Belt and Road* initiative creates significant opportunities for Brunei Darussalam to increase its importance as a logistic hub in ASEAN.¹⁵

Brunei Darussalam is Southeast Asia’s smallest country in terms of inhabitants. As of 2019, it had a population of 459 500 people, that has been constantly growing since 1961.

1.4.1. GDP and economic growth

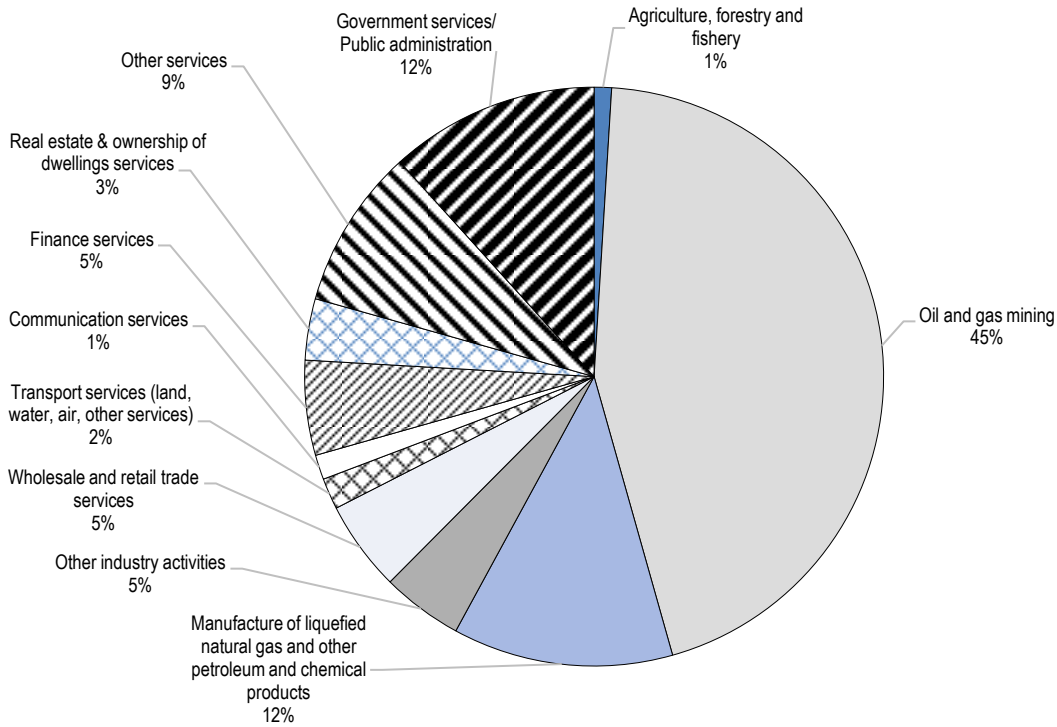
According to the International Monetary Fund (IMF), looking at their GDP per capita based on purchasing power parity (GDP PPP), Brunei Darussalam is the fifth wealthiest State in the world and the second in ASEAN, after Singapore.¹⁶ In 2019, its GDP amounted to more than USD 13 billion.

The oil and gas sector dominate the economy and the country’s extensive natural resources have allowed making it one of the richest countries in the world. Figure 1.1 below shows the percentage contribution to GDP by economic sector. In 2019, transportation only accounted for 1.7% of the country’s GDP, against approximately 45% originating from oil and gas mining. However, the GDP originating from the transportation and storage sector is growing fast: it registered an annual growth rate of 9.1% in 2016, though it declined to 4.6% and 0.3% in 2017 and 2018 respectively.¹⁷

The country’s heavy reliance on the oil and gas sector makes its economy more vulnerable to fluctuations in oil and gas world prices.

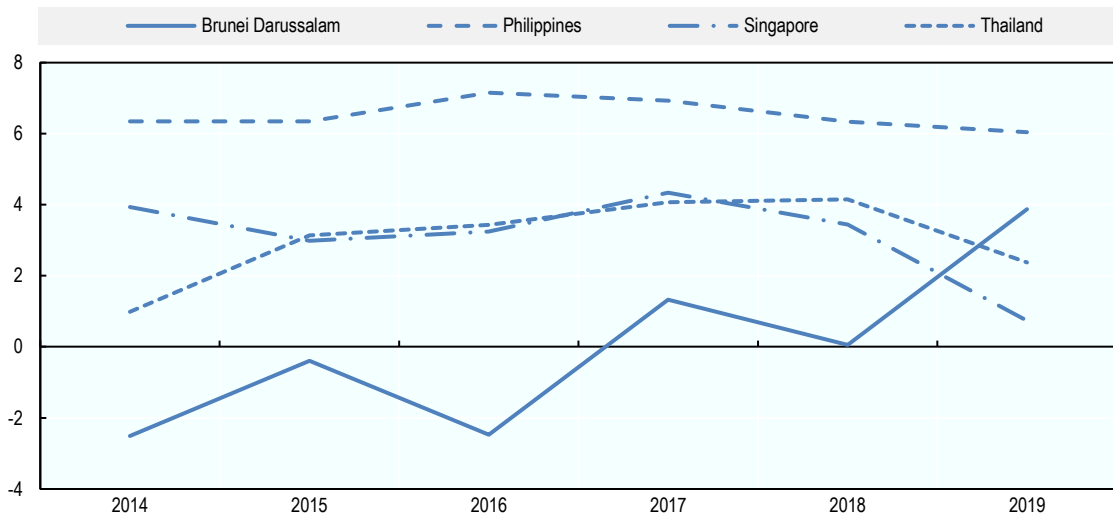
Figure 1.2 below shows that within the last five years, Brunei Darussalam’s growth rate across years fluctuated more significantly than other ASEAN countries.

Figure 1.1. Contribution (in %) to GDP by sector, 2019



Source: Department of Economic Planning and Statistics, Ministry of Finance and Economy, Brunei Darussalam, <http://www.deps.gov.bn/Site/Pages/National%20Accounts.aspx> (accessed on 23 July 2020).

Figure 1.2. GDP growth rate (% per year)

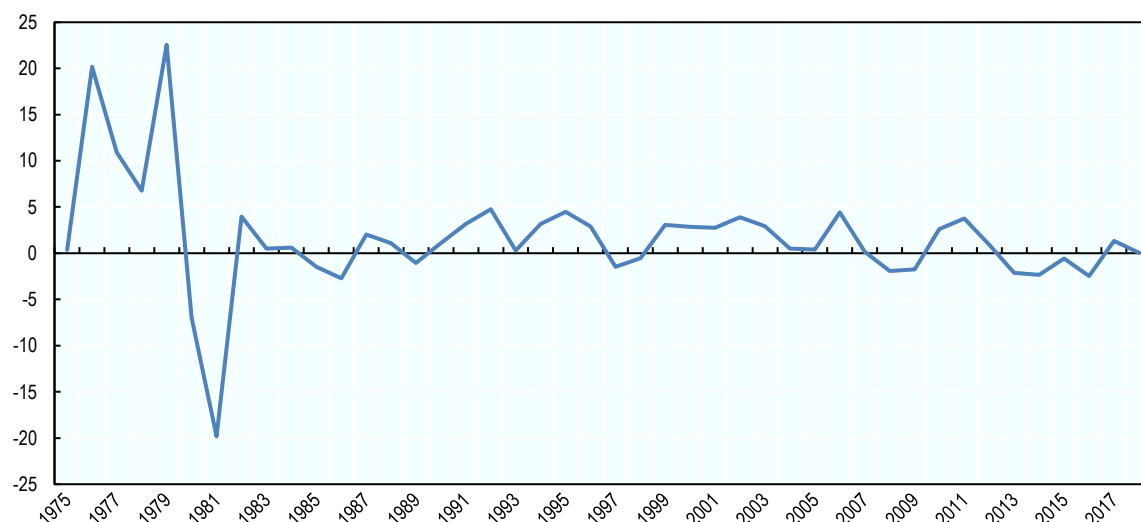


Source: World Bank (2020), <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2019&locations=BN-PH-SG-TH&start=2008>.

The slump in oil prices for instance was the main reason for Brunei Darussalam’s negative growth at the beginning of the 1980s, when the annual growth rate fell to -19.8%, as shown in Figure 1.3 below. The economy benefited from high global energy prices in the early 2000s. It slowed in 2007 (with a growth rate of 0.15%) and, due to the world economic downturn, even shrank in 2008 (-1.9 %) and 2009 (-1.8%)

before returning to small but steady growth in 2010-2014, thanks to the higher energy prices, which declined then sharply rose again in 2014. Current forecasts of future oil prices seem to suggest that there will not be a price recovery to its peak value of 2010 (Yean, 2018, p. 243^[31]).

Figure 1.3. Brunei Darussalam GDP growth (annual %)



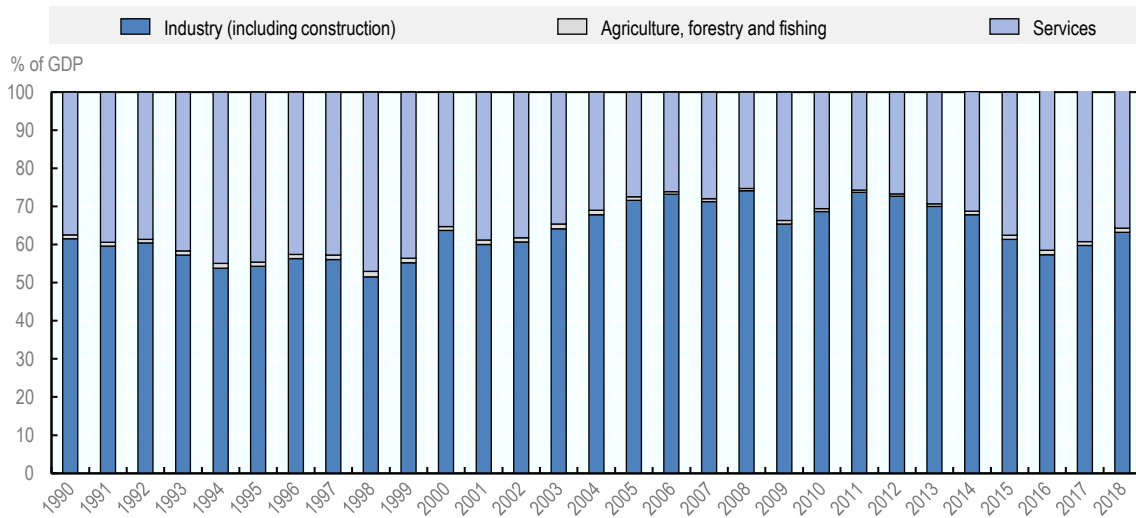
Source: World Bank (2018), <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=BN>.

1.4.2. Contribution to GDP by sector and the importance of services

As shown in Figure 1.1 and, across years, in Figure 1.4, today still more than 63% of Brunei Darussalam's GDP originates from the industry sector (including mainly oil and gas),¹⁸ though the share has fallen from 90.5% in 1974 as a result of Brunei Darussalam's attempt to diversify its economy. Increased comprehensive reforms to move away from the heavy dependence on oil and gas started in 2001, when the Brunei Darussalam Economic Development Board (BEDB) was established with the specific purpose of attracting FDI in the country. However, despite these attempts, as shown in Figure 1.4 below, Brunei Darussalam's economy continued to be dependent on its natural resources. Some analysts have noted that "the main reason for the failure to diversify was attributed to a poor enabling environment, such as a lack of clarity of purpose on diversification objectives and strategies, bureaucratic hindrances, a weak private sector, lack of scale due to size of economy, weak human capital, a high cost structure, lack of FDI outside of the oil and gas sector and unexploited potential growth areas" (Yean, 2018, p. 242^[31]).

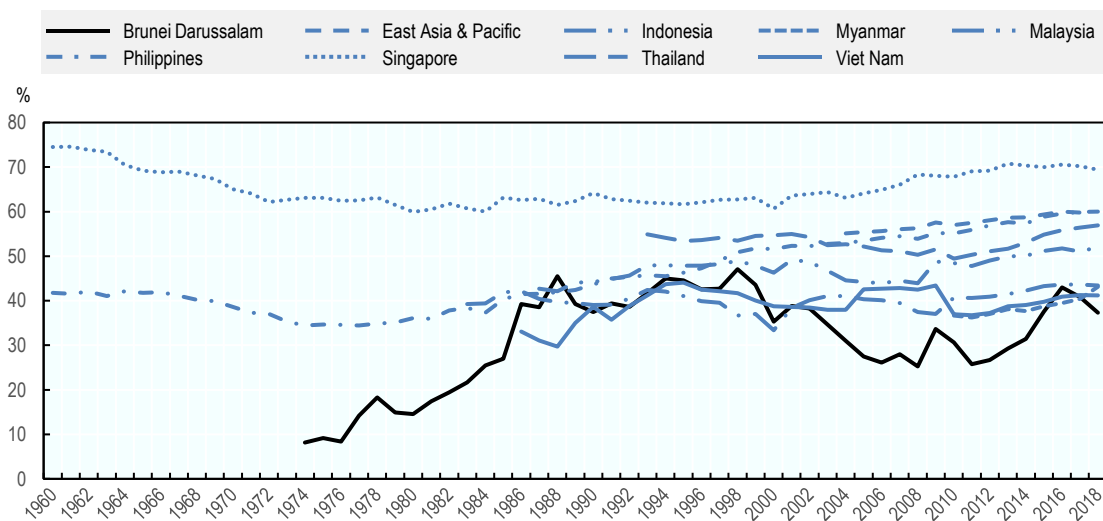
The most recent wave of efforts to diversify the economy began in 2008, when the government revealed its Wawasan 2035 (Vision 2035) plan, setting the country's development strategy. The sectors to prioritise in the diversification effort were listed in the Tenth National Development Plan (2012-2017) and included logistics, alongside financial services, tourism and information, technology and communication (Yean, 2018^[31]). Figure 1.5 below shows that, although the percentage of GDP originating from services is lower in Brunei Darussalam compared to other ASEAN countries, the importance of services for the national economy has been slightly growing over the last two decades. In 2018, the IMF also noted that the FDI projects and the reforms aimed at fostering economic diversification by improving the business climate have started to bear fruit.¹⁹

Figure 1.4. Value added by sector



Source: World Bank (2018), <https://data.worldbank.org/indicator/NV.IND.TOTL.ZS?locations=BN>.

Figure 1.5. Services as a percentage of GDP in ASEAN countries, 2000-18



Source: World Bank, <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=BN-Z4-ID-MM-MY-PH-SG-TH-VN>.

In 2018, Brunei Darussalam’s exports contributed to almost 52% of its GDP. This is down from a maximum of 78% in 2008, as shown in Figure 1.5.

Although the country imports most of its consumer goods, Brunei Darussalam’s large oil and gas exports have allowed it to keep its trade balance positive. The main destinations of Brunei Darussalam exports (mainly comprising mineral fuels and chemicals) in 2018 were Japan (30%), Korea (14%), Malaysia (11%) and Thailand (11%), while imports mainly came from China (21%), Singapore (19%), Malaysia (18%) and the US (8.3%).

1.4.3. Business environment

The World Economic Forum's Global Competitiveness Report ranks Brunei Darussalam 107 out of 140 survey economies in terms of the extent of market dominance, 115 for competition in services, and more highly for the distortive effect of taxes and subsidies on competition (28) (World Economic Forum, 2018, p. 121^[32]). Table 1.1 shows the ranking of other ASEAN countries in relation to some specific indexes.

Table 1.1. Ranking of ASEAN countries in Global Competitiveness Report

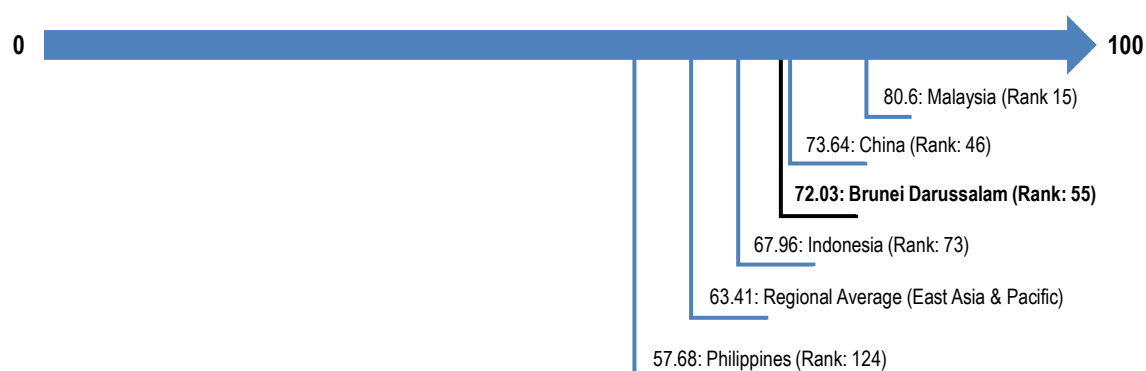
| | Extent of market dominance | Competition in services | Distortive effect of taxes and subsidies on competition |
|-------------------|----------------------------|-------------------------|---------------------------------------------------------|
| Brunei Darussalam | 107 | 115 | 28 |
| Cambodia | 100 | 113 | 111 |
| Indonesia | 39 | 42 | 34 |
| Lao PDR | 46 | 127 | 74 |
| Malaysia | 9 | 13 | 18 |
| Thailand | 96 | 37 | 57 |
| Philippines | 112 | 21 | 65 |
| Viet Nam | 77 | 103 | 94 |
| Singapore | 12 | 7 | 1 |

Note: Data for Myanmar was not available.

Source: (World Economic Forum, 2018^[32]).

According to the *Doing Business* 2019 report (World Bank, 2019^[33]), Brunei Darussalam ranked 55 with regards to its overall ease of doing business, moving up from 88 in 2009. On the global level, New Zealand, Singapore and Denmark make up the top three, while in the ASEAN region, the top performer after Singapore is Malaysia, followed by Thailand and Brunei Darussalam (55).²⁰

Figure 1.6. Ease of Doing Business score and ranking

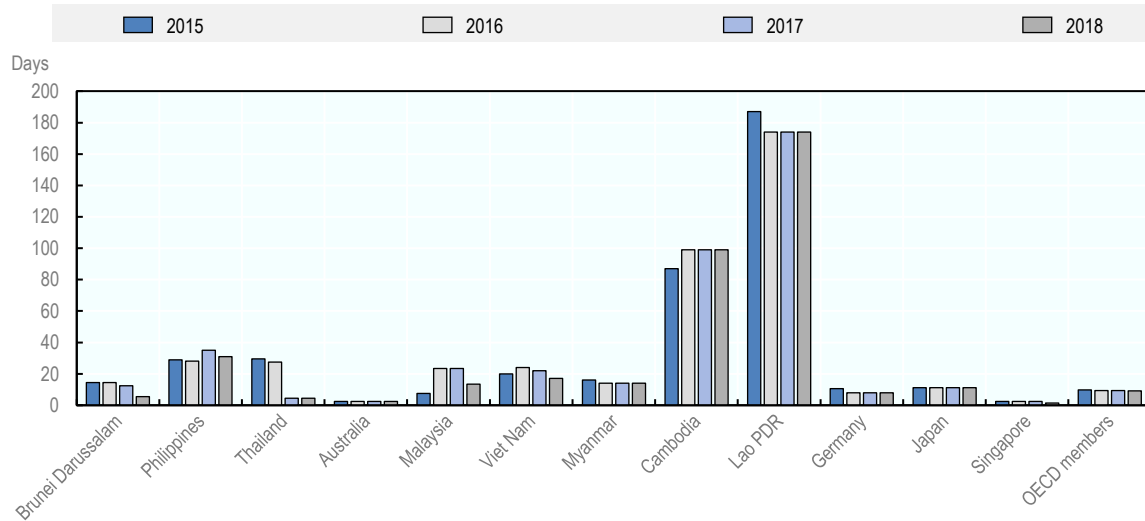


Source: (World Bank, 2019, p. 4^[33]).

Among the factors the World Bank takes into account to calculate the ease of doing business in a country is the time required to open a new business.²¹ Regulations regarding the launch of a new business can affect market entry more generally. In particular, the World Bank collects data on the number of days needed to complete all the necessary procedures to operate a legal business in the country. As shown in Figure 1.7, since 2015, almost all ASEAN Member States have significantly reduced the amount of time

required to start a business and in most of these countries, it is now possible to conclude all the necessary procedures within one month (for example, 31 calendar days in the Philippines, 13.5 in Malaysia). These steps bring most ASEAN countries closer to the OECD members' average of 9.2 days; Brunei Darussalam (as well as Singapore and Thailand) is already performing above the OECD average.

Figure 1.7. Time required to start a business



Source: World Bank World Development Indicators, <https://data.worldbank.org/indicator/IC.REG.DURS?end=2018&locations=TH-PH-BN-AU-MY-VN-MM-KH-LA-DE-JP-SG-OE&start=2018&view=bar>.

2 Economic and institutional overview of the logistic sector in Brunei Darussalam

The logistics sector is a crucial sector for the development of any economy, connecting firms to both domestic and international opportunities (World Bank, 2018^[34]). Apart from its large contribution to the GDP, the existence of a well-developed logistics network ultimately affects most economic activities and is fundamental to productivity and growth.

ASEAN also recognises the importance of connectivity and logistics for its overall economy. Therefore, in 2016, it adopted a Master Plan on ASEAN Connectivity 2025 with the aim of strengthening ASEAN competitiveness through enhanced trade routes and supply chain efficiency.²²

As a major component of the logistics sector, freight transport has an important role in enhancing economic growth and promoting consumer welfare. The movement of freight within a country and across borders improves the integration of national and international markets, fostering competition and specialisation. To this aim, freight transport constitutes a sector of vital importance for Brunei Darussalam's economy. It can also aid development by connecting remote regions to centres of economic activity, allowing consumers to benefit from a wider variety of products and services, while spreading technological advancements across the country and internationally (Boylaud, 2000^[35]).

A well-functioning logistics sector thus underpins most economic activities and is fundamental for productivity and growth. While still developing, the whole Bruneian transport service sector (by land, water, air and other transport services) generated BND 325.5 million (approximately, USD 240 million), corresponding to almost 1.8% of GDP in 2019,²³ and employed 6 371 people, up from 4 969 in 2018.²⁴ In 2019, the freight and logistics market was valued at approximately USD 670 million (Mordor Intelligence, 2020^[36]).

2.1. Key figures of the logistic sector

2.1.1. GDP from logistics sector

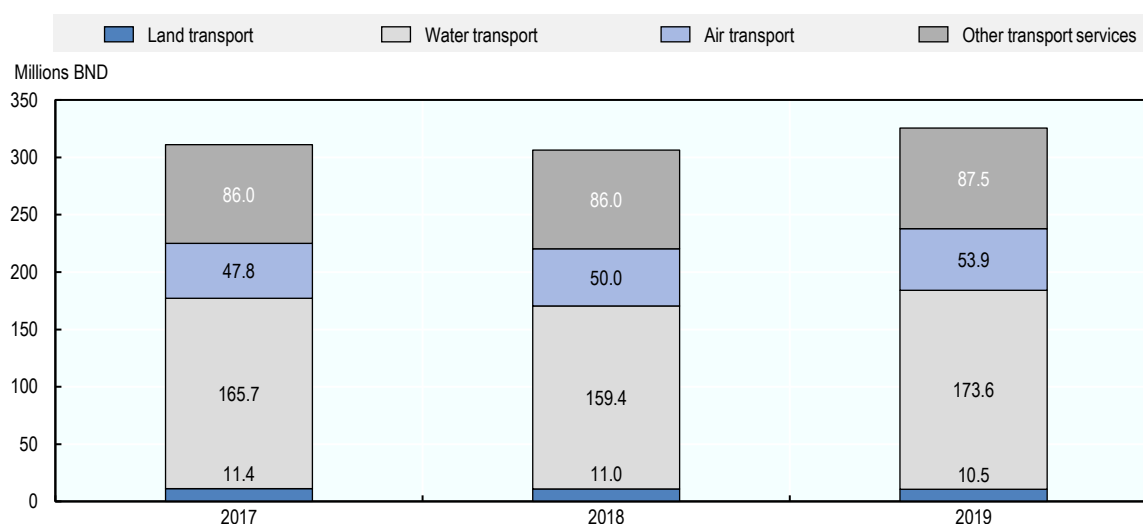
As discussed in Section 1.4, Brunei Darussalam's economy is heavily dependent on oil and gas, which accounted for 57% of the overall GDP in 2019 with the consequence that all the other sectors, including logistics, are particularly vulnerable to oil and gas market changes.

As shown in Figure 1.2, in 2019, transport services (including transport by land, water, air and other means of transport) contributed to approximately 1.8% of GDP and accounted for BND 325.5 million (approximately, USD 240 million) and constitute the sixth largest non-oil and gas sector.

The importance of maritime transport is confirmed when looking at the breakdown of the market by mode of transport. Figure 2.1 shows the nominal GDP originated by the transport sector, differentiated by mode

of transport. In 2019, maritime transport accounted for more than 50% of the total transport-related GDP, amounting to approximately BDN 174 million, compared to 3.2% (i.e., BDN 10.5 million) for land transport.

Figure 2.1. GDP originating from transport sector, by segment, 2017-19



Source: Department of Economic Planning and Statistics, Ministry of Finance and Economy, Brunei Darussalam, <http://www.deps.gov.bn/SitePages/National%20Accounts.aspx> (accessed on 23 July 2020).

2.1.2. Logistics market

In 2019, the turnover of the freight and logistics market in Brunei Darussalam was estimated at approximately USD 670 million (Mordor Intelligence, 2020^[36]). Consistently with its efforts to diversify the economy in order to reduce its dependence on oil and gas,²⁵ Brunei Darussalam has made significant investments in the transport infrastructure.²⁶ Therefore, the logistics market is expected to register a CAGR of 7.44% over the period 2018-2023.²⁷

Transport by sea currently constitutes the prevalent mode of transport of freight to the country. The importance of maritime transport for Brunei Darussalam is confirmed by the growing number of merchant ships registered in the country, that increased by more than 23% only between 2014 and 2015, as shown in Table 2.1 below.

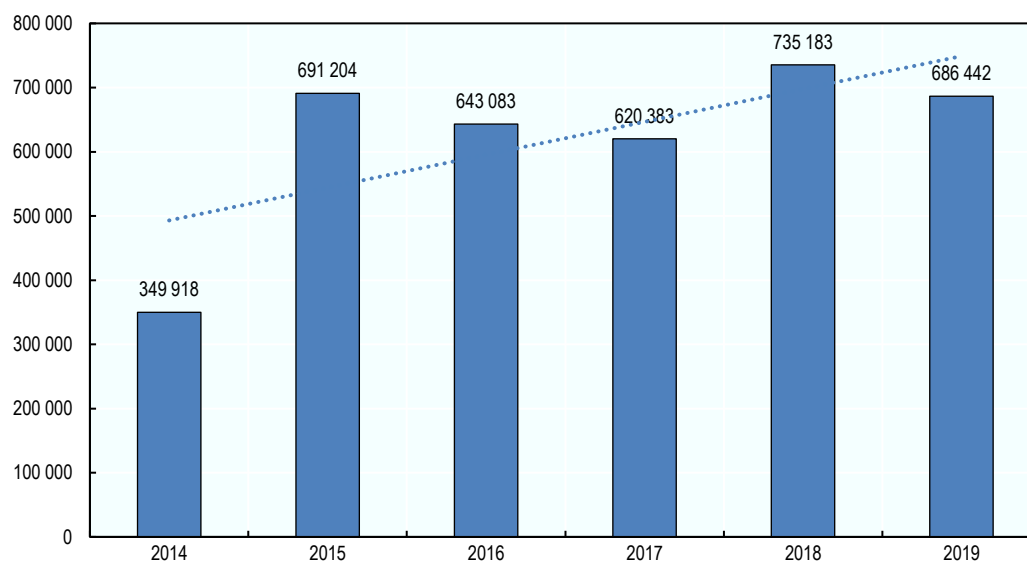
Table 2.1. Total merchant fleet ships by flag of registration at a given time, annual, 2011-18

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------------|-----------|-----------|-----------|-----------|-----------|------------|------------|------------|
| Brunei Darussalam | 82 | 82 | 81 | 81 | 97 | 102 | 104 | 100 |
| Cambodia | 836 | 754 | 740 | 699 | 606 | 580 | 351 | 364 |
| Indonesia | 5 960 | 6 341 | 6 768 | 7 542 | 8 132 | 8 472 | 8 974 | 9 053 |
| Lao PDR | 1 | 2 | 1 | 1 | 1 | 1 | 1 | 1 |
| Malaysia | 1 405 | 1 456 | 1 525 | 1 561 | 1 617 | 1 658 | 1 682 | 1 704 |
| Myanmar | 83 | 86 | 86 | 88 | 98 | 98 | 96 | 95 |
| Philippines | 1 407 | 1 403 | 1 390 | 1 436 | 1 461 | 1 534 | 1 565 | 1 615 |
| Singapore | 2 772 | 3 117 | 3 306 | 3 166 | 3 339 | 3 419 | 3 480 | 3 526 |
| Thailand | 769 | 746 | 747 | 767 | 776 | 795 | 795 | 807 |
| Viet Nam | 1 756 | 1 774 | 1 776 | 1 752 | 1 761 | 1 798 | 1 836 | 1 863 |

Source: UNCTAD, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=93>.

Most of the goods entering Brunei Darussalam arrive through the port of Muara, which is the main and only deep-water port of the country. Data reflected in Figure 2.2 below show that the amount of cargo handled by this port has been constantly increasing between 2014 and 2018, while registering a slight decrease in 2019.

Figure 2.2. General cargo handled by Muara Port Company, in tonnage, 2014-19



Note: 2014 - January 2017 handling was done by Ports Department. MPC started in February 2017, and took over conventional cargo in 2018.
Source: Muara Port Company.

Furthermore, the carrying capacity of Brunei Darussalam's national fleet has increased by 10% since 2005. Table 2.2 below shows the carrying capacity of the national fleet by type of ship.

Table 2.2. Brunei Darussalam's national fleet carrying capacity by type of ship, in thousands DWT, 2005-17

| | 2005 | 2010 | 2015 | 2020 |
|----------------------|------|------|------|------|
| Total fleet | 423 | 449 | 549 | 466 |
| Oil tankers | 2 | 1 | 1 | 1 |
| Bulk carriers | 0 | 20 | 0 | 0 |
| General cargo | 3 | 3 | 12 | 10 |
| Container ships | 0 | 0 | 0 | 0 |
| Other types of ships | 418 | 425 | 537 | 455 |

Source: UNCTADStat, <https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/096/index.html>.

By contrast, although there has been an increase in the number of active vehicles suitable for freight transport by road over the last 5 years, this number remains relatively small, showing the lower importance of land transport compared to maritime transport.

Table 2.3. Active vehicles by vehicle type, 2014-18

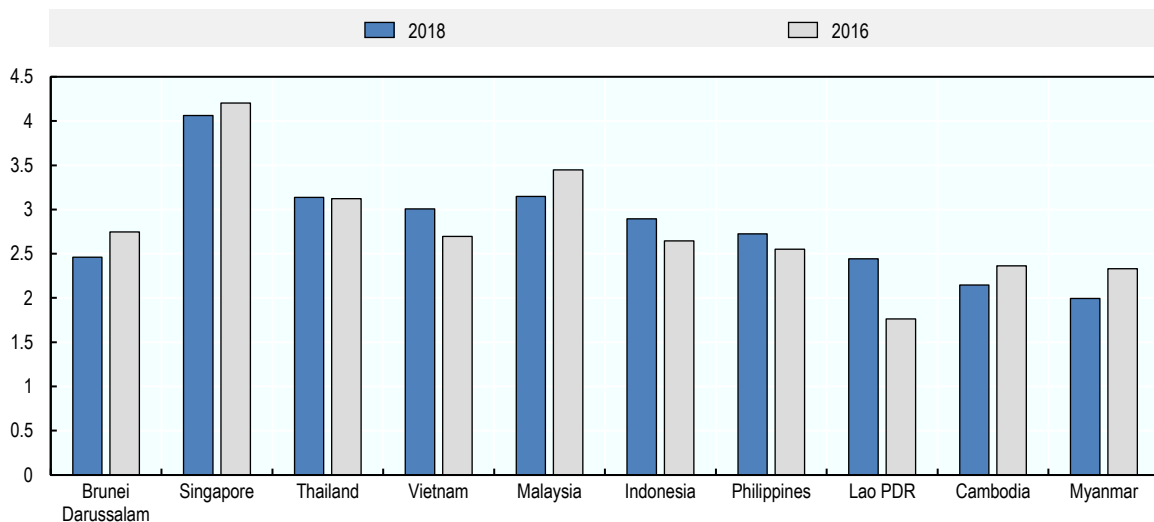
| | 2014 | 2015 | 2016 | 2017 | 2018 | Increase 2014-18 (%) |
|----------|-------|-------|-------|-------|-------|-------------------------|
| Trucks | 8 134 | 9 000 | 8 944 | 9 005 | 8 958 | 10 |
| Trailers | 993 | 1 146 | 1 202 | 1 262 | 1 229 | 26 |
| Tankers | 663 | 783 | 779 | 724 | 713 | 7.5 |

Source: Land Transport Department of Brunei Darussalam.

2.1.3. Infrastructure

The World Bank regularly collects data on the quality of trade and transport-related infrastructure and provides an aggregate indicator across 160 countries. This indicator captures logistics professionals' perception of the quality of a country's trade and transport-related infrastructure, including ports, railways, roads and information technology. The index ranges from one (very low quality) to five (very high quality).

As shown in Figure 2.3 below, the average quality of trade and transport-related infrastructure in East Asia & Pacific is 3.01 and only three countries in ASEAN (i.e., Malaysia, Singapore and Thailand) score above this average, while Brunei Darussalam comes immediately after. Singapore is the best performer in the region and ranks even higher than the OECD average.

Figure 2.3. Quality of trade and transport-related infrastructure

Source: World Bank and Turku School of Economics, Logistic Performance Index Surveys.

There are significant differences across ASEAN countries concerning the quality of their infrastructure. As shown below, Brunei Darussalam ranks as high as 33 out of 137 surveyed countries for the quality of its road network. By contrast, its limited port infrastructure based on one main port, as well as the relatively recent investment efforts in the non-oil and gas sector result in a lower score concerning the quality of its port infrastructure, where it only ranks 74, thus lower than other ASEAN countries such as Thailand (63) and Indonesia (72). Table 2.4 below provides a comparative overview of the quality of infrastructure in some ASEAN countries, as ranked by the World Economic Forum.

Table 2.4. Comparative analysis of Brunei Darussalam, Thailand, Viet Nam, Indonesia and Singapore by ranking for quality of infrastructure (out of 137 countries)

| Parameter | Brunei Darussalam | Thailand | Viet Nam | Indonesia | Singapore |
|--------------------------------|-------------------|----------|----------|-----------|-----------|
| Quality of roads | 33 | 59 | 92 | 64 | 2 |
| Quality of railway | .. | 72 | 59 | 30 | 4 |
| Quality of port infrastructure | 74 | 63 | 82 | 72 | 2 |

Source: World Economic Forum's Global Competitiveness Report, 2017-2018.

Roads

In Brunei Darussalam, the road transport system is built around the highway network. Overall, Brunei Darussalam's road network covers 3 713 km and is formed around the coastal highway backbone, running from the south-west to the northeast of the country and linking the towns from Kuala Belait, Sungai Liang, Tutong, and Jerudong to Muara Port. From this, key links run throughout Brunei Darussalam Muara to connect into the Bandar Seri Begawan. The total length of the road network is reflected in the table below.

Table 2.5. Length of Brunei Darussalam's road network by road classification, in km, 2010-19

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|------------------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Class A (Highways) | 430.80 | 433.90 | 453.70 | 310.08 | 310.08 | 321.68 | 351.98 | 364.46 | 364.46 | 364.46 |
| Class B (Secondary Roads) | 248.00 | 241.70 | 477.20 | 427.79 | 425.50 | 425.50 | 451.71 | 451.71 | 451.71 | 452.95 |
| Class C (Minor Roads or Distributor Roads) | 1 085.65 | 1 080.51 | 918.72 | 867.94 | 830.89 | 836.10 | 837.11 | 837.11 | 833.61 | 833.61 |
| Class D (Local Access Roads or Junction Roads) | 1 129.10 | 1 241.00 | 1 128.10 | 1 414.04 | 1 499.21 | 1 509.98 | 1 512.83 | 1 516.46 | 1 522.92 | 1 526.85 |
| Private Roads (1) | 244.17 | 249.46 | 249.46 | 255.54 | 256.44 | 262.02 | 527.26 | 523.29 | 535.71 | 535.71 |
| Total | 3 137.72 | 3 246.57 | 3 227.18 | 3 275.39 | 3 322.12 | 3 355.28 | 3 680.89 | 3 693.02 | 3 708.41 | 3 713.57 |

Source: Public Works Department (Ministry of Development), District Offices (Ministry of Home Affairs), Royal Brunei Darussalam Armed Forces (RBAF), Ministry of Defence, Forestry Department and Agriculture and Agrifood Department (Ministry of Primary Resources and Tourism), Darussalam Enterprise (DARE) and Brunei Darussalam Shell Petroleum Co. Sdn Bhd, <http://www.depd.gov.bn/SitePages/eData%20library.aspx>.

The geographic division of Brunei Darussalam in two separate constituent parts resulted until recently in the lack of a direct road connection between Brunei -Muara and Temburong. In order to move between the two areas, one needed to go through the Malaysian District of Limbang. This has resulted in a deep imbalance in the development of Temburong compared to the other three districts of Brunei Darussalam.²⁸ However, while this Project was ongoing, a bridge was developed to connect Brunei-Muara and Temburong without going through Malaysia.

Ports

As regards its port infrastructure, Muara Port is the country's main gateway for international trade. It started being used for commercial purposes in 1973 by the Royal Custom and Excise Department before the Ports Department took over its management in 1986. Between 1994 and 2004, it made significant investments by building a 250-metre length dedicated container terminal and three Inland Container Depots facilities in order to intensify logistics and distribution activities.²⁹ The privatisation of the port occurred in February

2017, when the Muara Port Company (MPC) took over the Muara Container terminal. As shown in Figure 2.2 above, the amount of cargo handled by Muara port has been constantly growing since 2014. Its efficiency and the number of vessel calls have also been increasing over years. Table 2.6 shows the increase in the number of vessel calls, including both containerised and non-containerised or break bulk cargo vessels, between 2017 and 2019, which amounted to 12.9%.

Table 2.6. Total vessel calls in Muara Port, 2017-19

| Year | 2017 | 2018 | 2019 |
|--------------|------------|------------|------------|
| January | 66 | 65 | 81 |
| February | 63 | 58 | 58 |
| March | 75 | 78 | 75 |
| April | 64 | 74 | 73 |
| May | 69 | 83 | 74 |
| June | 59 | 73 | 62 |
| July | 66 | 81 | 85 |
| August | 72 | 104 | 76 |
| September | 59 | 68 | 83 |
| October | 68 | 73 | 85 |
| November | 67 | 92 | 73 |
| December | 71 | 78 | 77 |
| Total | 799 | 927 | 902 |

Source: Muara Port Company.

When compared to other ASEAN ports, Muara Port is relatively small. Based on the throughput, Muara Port is the 19th port in ASEAN, as shown in Table 2.7 below.

Table 2.7. Ranking of ASEAN ports based on throughput

| Rank | Port |
|------|-----------------------------|
| 1 | Singapore |
| 2 | Port Klang (Malaysia) |
| 3 | Tanjung Priok (Indonesia) |
| 4 | Penang (Malaysia) |
| 5 | Bangkok (Thailand) |
| 6 | Tanjung Perak (Indonesia) |
| 7 | Batangas (Philippines) |
| 8 | Tanjung Pelepas (Malaysia) |
| 9 | Laem Chabang (Thailand) |
| 10 | Manila (Philippines) |
| 11 | Belawan (Indonesia) |
| 12 | Davao (Philippines) |
| 13 | Kuantan (Malaysia) |
| 14 | Tanjung Mas (Indonesia) |
| 15 | Ho Chi Minh City (Viet Nam) |
| 16 | Cebu (Philippines) |
| 17 | Kota Kinabaly (Malaysia) |

| Rank | Port |
|------|----------------------------------|
| 18 | Kuching (Malaysia). |
| 19 | Muara (Brunei Darussalam) |

Source: (Kutin, Saget and Vallee, 2018, p. 36^[36]).

2.1.4. International trade and connectivity

Transport services exports

At the global level, between 2012 and 2017, exports of transport services decreased in almost every region.³⁰ With regards to Brunei Darussalam, in 2017, 63% of the total services were exported, up from 50.8% in 2005.³¹ Table 2.8 below displays Brunei Darussalam's total trade in transport services between 2005 and 2018 and shows the country's positive trade balance in transport services since several years, after being negative in 2005.

Table 2.8. Brunei Darussalam's total trade in transport services

| | 2005 | 2010 | 2015 | 2018 |
|----------------------------------|------|------|------|------|
| Transport services exports | 313 | - | 466 | 303 |
| Transport services imports | 321 | - | 233 | 226 |
| Transport services trade balance | -8 | - | 233 | 77 |

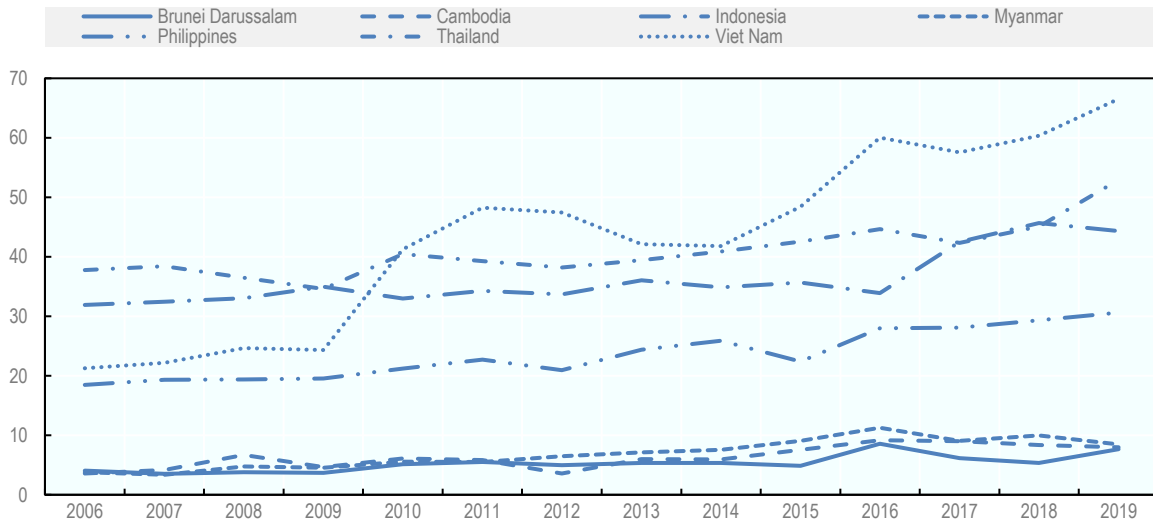
Note: Data include all transport services involving the carriage of people and objects from one location to another as well as related supporting and auxiliary services. Also included are postal and courier services.

Source: UNCTADStat, <https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/096/index.html>.

Liner shipping

Brunei Darussalam's liner shipping connections with other countries have improved over the years, although at a slower pace than other ASEAN countries. Figure 2.4 shows Brunei Darussalam and other comparable ASEAN countries' connectivity indexes, which reveal countries' levels of integration into the global networks of liner shipping.³² Since 2006, Brunei Darussalam's connectivity index has been increasing, passing from 4.08 in 2006 to 7.68 in 2019, with a peak in 2016 when it reached 8.6.

Figure 2.4. Liner shipping connectivity index of selected ASEAN countries, 2006-19



Note: The index for the country with the score of 100 in 2006 (China) is used as the basis and all other indices are in relation to this value.

Source: UNCTADStat, <https://unctadstat.unctad.org/wds/TableView/tableView.aspx?ReportId=92>.

2.1.5. Logistics rankings

As seen in Table 2.9 below, Brunei Darussalam ranked 80 in the Logistics Performance Index (LPI), down from 70 in 2016, although it still scores better than some other ASEAN countries, namely Lao PDR, Cambodia and Myanmar.

Box 2.1. Logistics Performance Index

The World Bank's Logistics Performance Index (LPI) benchmarks the performance of countries in the logistics sector using six indicators (with 1 the lowest and 5 the highest) to create an overall LPI index that allows for worldwide, regional and income-group country comparisons.

The LPI, says the World Bank, "is the weighted average of the country scores on the six key dimensions:

1. Efficiency of the clearance process (i.e., speed, simplicity and predictability of formalities) by border control agencies, including customs;
2. Quality of trade and transport related infrastructure (e.g., ports, railroads, roads, information technology);
3. Ease of arranging competitively priced shipments;
4. Competence and quality of logistics services (e.g., transport operators, customs brokers);
5. Ability to track and trace consignments;
6. Timeliness of shipments in reaching destination within the scheduled or expected delivery time."

Source: (World Bank, 2018^[34]).

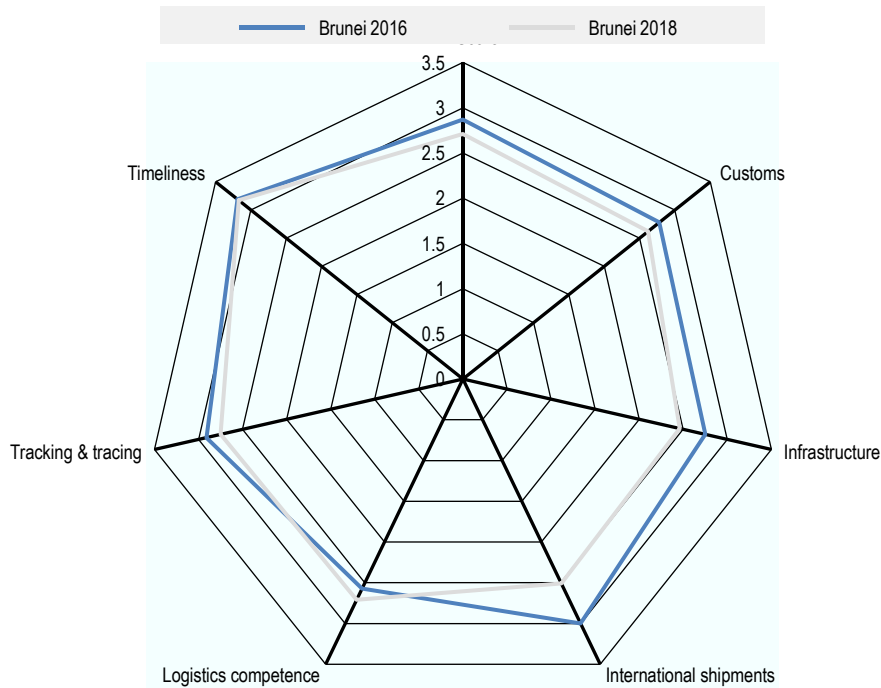
Table 2.9. LPI overall ranking, 2018

| Overall ranking | Country |
|-----------------|--------------------------|
| 1 | Germany |
| 2 | Sweden |
| 3 | Belgium |
| 4 | Austria |
| 5 | Japan |
| 6 | Netherlands |
| 7 | Singapore |
| 8 | Denmark |
| 9 | United Kingdom |
| 10 | Finland |
| | [...] |
| 32 | Thailand |
| 39 | Viet Nam |
| 41 | Malaysia |
| 46 | Indonesia |
| 60 | Philippines |
| 80 | Brunei Darussalam |
| 82 | Lao PDR |
| 98 | Cambodia |
| 137 | Myanmar |

Source: World Bank, <https://lpi.worldbank.org/international/global>.

Figure 2.5 shows more precisely the reasons for this change in the overall LPI score by providing, for 2016 and 2018, the score for each component of the overall LPI. It shows that while Brunei Darussalam improved with regards to the logistics competence of transport operators and customs brokers, and kept the same standards for timeliness of shipments, it reached lower results for the other components. The biggest jump back concerned the score in international shipments, which captures the ease of arranging competitively priced shipments.

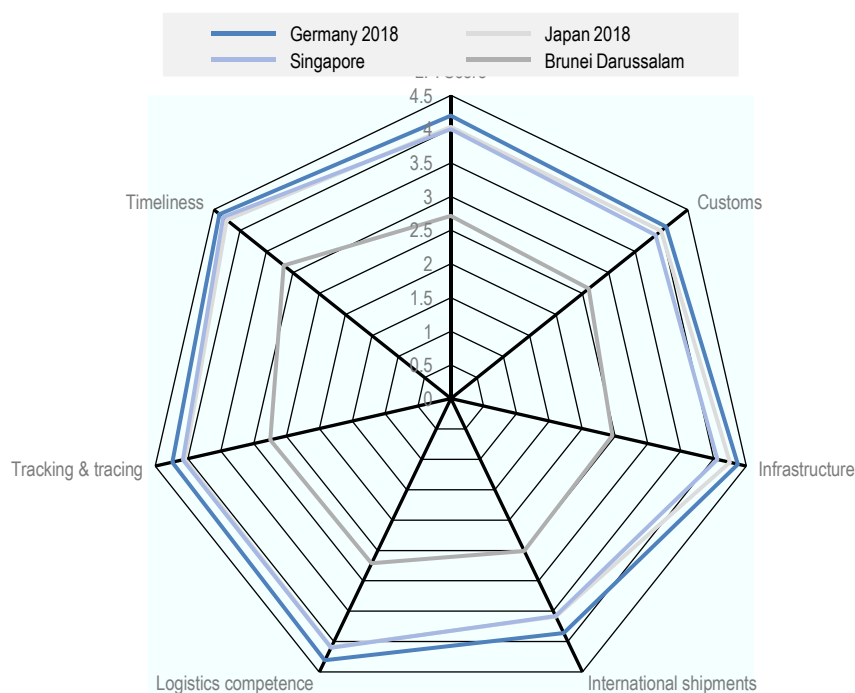
Figure 2.5. Brunei Darussalam's LPI score in 2016 and 2018



Source: World Bank, <https://lpi.worldbank.org/international/scorecard/radar/254/C/BRN/2018/C/BRN/2016/C/BRN/2014/C/BRN/2012/C/BRN/2010/C/BRN/2007#chartarea>.

Although Brunei Darussalam reached good results when compared to some other ASEAN countries (Lao PDR, Cambodia and Myanmar), there is still some room for improvement and the inclusion of logistics as one of the priorities of the Tenth Year Development Plan (2012-2017) referred to above³³ certainly goes in this direction. Data in Figure 2.6 below shows that, irrespective of the component taken into account, Brunei Darussalam scored significantly lower than both the top performer of its income group (Singapore)³⁴ and the top performer of the region (Japan). Within the logistics performance index, infrastructure and international shipments appear to be the two most challenging areas, while timeliness (i.e., the ability to get shipments to their destination within the scheduled or expected delivery time) is higher than other indicators.

Figure 2.6. Brunei Darussalam against Germany (world top performer), Singapore (top performer in same income group) and Japan (region's top performer)



Source: World Bank, <https://lpi.worldbank.org/international/scorecard/radar/254/C/BRN/2018/C/JPN/2018#chartarea>.

2.1.6. Market dynamics and developments

Brunei Darussalam has launched a study on sustainable land transport with a view to developing a roadmap and master plan. The purpose of the study is to formulate solutions for an integrated, efficient, safe and sustainable transport network in order to support the goals of Vision 2035.³⁵

In addition to this comprehensive strategy, Brunei Darussalam has also launched a number of more punctual initiatives. For example, in relation to the objective of Brunei Darussalam to become a Halal logistics hub,³⁶ Kerry Logistics and the government of Brunei Darussalam partnered to build an international brand called Brunei Darussalam Halal, that will also provide Halal-compliant logistics services (e.g., cold storage facilities and transport).

With regards to maritime transport, the Ports Department has granted favourable port tariff rates to all importers and exports and has allowed them enjoying longer port storage periods.³⁷ Furthermore, the Ports Department and the Customs Department met with BRUFA members to discuss the relocation of the port Inland Container Depot (ICD). At the broader ASEAN level, under the Kuala Lumpur Transport Strategic Plan 2016-2025,³⁸ Brunei Darussalam has agreed to contribute to the establishment of an ASEAN single shipping market. This should allow the development of cooperation in regional maritime transport and maritime logistics corridors within ASEAN.³⁹

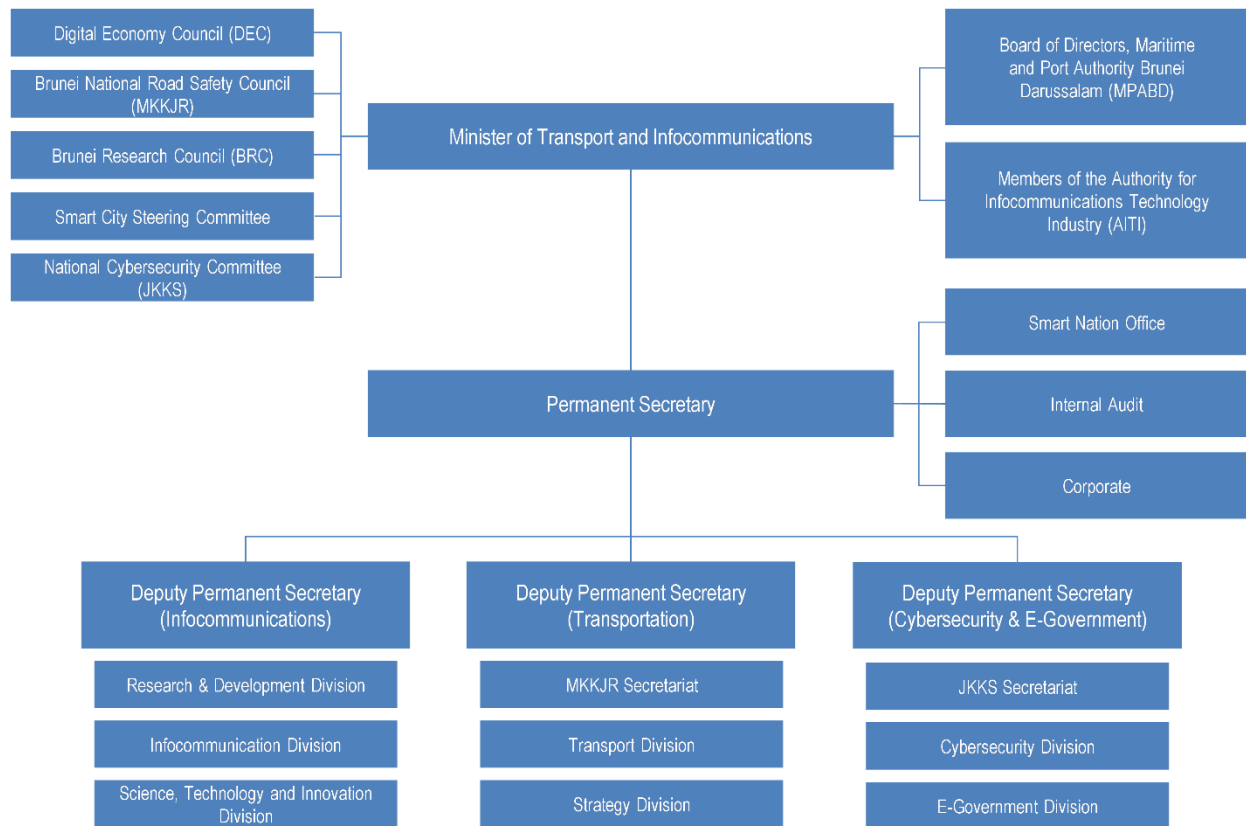
In line with its goal to become a logistics hub in ASEAN, Brunei Darussalam has established one Free Trade Zone, namely the Terunjing Free Trade Zone managed by the Darussalam Enterprise. At the same time, it has worked on improving linkages with neighbouring countries, in particular Malaysia. To this aim, the Trans-Borneo Railway (TBR) is a new cooperative project intended to provide the island with its first comprehensive railway, running along the coastline of Kalimantan, Sabah, Sarawak and Brunei Darussalam for 4 440 kilometres.

All these changes should contribute to benefit fully from the advantages of the trade agreements concluded by Brunei Darussalam's to facilitate the movement of goods across borders. The strategy of streamlining customs procedures falls within the broader strategy of the ASEAN Single Window project that creates a unified platform for import and export to facilitate customs declarations and payment of taxes, which in turn should reduce transit times and costs.

2.2. Key stakeholders

2.2.1. Government stakeholders and institutional framework

Figure 2.7. Organisational structure of the Ministry of Transport and Infocommunications



Source: Ministry of Transport and Infocommunications

The Ministry of Transport and Infocommunications comprises the office of the minister and, for the purposes of this project, the following authorities and departments are part of it or subject to its supervision:

- The **Maritime and Port Authority** of Brunei Darussalam (MPABD), formed in September 2017. MPABD's functions include issuing licences and regulations in respect of merchant shipping and particularly in respect of safety at sea, the manning of vessels and the prevention of pollution at sea within ports areas and territorial waters of Brunei Darussalam. MPABD also promotes efficiency and the development of the port, and regulates and controls navigation within the limit of the port and access to the port. To ensure the orderly operations and development of the maritime sector and industries, MPABD also exercises licensing and regulatory functions in respect of port

services and facilities. MPABD acts internationally as the national body representative of Brunei Darussalam in respect of sea transport, marine and port matters such as IMO and ASEAN.

- The **Land Transport Division**, with the task of licensing of vehicle, licensing of drivers, coordination with stakeholder on improving road safety, improving public transport, and enforcement.
- The **Department of Postal Services**. The first postage stamp was in 1895 and the first post office in Brunei Darussalam started functioning in 1906. Firstly established as a company, it then became a department under the responsibility of the Ministry of Communications in 1984. It has the function of providing postal services in Brunei Darussalam.

2.2.2. State-owned enterprises

For the purposes of this competition assessment report, the following state-owned enterprises (SOEs) are active in the logistics sector:

- **Darussalam Assets Sdn Bhd** (Darussalam Assets) is a private limited company established in 2012 to own Brunei Darussalam's government-linked companies. Its shareholder is the Minister for Finance Corporation (MOFC). Its portfolio of companies are in various sectors including aviation and logistics; and
- The **Muara Port Company** was formed on 15 February 2017 as a joint venture of Darussalam Assets and Beibu Gulf Holding (Hong Kong) Co., Ltd to manage the whole Muara Port. On 21 February 2017, MPC fully took over the Muara Container Terminal and subsequently, the Muara Conventional Terminal on 18 July 2018.
- The **Postal Services Department** is currently a department under the Ministry of Transport and Info-communications. However, the OECD understands that there is a plan to corporatise it, maintaining full public ownership and transferring the new company under Darussalam Assets. This process may start in 2019-2020.⁴⁰

2.2.3. Main trade associations

The main trade associations active in the logistics sector in Brunei Darussalam include:

- **Shipping Association of Brunei Darussalam (SABD)**;
- **Brunei Darussalam Freight Forwarders Association (BRUFA)**, which represents freight forwarders, warehousing operators, logistics and supply chain management operators and courier service operators;⁴¹
- **Federation of Transportation and Stevedoring of Brunei Darussalam (FTSBD)**.

2.2.4. Logistics companies

Major international players active in the logistics sector in Brunei Darussalam include DB Schenker, DHL, Yusen Logistics, Kerry Logistics, Archipelago, and Ceva.

3 Overview of the legislation in the logistic sector in Brunei Darussalam

The OECD has identified 63 pieces of legislation related to the logistics sector, including international agreements, codes, acts, decrees, ministerial regulations and announcements, and notifications of the customs department.

| Sector | | Legislation analysed | Restrictions found | Recommendations |
|--------------------------|----------|----------------------|--------------------|-----------------|
| Freight transport | Road | 6 | 10 | 7 |
| | Maritime | 26 | 38 | 27 |
| Freight forwarding | | 0 | 1 | 1 |
| Warehouses | | 3 | 5 | 4 |
| Small package delivery | | 10 | 3 | 3 |
| Horizontal/others | | 14 | 6 | 1 |
| International agreements | | 4 | 4 | 4 |
| Total | | 63 | 67 | 47 |

A summary of the pieces of legislation reviewed by the OECD, the number of barriers identified, and the recommendations made in this report are summarised below, while all barriers and recommendations are set out in Annex B.

3.1. Road freight transport

The framework legislation affecting road freight transport is included under the **Road Traffic Act (Chapter 68)** regulating transport by road, including authorities' powers and licensing requirements.

The OECD has identified 10 restrictive regulations for transport of freight by road and makes 7 recommendations concerning the following topics:

1. Vehicle inspections.
2. Limits on the number of vehicles that can be registered or licences that can be issued.
3. Discretionary powers regarding the grant of exemptions from licensing requirements or any other requirement laid down in the law.
4. Some specific requirements imposed on vehicles to ensure safety.

3.1.1. Vehicle inspections

Description of the obstacle. Pursuant to Section 11 of Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations, all vehicles (i.e., trucks for freight transport as well as private cars) must obtain a roadworthiness vehicle licence from the Land Transport Department. This licence allows using the vehicles on Bruneian roads and can include conditions on such permitted use. This licence is issued only if the licensing officer considers that the vehicle is in a suitable condition for the purpose for which a registration is sought (so called, roadworthiness inspection).

For commercial vehicles (heavy vehicles and public service vehicles, i.e., vehicles used for providing services to third parties against remuneration), such vehicle licence must be renewed every six months, while for other vehicles such as private cars the licence will have to be renewed every year.

Harm to competition. The obligation to renew the licence for commercial vehicles every six months may result in an administrative burden for companies, thus raising a barrier to entry for potential competitors or increasing the costs for incumbents. Furthermore, during the time required to take the vehicle to the inspection, both the vehicle and the worker will be unavailable for other tasks.

Policymaker's objective. This provision aims to ensure that vehicles used for providing services to third parties are in good conditions.

International comparison. The principal factors determining the condition of goods vehicles are proper operation, kilometres covered, years in service, and regularity of technical inspections. Maintaining vehicles correctly becomes particularly important as they age and for those used on long international routes.⁴² Regular inspections over vehicles are commonplace all over the world. However, many countries only require inspections to take place every year. This is for instance the case in other ASEAN countries such as the Philippines and Viet Nam. In the latter, the truck licence is valid for one year if the truck is less than 5 years old, while it must be renewed every six months for older vehicles.

Recommendation. Reduce administrative burden stemming from vehicle inspections. This could be done for instance by requiring roadworthiness tests only every year instead of every six months (or every six months only for five (or more) year old vehicles), or by requiring inspections based upon the number of kilometres travelled. If there is a genuine risk of market participants not complying with the rules, surprise inspections or heavier fines for such behaviour could be introduced as a deterrent.

3.1.2. Limited number of trailer registrations for every prime mover

Description of the obstacle. According to market participants, only two trailers can be registered for each prime mover. As a result, if the two trailers remain at the customer's premises for loading/un-loading cargo, the prime mover will also be retained with the trailers as the lack of other registered trailers will make it impossible to use it to transport different goods at the same time.

Harm to competition. The limitation of two trailers per prime mover may limit the amount of transport services that a truck company can offer. In addition, it may increase transportation costs per freight unit, as it may reduce the utilisation rate of the prime mover.

Policymaker's objective. This provision aims to ensure safety and, to this purpose, to avoid trucks using more than two trailers with one prime mover.

International comparison. To the best of the OECD's knowledge, there is no similar restriction in the Philippines, Thailand or Viet Nam. To ensure safety, these countries have regulations on total maximum length of the truck including the trailer and/or weight allowed.

Recommendation. Allow registration of trailers independently of the number of prime movers and trucks. The valid safety objectives can be achieved in different ways, for instance by prohibiting, if necessary for certain roads, to use more than two trailers per prime mover at the same time or by introducing load limits.

3.1.3. Exemption from requirements laid down in the road traffic act and regulations

Description of the obstacle. Pursuant to Section 8 of the Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations (2013) and Section 96 of the Road Traffic Act, Chapter 68, the Director of Land Transport (or the Minister of Transport and Infocommunications) may exempt any motor vehicle or trailer from the requirements laid down in these laws. This refers for instance to the obligation to obtain a motor vehicle or trailer licence for using the vehicle to provide freight transport services. The power to grant exemptions is not subject to any limitation or conditions.

Harm to competition. The broad discretion in this provision may lead to discrimination among competitors. Although the Land Transport Department confirmed that exemptions are granted according to international standards and best practices, the director's discretion may still be significant.

Recommendation. Describe in the law or guidelines the specific cases where such an exemption can be granted to give more certainty to market participants.

3.1.4. Limiting the number of motor vehicle licences

Description of the obstacle. Pursuant to Section 93(2)(a) of the Road Traffic Act, Chapter 68, the Minister of Transport and Infocommunications may impose limits on the number of motor vehicle licences in a certain area. According to market participants, this power to limit the number of licences that can be issued has never been exercised in practice.

Harm to competition. The limitation on the number of licences for specified types or classes of vehicles in a certain area may reduce the number of operators active on the market, thus restricting market entry and therefore competition.

Policymaker's objective. This provision likely aims at avoiding traffic congestion in certain areas as well as at addressing environmental concerns.

International comparison. Although some other countries have similar provisions in place (Myanmar) or authorities have the power to introduce similar limitations (Thailand), the World Bank highlighted in a study that this is a "highly restrictive model" and "market forces are highly subdued and replaced by central decision making with a high degree of potential error" (IRU, World Bank, 2017^[37]).

Recommendation. The OECD recommends removing this provision. Although congestion and environmental concerns are legitimate objectives, they can be achieved in different ways, for instance by introducing truck bans at peak hours.

3.1.5. Speed warning devices

Description of the obstacle. The Road Traffic (motor vehicles (speed warning device)) Regulations (2002) require commercial heavy goods vehicles and public service vehicles to install a speed-warning device.

Harm to competition. According to market participants, the device is costly and not durable. The requirement to have a speed-warning device on every vehicle results in a burden for companies, thus possibly increasing costs.

Policymaker's objective. This requirement aims to ensure road safety.

International comparison. Other countries (such as Singapore) that used to have the same requirement have lifted it and are currently using speed traps.

Recommendation. Consider removing and gradually introducing alternative solutions, such as speed traps. The OECD supports the government's efforts to find an alternative and less burdensome system for speed monitoring.

3.2. Maritime freight transport

The main pieces of legislation affecting the freight transport by sea are:

- The **Maritime and Port Authority of Brunei Darussalam (MPABD) Order** (2017), which lays down provisions on the establishment, functions and powers of the MPABD as well as regulations on ports.
- The **Merchant Shipping Order** (2002), regulating the Brunei Darussalam ship registry, ship manning and officers' certifications as well as other matters related to the ship-crew.

The OECD has identified 38 restrictive regulations for transport of freight by sea and makes 27 recommendations mainly concerning the following topics:

1. Overlap of regulatory and operational functions within the same authority.
2. Ship registration, ship and port licences and their cancelation.
3. Requirements applying to seafarers.
4. Price regulations for certain port services.
5. Minimum capital requirements.

3.2.1. Overlap of regulatory and operational functions

Description of the obstacle. With the Maritime and Port Authority of Brunei Darussalam Order (hereinafter, MPABD Order), Brunei Darussalam implemented a reform to separate regulatory and operational functions regarding port facilities. However, pursuant to Section 7 of the MPABD Order, the Maritime and Port Authority Brunei Darussalam (MPABD) is allowed to continue providing any marine or port services and facilities in three cases:

1. until the licences granted under Part 12 of the MPABD Order come into effect;⁴³
2. if it considers that the licensee has failed to discharge its obligations; and
3. to give effect to any direction of the Minister of Transport and Infocommunications under Section 9. The Minister can give any direction "as he thinks fit." This expressly includes the prohibition or regulation of any marine or port services

Harm to competition. The overlap between regulatory and operational functions within MPABD may result in a conflict of interests. For instance, MPABD may keep potential competitors seeking a licence out of the market in which it provides towage services itself. The overlap between regulatory and operational functions may, at least theoretically, also result in MPABD issuing regulations according to its requirements as an operator, thus, granting itself a competitive advantage over other potential or actual players in the industry and infringing the principle of competitive neutrality and level playing field.

Policymaker's objective. As confirmed by MPABD, the exceptions provided to the general principle of separation aim to ensure continuity of the services in the period between the previous and the new legal framework. However, some of the exceptions go beyond this objective of ensuring continuity in the provision of the services.

Recommendation. Remove the possibility for the minister to give directions resulting in regulatory and operational overlap. After a transition period, the government should always ensure full separation as the general rule. When introducing changes to regulations or giving directions pursuant to Section 7 of the

MPABD Order in case of licensees' failure to discharge their obligations, the government (e.g. Ministry of Transport) may consider requesting the opinion of the Competition Commission Brunei Darussalam in order to ensure that market players or regulators do not implement strategies that may foreclose competitors.

3.2.2. Monopoly over certain port services

Monopoly over towage services

Description of the obstacle. The Minister of Transport and Infocommunications may prohibit towage, sale and supply of water and fuel to vessels other than through MPABD or by agreement with it. To outsource the provision of such services, the Minister can make regulations regarding licences. While this Project was ongoing, Brunei Darussalam changed the way in which towage services are provided. While in the past MPABD was the only provider of tug services, with effect from 1 December 2019, Darussalam Pilotage Services Sdn. Bhd. took over the management and operations of tug services within the Muara Port district. According to stakeholders' inputs, the responsibility for the provision of towage services was transferred to the new entity without any prior assessment of potential interest by private operators.

Harm to competition. Until recently no licence had been granted to third parties and MPABD had a monopoly over towage services. This public monopoly could result in allocative and technical cost inefficiency and suboptimal service level. There was also a risk that the direct provision of towing services by the public authority could result in high prices due to the extraction of monopoly rents. Direct assignment to a separate entity rather than a competitive process ensuring competition *for* the market might also entail a risk of higher tariffs and lower efficiency. In contrast, a tendering process ensuring competition *for* the market could contribute to maximising efficiency and reducing tariffs.

Policymaker's objective. The provision of services by a single operator aims to ensure safety by creating a monopoly and excluding competition *in* the market.

International comparison. While towing services have historically often been provided by port operators, they are increasingly outsourced to third parties. For example, in Viet Nam, according to Article 257 of Viet Nam's Maritime Code (2015), towage services can be provided by private operators (including foreign-invested enterprises) as long as they comply with certain requirements listed in the law, such as assigning full-time personnel to operate ship towage services and have a sufficient number of towboats as per regulations. In the EU, data collected from European Sea Ports Organisation (2011) on 116 ports from 26 European countries shows that only in approximately 15% of the ports towage inside the port area is provided directly by the port authority. In most cases it is provided by private operators, by means of a concession or licensing regime. For example, in Portugal, only in one port towing services are provided by the port authority, while in two cases there is a concession to a private party and in six ports there is a licensing system (OECD, 2018, p. 190^[6]).⁴⁴

Recommendation. Authorities should consider whether there is a private interest in providing these services. If so, create appropriate legal framework so that towing services are effectively tendered based on fair and non-discriminatory terms to guarantee competition for the market.

Monopoly over pilotage services

Description of the obstacle. While this Project was ongoing, the rules on the provision of pilotage services in Brunei Darussalam were amended. Thus, while in the past only MPABD could employ pilots, as of 1 December 2019, Darussalam Pilotage Services Sdn Bhd, a government-linked company, took over the management and operation of pilotage services within the Muara Port district. According to stakeholders' inputs, however, the responsibility to provide pilotage services was granted to Darussalam Pilotage

Services Sdn Bhd without any prior assessment of potential interest by private operators in providing pilotage services.

Harm to competition. The previous legal framework prevented pilots who were not employees of the MPABD from entering the market and competing. MPABD's exclusive right to provide pilotage services limited the choice and could increase costs for those navigating in a pilotage district. According to some market participants, the public monopoly system was not very efficient and resulted in increased costs for vessels (e.g., fuel costs due to the long waiting time on anchorage before receiving a pilot).

The OECD notes that the principle of competition should generally govern the provision of technical and nautical services, while legal monopolies should only be limited to situations where they are absolutely indispensable. Safety reasons cannot a priori justify the exclusion of any competition mechanism in the provision of port services. Therefore, direct assignment of pilotage services to a separate entity rather than a competitive process ensuring competition *for* the market might also entail a risk of higher tariffs and lower efficiency. In contrast, a tendering process ensuring competition *for* the market could contribute to maximising efficiency and reducing tariffs, while addressing safety and environmental concerns.

International comparison. In many countries, pilotage is considered a public service, given its role of protecting navigational safety, preserving port infrastructure and preventing environmental hazards. A lack of experience and knowledge of specific port conditions may indeed pose risks for the safety of cargo and other port users, as well as damage port infrastructure. For these reasons, piloting is subject to strict regulations that aim to promote safety and protect the environment. However, some provisions might have the effect of restricting competition more than is strictly necessary to achieve a legitimate policy objective.

In the Report on the Competition Assessment in Portugal, the OECD observed that "regardless of the juridical regime chosen for the public provision of piloting services, there is no economic justification for attributing exclusive rights to serve as a pilot to a specific type of port employee, excluding other forms of labour contract (interim) or service contract hiring. Considering that the legal regime foresees other specific requirements to become a pilot (licence, examination, etc.), the legal regime should focus on assessing (and guaranteeing) that pilots have the needed expertise and knowledge to provide pilotage on a local basis, instead of demanding formal labour contracts requirements." Data collected from European Sea Ports Organisation (2011) on 116 ports from 26 European countries shows that only around 25% of the piloting services are directly provided by the port authorities, while in most of the cases they are provided by private operators. The 75% of ports provide them through licensing regimes, concessions to public or private operators, or the existence of separate public entities providing such services.

Recommendation. Authorities should consider whether there is a private interest in providing these services. If so, create appropriate legal framework so that piloting services are tendered based on fair and non-discriminatory terms to guarantee competition for the market.

3.2.3. Ship registration

Discretion on ship registration

Description of the obstacle. The Minister of Transport and Infocommunications may issue regulations regarding the conditions for registration of a ship as a Brunei Darussalam ship. Such conditions can include minimum amount of paid-up capital or limits on the age and tonnage of the ship. The conditions are currently prescribed in the Merchant Shipping (Registration of Ships) Regulations (2016). However, even if the ship complies with such conditions, the Registrar of Brunei Darussalam ships may refuse registration as it is not obliged to provide any reasons on the rejection. It is unclear whether the rejection decision can be challenged before a court and, if so, on which grounds.

Harm to competition. As the refusal by the registrar to proceed to registration can be issued without providing any reason, this may result in discrimination and may undermine the possibility to appeal the rejection based on discriminatory grounds.

International comparison. In Singapore, pursuant to Article 81 of the Maritime and Port Authority of Singapore Act, in case of refusal by the port authority to grant a licence for providing port services, the applicant may, within 14 days of the refusal, appeal to the Minister whose decision shall be final. The same law provides that, in other cases (e.g., damages, liability, other expenses) the appeal shall be lodged with the district court.

Recommendation. Ensure that reasons for rejection are given in any decision and that any decision can be challenged, for instance before a court.

3.2.4. Ship and port service licences

The Merchant Shipping Order (2002) and the Merchant Shipping (Registration of Ships) Regulations (2006) regulate registration of ships in the Brunei Darussalam registry.

Table 3.1 shows the number of ships that were granted a licence in Brunei Darussalam every year.

Table 3.1. Number of vessels/boats licensed, 2000-19

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|--------------------|------|------|------|-------|------|------|-------|------|------|------|------|
| Cargo Boats | 9 | 11 | 8 | 8 | 8 | 5 | - | 5 | 5 | 0 | 0 |
| Passenger Boats | 147 | 125 | 145 | 138 | 129 | 123 | 114 | 113 | 98 | 84 | 36 |
| Fishing Boats | 43 | 42 | 45 | 1 164 | 652 | 607 | 1 049 | 445 | 342 | 216 | 181 |
| Leisure Crafts | 36 | 30 | 21 | 82 | 45 | 37 | 6 | 0 | 0 | 51 | 13 |
| Government Vessels | 44 | 45 | 54 | 22 | 34 | 31 | 25 | 31 | 31 | 20 | 19 |
| Total | 279 | 253 | 273 | 1 414 | 868 | 803 | 1 194 | 594 | 476 | 371 | 249 |

Source: Maritime and Port Authority of Brunei Darussalam (MPABD), <http://www.depd.gov.bn/SitePages/eData%20library.aspx>.

Cancellation of ship licence

Description of the obstacle. MPABD may cancel any ship licence, without this power being subject to listed conditions. This provision applies to ships not exceeding 100 tonnes.

Harm to competition. Since the power to cancel a licence is not subject to any conditions, this could theoretically lead to discrimination against certain operators.

Policymaker's objective. This provision aims at allowing MPABD to withdraw a ship licence when the circumstances under which it was granted have changed.

International comparison. Similarly to Brunei Darussalam, in Malaysia there are specific laws and regulations for smaller ships, including on their licensing. Pursuant to Article 10 of the Ports and Harbours (Sabah Licensed Small Ships) Regulations (2008), for instance, the licensing authority can cancel or suspend any small ship licence but, according to the provision, this is only possible in case of breach of a provision under these regulations. Article 8 provides that any refusal to issue or renew a licence may be appealed in writing to the Director of the State Department of Ports and Harbours whose decision shall be final.⁴⁵

Recommendation. Ensure legal certainty and predictability by defining either in the law or in separate guidelines the circumstances in which a ship licence can be withdrawn. Ensure also that decisions can be challenged, for instance before a national court.

3.2.5. Order of special administration to ensure provision of port services

Description of the obstacle. If the Minister of Transport and Infocommunications considers that it is in the interest of the security and reliability of the provision of port services and facilities or simply in the public interest, he/she can issue an "order of special administration" in relation to a company. During the period of validity of this order, the affairs, business and property of the company will be managed by MPABD in order to achieve specific purposes (e.g., towage services or supply of fuel to vessels) listed in the order itself.

Harm to competition. This power may result in preventing a company from supplying goods or services. Indeed, the Minister can replace the managers of the company with MPABD for conducting its affairs and business. The conditions to exercise this power are very broad (especially under Section 89(2)(c) on "public interest"), thus resulting in legal uncertainty and possibly discouraging entry into the market.

Policymaker's objective. This provision aims to ensure reliability in the provision of port services.

Recommendation. Ensure that the power to issue an order of special administration is subject to strict criteria. The addressees of the decision should be entitled to challenge those decisions before a national court.

3.2.6. Price regulation and financial assistance

Regulation of tariffs for handling and storage of goods

Description of the obstacle. When granting a licence for handling and storage of goods, MPABD can impose the tariffs thereof or set the pricing policies and principles. The setting of prices is done "with reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factors." Pursuant to Section 11 of the MPABD Order, there is a specific committee (the MPABD Marine and Port Tariff Committee) that comprises different authorities and departments. This committee recommends new tariffs which are then endorsed by the MPABD's Board of Directors before being submitted to the MOFE for further consideration and approval.

Harm to competition. This provision may limit the ability of operators to set their prices. For instance, operators will not be able to undercut prices of rivals in order to gain market share.

Policymaker's objective. This provision aims to avoid excessive prices for port services.

International comparison. In Mexico, Article 16 of the Ports Law provides that SCT can establish the basis for tariff regulation if in a port there is only one terminal or one service supplier. However, if the regulated firms consider that there are no reasonable grounds to establish tariff regulation, they can request an opinion from the Competition Commission and, if the latter finds that such tariff regulation is not justified, it must be reviewed within 30 days.

Recommendation. Only keep maximum prices and allow competitors to grant discounts as they wish. MPABD, the tariff-setting committee and/or the MOFE that eventually approves prices should request the opinion of the Competition Commission Brunei Darussalam regarding the justified nature and level of such tariff regulation, in order to ensure consistency with the objectives of the Competition Order.

Exemption from port charges

Description of the obstacle. The Minister of Transport and Infocommunications may exempt any vessels or class of vessels from the provisions on rates, charges and dues payable to it.

Harm to competition. The power of the Minister to exempt certain vessels from payment of charges may lead to favouring some undertakings vis-à-vis others.

International comparison. Although the power to grant exemption is common in other countries, such exemptions are usually granted by the port authority and not by the minister of transport. For example, in Singapore, port rates are determined in the Maritime and Port Authority of Singapore. Pursuant to Article 4 of the Scale of Dues, Rates and General Fees Notification, the Maritime and Port Authority of Singapore can grant discounts. Similarly to Brunei Darussalam, maritime welfare fees shall not be payable in respect of any vessel or class of vessels which has or have been exempted by the Minister. In Germany, generally port tariffs are provided in the port operator's general terms and conditions or in specific price lists. Vessel owners can enter into civil law agreements with the relevant port operator and define different tariffs for the utilisation of the port, for instance discounts if the vessel regularly visits the port. In the Port of Gothenburg (Sweden), discounts are granted by the port authority, based on specific and clearly established criteria. The government can intervene on port fees by means of regulations of general application.

Recommendation. Remove and reserve the power to grant discounts only to MPABD.

Financial assistance granted by the port authority

Description of the obstacle. The MPABD has the power to provide financial grant, aid or assistance to any person for the purposes of the MPABD Order (e.g., to licensees providing marine services in the port). There is no limitation of the amount or duration of such assistance.

Harm to competition. This broad discretion may result in granting benefits only to some companies, thus favouring such operators and distorting competition.

Policymaker's objective. This provision gives MPABD the power to support the national economy and its operators.

Recommendation. Clarify either in the law or in separate guidelines the criteria for and circumstances in which such financial aid and benefits can be granted.

3.2.7. Obligation for pilots to make a deposit

Description of the obstacle. Every pilot shall deposit a sum of \$1000 as a bond in favour of the MPABD to guarantee the performance of his/her duties.

Harm to competition. The obligation to provide a bond may be a barrier to entry in the market for the provision of pilotage services for those that cannot afford depositing this sum.

Policymaker's objective. This bond aims to guarantee that the pilot can pay for damages caused while at the same time limiting the pilot's liability to the sum of the bond. Therefore, once the bond has been paid, the pilot will not be liable for any penalty beyond the sum of such bond. The law clarifies that this is applicable to the cases of the pilot's "neglect, want of skill or incapacity in office".

International comparison. Similarly to Brunei Darussalam, in Singapore Article 72(2) of the Maritime and Port Authority of Singapore Act provides that "every pilot shall give a bond in the sum of \$1,000 in favour of the Authority for the proper performance of his duties under this Part and any regulations made thereunder." This bond is expressly aimed at limiting the pilot's liability. In France, pilots need to make a deposit and will be liable within the limits of this deposit for the damages caused to the owner of the ship.

The amount of this deposit changes according to the size of the port. Finally, pursuant to Italian Law No. 230/2016 recently amended the Italian Navigation Code, pilots are subject to the obligation to sign an insurance contract that covers the full liability of the pilot, that is limited to one million euros for each damage case, irrespective of the number of damaged persons.

Recommendation. Allow choosing between deposit and insurance and possibly reconsider the maximum liability amount that the insurance will cover. The insurance contract should cover at least loss or damage (personal injury and damage to vessels and property) and loss of life or injury to third parties.

3.2.8. Limitation on the transfer of ships

Description of the obstacle. A ship cannot be transferred to a person not qualified to own a Brunei Darussalam ship if there is an unsatisfied mortgage entered in the register of Brunei Darussalam ships or unpaid fees or outstanding claims in respect of wages. Section 5 of the Merchant Shipping (Registration of Ships) Regulations (2006) defines the conditions for being qualified to own a Brunei Darussalam ship.⁴⁶

Harm to competition. This provision may make entry and exit from the market more difficult as it may limit both the people to whom (only a person qualified to own a Brunei Darussalam ship) and the cases in which (only when there is no unsatisfied mortgage) a transfer of a Brunei Darussalam ship can be done.

International comparison. In the UK, ship mortgages also exist and there is a transcript of them in the ship registry. It is the responsibility of the centralised Registry of Shipping and Seamen in Cardiff (Wales), to register mortgages over UK ships. A mortgage creates a fixed security over the ship and this is a security *in rem*. This means that the mortgage will survive any change of ownership of the ship and the lender will be allowed to sell the ship and use the money from the sale to pay off the amount owed to him/her. In case several mortgages are registered on the same ship, priority is given by order of time of registration (the earliest registered having priority over subsequent registrations). To the best of the OECD's knowledge, there is therefore no limitation on the power to transfer the ownership of the ship, although there is an unsatisfied mortgage. Furthermore, the UK recognizes mortgages on foreign ships. In this case, the priority of the foreign mortgage is the same as if it were a mortgage over a UK-flagged ship.

Recommendation. Allow transfer of the ownership of the ship, although there is an unsatisfied mortgage. If, based on current regulations, this were to result in the cancellation of the mortgage (as a result of the ship losing the Brunei Darussalam flag), allow recognition of mortgages also on foreign ships.

3.2.9. Requirements on marine officers

The Merchant Shipping Order lays down requirements for marine officers, including certification requirements. Table 3.2 below shows the number of seafarers in Brunei Darussalam, including what percentage of the worldwide number of seafarers they represent.

Table 3.2. Seafarer supply in Brunei Darussalam (2015)

| Absolute value | | | Percentage of total world | | |
|----------------|---------|-------|---------------------------|---------|-------|
| Officers | Ratings | Total | Officers | Ratings | Total |
| 490 | 317 | 807 | 0.06 | 0.04 | 0.05 |

Note: Officers: This category includes deck officer, engineer officer, telecommunications personnel holding certificates of competency issued by competent authorities. Ratings: These are seafarers other than officers.

Source: UNCTADStat, <https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx?ReportId=157422>.

Prescribed number of marine officers

Description of the obstacle. Pursuant to Section 47 of the Merchant Shipping Order, the Minister of Transport and Infocommunications has the power to prescribe in regulations the number of qualified officers, doctors and seamen to be carried on a ship.

Harm to competition. Specifying in regulations the number of qualified officers, doctors and seamen to be carried on a ship may restrict market access and make entry more difficult, especially for smaller firms. For instance, such fixed number can be higher than the actual needs of the ship, thus imposing on the operator additional costs.

Policymaker's objective. Fixing in regulations the number of specific officers that must be present on a ship aims to ensure safety as well as the constant presence of certain key figures on the ship.

International comparison. While some countries adopt the same prescriptive approach as Brunei Darussalam, some others have adopted a more goal-oriented approach. The International Maritime Organisation (IMO) provides guidance on determining the appropriate manning levels in Annex 1 of IMO Assembly Resolution A.890(21)⁴⁷ only requiring a goal-oriented approach. In the UK, the law lays down specific requirements for safe manning in order to guarantee navigational safety. It is however up to the owner or operator of the UK-registered ship to make an assessment as to the number and grades necessary for safe operations. The law only provides some criteria, specifying that such number must ensure for instance that the personnel is not required to work more hours than is safe or which may be injurious to their health and safety. Once the owner or operator has made this assessment, it will submit the proposal to the Maritime and Coastguard Agency and, if it is satisfied with the proposed manning levels, it will issue a safe manning document.

Recommendation. Remove and provide instead standards for safety and security on the ship that the owner or operator of the ship must comply with. This should include for instance maximum number of working hours for seafarers in order to avoid damages to their health or safety, as per IMO's Resolution A.890(21) adopted on 25 November 1999. Such goal-based regulations should be preferred to the prescriptive approach laying down a fixed number of ship officers in the law.

Nationality requirements for marine officers

Description of the obstacle. The Minister of Transport and Infocommunications may issue regulations prescribing standards of competence to be attained in order to be qualified as a marine officer. As expressly provided by Section 47(2) of the Merchant Shipping Order, such conditions may also include nationality requirements.⁴⁸ By means of the same regulations, the Minister may also grant exemptions. There seem to be no boundaries to the exercise of his/her discretion. MPABD confirmed that officers on board must be nationals of one of the 13 STCW (i.e., Convention on Standards of Training, Certification and Watchkeeping for Seafarers) countries that Brunei Darussalam has signed MoUs with.

Harm to competition. Nationality requirements to qualify as a marine officer may lead to higher costs for companies that will not be able to take advantage of lower costs of foreign manpower.

Policymaker's objective. Regulations imposing nationality requirements aim to support national labour and ensure that Brunei Darussalam workers acquire the necessary skills as marine officers.

International comparison. Many countries have nationality requirements applying to marine officers. While in some countries, they are limited to key marine officers, in others they apply to the whole crew only when providing certain services. In Thailand, Thai vessels providing marine commerce services in territorial waters can only employ personnel of Thai nationality. When Thai vessels provide international transport services, 50% of the total crew must have Thai nationality. In Malaysia, nationality requirements apply to the representative of the ship that must always be a Malaysian citizen who has his/her permanent residence in Malaysia or a body corporate incorporated in Malaysia which has its main place of business

in Malaysia. Similarly, in Denmark, pursuant to Section 13, Consolidated Act on the Manning of Ships, No. 74/2014 issued by the Danish Maritime Authority, only the master of the ship must be Danish or EU citizen, while there is no nationality requirement for other ship crew members.

Recommendation. Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement.

3.2.10. Minimum capital requirements

Minimum capital requirements for ship registration

Description of the obstacle. In order to register a ship, the company must have a minimum paid-up capital of 10% of the value of the ship or BND 500 000 (whichever is the lesser amount). In any event, the amount should be at least BND 50 000.

Harm to competition. The minimum amount of paid-up capital may constitute a barrier to entry for smaller firms.

Policymaker's objective. Minimum capital requirements aim to ensure that the company has enough capital to run the business of freight transport operator by sea. It also aims to protect consumers and creditors from risky and potentially insolvent businesses.

International comparison. Capital requirements are not necessarily the best way to measure a firm's ability to fulfil its obligations. In a report on *Doing Business 2014 - Why are minimum capital requirements a concern for entrepreneurs* (2014), the World Bank observed that, in general, minimum share capital is not an effective measure of a firm's ability to fulfil its debt and client service obligations. In particular, share capital is a measure of the investment of a firm's owners, and not the assets available to cover debts and operating costs. Furthermore, minimum capital requirements as stipulated by the commercial code or company law, do not take into account variations in firms' economic activities, size or risks, and are thus of limited use for addressing default risks. Creditors prefer to rely on objective assessments of companies' commercial risks based on the analysis of financial statements, business plans and references, as many other factors can affect a firms' possibility of facing insolvency. Commercial bank guarantees and insurance contracts are a better instrument for managing counterparty risks, and therefore should be the focus of any regulation seeking to promote a set minimum level of business certainty for users of maritime services.

Recommendation. Accept bank guarantees as an alternative to upfront payment of capital.

Minimum capital requirements for bareboat charterer companies

Description of the obstacle. A bareboat charterer company which is not registered as owner of any Brunei Darussalam ship but wants to operate in Brunei Darussalam (thus providing chartering of ships, for instance by renting them from others) is required to have a minimum paid-up capital of BND 500 000.

Harm to competition. This provision may raise costs for companies that are not registered as owners of Brunei Darussalam ships (most likely, foreign companies) compared to companies that own Brunei Darussalam ships.

Policymaker's objective. The likely objective of this provision is to ensure that, although the company does not have any ship (whose value is generally considered as sufficient guarantee for the fulfilment of its obligations), it still has some capital to guarantee the fulfilment of its obligations vis-a-vis creditors.

Recommendation. Accept bank guarantees as an alternative to upfront payment of capital.

3.3. Freight forwarding

Brunei Darussalam does not have any comprehensive laws regulating the freight-forwarding sector.

3.3.1. Freight-forwarding licence

Description of the obstacle. While there is a specific licence for operating sea freight forwarding,⁴⁹ no licence is required for road freight forwarding.

Harm to competition. Given that they may be in competition with each other to a certain extent (for instance when it comes to transporting goods to neighbouring countries within a specific catchment area), the different treatment of freight forwarding by sea and by road may create a distortion of competition and put sea freight forwarders at a competitive disadvantage. It may also constitute a significant administrative burden for sea freight forwarders, thus raising their costs and time of entry.

International comparison. In many countries, there is no specific regulation on the access to the freight-forwarding market. This is the case for instance in Germany where newly established companies only need to announce their foundation to the local authority, the Netherlands where only a registration as a company or independent in the registry of the Chamber of Commerce is necessary, Sweden and Switzerland. The IRU/World Bank also notice that "*in most regions of the world, this profession is not regulated. In regions and countries where the forwarding activity is regulated, the conditions to access the profession are usually very simple and consist of a registration to a dedicated register held in general by the Ministry of Transport*" (IRU, World Bank, 2017, p. 49_[37]). Although it is not mandatory, FIATA (*Fédération Internationale des Associations de Transitaires et Assimilés* or International Federation of Freight Forwarders Associations) has developed self-regulation of the profession in order to guarantee a certain level of professional competence by forwarders.

Recommendation. Align the requirements so that sea freight forwarders are not subject to more stringent or onerous licensing requirements than road freight forwarders. If the government wishes to guarantee a certain level of professional competence, it may consider promoting self-regulation of the profession.

3.4. Warehouses

The main pieces of legislation affecting the warehousing sector are

- The **Land Code (Chapter 40)**, which regulates land registration, documents, rent, transfer and leases.
- The law on **Land Acquisition (Chapter 41)**, dealing with the acquisition and occupation of land, payments and procedures before courts.

3.4.1. Restrictions on land purchase and transfer

Prohibition for companies to purchase land

Description of the obstacle. Pursuant to Section 3(2) of the Land Acquisition Act, for a natural or legal person to be allowed to buy land, the Sultan must be satisfied that the acquisition is needed for some work that is "*likely to prove useful to the public*". According to some market participants, in practice, only natural persons are allowed to purchase and own land. By contrast, companies (irrespective of whether they are local or foreign entities) are usually not allowed to purchase land and own it under their own name, and can only lease it for their commercial activities. The OECD's FDI Regulatory Restrictions database also reports that "*locally incorporated or registered companies, domestically or foreign-owned owned, are only allowed to lease land up to 99 years for the purpose of conducting business operations.*"

Harm to competition. The prohibition in practice to purchase and own land may prevent companies from entering the market or may result in increased costs of investment. This might be aggravated if they cannot conclude long-term leasing contracts either. Thus, it may be difficult for them to recoup the investment in a warehouse if they cannot purchase the land and do not have a sufficiently long leasing contract.

International comparison. Similar restrictions do not exist in Europe. For example, in Germany, every entity (i.e., natural or legal person) is allowed to purchase and own real estate. There are no restrictions on ownership of land by foreigners either. In Italy, legal entities are entitled to purchase and own land in the same manner as natural persons. In other ASEAN countries (e.g., the Philippines, Thailand), there are restrictions on foreigners to purchase and own land (applying both to natural and legal persons), but there are no restrictions on legal entities as such to purchase land.

Recommendation. Allow companies to own land, at least as long as the majority share of the legal person is owned by Brunei Darussalam citizens.

Difficulties in land transfer

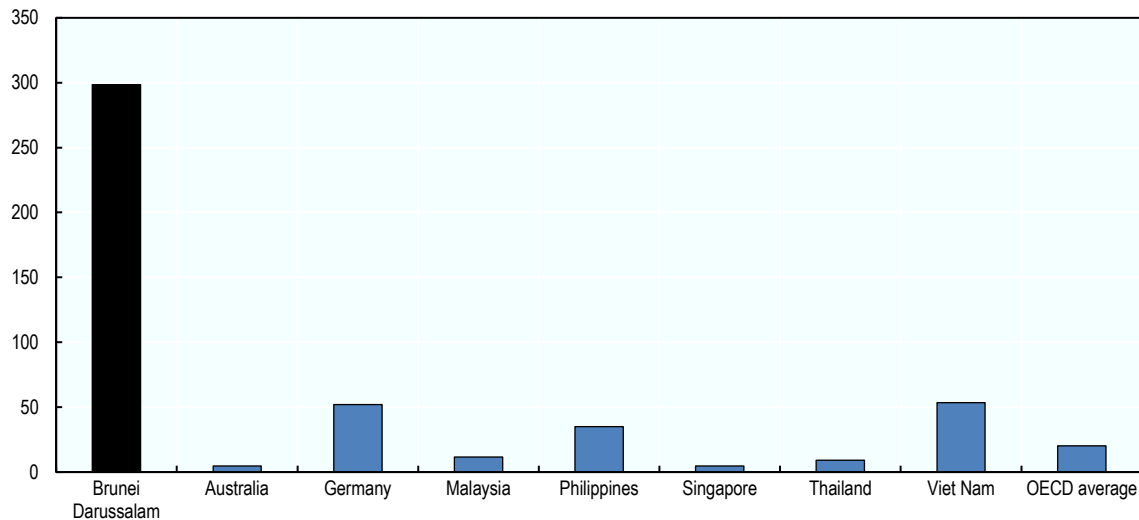
Description of the obstacle. According to some market participants and publicly available information (World Bank, 2019^[33]), it may be difficult and sometimes significantly burdensome to transfer land, private ownership or commercial property titles, even between Bruneian citizens. The steps required to transfer property in Brunei Darussalam are the following:

1. Checking encumbrances, i.e., whether the seller is the lawful owner and is entitled to sell the property. This generally takes one day.
2. Conducting a search at the High Court to determine whether any of the parties had a bankruptcy case or has any other pending case affecting the property. This can be done online and generally takes less than one day.
3. After signing the sale and purchase agreement, an application to the Land Department is required in order to obtain approval of the agreement by the "His Majesty in Council" (i.e., a council of officials representing the Sultan). This generally takes 280 days since a number of checks need to be conducted (e.g., formal checks on the technicalities of the transaction, submission of a report to the Ministry of Development, review by the Ministry of Development, checking compliance with land policies of the government, submitting a report to His Majesty in Council).
4. a number of other checks and formalities (e.g., visit of the property by the Land Department in order to determine the actual stamp duty due, paying the stamp duty, registering the property with the Land Registry).

Harm to competition. The difficulties in transferring land may constitute a barrier to market entry or exit. For instance, it may delay purchase and sale of the assets, and thus entry and exit from the market.

International comparison. As shown in Figure 3.1 below, registering property in Brunei Darussalam takes on average 298.5 days, against 72.6 days on average in other East Asia & Pacific countries, and 20.1 days on average in OECD high income economies.

Figure 3.1. Days required to register property in selected ASEAN and OECD countries



Source: World Development Indicators.

Recommendation. Facilitate the procedure with the goal of significantly reducing the number of days required for transferring land. This could be done for example by introducing statutory time limits for the whole process or by removing certain phases from the current process.

3.4.2. Maximum duration of lease

Description of the obstacle. The duration of leasing contract is limited to 60 years for industrial and commercial purposes. Pursuant to Section 23(2) of the Land Code, for long leases (i.e., above 7 years), a registration with the Land Department with the Sultan's approval is necessary. The OECD has not been able to identify the conditions for obtaining such approval. Market participants indicated that generally the State leases its land out for only 5 years.

Harm to competition. The requirements and difficulties for concluding a lease longer than 7 years may discourage investments and constitute a barrier to entry. According to some market participants, such limited duration may make it difficult to recoup a significant investment, for instance in a warehouse.

Policymaker's objective. The objective of this provision is to avoid occupation of land by the same tenant for too long periods, thus ensuring that the land will be made available again for other uses after a certain period of time.

International comparison. In Thailand, leasing contracts have a limited duration, i.e., 30 years or 50 years for industrial and commercial purposes. In Germany, contractual lease provisions are freely negotiated and the parties enjoy liberty to deviate from statutory legal provisions regarding leases. Therefore, the parties can freely negotiate the length of the lease.

Recommendation. Permit long lease, for example of up to 99 years for industrial and commercial purposes, without any approval requirement. This would allow foreign companies to invest with a longer time perspective.

3.5. Small package delivery services

The main piece of legislation affecting the small package delivery service sector is the **Post Office Act (Chapter 52)**. This law regulates, inter alia, the establishment of the Postal Services Department (PSD) under the Ministry of Transport and Infocommunications, its exclusive privileges and monopoly, the rates for its services, the conditions for delivery and liability. Table 3.3 below displays the number of letters and other postal items handled by the PSD. It shows that PSD is mainly active in its monopoly market, i.e. delivering letters, although it is becoming increasingly active in delivering small packets and parcels, with an overall 476% increase between 2010 and 2018 and, with specific regards to small packets, an even more significant 686% increase.

Table 3.3. Number of postal items handled by the PSD and percentage difference, 2010-18

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | Percentage increase 2010-18 |
|----------------------------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------------------------|
| Letters | 8 405 785 | 7939 949 | 7250 791 | 6679 229 | 7281 242 | 7066 158 | 7505 241 | 6643 886 | 6521 483 | -22.4 |
| Postcards | 59 783 | 96 461 | 58 656 | 34 247 | 24 324 | 34 820 | 29 112 | 39 496 | 43 671 | -27.0 |
| Small packets | 32 103 | 58 034 | 98 109 | 116 254 | 183 059 | 160 091 | 214 768 | 228 770 | 252 341 | 686 |
| Parcels | 14 375 | 17 935 | 19 554 | 21 842 | 22 109 | 19 706 | 17 302 | 16 004 | 15 691 | 9.2 |
| Express Mail Service (EMS) | 41 337 | 49 758 | 50 015 | 52 259 | 56 546 | 54 434 | 46 947 | 37 894 | 35 828 | -13.3 |

Source: Brunei Darussalam Department of Statistics, <http://www.depd.gov.bn/SitePages/eData%20library.aspx>.

3.5.1. Unclear boundaries of Postal Services Department's monopoly

Description of the obstacle. The PSD has the exclusive right to deliver letters. The law specifies that "letter" includes postcards but does not provide any precise definition of "letter" in order to distinguish it from small packages and/or other services not covered by the exclusive right.⁵⁰ According to market participants, the "exclusive privilege" under Section 5 refers to deferred delivery (as opposed to express delivery) and does not cover express delivery services. However, this interpretation is unclear from the letter of the provision, thus making it unclear whether express delivery services also fall within the exclusive privilege. Pursuant to Section 63 of the Post Office Act, the breach of this exclusive right constitutes an offence and fines amount to BND 50 for every letter.

The OECD understands that, in the move towards corporatisation of PSD, amendments to the Post Office Act will provide more clarity as to the boundaries of the legal monopoly. According to stakeholders' inputs, these amendments will also include Universal Service Obligations and the authority responsible for postal services will develop a framework on the quality of such services.

Harm to competition. This provision gives the PSD the exclusive right to provide delivery services of letters. Due to the broad definition of letters, such exclusive right may also extend to small package delivery services or to express delivery. Although, according to market participants, the exclusive right does not cover parcels or express delivery services for letters, this is unclear from the letter of the law and this may result in uncertainty as to the boundaries of the monopoly, thus discouraging potential competitors from entering the market.

International comparison. Many countries have put an end to their national postal monopolies and opened the market to competition, while introducing compensation mechanisms to fulfil universal service

obligations. According to the European Commission's policy on postal services, governments should reduce the scope of monopolies granted to postal operators. Member States should review their regulations and introduce more competition. For example, in France, the government put an end to the last existing La Poste's monopoly (i.e., the monopoly over letters below 50 grams), thus fully opening the market to competition for any item. However, La Poste still has to provide universal service. The State will provide compensation for the costs stemming from such universal postal service obligation mainly through a fund to whom other service providers must contribute. In Sweden, the postal market was liberalized in 1993. In 2007 (i.e., 14 years after abolition of the postal monopoly), the regulator conducted a study on the liberalized market and concluded that service quality of Posten AB improved as a result of growing competition. Also, it found that new products have been developed and delays have been reduced (Cohen et al., 2007^[38]).

Recommendation. The OECD recommends one of the following options:

1. Clarify the boundaries of the Postal Services Department's monopoly so as to exclude expressly small package delivery and express delivery. This could be done for instance by defining precisely what falls within the notion of "letter" and exclusive privilege. The OECD supports Brunei Darussalam's efforts to provide more clarity in the Post Office Act.
2. If economically feasible, consider lifting the monopoly granted to the Postal Services Department and, after assessing universal service obligation (USO) costs, if needed, introduce a mechanism to provide compensation for the additional costs stemming from such USO.

3.5.2. Licence to provide delivery services

Description of the obstacle. Pursuant to Section 6A(1) of the Post Office Act, the Minister of Transport and Infocommunications can grant a licence for providing those services falling under the exclusive right of the Postal Services Department, as long as such activities do "*not constitute a contravention of the exclusive right*". The OECD has not been able to clarify as this is possible in practice and it is unclear from the letter of the law what such a licence could cover and what remains covered by the exclusive privilege of the Postal Services Department. According to market participants, 12 licences have been issued so far.

Harm to competition. This provision may create legal uncertainty as to what activities are open to competition, thus discouraging potential entrants to enter the market.

Recommendation. The OECD recommends one of the following options:

1. Clarify the boundaries of the Postal Services Department's monopoly so as to exclude expressly small package delivery and express delivery. This could be done for instance by defining precisely what falls within the notion of "letter" and exclusive privilege.
2. Consider lifting the monopoly granted to the Postal Services Department and, after assessing universal service obligation (USO) costs, if needed, introduce a mechanism to provide compensation for the additional costs stemming from such USO.

3.5.3. Liability limitations for the PSD

Description of the obstacle. The Minister of Transport and Infocommunications may define the conditions and the limits for liability of the PSD in case of loss or damage of postal articles. The PSD cannot be sued and the Postmaster has wide discretion on the amount of compensation. The OECD has not been able to determine whether such limitation of liability applies only within the framework of the PSD's exclusive right or also to services provided in competition with private operators that are not subject to the same liability limitation.

Harm to competition. This provision may reduce costs and constitute an advantage for the Postal Services Department vis-à-vis its private competitors that have been duly licensed and are subject to

liability under international conventions. As the latter do not enjoy any limitation of liability, they may have to bear higher costs in case of liability for lost or damaged items.

International comparison. Many countries have rules limiting liability of the postal operator. In the UK, Royal Mail pays compensation for damage or loss of an item in a postal package if the degree of harm reasonably impairs the material function or content of the item, solely as a result the transmission by post (thus excluding liability for pre-existing damage). In Australia, the Australian Postal Corporation Act provides that Australian Post is not liable for loss or damage to a letter or article, unless it has given the claimant a receipt for the article. However, there are some cases where the terms and conditions provide for compensation to be paid (e.g., item sent by registered post or cash on delivery) within some specific thresholds.

Recommendation. Apply the same liability limitations to the Postal Services Department and private operators with regards to the activities conducted in competition with each other. The Postal Service Act should be amended to fully reflect the UPU standards and international conventions on liability to PSD non-express delivery services.

3.6. Horizontal and Others

The main pieces of horizontal legislation affecting the freight transport sector are:

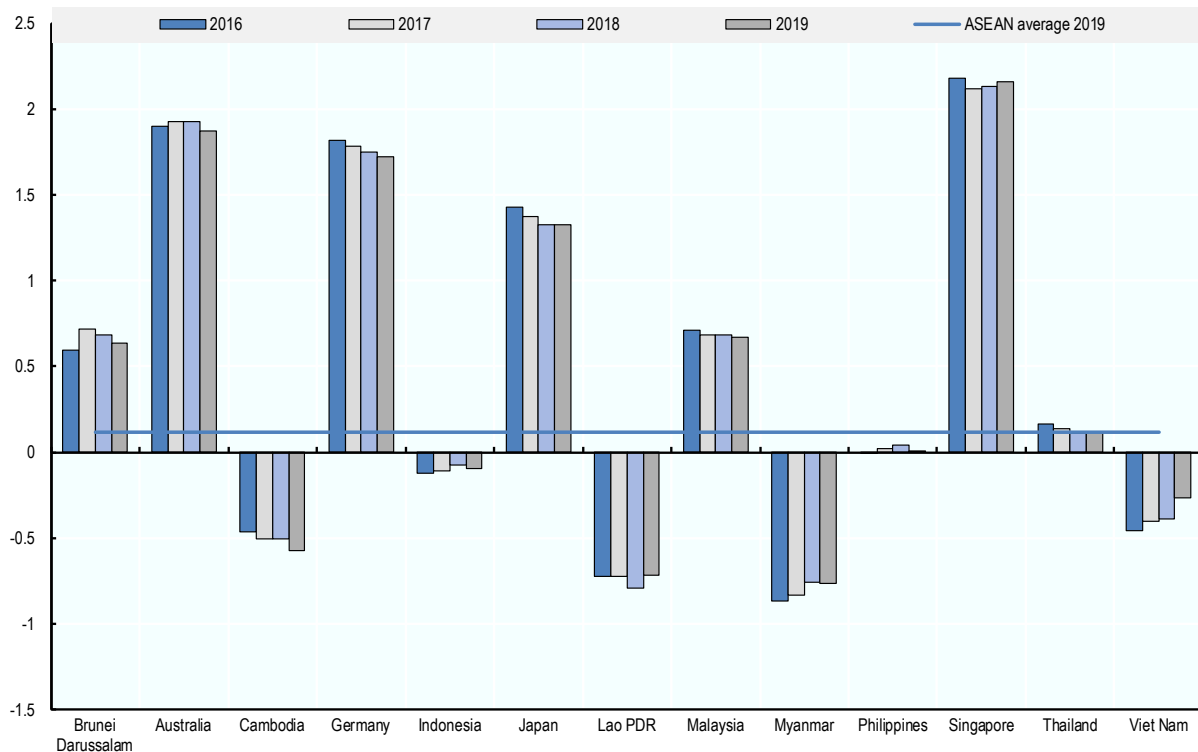
- The **Companies Act (Chapter 39)**, that regulates inter alia the incorporation of companies in Brunei Darussalam and their share capital and shareholders.
- The **Employment Order** on workers' contract and salaries.

3.6.1. Access to legislation and regulatory quality

A clear regulatory framework is essential for competition as it reduces costs of compliance and facilitates amongst other factors entry of new players. Indeed, the codification, constant update and publication of legislation in the logistic sector is beneficial especially for new entrants, that are not necessarily familiar with the national provisions, and small competitors, for whom compliance costs and administrative burdens are relatively more important than for larger companies.⁵¹

The World Bank provides an indicator on regulatory quality estimate. It captures the perception of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. As shown in Figure 3.2 below, compared to some ASEAN countries, Brunei Darussalam scores well in this regulatory estimate and is the second in ASEAN, after Singapore. However, there is still room for improvement when comparing with OECD countries such as Australia or Germany.

Figure 3.2. Regulatory quality estimate



Note: Lowest = -2.5; highest = 2.5.

Source: World Bank's Worldwide Governance Indicators.

Description of the obstacle. The Attorney General's Chambers' website is the main website for finding Brunei Darussalam legislation. Legislation there is organized in alphabetical order. However, to the best of the OECD's knowledge, amendments to legislation are not always incorporated into the original piece of legislation. Also, many pieces of legislation are not in a searchable format.

Harm to competition. Businesses and consumers need to bear the costs of identifying the relevant provisions in separate legal texts and understanding the legal framework that applies to them at a specific time.

Recommendation. In order to improve regulatory quality in Brunei Darussalam and thus contribute to foster competition, the OECD recommends one of the following two options:

1. Authorities should publish all consolidated relevant pieces of legislation (including all subsequent amendments) within their responsibility on their respective websites.
2. Organise the database in an easily accessible way. Although in some occasions this has been done manually by pen, the OECD recommends that authorities revise all legislation to include new amendments in the original main piece of legislation or, alternatively, list the main legislation and then provide a link to any amendments. This could be done for instance by the Attorney General's Chambers that is currently responsible for improving and updating the existing legal online system.

Box 3.1. What is regulatory quality?

Regulations are the rules that govern the everyday life of businesses and citizens. They are essential for economic growth, social welfare and environmental protection. But they can also be costly in both economic and social terms. In that context, “regulatory quality” is about enhancing the performance, cost effectiveness, and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-base. Beyond process, the notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient (do not impose unnecessary costs), coherent (when considered within the full regulatory regime) and simple (regulations themselves and the rules for their implementation are clear and easy to understand for users).

Building and expanding on the 1995 “OECD Recommendation on Improving the Quality of Government Regulation” (OECD, 2015^[39]), it is possible to define regulatory quality by regulations that:

1. serve clearly identified policy goals, and are effective in achieving those goals
2. are clear, simple, and practical for users
3. have a sound legal and empirical basis
4. are consistent with other regulations and policies
5. produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
6. are implemented in a fair, transparent and proportionate way
7. minimise costs and market distortions
8. promote innovation through market incentives and goal-based approaches
9. are compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

Source: Reproduced from (OECD, 2015^[39]).

Box 3.2. World Bank’s Worldwide Governance Indicators: The Regulatory Quality Estimate

The Worldwide Governance Indicators (WGI) aim at capturing several dimensions of governance across 200 countries. They include indicators on:

1. Voice and Accountability.
2. Political Stability and Absence of Violence.
3. Governance Effectiveness.
4. Regulatory Quality.
5. Rule of Law.
6. Control of Corruption.

Data are based on a wide variety of sources and for each indicator researchers have used a statistical methodology known as an Unobserved Components Model in order to standardise the data from different sources, provide an aggregate indicator of governance as a weighted average of variables and reflect possible imprecisions in measuring governance.

Regarding specifically the Regulatory Quality (RQ) indicator, it aims at capturing “perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.” The country’s score is provided in an aggregate indicator, ranging from -2.5 (lowest score) to 2.5 (highest score).

3.7. International agreements

Brunei Darussalam is a signing party to several international and regional agreements. The government sees free trade agreements (FTAs) a vital part of its foreign trade policy in order to attract foreign direct investments (FDIs). Through its ASEAN membership, Brunei Darussalam has concluded FTAs with Australia, New Zealand, mainland China, India, Japan and Korea. The government has also concluded bilateral agreements, for instance with Japan (Brunei Darussalam-Japan EPA) and multilateral agreements with Chile, New Zealand and Singapore (the Trans-Pacific Strategic EPA).

With regards to ASEAN-wide agreements affecting the transport sector, in 2004, the heads of State and Government of all ASEAN countries signed the ASEAN Framework Agreement for the Integration of Priority Sectors.⁵² The purpose of this framework agreement was to identify measures, with precise timelines, that would enable the progressive and systematic integration within ASEAN. However, logistics was not included within the eleven priority sectors.⁵³ It was only in 2006 that the ASEAN Economic Ministers decided to add logistics as the twelfth priority sector and developed a Roadmap for the Integration of Logistics Services, adopted in 2007 and including specific measures aiming to create an ASEAN single market “by strengthening ASEAN economic integration through liberalization and facilitation measures in the area of logistics services”.⁵⁴ Today, Brunei Darussalam is party to the ASEAN Framework Agreement on the Facilitation on Goods in Transit (AFAFGIT) and the ASEAN Framework Agreement on Facilitation of Inter-state Transport (AFAFIST).

3.7.1. Lack of ratification or implementation of regional/international agreements

Description of the obstacle. Brunei Darussalam is a signing party to the ASEAN Framework Agreement on Multimodal Transport (2005). The objective of this agreement is to facilitate “*the expansion of international trade among the members of ASEAN*” and “*to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade*”. However, Brunei Darussalam has not yet implemented it in its national legal order. As a result, multimodal transport service providers cannot benefit from the provisions on liability, facilitation of documents and operations across ASEAN countries.

Harm to competition. The lack of implementation of the ASEAN Framework Agreement on Multimodal Transport results in additional costs for operators and limits their possibility to provide their services across ASEAN Member States, thus raising geographic barriers to the provision of services. In particular, according to market participants, the lack of implementation makes it necessary to issue different documents for each leg of the transport by different means (e.g., bill of lading for the maritime leg and CMR – *Convention relative au contrat de transport international de marchandises par route* - for the road leg), thus making it more burdensome to transfer cargo from one mode of transport to the other.

Recommendation. Introduce specific provisions or amend existing provisions to implement the ASEAN Framework Agreement on Multimodal Transport into the national legal order.

3.7.2. Limited number of licences for cross-border road transport

Description of the obstacle. The BIMP (Brunei Darussalam, Indonesia, Malaysia, the Philippines) EAGA (East ASEAN Growth Area) Memorandum of Understanding (MOU) on Transit and Inter-State Transport of Goods provides for a limited number of licences (500) that can be issued to operate cross-border across the BIMP EAGA countries. Similarly, Protocol 3 of the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) limits the number of licences to provide transport services across ASEAN countries to 60 trucks per country.

Harm to competition. The limited number of licences allowing trucks to operate cross-border may constitute a barrier to entry if there are not sufficient licences available for every interested company.

International comparison. The objective of these provisions is likely the protection of national road transport service providers against competition from other neighbouring countries.

Recommendation. The OECD recommends one of the following:

1. Remove these limitations and grant a licence to all those that request it, based on qualitative criteria. Such qualitative criteria may concern the good repute of the operator, its adequate financial standing and its professional competence. Each of these criteria should be clearly defined in the international agreement or implementing laws or regulations.
2. Regularly assess the market's need and demand, and consider increasing the maximum number of licences.

Both these recommendations would require negotiations between the two co-signatories.

3.7.3. Lack of online applications

Description of the obstacle. There is no online application for cross-border transport permits for trucks. In order to obtain recognition of the permit issued by one country (e.g., Brunei Darussalam) in the other country (e.g., Malaysia), it is necessary to take the permit physically to the office of the other country. According to market participants, the whole process can take weeks or months.

Harm to competition. The requirement to physically take the permit from one country to the other is burdensome and costly for companies. It may therefore constitute a barrier to entry for potential competitors.

International comparison. Most OECD countries allow online application processes for transport and logistics-related licences and authorisations. In the UK, for instance, there is a user-friendly online procedure for transport operator licences (with possibility to pay fees online with credit card), although it is also possible to file an application by post if one cannot use the online service. Decisions are usually issued within shorter time in case of online application (7 weeks) compared to applications by post (9 weeks).

Recommendation. Introduce online applications and remove the requirement to submit hard copies of applications.

Annex A. Methodology

The assessment of laws and regulations in these sectors and its subsectors has been carried out in four stages. The present annex describes the methodology followed in each of these stages.

Stage 1: Mapping the sectors

The objective of Stage 1 of the project which started in the second half of 2018 was to identify and collect sector-relevant laws and regulations. The main tools used to identify the applicable legislation were the online databases, in particular the database provided by the Attorney General's Chambers. This was complemented by the websites of Brunei Darussalam authorities and of industry and consumer associations. Over the course of the project, the lists of legislation were refined, as additional pieces were discovered by the team or issued by the authorities, while other pieces initially identified were found not to be relevant to the sectors or no longer in force. In total, [63] different pieces of legislation were identified.

Another important objective of the first stage was the establishment of contact with the market through the main authorities, industry associations and private stakeholders active in the sectors. In January 2019, the OECD team conducted a fact-finding mission to Bandar Seri Begawan to meet with government and private stakeholders. Interviews with market participants contributed to a better understanding of how the sub-sectors under investigation work in practice and helped in the discussion of potential barriers deriving from the legislation.

Based on those meetings and the discussion on practical problems stakeholders face, and backed up by further research, the OECD team identified the legislation to be prioritised for areas in which *prima facie* barriers to competition existed and therefore impact on competition could be expected.

Stage 2: Screening of the legislation and selection of provisions for further analysis

The second stage of the project mainly entailed the screening of the legislation to identify potentially restrictive provisions, as well as providing an economic overview of the relevant sectors. Every piece of legislation was scanned by a team member and an outside national consultant (“four-eyes principle”).

The legislation collected in Stage 1 was analysed using the framework provided by the OECD *Competition Assessment Toolkit*. This toolkit, developed by the Competition Division at the OECD, provides a general methodology for identifying unnecessary obstacles in laws and regulations and developing alternative, less restrictive policies that still achieve government objectives. One of the main elements of the toolkit is a competition-assessment checklist that asks a series of simple questions to screen laws and regulations with the potential to restrain competition unnecessarily.

Following the toolkit's methodology, the OECD team compiled a list of all the provisions that answered any of the questions in the checklist positively. The final list consisted of 67 provisions across the logistic sector.

Box A A.1. OECD Competition Assessment checklist

Further competition assessment should be conducted if a piece of legislation answers “yes” to any of the following questions:

A) Limits the number or range of suppliers

This is likely to be the case if the piece of legislation:

1. grants a supplier exclusive rights to provide goods or services
2. establishes a licence, permit or authorisation process as a requirement of operation
3. limits the ability of some types of suppliers to provide a good or service
4. significantly raises the cost of entry or exit by a supplier
5. creates a geographical barrier to the ability of companies to supply goods, services or labour, or invest capital.

B) Limits the ability of suppliers to compete

This is likely to be the case if the piece of legislation:

1. limits sellers’ ability to set the prices of goods or services
2. limits the freedom of suppliers to advertise or market their goods or services
3. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
4. significantly raises the costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants).

C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

1. creates a self-regulatory or co-regulatory regime
2. requires or encourages information on supplier outputs, prices, sales or costs to be published
3. exempts the activity of a particular industry or group of suppliers from the operation of general competition law.

D) Limits the choices and information available to customers

This may be the case if the piece of legislation:

1. limits the ability of consumers to decide from whom they purchase
2. reduces the mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
3. fundamentally changes the information required by buyers to shop effectively.

The OECD also prepared an extensive economic overview of the logistics sector (and refined it during later stages), covering industry trends and main indicators, such as output, employment and prices, including comparisons with other ASEAN and OECD member countries where relevant. It also analysed summary statistics on the main indicators of the state of competition typically used by competition authorities, especially information on the market shares of the largest players in each sector. Where possible, these statistics were broken down by sub-sector. The analysis conducted during this stage aimed to furnish

background information to better understand the mechanisms of the sector, providing an overall assessment of competition, as well as explaining the important players and authorities.

Stage 3: In-depth assessment of the harm to competition

The provisions carried forward to Stage 3 were investigated in order to assess whether they could result in harm to competition. In parallel, the team researched the policy objectives of the selected provisions, so as to better understand the regulation. An additional purpose in identifying the objectives was to prepare, in Stage 4, alternatives to existing regulations, taking account of the objective of the specific provisions when required. The objective of policymakers was researched in the recitals of the legislation, when applicable, or through discussions with the relevant public authorities.

The in-depth analysis of harm to competition was carried out qualitatively and involved a variety of tools, including economic analysis and research into the regulations applied in other OECD countries. All provisions were analysed, relying on guidance provided by the OECD's *Competition Assessment Toolkit*. Interviews with government experts complemented the analysis by providing crucial information on lawmakers' objectives and the real-life implementation process and effects of the provisions.

Stage 4: Formulation of recommendations

Building on the results of Stage 3, the OECD team developed preliminary recommendations for those provisions that were found to restrict competition. It tried to find alternatives that were less restrictive for suppliers, while still aiming to fulfil the policymakers' initial objective. For this process, the team relied on international experience— from the ASEAN region, and European and OECD countries – whenever available. The report was also shared with the OECD International Transport Forum (which also contributed with international experience in the transport sector) and the Investment Division.

During a stakeholder consultation in July-September 2019, the OECD presented preliminary recommendations to the Brunei Darussalam authorities and asked for their views on recommendations. All those comments were taken into account when deciding on final recommendations and writing the final report.

In total, 47 recommendations were submitted to Brunei Darussalam.

Annex B. Legislation screening

Road freight transport

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations, 2013 | Art. 11 | Permits and authorizations | <p>All vehicles (i.e., trucks for freight transport as well as private cars) must obtain a roadworthiness vehicle licence from the Land Transport Department. This licence allows using the vehicles on Brunei Darussalaman roads and can include conditions on such permitted use.</p> <p>This licence is issued only if the licensing officer considers that the vehicle is in a suitable condition for the purpose for which a registration is sought (so called, roadworthiness inspection). Inspection fees for motor vehicles and trailers is BND 5 and BND 10 for subsequent inspections.</p> <p>For commercial vehicles</p> | <p>Although the inspection fee is low and the inspection itself is conducted quickly, the obligation to renew the licence for commercial vehicles every six months may result in administrative burden for companies, thus raising a barrier to entry for potential competitors or increasing the costs for incumbents. Furthermore, during the time required to take the vehicle to the inspection, both the vehicle and the worker will be unavailable for other tasks.</p> | <p>This provision aims to ensure that vehicles used for providing services to third parties are in good conditions. The Land Transport Department confirmed that it also aims at ensuring safety and roadworthiness of the vehicles.</p> <p>International comparison</p> <p>Regular inspections over vehicles are commonplace all over the world. However, many countries only require inspections to take place every year. This is for instance the case in other ASEAN countries such as:</p> <p>The Philippines: In the Philippines, a similar motor vehicle registration</p> | <p>Reduce administrative burden stemming from vehicle inspections. This could be done for instance by requiring roadworthiness tests only every year instead of every six months (, or by requiring inspections every six months only for five (or more) year old vehicles), or by requiring inspections based upon the number of kilometres travelled. If there is a genuine risk of market participants not complying with the rules, surprise inspections or heavier fines for such behaviour could be introduced as a deterrent.</p> |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | <p>(heavy vehicles and public service vehicles, i.e., vehicles used for providing services to third parties against remuneration), such vehicle licence must be renewed every six months, while for other vehicles such as private cars the licence will have to be renewed every year. The Director of Land Transport may at its discretion approve any shorter period, although not less than one month. The Land Transport Department confirmed that the applicant can schedule the inspection beforehand and the inspection itself is carried out very quickly.</p> <p>According to market participants, during the time of such inspection, the vehicle is sent out for inspection and is therefore unavailable for carrying out any activity.</p> | | <p>is granted for one year.</p> <p>Viet Nam: In Viet Nam, the truck licence is valid for one year if the truck is less than 5 years old. If older, the licence is granted for 6 months.</p> | |
| Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations, 2013 | Art. 15 | Permits and authorizations | In order to grant a motor vehicle or trailer licence as per above, the licensing officer can require the owner to provide any evidence as it may be reasonably available with regards to the specifications of the motor vehicle or trailer. The law | Theoretically, the lack of indication in the law concerning the data to provide could result in extensive requests by the licensing authority. This may deter entrepreneurs from entering the market. Also, such wide discretion may theoretically allow | <p>The likely objective of this provision is to ensure that the licensing officer has all the necessary information to take informed decisions.</p> <p>International comparison</p> <p>In Thailand, Articles 24 ff. of the Land Transport Act</p> | No recommendation. The data to be provided is already sufficiently identified in the Land Transport Department's online system. |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | <p>does not list the information and documents to provide in order to obtain the licence.</p> <p>The Land Transport Department confirmed that there is an online system called Sistem Pengangkutan Darat (SPD) that identifies all the technical specifications to be provided by the applicants. Upon renewal, the data of the vehicle will already be in the system so the owner will not have to provide it twice.</p> | discrimination among operators. In practice, however, the information to provide is identified in the online system of the Land Transport Department. | B.E. 2522 lays down specific conditions for obtaining the licence to provide transport services, depending on the intended activity (fixed route transport, non-fixed route transport, transport by small vehicle or private transport). | |
| Market reports and market participants | - | Permits and authorizations | According to market participants, only two trailers can be registered for each prime mover (including both 4x2 and 6x4 prime movers). As a result, if the two trailers remain at the customer's premises for loading/unloading cargo, the prime mover will also be retained with the trailers as the lack of other registered trailers will make it impossible to use it to transport different goods at the same time. | The limitation of two trailers per prime mover may limit the amount of transport services that a truck company can offer. Also, it may increase transportation costs per freight unit, as it may reduce the utilisation rate of the prime mover. | <p>This provision aims to ensure safety and, to this purpose, to avoid trucks using more than two trailers with one prime mover. However, it is unclear whether this provision actually serves the objective as one can still use, with the same truck, several trailers registered with different trucks.</p> <p>International comparison</p> <p>The government of Western Australia (Department of Transport, Driver and Vehicles Services) provides for</p> | Allow registration of trailers independently of the number of prime movers and trucks. Safety objectives can be achieved in different ways, for instance by prohibiting, if necessary, to use more than two trailers per prime mover at the same time or by introducing load limits. |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | | | <p>specific dimensional limits with regards to the overall length of the prime mover and semi-trailer combination (rather than limiting the number of trailers that can be registered) (for more details.¹ For instance, the maximum overall length of the prime mover and semi-trailer combination is of 19 meters.</p> <p>ASEAN To the best of our knowledge, there is no similar restriction in the Philippines, Thailand or Viet Nam, although such countries have regulations on maximum length and/or weight allowed. For instance, in the Philippines, Section 9(c) of Republic Act 4136 on land transportation and traffic rules on highways provides that "no motor vehicle and/or trailer combination shall exceed eighteen meters in overall projected length, including any load carried on such vehicle and trailer."</p> | |
| Road Traffic (Registration of Motor Vehicles and Trailers) Regulations, 2013 | Art. 3, para. 3 | Permits and authorizations | When applying for registration of a truck (e.g., registration of ownership, the applicant must additionally provide any | The broad discretion may lead to discrimination between potential operators, thus raising costs for some of them | The likely objective of this provision is to ensure that the Director of Land Transport has sufficient information in order to take | No recommendation. Data to provide are already identified in the Land Transport Department's online system. |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | information and evidence required by the Director of Land Transport. The details and evidence to provide in order to register a motor vehicle or trailer are unclear from the letter of the law and the Director of Land Transport seems to enjoy broad discretion. However, the Land Transport Department confirmed that there is an online SPD (Sistem Pengangkutan Darat) that identifies all the technical specifications to be provided. | compared to others. Also, the uncertainty with regards to the conditions may discourage entry into the market. | <p>informed decisions.</p> <p>International comparison</p> <p>Several countries have similar provisions which are, however, more detailed. For example:</p> <p>In Thailand, Chapter VI (Vehicles) of the Land Transport Act, B.E. 2522 provides that vehicles used in transport must be in good status, resistant and well equipped with accessories and components that are precisely prescribed in ministerial regulations.</p> | |
| Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations, 2013 | Art. 8, para. 2 | Truck and driver requirements | The Director of Land Transport may exempt any motor vehicle or trailer from the requirements laid down in the Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations, e.g, from the obligation to obtain a motor vehicle or trailer licence for using the vehicle for freight transport services. The power to grant exemptions is not subject to any limitation or conditions. | This wide discretion may lead to discrimination among competitors. Although the Land Transport Department confirmed that exemptions are granted according to international standards and best practices, the director's discretion may still be significant. | Road Traffic (Licensing of Motor Vehicles and Trailers) Regulations (2013) aim to ensure that the vehicles and trailers are fit for their purpose and in good conditions, thus ensuring safety. | Describe in the law or guidelines the specific cases where such an exemption can be granted to give more certainty to market participants. |
| Road Traffic Act, Chapter 68 | Art. 93, para. 2, lett. a) | Restriction on operation | The Minister of Transport and Infocommunications | The limitation on the number of licences to be | This provision likely aims at avoiding traffic | Remove. Although congestion and |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | <p>may impose limits on the number of motor vehicle licences in a certain area. According to market participants, this power to limit the number of licences that can be issued has never been exercised in practice.</p> | <p>granted for specified types or classes of vehicles in a certain area may reduce the number of operators active on the market, thus restricting market entry and therefore competition.</p> | <p>congestion in certain areas as well as addressing environmental concerns. It may be a legacy from the past, when transport businesses were State-owned or when new models of transport were being developed and were deemed to need protection from competition by road transport operators.</p> <p>However, OECD believes that this may not be the best way to avoid congestion and protect the environment and that it may be better to introduce truck bans at peak hours for instance.</p> <p>International comparison: Although some other countries have similar provisions in place or authorities have the power to introduce similar limitations, the World Bank highlighted in a study that this is a "highly restrictive model" where access by new competitors is under strict control.</p> <p>The Yangon Regional Transport Authority (YRTA) (i.e., a local authority in Myanmar) adopted a restrictive model</p> | <p>environmental concerns are legitimate objectives, they can be achieved in different ways, for instance by introducing truck bans at peak hours.</p> |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | | | <p>and it seems that many operators are currently circumventing the limitation by registering their vehicles in other municipalities. In the case of Myanmar, this seems to result in an additional burden for operators, for instance because they will have to renew their vehicle licence in that area or take their vehicle there for inspection.</p> <p>In the World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services Reform", the authors observe that historically there have been countries limiting the number of authorized carriers and the size of their fleet. They state that "in such schemes, new entrants are allowed only to compensate the elimination of actors from the market (bankruptcy, retirement). In this model, the consideration of certain qualitative aspects of admission may also be integrated, though only to a limited extent." They conclude that this is "a</p> | |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | | | <p>highly restrictive model whereby all access conditions are under strict control. Market forces are highly subdued and replaced by central decision making with a high degree of potential error. This access model is common in economies dominated by state ownership of businesses, in most cases yielding low efficiency and high costs of operation accompanied by monopolistic pricing causing harm to consumers and ultimately society" (pp. 31-32).</p> <p>In Thailand, although based on the letter of the provision of the Land Transport Act it seems that the Central Land Transport Control Board has the power to limit the number of operators and vehicles for the Bangkok area, to the best of our knowledge this power only applies to the transport of passengers and not to freight transport service providers.</p> <p>In the Philippines, to avoid traffic congestion and preserve free-flow movement of traffic during</p> | |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | | | <p>peak hours, in certain areas of Metro Manila trucks are only allowed to operate at certain times of the day (so called truck bans).</p> <p>Greece: In the World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services Reform", this is how the authors describe the restrictive model of Greece regarding the number of authorized carriers of goods: "The privilege to carry goods belonged historically to the State, which passed this on to truckers by selling them a limited number of licenses every year. The license gave the right to carry goods internally and internationally. In 1970 the Government decided that the 33,000 licenses on the market were enough to perform the country's commercial transport of goods and stopped issuing additional licenses. The commercial road transport became a "closed profession." As a consequence, the selling</p> | |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | | | <p>price of the licenses rose continuously, and reached as much as 250,000 Euros/truck in 2010. A license was seen as a long-term investment and a secure source of income. At the same time, this system protected the profession from stiff competition that new entrants would present, which translated into lack of incentives to innovate. The transport of goods "for own account" was not subject to the same rules. As a consequence, there are more than 1.4 million vehicles (smaller or bigger trucks) that are supposed to carry only their own business products or raw materials. This leads to low capacity-utilization. It also means that there are low economies of scale and unregulated use of vehicles."</p> | |
| Road Traffic Act, Chapter 68 | Art. 93, para. 2, lett. w) | Truck and driver requirements | The Minister of Transport and Infocommunications may issue regulations of general or particular application imposing limits on the width, height, wheelbase, length and overhang of motor vehicles and trailers and the load carried thereby, the diameter of wheels and the | The limitation existing in Brunei Darussalam may raise costs and/or constitute a barrier to entry for cargo operators. It may indeed reduce the utilization rate of the trailers, thus significantly increasing costs of transport. Also, it may constitute a barrier or | <p>These limitations aim to ensure safety on Brunei Darussalaman roads.</p> <p>International comparison</p> <p>The World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services</p> | <p>No recommendation. Brunei Darussalam government however should continue ensuring harmonization of vehicle load limitations with neighbouring countries, pursuant to the specific provisions to this purpose contained in the ASEAN Framework Agreement on</p> |

| No and title of regulation | Article | Thematic category | Brief description of the potential obstacle | Harm to competition | Policymaker's objective/Objective justification | Recommendations |
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| | | | <p>width, nature and conditions of tyres of motor vehicles and trailers and the use of any tyres likely to cause damage to the roads.</p> <p>According to market participants, the law currently limits to 14 tons the load that trailers can transport on the road. In their view, the limitation to 14 tons does not take into account the improvements made to the construction of roads since such regulations were issued. However, the Land Transport Department confirmed that Brunei Darussalam Public Works Department (an agency responsible for the road infrastructure) "allows 8 tons per axle of the vehicle to the prime roads."</p> | <p>additional costs for international transport operators, e.g., for trucks coming from Malaysia. However, since the Brunei Darussalam Public Works Department allows vehicles to transport 8 tons per axle, the harm to competition is only theoretical.</p> | <p>Reform" observes that "it is rather common for the maximum axle load and gross vehicle load limits to be much lower than the optimum. Strict enforcement would not allow efficient use of road transport vehicles and impose substantial additional transport costs. In practice, everyone ignores the regulations except when enforcement officers want favors from the truckers. This fails to check even extreme overloading and undermines enforcement efforts generally" (see p. 86).</p> <p>It seems that most countries have higher weight limits than Brunei Darussalam. For example:</p> <p>Malaysia: In Malaysia, the Federal Weight Restriction Order provides for specific weight restrictions for vehicles, depending on the wheelbase and the wheel spread. These limits are all above 16t (for more details.²</p> <p>ASEAN:</p> | <p>Facilitation of Goods in Transit.</p> |

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| | | | | | <p>Protocol 4 (Technical requirements of vehicles) annexed to the ASEAN Framework Agreement on the Facilitation of Goods in Transit provides for a maximum weight of the vehicle/trailer (including any load carried on it) rather than the maximum weight of the load itself. Such weight limits are between 21 and 38 tons, depending on the vehicle.</p> <p>Germany: In Germany, the law specifies the maximum permitted weight of vehicles, depending on the number of axles of the vehicle (in practice the length and resistance of the vehicle or trailer). For instance, such weight limit is between 18t and 24t for trailers and between 18t and 32t for motor vehicles.³</p> <p>However, we understand that it might be difficult to compare precisely the quality of roads across countries.</p> <p>Also, in order to ensure that load limits (possibly revised) are respected and transport companies</p> | |

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| | | | | | compete on fair conditions, some countries have put liability also on the shippers that eventually benefit from overloading practices. For instance, France has introduced regulations whereby also shippers/consignors (in addition to the transport company) are responsible and fined in case of overloading. Similarly, in Greece, liability for overloading is put both on the consignor and the transport operator. | |
| Road Traffic Act, Chapter 68 | Art. 96 | Other | The Minister of Transport and Infocommunications may exempt any person or "class or description of person" (i.e., a certain general category of persons) or any vehicle or "class or description of vehicle" (i.e., a certain general category of vehicles) from all or any of the provisions of the Road Traffic Act and other regulations made thereunder. No criteria for granting such exemptions are provided in the law. | This broad discretion may lead to discrimination and favour one or more operators vis-à-vis others. For instance, theoretically, an operator may be exempted from the obligation to obtain a licence or to undergo certain inspections while other competitors will have to bear those costs. The fact that the Minister will exercise this power only in exceptional cases does not reduce wide discretion in practice. | The Road Traffic Act, Chapter 68, aims at regulating traffic on roads (e.g., driving licences, driving offences) as well as other aspects of roads and vehicles (such as coordinating means of and facilities for transport and construction of vehicles). | Make the grant of exemptions subject to strict conditions and describe in the law or guidelines the specific cases where such an exemption can be granted. |
| Road Traffic Act, Chapter 68 | Art. 66 | Permits and authorizations | Any person willing to obtain a public service licence (i.e., a licence for providing transport | The information requests may possibly be excessive (if the Licensing Authority makes extensive requests | This provision aims at ensuring the decision-making authority has sufficient information to | Amend the law or issue guidelines specifying the documents required for obtaining a licence and/or |

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| | | | <p>services to third parties against remuneration) is required to provide any information which the Licensing Authority (today the Land Transport Department, following dissolution of the Motor Transport Licensing Authority) may require for the proper exercise of its functions. The Land Transport Department confirmed that "some of this information is required to consider the application for the franchise or licence."</p> <p>The law does not precisely specify the information to provide in order to obtain a public service licence. Pursuant to Section 66, the information required includes in particular details on "any business as a carrier of passengers or goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged or proposed to be charged by the applicant." This is however just an example (as highlighted by the wording "in particular" in the provision) and it is not an exhaustive list.</p> | <p>based on its wide discretion) leading to high administrative costs. Also, such wide discretion may allow discrimination among operators.</p> | <p>make informed decisions. However, applicants should be aware beforehand of the specific information they need to provide.</p> <p>International comparison</p> <p>Other countries also require a licence but generally lay down the exact conditions. For instance:</p> <p>In the Philippines, LTFRB MC 2017-004 (LTFRB Citizen's Charter) and MC 2017-027 "Implementing Guidelines for garages under Department Order No. 2017-011 (Omnibus Franchising Guideline) specifically list the requirements and documents to submit in order to be authorized to operate as a Truck-for-Hire. These requirements include:</p> <ul style="list-style-type: none"> - A valid and existing hauling contract; - A sketch or the dimensions of the garage and the corresponding contract/lease of premises; - Proof of existence of all units, by submitting the Certificates of Registration (CR) and official receipt | <p>the facts to be proven.</p> |

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| | | | | | <p>(OR) of registration (both in the name of the applicant) as well as the Stencil of Chassis and Motor numbers. The applicant must have insurance for all units.</p> <p>In the EU, there is a European Transport Licence (ETL) for providing freight transport services across EU countries. The requirements are specifically laid down in the law and include registration of the company, availability of a transport manager, good reputation of the transport company, financial strength, parking area for transport vehicles and a registered office.</p> | |
| Road Traffic (motor vehicles (speed warning device)) Regulations, 2002 | Art. 3, para. 3 | Truck and driver requirements | <p>These regulations require commercial heavy goods vehicles and public service vehicles to install a speed warning device. The same requirement does not apply to private vehicles, e.g., vehicles used for the transport of a company's own goods.</p> <p>According to market participants, the device is costly and not durable.</p> | The requirement to have a speed warning device on every vehicle results in a burden for companies, thus possibly raising a barrier to entry. | <p>The Land Transport Department confirmed that it is in the process of finding an alternative robust system that can be used for speed monitoring.</p> <p>International comparison</p> <p>Other countries (such as Singapore) that used to have the same requirement have now lifted it and are currently</p> | Consider removing and gradually introducing alternative solutions, such as speed traps. The OECD supports the government's efforts to find an alternative and less burdensome system for speed monitoring. |

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| | | | | | using speed traps. | |

1. See, https://www.transport.wa.gov.au/mediaFiles/licensing/LBU_VS_CI_111.pdf).
2. See, http://mddb.apec.org/Documents/2017/TPTWG/WKSP1/17_%20ptwg_wksp1_018.pdf).
3. See, <https://www.iru.org/apps/infocentre-item-action?id=282&lang=en>)

Maritime freight transport

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| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 7 | Ports | <p>With the Maritime and Port Authority of Brunei Darussalam Order (hereinafter, MPABD Order), Brunei Darussalam implemented a reform to separate regulatory and operational functions regarding port facilities.</p> <p>Pursuant to Section 81 ff. of the MPABD Order, MPABD will grant licences to third parties to provide marine and/or port services, while it will keep for itself the regulatory functions. This is part of a broader reform within the Ministry of Transport and Infocommunication's "Strategic Plan 2008-2017"¹ whereby the ministry will shift its role from a service provider to a regulatory body setting the regulations and policies. Within this framework, the Ministry of Transport has developed policies for corporatizations and privatizations and for business facilitation. One of these reforms concerned MPABD (see</p> | <p>The overlap between regulatory and operational functions within MPABD may result in a conflict of interests. For instance, MPABD may keep potential competitors (seeking a licence) out of the market in which it provides towage services itself. The overlap between regulatory and operational functions may theoretically also result in MPABD issuing regulations according to its requirements as an operator, thus, granting itself a competitive advantage over other potential or actual players in the industry and infringing the principle of competitive neutrality and level playing field.</p> | <p>The objective of the MPABD Order is to ensure the separation of regulatory and operational functions with regards to marine and port services. As confirmed by MPABD, the exceptions provided to the general principle of separation aim to ensure continuity of the services in the period between the previous and the new legal framework. However, some of the exceptions go beyond this objective. According to MPABD, MPABD is expected to adopt new regulations soon to achieve full separation of regulatory and operational functions with regards to pilotage and towage services. It confirmed that it is in the process of transferring the existing functions of service provider to a government-linked company (GLC), at least concerning pilotage and towage services. There will also be licences issued to private operators to run such privatized services.</p> | <p>Remove the possibility for the minister to give directions resulting in regulatory and operational overlap. After a transition period, the government should always ensure full separation as the general rule.</p> <p>When introducing changes to regulations or giving directions pursuant to Section 7 of the MPABD Order, the government (e.g. Ministry of Transport) may consider requesting the opinion of the Competition Commission Brunei Darussalam in order to ensure that market players or regulators do not implement strategies that may foreclose competitors.</p> |

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| | | | <p>Jatswab S. Sidhu, "Historical Dictionary of Brunei Darussalam", p. 260).</p> <p>However, there might still be circumstances where regulatory and operational functions may overlap under this new legal framework.</p> <p>Pursuant to Section 7(5) of the MPABD Order, the Maritime and Port Authority Brunei Darussalam (MPABD) is allowed to continue providing any marine or port services and facilities until the licences granted under Part 12 of the MPABD Order come into effect. This is to ensure continuity of the services during the transitional period between the old and new legal framework.</p> <p>However, Section 7(6) provides that MPABD will also be allowed to provide any marine and port services in other two cases:</p> <ul style="list-style-type: none"> - if it considers that the licensee has failed to discharge its obligations; and - to give effect to any | | <p>International comparison</p> <p>Separation of regulatory and operational functions is a common issue in many countries.</p> <p>As explained in the OECD Governance of Regulators (2014), regulatory integrity is of utmost importance. "Establishing the regulator with a degree of independence (both from those it regulates and from government) can provide greater confidence and trust that regulatory decisions are made with integrity. A high level of integrity improves outcomes of the regulatory decisions" (p. 47). It is important to create an independent and structurally separate body.</p> <p>The Port Reform Toolkit PPIAF of the World Bank, 2nd Edition, provides a guide to policymakers on undertaking sustainable and well-considered reforms of ports. It provides that " to avoid conflicts of interest, the law should explicitly regulate the powers and duties of the port authority in relation to private</p> | |

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| | | | <p>direction of the Minister of Transport and Infocommunications under Section 9.</p> <p>Pursuant to the latter provision under Section 9 of the MPABD Order, the Minister can give any direction "as he thinks fit." This expressly includes the prohibition or regulation of any marine or port services.</p> <p>In practice, although the general legal framework provides for a separation of regulatory (for MPABD) and operational (for licensees) functions, some overlap regarding marine and port services may still exist, even besides emergency cases, for instance if the Minister of Transport and Infocommunications provides such directives under Section 9.</p> <p>MPABD confirmed that currently there are overlapping regulatory and operational functions within MPABD but it is in the process of transferring the existing functions of service provider to a government-linked</p> | | <p>operators with respect to investments and share participation." It also states that "generally, it is undesirable for a public port authority to be directly involved in terminal operations. A port law may explicitly prohibit a port authority from providing cargo handling services. A further step to avoid conflict of interest issues would be to prohibit a port authority from being a shareholder in a terminal operating Company located in its port area."</p> <p>Indonesia: In its report on the Review of Regulatory Reform in Indonesia (2012), the OECD welcomed the changes introduced in the Indonesian Shipping Law of 2008, in particular the introduction of the concept of separation of regulatory and operational functions with regards to ports. In this report, the OECD recommended further clarifications on the separation of regulatory and operational functions between port authorities and Indonesian port corporations (that</p> | |

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| | | | company (GLC), at least concerning pilotage and towage services. It will also issue licences to private operators to manage such privatized services. | | <p>previously performed regulatory functions) (see OECD Review of Regulatory Reform in Indonesia (2012), p. 20).</p> <p>Philippines: There is currently a bill (HB 8005) before Congress, which seeks to reform the administration of ports in the Philippines. It provides for the separation of PPA's regulatory and commercial/development functions. The proposal is to transfer PPA's regulatory functions to MARINA and to create a new corporation, PHILPORTS to carry out the commercial and development functions. The bill has as its objective to 'avoid the conflict of interest arising from regulatory agencies vested in both regulatory and development or commercial functions'. It explains that 'under no circumstances should a regulatory agency benefit from its own regulation and/or use its own regulatory powers to protect itself from competition at the expense of public interest' (Section</p> | |

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| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 41, para. 1, lett. f) | Restrictions on operation | The Minister of Transport and Infocommunications may prohibit towage, sale and supply of water and fuel to vessels other than through MPABD or by agreement with it. To outsource the provision of such services, the Minister can make regulations regarding licences. While this Project was ongoing, Brunei Darussalam changed the way in which towage services are provided. While in the past MPABD was the only provider of tug services, with effect from 1 December 2019, Darussalam Pilotage Services Sdn. Bhd. took over the management and operations of tug services within the Muara Port district. According to stakeholders' inputs, the responsibility for the provision of towage services was transferred to the new entity without any prior assessment of potential interest by private operators. | Until recently no licence had been granted to third parties and MPABD had a monopoly over towage services. This public monopoly could result in allocative and technical cost inefficiency and suboptimal service level. There was also a risk that the direct provision of towing services by the public authority could result in high prices due to the extraction of monopoly rents. Direct assignment to a separate entity rather than a competitive process ensuring competition for the market might also entail a risk of higher tariffs and lower efficiency. In contrast, a tendering process ensuring competition for the market could contribute to maximising efficiency and reducing tariffs. | 2, HB 8005). This provision aims at ensuring safety by creating a monopoly of a public body. It may also be a legacy from the past, when services were generally directly provided by the port authority only. International comparison While towing services have historically often been provided by port operators, they are getting increasingly outsourced to third parties. For example: Viet Nam: According to Article 257 of Viet Nam's Maritime Code (2015), towage services can be provided by private operators (including foreign-invested enterprises) as long as they comply with certain requirements listed in the law, such as assigning full-time personnel to operate ship towage services and have a sufficient number of towboats as per regulations. EU: Data collected from European Sea Ports | Authorities should consider whether there is a private interest in providing these services. If so, create appropriate legal framework so that towing services are effectively tendered based on fair and non-discriminatory terms to guarantee competition for the market. |

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| | | | | | <p>Organisation (2011) on 116 ports from 26 European countries shows that only in approximately 15% of the ports towage inside the port area is provided directly by the port authority. In most cases it is provided by private operators, by means of a concession or licensing regime. For example, in Portugal, only in one port towing services are provided by the port authority, while in 2 cases there is a concession and in 6 ports a licensing system (see OECD Report on Competition Assessment in Portugal, p. 190).</p> <p>Australia: In order to operate as a towage service provider in a port operated by a port authority, a licence is necessary. Generally, the applicant must show that he/she is sufficiently competent and qualified and must submit any required forms. Such forms are available on the website of the port authority.</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 65 of MPABD Order and Art. 9, para. 1 of Ports (Pilotage) Regulations | Ports | Pursuant to Section 68 of the MPABD Order, in order to become a pilot, a | This provision may raise geographic barriers to the provision of pilotage | The objective of this provision is to guarantee safety by ensuring that | No recommendation as this kind of restriction is common all over the world |

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| and Ports (Pilotage) Regulations, 1988 | | | <p>special licence is required that is issued after an examination by the Pilotage Committee appointed by MPABD. The examination aims to assess the candidate's general fitness and competency, including physical fitness, to act as an authorised pilot. Pursuant to Section 65 of the MPABD Order, the licence issued following such an examination must indicate the name of the pilotage district in respect of which it is granted. No pilot is allowed to provide piloting services outside that specified district, unless he/she obtains another specific licence for that district.</p> <p>MPABD confirmed that there are specific provisions to avoid that the licensee engages in any practice or enters into any agreement that has the object or the likely effect of preventing, restricting or distorting competition in the establishment, operation and maintenance of pilotage services.</p> | <p>services as the licence is only valid to act as pilot in a specified pilotage district.</p> | <p>pilots have extensive knowledge of the specific port so that they can assist a vessel with the safe navigation in that specific port. To the best of our knowledge there is currently only one compulsory pilotage area in Brunei Darussalam, which is in Muara.</p> <p>International comparison: requiring a compulsory licence for a certain piloting area is international best practice.</p> <p>In its IMO Resolution A.960, "Recommendations on training and certification and operational procedures for maritime pilots other than deep-sea pilots", the International Maritime Organization (IMO) recommends that the pilotage licence or certificate state "the pilotage area for which it is issued".</p> <p>Singapore: Similarly to Brunei Darussalam, Article 65 of the Maritime and Port Authority of Singapore Act provides that "no person shall be employed as an</p> | <p>and ensuring safety is a legitimate policy objective.</p> <p>The specific provisions aimed at ensuring fair competition in the provision of pilotage services should avoid that licensees of pilotage services abuse their market power or engage in anticompetitive practices.</p> |

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| | | | | | <p>authorised pilot in a pilotage district unless he is in possession of a valid licence issued under section 68 to act as a pilot in that district." The licence therefore specifies the district in which the pilot can provide his/her services.</p> <p>Viet Nam: Pursuant to Article 250(4) of Viet Nam's Maritime Code, the marine pilotage operating zone is identified in the issued certificate.</p> <p>Australia: In Western Australia, the licence to act as a pilot is issued for a specific pilotage area (see Section 9B(1), Shipping and Pilotage (Ports and Harbours) Regulations 1966 as at 17 May 2019).</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 72, para. 2 of the MPABD Order and Art. 11 of the Ports (Pilotage) Regulations | Ports | Every pilot shall deposit a sum of \$1000 as a bond in favour of the MPABD to guarantee the performance of his/her duties. | The need to provide a bond may be a barrier to entry in the market for the provision of pilotage services for those that cannot afford depositing this sum. Also, if the sum is in no relationship to the volume of operation of the pilot this sum may be excessive. | This bond aims to guarantee that the pilot can pay for damages caused while at the same time limiting the pilot's liability to the sum of the bond. Therefore, once the bond has been paid, the pilot will not be liable for any penalty beyond the sum of such bond. The law clarifies that this is applicable to the cases of | Allow choosing between deposit and insurance and possibly reconsider the maximum liability amount that the insurance will cover. The insurance contract should cover at least loss or damage (personal injury and damage to vessels and property) and loss of life or injury to third parties. |

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| | | | | | <p>the pilot's "neglect, want of skill or incapacity in office". We are not sure however that this amount actually serves the purpose of covering the damages that the pilot may cause as such damages are likely to amount to higher sums than USD 1000. Thus, the provision may also simply aim at giving the pilot an incentive for the good performance of his/her duties.</p> <p>International comparison</p> <p>Singapore: Similarly to Brunei Darussalam, Article 72(2) of the Maritime and Port Authority of Singapore Act provides that "every pilot shall give a bond in the sum of \$1,000 in favour of the Authority for the proper performance of his duties under this Part and any regulations made thereunder." This bond is expressly aimed at limiting the pilot's liability.</p> <p>France: In France, pilots need to make a deposit and will be liable within the limits of this deposit for the</p> | |

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| | | | | | <p>damages caused to the owner of the ship. The amount of this deposit changes according to the size of the port.</p> <p>Italy: Italian Law No. 230/2016 recently amended the Italian Navigation Code. Whilst pilots were subject to the obligation to make a deposit pursuant to Article 89 of the Navigation Code, now they are subject to the obligation to sign an insurance contract that covers the full liability of the pilot (that is limited to one million euros for each damage case, irrespective of the number of damaged persons).</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017; market reports and market players | Art. 62 of the MPABD Order | Ports | While this Project was ongoing, the rules on the provision of pilotage services in Brunei Darussalam were amended. Thus, while in the past only MPABD could employ pilots, as of 1 December 2019, Darussalam Pilotage Services Sdn Bhd, a government-linked company, took over the management and operation of pilotage services within the Muara Port district. According to | The previous legal framework prevented pilots who were not employees of the MPABD from entering the market and competing. MPABD's exclusive right to provide pilotage services limited the choice and could increase costs for those navigating in a pilotage district. According to some market participants, the public monopoly system was not very efficient and resulted in increased costs for vessels (e.g., fuel costs | In many countries, pilotage is considered a public service, given its role of protecting navigational safety, preserving port infrastructure and preventing environmental hazards. A lack of experience and knowledge of specific port conditions may indeed pose risks for the safety of cargo and other port users, as well as damage port infrastructure. For these reasons, piloting is subject to strict regulations that aim to | Authorities should consider whether there is a private interest in providing these services. If so, create appropriate legal framework so that piloting services are tendered based on fair and non-discriminatory terms to guarantee competition for the market. |

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| | | | <p>stakeholders' inputs, however, the responsibility to provide pilotage services was granted to Darussalam Pilotage Services Sdn Bhd without any prior assessment of potential interest by private operators in providing pilotage services.</p> | <p>due to the long waiting time on anchorage before receiving a pilot). The OECD notes that the principle of competition should generally govern the provision of technical and nautical services, while legal monopolies should only be limited to situations where they are absolutely indispensable. Safety reasons cannot a priori justify the exclusion of any competition mechanism in the provision of port services. Therefore, direct assignment of pilotage services to a separate entity rather than a competitive process ensuring competition for the market might also entail a risk of higher tariffs and lower efficiency. In contrast, a tendering process ensuring competition for the market could contribute to maximising efficiency and reducing tariffs, while addressing safety and environmental concerns.</p> | <p>promote safety and protect the environment. However, some provisions might have the effect of restricting competition more than is strictly necessary to achieve a legitimate policy objective.</p> <p>International comparison</p> <p>In the Report on the Competition Assessment in Portugal (p. 455), the OECD observed that "regardless of the juridical regime chosen for the public provision of piloting services, there is no economic justification for attributing exclusive rights to serve as a pilot to a specific type of port employee, excluding other forms of labour contract (interim) or service contract hiring. Considering that the legal regime foresees other specific requirements to become a pilot (licence, examination, etc.), the legal regime should focus on assessing (and guaranteeing) that pilots have the needed expertise and knowledge to provide pilotage on a local basis, instead of demanding</p> | |

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| | | | | | <p>formal labour contracts requirements."</p> <p>Data collected from European Sea Ports Organisation (2011) on 116 ports from 26 European countries shows that only around 25% of the piloting services are directly provided by the port authorities, while in most of the cases they are provided by private operators. The 75% of ports provide them through licensing regimes, concessions to public or private operators, or the existence of separate public entities providing such services.</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 81 | Ports | <p>When granting the licence for handling and storage of goods, MPABD can impose the tariffs thereof or set the pricing policies and principles. The setting of prices is done "with reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factors."</p> <p>MPABD can also impose the publication of prices by private operators.</p> <p>Pursuant to Section 11 of</p> | <p>This provision may limit the ability of operators to set their prices, e.g., they will not be able to undercut prices of rivals in order to gain market share. Also, the requirement to publish prices may lead to the coordination of prices of market players as publication makes it easy to monitor competitors' prices.</p> | <p>The policymaker's objective is likely to avoid excessive prices for port services.</p> <p>International comparison</p> <p>In its Port Reform Toolkit, Module 4, the World Bank observes that "operators should have the freedom to set their own prices. The operator should be expected to negotiate periodically with its customers and may provide quantum rebates in return for increased</p> | <p>Only keep maximum prices but allow competitors to grant discounts as they wish. MPABD, the tariff-setting committee and/or the MOFE that eventually approves prices should request the opinion of the Competition Commission Brunei Darussalam regarding the justified nature and level of such tariff regulation, in order to ensure consistency with the objectives of the Competition Order.</p> |

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| | | | <p>the MPABD Order, there is a specific committee (the MPABD Marine and Port Tariff Committee) that comprises different authorities and departments. This committee recommends new tariffs (for all services provided by private operators within ports, such as pilotage, towage and cargo handling) which are then endorsed by the MPABD's Board of Directors before being submitted to the MOFE for further consideration and approval. This was also confirmed by MPABD. For instance, if Muara Port Company (MPC) wants to change tariffs for its services, it will need to seek approval from this committee and explain the reasons why it considers changes to be necessary.</p> <p>We understand from market participants that MPC is only entitled to make non-binding suggestions on tariffs to the committee. However, we understand from market participants that MPC is free to grant discounts in individual</p> | | <p>throughput. Only in a situation when the operator is in a monopoly position might there be a reason for government interference in tariff setting."</p> <p>Mexico: Consistently with the above-mentioned World Bank's observations, in Mexico, Article 16 of the Ports Law provides that SCT can establish the basis for tariff regulation if in a port only one terminal exists, or if only one terminal exists for specific merchandises or if there is only one service supplier. However, if the regulated firms consider that there are no reasonable grounds to establish tariff regulation, they can request an opinion from the Competition Commission and if it finds that such tariff regulation is not justified, they must be reviewed within 30 days. According to the OECD's Review of the Regulation of Freight Transport in Mexico (2017), p. 157, tariff regulation has been established for services such as handling, storage</p> | |

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| | | | cases without seeking approval as long as it complies with certain ceilings. According to market participants, pricing is very rigid and difficult to change. | | and pilotage in specifically listed ports. Singapore: Similarly to Brunei Darussalam, Article 81(5) of the Maritime and Port Authority of Singapore Act provides that conditions in the licence granted by MPABD may include "provision controlling or fixing the prices to be charged by the public licensee in respect of the handling and storage of goods other than such category of goods as the Minister may by notification in the Gazette, from time to time declare to be transshipment goods, including — (i) the setting of pricing policies or principles; and (ii) the setting of prices with reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factors." | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 27, para. 5 | Ports | MPABD can remit or waive the whole or part of any rates, charges, dues and fees paid for the use of its services and port facilities. Such power can be exercised by MPABD "as it thinks fit", thus having discretion. MPABD | This provision may lead to reducing costs only for some undertakings, thus distorting competition by means of discrimination. | This provision likely aims to give MPABD the power adjust and respond to market demand. International comparison: Giving the port authority the power to waive charges in some form exist | No recommendation as this power of granting discount is commonplace in many countries. |

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| | | | <p>confirmed that in practice waivers of rates, charges, dues and fees are only granted to goods belonging to His Majesty (and the Royalties) and Navy vessel.</p> | | <p>in many other countries as well. For example:</p> <p>Singapore: Similarly to Brunei Darussalam, Article 27(5) of the Maritime and Port Authority (MPA) of Singapore Act provides that the MPABD "may, if it thinks fit, remit or waive the whole or any part of any rates, charges, dues and fees paid or payable under this Act."</p> <p>the Netherlands: The port of Rotterdam offers a number of discounts on the port dues. This includes inter alia a green award discount (for vessels and shipping Companies that invest in the vessel and crew to improve the overall environmental performance, safety and quality), a second call discount (for those calling the port twice during a single deep sea service), a transhipment discount and a quantity discount (for transshipping large quantities of cargo in Rotterdam).</p> | |

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| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 27, para. 12, lett. c) | Ports | The Minister of Transport and Infocommunications may exempt any vessels or class of vessels from the provisions on rates, charges and dues payable to it. | The power of the Minister to exempt any vessels from the payment of charges, fees, dues and alike may lead to favouring some undertakings vis-à-vis others. | <p>International comparison: though the power to grant exemption is common in other countries, they are usually granted by the port authority and not by the minister of transport.</p> <p>Singapore: Port rates are determined in the Maritime and Port Authority of Singapore (Scale of Dues, Rates and General Fees) Notification. Pursuant to Article 4 of this Notification, the Maritime and Port Authority of Singapore can grant discounts. Similarly to Brunei Darussalam, maritime welfare fees shall not be payable in respect of any vessel or class of vessels which has or have been exempted by the Minister.</p> <p>Germany: Generally, port tariffs are provided in the port operator's general terms and conditions or in specific price lists. Vessel owners can enter into civil law agreements with the relevant port operator and define different tariffs for the utilisation of the port, for instance discounts if the vessel regularly visits</p> | Remove and reserve the power to grant discounts only to MPABD, as per above. |

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| | | | | | <p>the port. However, tariffs and discounts are determined by the port operator, either in specific agreements or in price lists of general application.</p> <p>Sweden: In the Port of Gothenburg, discounts are granted by the port authority, based on specific and clearly established criteria. The government can intervene on port fees by means of regulations of general application.</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Schedule 2, No. 14 | Ports | The Maritime and Port Authority of Brunei Darussalam (MPABD) has the power to provide financial grant, aid or assistance to any person for the purposes of the MPABD Order (e.g., to licensees providing marine services in the port). There is no limitation of the amount or duration of such assistance. | This broad discretion may result in granting benefits only to some companies, thus favouring such operators and distorting competition. | <p>This provision aims to give MPABD the power to support the national economy and its operators.</p> <p>International comparison</p> <p>Singapore: Similarly to Brunei Darussalam, pursuant to the second schedule annexed to the Maritime and Port Authority of Singapore Act, MPABD has the power to " provide financial grant, aid or assistance to any person for all or any of the purposes of this Act."</p> | Clarify (either in the law or in separate guidelines) the criteria for and circumstances in which such financial aid and benefits can be granted. |

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| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 1(4) | Requirements for ships and crew | The MPABD Order does not apply to vessels belonging to the Head or the government. When issuing regulations, the Minister of Transport and Infocommunications may specify what provisions apply to such Sultan's or government's vessels. MPABD confirmed that the Head or government vessels are not used for commercial activities and therefore they do not compete with private vessels for freight transport services. | This provision may discriminate between private-owned vessels as opposed to government's vessels that will not be subject to these provisions (on pilotage licences, provision of certain information, port clearance, etc.), thus creating an uneven playing field. However, this will not raise a competition issue if the Head or government vessels do not compete with private vessels, as we understand it is the case. | <p>International comparison: exempting government vessels that do not compete with private operators is not unusual. For example:</p> <p>Singapore: Article 27(12) of the Maritime and Port Authority of Singapore Act provides that the maritime welfare fees are not payable in respect of vessels belonging to or for the time being in the service or employment of the government (unless such vessels carry goods for freight or fares).</p> <p>Thailand: Pursuant to Chapter III of PAT's by-law concerning the safety, port services and facilities, vessels belonging to the Thai or foreign government agencies are exempted from the fees fixed by PAT for the use of port services and facilities.</p> | No recommendation as long as Sultan and government vessels do not compete with private vessels. |
| Merchant shipping order, 2002 | Art. 7 | Requirements for ships and crew | By way of regulations, the Minister of Transport and Infocommunications may make provisions on the conditions for registration of a ship as a Brunei Darussalam ship. Such conditions can include | As the refusal by the registrar to proceed to registration can be done without providing any reason, this may result in discrimination and may undermine the possibility to appeal the rejection | <p>International comparison</p> <p>Singapore: Pursuant to Article 81 of the Maritime and Port Authority of Singapore Act, in case of refusal by the port authority to grant a</p> | Ensure that reasons for rejection are given in any decision and that any decision can be challenged, for instance before a court. |

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| | | | <p>minimum amount of paid-up capital or limits on the age and tonnage of the ship. The conditions are currently prescribed in the Merchant Shipping (Registration of Ships) Regulations (2016).</p> <p>Even if the ship complies with such conditions, the Registrar of Brunei Darussalam ships may refuse registration as it is not obliged to provide any reasons on the rejection. MPABD confirmed that in practice no application that complies with the conditions has ever been rejected. It is unclear whether, if this rejection was ever issued, it could be challenged before a court and, if so, on which grounds.</p> | based on discriminatory grounds. | licence for providing port services, the applicant may, within 14 days of the refusal, appeal to the Minister whose decision shall be final. The same law provides that, in other cases (e.g., damages, liability, other expenses) the appeal shall be lodged with the district court. | |
| Merchant shipping order, 2002 | Art. 20 | Requirements for ships and crew | <p>A ship cannot be transferred to a person not qualified to own a Brunei Darussalam ship if there is an unsatisfied mortgage entered in the register of Brunei Darussalam ships or unpaid fees or outstanding claims in respect of wages.</p> <p>Section 5 of the Merchant Shipping (Registration of</p> | This provision may make entry and exit from the market more difficult as it may limit both the people to whom (only a person qualified to own a Brunei Darussalam ship) and the cases in which (only when there is no unsatisfied mortgage) a transfer of a Brunei Darussalam ship can be done. Exiting the market by selling the | <p>We have been unable to identify the specific policy objective of this provision. The provision might aim at ensuring payment of the mortgage and wages, with the ship being a security for that.</p> <p>International comparison</p> <p>United Kingdom: In the UK, ship mortgages</p> | <p>Allow transfer of the ownership of the ship, although there is an unsatisfied mortgage.</p> <p>If, based on current regulations, this were to result in the cancelation of the mortgage (as a result of the ship losing the Brunei Darussalam flag), allow recognition of mortgages also on foreign</p> |

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| | | | <p>Ships) Regulations (2006) defines the conditions for being qualified to own a Brunei Darussalam ship. This provision specifies that only citizens of Brunei Darussalam, bodies corporate incorporated in Brunei Darussalam and international business Companies or foreign international Companies incorporated, converted or registered in Brunei Darussalam under the International Business Companies Order are "qualified" (i.e., have the right to be registered) to own Brunei Darussalam ships.</p> | <p>assets (e.g., the ships) may be even more urgent and necessary where there is a mortgage that the operator is not able to pay.</p> | <p>also exist and there is a transcript of them in the ship registry. It is the responsibility of the centralised Registry of Shipping and Seamen in Cardiff (Wales), to register mortgages over UK ships. A mortgage creates a fixed security over the ship and this is a security in rem. This means that the mortgage will survive any change of ownership of the ship and the lender will be allowed to sell the ship and use the money from the sale to pay off the amount owed to him/her. In case several mortgages are registered on the same ship, priority is given by order of time of registration (the earliest registered having priority over subsequent registrations). To the best of our knowledge, there is therefore no limitation on the power to transfer the ownership of the ship, although there is an unsatisfied mortgage. Furthermore, the UK recognizes mortgages on foreign ships. In this case, the priority of the foreign mortgage is the same as if it were a mortgage over a UK-flagged ship.</p> | <p>ships.</p> |

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| Merchant shipping order, 2002 | Art. 24, para. 1 | Requirements for ships and crew | At its discretion ("if it thinks fit"), the High Court may, on the application of an interested person, prohibit for a specified time any dealing with a ship or any share therein. The conditions and cases in which such prohibition may be imposed are not listed. | The prohibition to deal with a ship or to acquire share therein, issued by the High Court at its discretion (without any specific conditions other than the application made by an interested person) may delay market entry or exit from the market. For instance, during the time of the prohibition, the operator may be obliged to refuse offers from interested parties wanting to enter the market by purchasing the ship. | This provision likely aims at granting the High Court the power to impose interim measures, for instance in the framework of judicial proceedings. Although the independent nature of the court should ensure that no discriminatory measure is adopted, the lack of guidance provided to the court in the law may run counter this objective. | No recommendation as the High Court has sufficient safeguards to exercise this power in a balanced and independent manner. |
| Merchant shipping order, 2002 | Art. 47, para. 1, let. a) | Requirements for ships and crew | The Minister of Transport and Infocommunications has the power to prescribe in regulations the number of qualified officers, doctors and seamen to be carried on a ship. We have been unable to determine whether these regulations have been issued in practice. | Specifying in regulations the number of qualified officers, doctors and seamen to be carried on a ship may restrict market access and make entry more difficult, especially for smaller firms. For instance, such fixed number can be higher than the actual needs of the ship, thus imposing on the operator additional costs. | The policy objective of fixing in regulations the number of specific officers that must be present on a ship may be to ensure safety as well as the constant presence of certain key figures on the ship. For instance, requiring the presence of a doctor may aim at safeguarding health of the ship crew. International comparison: while some countries adopt the same prescriptive approach, some others have adopted a more goal-based approach. | Remove and provide instead standards for safety and security on the ship that the owner or operator of the ship must comply with. This should include for instance maximum number of working hours for seafarers in order to avoid damages to their health or safety, as per IMO's Resolution A.890(21) adopted on 25 November 1999. This should be preferable to the prescriptive approach laying down a fixed number of ship officers in the law. |

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| | | | | | <p>The International Maritime Organisation (IMO) provides guidance on determining the appropriate manning levels of manning in Annex 1 of IMO Assembly Resolution A.890(21).² There, it only requires a goal-based approach and not necessarily a precisely prescriptive method.</p> <p>Malta: The Malta Flag Administration regulates the minimum number of officers required for a specific vessel, without which the vessel is not allowed to navigate. This number is specified in the Minimum Safe Manning Certificate.</p> <p>United Kingdom: In the UK, the law lays down specific requirements for safe manning in order to guarantee navigational safety. It is however up to the owner or operator of the UK-registered ship to make an assessment as to the number and grades necessary for safe operations. The law only provides some criteria, specifying that such</p> | |

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| | | | | | <p>number must ensure for instance that the personnel is not required to work more hours than is safe or which may be injurious to their health and safety. Once the owner or operator has made this assessment, it will submit the proposal to the Maritime and Coastguard Agency and, if it is satisfied with the proposed manning levels, it will issue a safe manning document. As clarified on the Maritime and Coastguard Agency's website, in the past "the UK Administration specified minimum numbers of certificated officers and the grades of certificates which should be held for different types of ships and power levels, and in some cases the numbers of ratings." In 1997, new regulations adopted a "less prescriptive approach" and "the responsibility to ensure that ships are safely, sufficiently and efficiently manned rests with owners and managing operators. Guidance on determining appropriate manning levels is given in Annex 1 of IMO Assembly</p> | |

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| Merchant shipping order, 2002 | Art. 47, para. 1, lett. b) and para. 2 | Requirements for ships and crew | The Minister of Transport and Infocommunications may issue regulations prescribing standards of competence to be attained in order to be qualified as a marine officer. As expressly provided by Section 47(2), such conditions may also include nationality requirements. By means of the same regulations, the Minister may also grant exemptions. There seem to be no boundaries to the exercise of his/her discretion. MPABD confirmed that officers on board must be nationals of one of the 13 STCW (i.e., Convention on Standards of Training, Certification and Watchkeeping for Seafarers) countries that Brunei Darussalam has signed MoUs with. | Nationality requirements to qualify as a marine officer may lead to higher costs for companies that will not be able to take advantage of lower costs of foreign manpower. | <p>Resolution A.890(21)".</p> <p>The existence of nationality requirements likely aims at supporting national labour and ensuring that Brunei Darussalam workers acquire the necessary skills as marine officers.</p> <p>International comparison: many countries have nationality requirements applying to marine officers. While in some countries they are limited to key marine officers, in others they apply to the whole crew only when providing certain services.</p> <p>Thailand: In Thailand, Thai vessels providing marine commerce services in territorial waters can only employ personnel of Thai nationality. When Thai vessels provide international transport services, 50% of the total crew must have Thai nationality.</p> <p>Malaysia: The representative of the ship must always be a Malaysian citizen who has his/her permanent residence in Malaysia or a</p> | Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement. |

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| | | | | | <p>body corporate incorporated in Malaysia which has its main place of business in Malaysia.</p> <p>Denmark: In Denmark, only the master of the ship must be Danish or EU citizen, while there is no nationality requirement for other ship crew members (Section 13, Consolidated Act on the Manning of Ships, No. 74/2014 issued by the Danish Maritime Authority).</p> <p>France: In France, 25% of the crew for ships registered under the French registry must be EU or EEA citizens. The master of the ships must also be an EU or EEA citizen and comply with certain conditions of knowledge of French language and law.</p> <p>Germany: In Germany, only the master of merchant ships under German flag has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships that are more</p> | |

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| | | | | | than 8000 GT (see German Safe Manning Ordinance (Schiffsbesetzungsverordnung)). | |
| Market reports | - | Requirements for ships and crew | For a shipping Company to have a contract with an oil and gas company in Brunei Darussalam, it is required to have 100% local ownership as well as 100% local crew after two years of registration. For the first two years, however, it is allowed to hire foreigners. | This requirement may raise barriers to entry for foreign companies that will need to hire local crew in order to be able to operate in Brunei Darussalam. Also, it may increase costs for companies in general as they will not get any return on the investment made in hiring/training their crew for the first two years and will instead need to replace it with a local crew (that will need to be trained). | <p>The likely objective of this provision is to support the acquisition of the necessary skills in the oil and gas industry by Brunei Darussalam nationals.</p> <p>International comparison</p> <p>The use of national-content clauses is common in certain industries (e.g., oil and gas industry). In Mexico, for instance, the 2013 energy reform establishes that to promote the participation of national enterprises, a minimum percentage of national content should be used. This is applicable for instance to goods and services, qualified Mexican labour, training of Mexican labour (see Report on Competition Assessment in Mexico (2019), p. 79-80). Similar local-content policies (LCP) have been implemented in the oil and gas sectors of countries including Angola, Brazil, Indonesia, Kazakhstan, and Trinidad and Tobago. In some countries with a</p> | No recommendation. The government should be aware, however, that requiring companies to use national content (including labour) may make production of oil and gas more expensive. The government may therefore consider allowing Companies to hire some foreigners and possibly reduce their costs to a certain extent. |

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| | | | | | small population (e.g., Qatar), however, this requirement to use local labour constitutes an issue due to the limited and very expensive local labour force. | |
| Merchant shipping order, 2002 | Art. 55 | Requirements for ships and crew | The Minister of Transport and Infocommunications may make regulations applying to certain Brunei Darussalam ships prescribing that a certain percentage of seamen in a ship crew must be citizens of Brunei Darussalam. Such regulations may include different provisions applying to different classes of ships or for ships of the same classes depending on the circumstances. | The requirement to have a certain percentage of seamen being Brunei Darussalam citizens may raise the costs for Brunei Darussalam ships, that will be prevented from taking advantage of lower costs of foreign seamen. Also, these regulations may be limited to certain ships only, thus potentially leading to favouring certain ships vis-a-vis others and distorting competition. | <p>The existence of nationality requirements likely aims at supporting national labour and ensuring that Brunei Darussalam workers acquire the necessary skills as seafarers.</p> <p>International comparison</p> <p>Malaysia: In Malaysia, there is no restriction on crew's nationality if the ship manager or ship management Company operating the ship is incorporated in Malaysia.</p> <p>Thailand: In Thailand, Thai vessels providing marine commerce services in territorial waters can only employ personnel of Thai nationality. When Thai vessels provide international transport services, 50% of the total crew must have Thai nationality.</p> | Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement. |

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| | | | | | <p>EU: In Denmark, only the master of the ship must be Danish or EU citizen, while there is no nationality requirement for other ship crew members. In France, 25% of the crew for ships registered under the French registry must be EU or EEA citizens. The master of the ships must also be an EU or EEA citizen and comply with certain conditions of knowledge of French language and law. In Germany, only the master of merchant ships under German flag has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships that are more than 8000 GT (see German Safe Manning Ordinance (Schiffsbesetzungsverordnung)).</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 40, lett. h) | Requirements for ships and crew | As above, the Minister can make regulations for Brunei Darussalam ships on the percentage of seamen that need to be citizens of Brunei Darussalam. | The requirement to have a certain percentage of seamen being Brunei Darussalam citizens may raise the costs for Brunei Darussalam ships, that will be prevented from taking advantage of lower costs of foreign seamen. These | As above. | Conduct annual surveys of demand and supply for crews and, in the case of shortages, allow exemptions from nationality requirement. |

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| Merchant shipping order, 2002 | Art. 106, para. 2 | Permits and authorizations | The Director of Marine or the Maritime and Port Authority of Brunei Darussalam may cancel any ship licence, without this power being subject to listed conditions. This provision applies to ships not exceeding 100 tons. | <p>regulations may be limited to certain descriptions of ships only, thus potentially leading to favouring certain "categories" of ships vis-a-vis others and distorting competition.</p> <p>The power to cancel a licence does not seem to be subject to any conditions/restrictions. This could theoretically lead to discriminating certain operators.</p> | <p>This provision aims at allowing MPABD to withdraw a ship licence when the circumstances under which it was granted have changed.</p> <p>International comparison</p> <p>Malaysia: Similarly to Brunei Darussalam, in Malaysia there are specific laws and regulations for smaller ships, including on their licensing. Pursuant to Article 10 of the Ports and Harbours (Sabah Licensed Small Ships) Regulations (2008), for instance, the licensing authority can cancel or suspend any small ship licence but, according to the provision, this is only possible in case of breach of a provision under these regulations. Article 8 provides that any refusal to issue or renew a licence may be appealed in writing to the Director of the State</p> | Ensure legal certainty and predictability by defining (either in the law or in separate guidelines) the circumstances in which a ship licence can be withdrawn. Also, ensure that decisions can be challenged, for instance before a national court. |

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| | | | | | Department of Ports and Harbours whose decision shall be final ³ | |
| Merchant shipping order, 2002 | Art. 205 | Permits and authorizations | The Director of Marine has the power to prohibit any ship from entering Brunei Darussalam territorial waters or can direct it to leave such waters, if he thinks it is not in the public interest for the ship to enter or remain in Brunei Darussalam territorial waters. Similar powers are conferred also to the Sultan by Section 21 of the Ports Act. | By preventing a vessel to enter into Brunei Darussalam's waters, the Director may prevent foreign competitors to become active in the market and ship their products in Brunei Darussalam. | As confirmed by MPABD, this provision aims to ensure national security, in case a ship poses a threat to it. It is also an aspect of Brunei Darussalam's sovereignty. International comparison Singapore: Pursuant to Article 49 of the Maritime and Port Authority of Singapore Act, "the Port Master may prohibit any vessel from entering the territorial waters of Singapore if he is of the opinion that it would not be in the public interest for the vessel to enter Singapore." | No recommendation as national security is a legitimate policy objective. |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 48 and 49, para. 1 | Permits and authorizations | The Port Master may prohibit any vessel from entering Brunei Darussalam's territorial waters or may direct it to leave such territorial waters if he considers that entering or remaining in such waters would be against the public interest of Brunei Darussalam. | By preventing a vessel from entering into Brunei Darussalam's waters, the Port Master may prevent foreign competitors to ship their products or provide services in Brunei Darussalam. | As above, concerning a sample of countries where it is possible to prohibit vessels from entering their territorial waters. | No recommendation as national security is a legitimate policy objective. |
| Merchant shipping order, 2002 | Art. 212 | Requirements for ships and crew | The Minister of Transport and Infocommunications may exempt any person or | This provision may favour one or more operators vis-à-vis others, thus distorting | International comparison Singapore: | Issue guidelines that reflect the current practice on granting exemptions |

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| | | | ship or class of ships from all or any of the provisions of this Order. No criteria for granting such exemptions are set out in this provision. | competition by means of discrimination. | To the best of the OECD's knowledge, exemptions from the Maritime and Port Authority of Singapore Regulations are possible but limited to specific provisions (e.g., pilotage obligations or obligation to obtain port clearance before leaving the port). We have not found any provisions which give the Minister the power to grant exemptions from any provision without any further specification. Article 118 of the Maritime and Port Authority (MPA) of Singapore Act provides that this general power of exemption is granted to the MPA with the approval of the Minister. It is therefore the MPA together with the Minister that can "exempt any person, vessel, vehicle or premises or any class or description of persons, vessels, vehicles or premises from any of the provisions of this Act or the regulations." In any event, any of these exemptions "shall not reduce or in any way affect the responsibility of the person to whom the exemption is granted or of the owner or | with the aim of giving more legal certainty to market participants. |

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| | | | | | <p>master of a vessel or of the owner of a vehicle or the premises to whom the exemption is granted and the Authority shall not be liable for any death or injury of any person or for any loss, damage or destruction of any property arising from such exemption." Also, there is a specific form to fill in in order to seek an exemption from regulations. The form must be submitted to the MPA and requires information about the regulations from which the exemption is sought, the provision allowing the exemption, the reason and justification for requesting the exemption or dispensation and the duration of the exemption request. Finally, the applicant must indicate the "risk control measures to be implemented during the period of exemption or dispensation"⁴)</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 81, para. 5, lett. a) and b) | Permits and authorizations | The public licence allowing to provide marine or port services or facilities may contain restrictions on (i) the creation, holding or disposal of shares in the public licensee entity itself or its shareholders; and (ii) the carrying on by the | Limiting the persons that can hold shares in a company licensed to provide port services or facilities may raise a barrier to entry. For example, since certain persons will be prevented from holding shares in the | The objective of this provision is to avoid conflicts of interests and ensure integrity of the sector. It may also aim at favouring specialization of the operator, by avoiding it carry out different unrelated activities. | No recommendation. However, decisions should explain the reasons why a risk of a conflict of interests exists and the right to challenge such decisions (e.g., before a national court) should be ensured. |

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| | | | <p>public licensee of certain businesses which are not related to the activity authorised in the licence.</p> <p>Thus, the licence may prohibit certain persons from holding shares in the licensed company providing port services and/or may prohibit such licensed company from carrying out certain businesses.</p> | <p>company, the provision may make it more difficult to find investors to set up a company and enter the market.</p> <p>The restrictions on the activities allowed imposed on the licensee through the public licence may also limit its freedom to carry out the desired activities. For instance, carrying out certain businesses at the same time as providing port services may lead to economies of scale and increased competition on rates and quality (e.g., when providing piloting and towage services).</p> | <p>International comparison</p> <p>Singapore: Similarly to Brunei Darussalam, Article 81(5) of the Maritime and Port Authority of Singapore Act provides that the licence for the provision of port services and facilities granted to a public licensee may contain "restriction on the carrying on by the public licensee of any trade or business which is not related to the activity which the licensee is authorised by its public licence to carry on."</p> | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 89 | Restrictions on operation | <p>If the Minister of Transport and Infocommunications considers that it is in the interest of the security and reliability of the provision of port services and facilities or simply in the public interest, he/she can issue an "order of special administration" in relation to a company. During the period of validity of this order, the affairs, business and property of the company will be managed MPABD in order to achieve specific purposes (e.g., towage services or</p> | <p>This power may result in preventing a company from supplying goods or services. Indeed, the Minister can replace the managers of the company with MPABD for conducting the affairs and business of the company. The conditions to exercise this power are very broad (especially under Section 89(2)(c) on "public interest"), thus resulting in legal uncertainty and possibly discouraging entry into the market.</p> | <p>This provision aims to ensure reliability in the provision of port services.</p> <p>International comparison</p> <p>Singapore: Similarly to Brunei Darussalam, an order of special administration can be issued by the Minister upon request by MPABD in the following circumstances: (a) the Company is or is likely to be unable to pay its debts; (b) the Minister considers it</p> | <p>Ensure that the power to issue an order of special administration is subject to strict criteria. Also, the addressees of the decision should be entitled to challenge them, for instance before a national court.</p> |

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| | | | supply of fuel to vessels) listed in the order itself. | | in the interest of the security and reliability of the provision of port services and facilities relating to container terminal services and facilities to the public; or (c) the Minister otherwise considers it in the public interest. | |
| Maritime and Port Authority of Brunei Darussalam Order, 2017 | Art. 120, para. 1 | Other | <p>The Minister of Transport and Infocommunications, with the approval of the Sultan, may exempt any person or vessel or vehicle or premises or classes thereof from all or any of the provisions of the MPABD Order.</p> <p>The MPABD Order regulates inter alia the employment of seamen, port services as well as supervision of all activities carried out in the port, insurance policy and port clearance for vessels that want to leave the port.</p> <p>No criteria or limited duration for such exemptions are set out in this provision and the Minister seems to enjoy absolute discretion for such grant or withdrawal.</p> | This provision grants broad discretion, that may result in favouring one or more operators vis-à-vis others. | <p>Due to the lack of criteria, we have been unable to identify the policy objective of this provision.</p> <p>Generally, the Sultan's absolute discretion concerning the issuance of laws and regulations and the grant of exemptions is part of Brunei Darussalam's legal tradition, as the sultan has absolute discretion to issue Orders as long as it considers them to be "desirable in the public interest" without any external limits based on the Constitution. There have not been significant changes since the adherence to ASEAN (see the Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration, p. 32).</p> <p>International comparison</p> | Issue guidelines that reflect the current practice on granting exemptions with the aim of giving more legal certainty to market participants. |

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| | | | | | <p>Singapore: Article 118 of the Maritime and Port Authority (MPABD) of Singapore Act provides that this general power of exemption is granted to the MPABD with the approval of the Minister. It is therefore the MPABD (that has specific knowledge of the technical matters in the port) together with the Minister that can "exempt any person, vessel, vehicle or premises or any class or description of persons, vessels, vehicles or premises from any of the provisions of this Act or the regulations." In any event, any of these exemptions "shall not reduce or in any way affect the responsibility of the person to whom the exemption is granted or of the owner or master of a vessel or of the owner of a vehicle or the premises to whom the exemption is granted and the Authority shall not be liable for any death or injury of any person or for any loss, damage or destruction of any property arising from such exemption." Also, there is a specific form to fill in in</p> | |

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| | | | | | order to seek an exemption from regulations. The form must be submitted to the MPABD and requires information about the regulations from which the exemption is sought, the provision allowing the exemption, the reason and justification for requesting the exemption or dispensation and the duration of the exemption request. Finally, the applicant must indicate the "risk control measures to be implemented during the period of exemption or dispensation" ⁵ | |
| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 6 | Requirements for ships and crew | An existing registration of a tug or barge or ship of less than 1600 tons shall be cancelled if the ownership (or simply any share, in some circumstances) by a local company or a citizen of Brunei Darussalam is transferred to a person who is not a citizen of Brunei Darussalam or to another local company. | This provision limits access to the ownership of ships by foreigners (which cannot own in Brunei Darussalam ships that are smaller than 1600 tons), thus leading to a barrier to entry that may reduce competition. | This provision likely aims at avoiding circumventing Section 10 of the Merchant Shipping (Registration of Ships) Regulations, 2006 which requires foreign-owned vessels to be larger than 1600 tons in order to be registered in Brunei Darussalam. As noted below, this provision likely aims to promote entry into Brunei Darussalam only of big vessels. International comparison Bahamas: The Bahamas Maritime Authority has a similar | Allow registering foreign-vessels that are smaller than 1600 tons, following an individual assessment of the application and conditions of the vessel. |

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| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 7, paras 1 and 3 | Permits and authorizations | In order to register a ship, the company must have a minimum paid-up capital of 10% of the value of the ship or \$500,000 (whichever is the lesser amount). In any event, the amount should be at least \$50,000. | The minimum amount of paid-up capital may constitute a barrier to entry for smaller firms. | <p>provision. However, applications for vessels of less than 1600 net tons may also be submitted to the register and will be assessed on an individual basis.</p> <p>This provision aims to ensure that the company has enough capital to run the business of freight transport operator by sea. It also aims to protect consumers and creditors from risky and potentially insolvent businesses.</p> <p>International comparison: capital requirements are not necessarily the best way to measure a firm's ability to fulfil its obligations.</p> <p>In a report on "Doing Business 2014 - Why are minimum capital requirements a concern for entrepreneurs?" (World Bank, 2014), the World Bank observed that, in general, minimum share capital is not an effective measure of a firm's ability to fulfil its debt and client service obligations. In particular, share capital is a measure of the investment of a firm's</p> | Accept bank guarantees as an alternative to upfront payment of capital. |

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| | | | | | <p>owners, and not the assets available to cover debts and operating costs. In its report, the World Bank concluded that minimum capital requirements protect neither consumers nor investors and that they are associated with less access to financing for SMEs and a lower number of new Companies in the formal sector. In other words, they are futile for the purpose of protecting investors and their elimination would make it easier to start a small and medium-size enterprise. Commercial bank guarantees and insurance contracts are a better instrument for managing counterparty risks, and therefore should be the focus of any regulation seeking to promote a set minimum level of business certainty for users of maritime services.</p> <p>The World Bank also observed that minimum paid-in capital requirements, as often stipulated by the commercial code or Company law, do not take into account variations in firms' economic activities,</p> | |

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| | | | | | <p>size or risks, and are thus of limited use for addressing default risks. Creditors prefer to rely on objective assessments of Companies' commercial risks based on the analysis of financial statements, business plans and references, as many other factors can affect a firms' possibility of facing insolvency. Moreover, such requirements are particularly inefficient if firms are allowed to withdraw deposited funds soon after incorporation.</p> <p>Contrary to initial expectations, evidence has shown that minimum capital requirements do not help the recovery of investments, as they are negatively associated with creditor recovery rates (World Bank, 2014). Credit recovery rates tend to be higher in economies without minimum capital requirements, which suggest that other alternative measures (e.g., efficient credit and collateral registries and enhanced corporate governance standards) are potentially more efficient in</p> | |

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| | | | | | <p>addressing such concerns. Moreover, minimum capital requirements have been found to be associated with higher levels of informality, and with firms operating without formal registrations for a longer period. They also tend to diminish firms' growth potential (World Bank, 2014).</p> <p>In Portugal, the OECD recommended that Portuguese authorities abolish minimum capital requirements imposed amongst others on freight forwarders and shipping agents in order to promote market entry and operational efficiency. The same recommendation was made in Portugal with regards to freight transport by road, where the OECD recommended that any amount of required initial capital should be considered under the general rules for constituting a Company (in line with the Portuguese Companies Code and the Portuguese Commercial Registration Code) rather than under specific minimum capital requirements depending</p> | |

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| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 7, para. 2 | Permits and authorizations | A bareboat charterer company which is not registered as owner of any Brunei Darussalam ship but wants to operate in Brunei Darussalam (thus providing chartering of ships, for instance by renting them from others) is required to have a minimum paid-up capital of \$500,000. | This provision may raise costs for companies that are not registered as owners of Brunei Darussalam ships (which will be the case mainly for foreign companies which will more likely have non-Brunei Darussalam ships) compared to companies that own Brunei Darussalam ships. | <p>on the activity (see OECD's Competition Assessment in Portugal, p. 79).</p> <p>The likely objective of this provision is to ensure that, although the company does not have any ship (whose value may be considered as sufficient guarantee for the fulfilment of its obligations), it still has some capital to guarantee the fulfilment of its obligations, e.g., vis-a-vis creditors. If the foreign Company does not have any registered Bruneian ship, it can still operate as a charterer of ships but in such a case a minimum paid-up capital is required.</p> <p>See above for international comparison and the observations by the World Bank on minimum paid-up capital requirements.</p> | Accept bank guarantees as an alternative to upfront payment of capital. |
| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 10, para. 1 | Permits and authorizations | Foreign-owned ships cannot be registered if they have a weight of less than 1,600 tons and are not fitted with mechanical means of self-propulsion. MPABD confirmed that at the moment it only grants licenses to operate to foreign vessels that are | This provision may prevent foreign Companies from registering their ships if they are less than 1,600 tons and not fitted with mechanical means of self-propulsion, thus preventing them from operating in Brunei Darussalam for long periods. | <p>This provision likely aims to promote entry into Brunei Darussalam of big vessels and to avoid that small foreign-owned ships enter the Brunei Darussalam market.</p> <p>Bahamas: The Bahamas Maritime</p> | Consider registering foreign-vessels that are smaller than 1600 tons, following an individual assessment of the application and conditions of the vessel. |

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| | | | operating in Brunei Darussalam only for a period not exceeding 12 months. | | Authority has a similar provision. However, applications for vessels of less than 1600 net tons may also be submitted to the register and will be assessed on an individual basis. | |
| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 12, para. 3 | Requirements for ships and crew | For every ship registered in Brunei Darussalam, the owner shall appoint a representative person. This representative can only be a resident in Brunei Darussalam and needs to be either (i) a qualified person and owner of the ship or part of it; or (ii) a body corporate incorporated in Brunei Darussalam and engaged in the business of managing or acting as an agent of ships. Such representative is appointed "for the purposes of section 7 of the Order", i.e., to register the ship. | The provision can raise costs for foreign Companies in comparison to national companies that do not necessarily have a person in their crew resident in Brunei Darussalam to be appointed as a representative of the ship. | <p>International comparison: many countries have nationality requirements applying to marine officers. While in some countries they are limited to key marine officers, in others they apply to the whole crew only when providing certain services.</p> <p>Thailand: In Thailand, Thai vessels providing marine commerce services in territorial waters can only employ personnel of Thai nationality. When Thai vessels provide international transport services, 50% of the total crew must have Thai nationality.</p> <p>Denmark: In Denmark, only the master of the ship must be Danish or EU citizen, while there is no nationality requirement for other ship crew members.</p> | No recommendation as this provision is common in other countries. |

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| | | | | | <p>Germany: In Germany, only the master of merchant ships under German flag has to be an EU/EEA citizen. For other officers, there is a requirement to have one EU/EEA citizen officer only for ships that are more than 8000 GT (see German Safe Manning Ordinance (Schiffsbesetzungsverordnung)).</p> <p>Malaysia: In Malaysia, there is no restriction on crew's nationality if the ship manager or ship management Company operating the ship is incorporated in Malaysia.</p> | |
| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 20, para. 1 | Requirements for ships and crew | In order to prove that a ship is in a seaworthy condition to be registered, it is necessary to provide a certificate issued by a classification society duly authorised to issue certificates on behalf of the government. MPABD confirmed that Brunei Darussalam only accepts certificates from those societies with whom there is an MoU in place. The following classification societies have been | The requirement to have a certificate issued by an approved classification society may make entry of foreign ships difficult as their certificate may not be valid in Brunei Darussalam. | This provision aims to ensure reliability of certificates issued by classification societies to - This will likely guarantee security of the ship. However, the same purpose is generally pursued by IACS. As per IACS's website, "more than 90% of the world's cargo carrying tonnage is covered by the classification design, construction and through-life compliance rules and | No recommendation. However, Brunei Darussalam should consider concluding additional MoUs with other classification societies that are members of IACS. |

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| | | | <p>appointed for issuing certificates on behalf of the government: American Bureau of Shipping (ABS), Bureau Veritas (BV), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Lloyds Register of Shipping (LR), and Nipon Kaiji Kyokai (NKK). We understand that some other generally accepted classification societies' certificates (such as those issued by Registro Italiano Navale, the Korean Register of Shipping) are therefore not accepted in Brunei Darussalam, although such societies are members of IACS.</p> | | <p>standards set by the twelve Member Societies of IACS." In order to become a member of IACS, a number of safety and quality requirements need to be fulfilled.</p> <p>International comparison</p> <p>Out of the 12 IACS-member classification societies, the Maritime and Port Authority of Singapore signed an instrument with nine classification societies for carrying out certification and surveys of vessels registered in Singapore. Based on the press release of the signature, "the Instruments spell out the scope, terms, conditions and requirements to be met when classification societies carry out statutory surveys and issue relevant certificates to Singapore ships on behalf of the MPA. Among other things, the classification societies are required to conduct surveys and certification according to the MPA's regulations and international conventions, and may be subject to supervision and audits</p> | |

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| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 32, para. 2 | Permits and authorizations | When a Brunei Darussalam ship is chartered out and registered outside Brunei Darussalam in the name of the bareboat charterer, its registration as a Brunei Darussalam ship is suspended for the duration of the charter period. In order to put an end to such suspension of a ship from the registry, it is necessary to bring evidence of the seaworthiness "as the Registrar may require on the initial registry of the ship". In other words, to put an end to the suspension, it is necessary to provide all the information as if it were a new application. | Although it is just a suspension from the registry and the ship has already provided evidence of seaworthy condition upon its first registration, it will be necessary to submit such seaworthiness evidence again as if it were the first registration in order to terminate the suspension period. This may constitute an unnecessarily excessive administrative burden. | conducted by the MPA." These instruments can be subject to renewal every 12 months. ⁶ This provision likely aims at ensuring that the vessel is subject to <i>ex novo</i> controls after going abroad, in case that any of its characteristics has been changed during that time abroad, thus possibly compromising safety and security. | No recommendation as safety and security are legitimate policy objectives. |
| Merchant Shipping (Registration of Ships) Regulations, 2006 | Art. 35 | Other | The Registrar may exempt any ship or person from any of the provisions of these regulations on registration of ships and impose such conditions as it considers necessary. | As there are no criteria for granting such an exemption, the provision may result in discrimination among competitors and distortion of competition (e.g., by providing a cost advantage to some Companies compared to others). | We have been unable to determine why such broad powers to grant exemptions from any provision on registration of ships are given to the registrar. | Any power to grant exemptions from general provisions should be limited and subject to strict requirements and conditions, clearly laid down in the law or separate guidelines. |

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| Prevention of pollution of the sea Order, 2005 | Art. 5, para. 5 | Other | The Minister of Transport and Infocommunications may exempt any ship or class of ships from the fines set out for any disposal or discharge of refuse, garbage, waste matter, trade effluent, plastics or marine pollutant in packaged form occurring from any ship into Brunei Darussalam waters. | This provision may result in discrimination and may distort competition by providing a cost advantage to some companies compared to others. | This Order generally aims at addressing environmental concerns and avoiding damages to the environment. However, we have been unable to determine why such broad powers to grant exemptions from any of these provisions are given to the Minister of Transport and Infocommunications. This may possibly run counter the environment-protection objective of the Order. | Any power to grant exemptions from general provisions should be limited and subject to strict requirements and conditions, clearly laid down in the law or separate guidelines. |
| Prevention of pollution of the sea Order, 2005 | Art. 6, para. 4 | Other | The Minister of Transport and Infocommunications may exempt any ship or class of ships from the fines set out for any discharge of oil or oily mixture occurring from a Brunei Darussalam ship into any part of the sea or from any ship into Brunei Darussalam waters, | This provision may result in discrimination and may distort competition by providing a cost advantage to some companies compared to others. | As above. | Any power to grant exemptions from general provisions should be limited and subject to strict requirements and conditions, clearly laid down in the law or separate guidelines. |
| Prevention of pollution of the sea Order, 2005 | Art. 9, para. 4 | Other | The Minister of Transport and Infocommunications may exempt any ship or class of ships from the fines set out for any discharge of a noxious liquid substance, or of a mixture containing a noxious liquid substance, being a substance or mixture carried as cargo or part cargo in bulk, occurring from a Brunei | This provision may result in discrimination and may distort competition by providing a cost advantage to some companies compared to others. | As above. | Any power to grant exemptions from general provisions should be limited and subject to strict requirements and conditions, clearly laid down in the law or separate guidelines. |

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| | | | Darussalam ship into the sea or from any ship into Brunei Darussalam waters. | | | |
| Prevention of pollution of the sea Order, 2005 | Art. 14, para. 2 | Other | The Minister of Transport and Infocommunications may grant exemptions from any provision of this Order. There are no criteria providing guidance on the cases in which an exemption can be granted. | This provision may result in discrimination and may distort competition by providing a cost advantage to some companies compared to others. | As above. | Any power to grant exemptions from general provisions should be limited and subject to strict requirements and conditions, clearly laid down in the law or separate guidelines. |
| Prevention of pollution of the sea Order, 2005 | Art. 33, para. 3 | Other | By means of regulations, the Minister of Transport and Infocommunications may empower any person to grant exemptions from all or any of the provisions of the regulations. | This provision may result in discrimination and may distort competition by providing a cost advantage to some companies compared to others. | As above. | Any power to grant exemptions from general provisions should be limited and subject to strict requirements and conditions, clearly laid down in the law or separate guidelines. |

1. Available at <http://www.mtic.gov.bn/Resources/STRATEGIC%20PLAN%202008%20-%202017.pdf>.

2. See, <http://www.imo.org/en/OurWork/HumanElement/VisionPrinciplesGoals/Pages/PriciplesOnSafeManning.aspx>.

3. See, <https://sagc.sabah.gov.my/sites/default/files/law/PortsAndHarbours%28SabahLicensedSmallShips%29Regulations2008.pdf>.

4. See, MPA form available at https://marine-offshore.bureauveritas.com/sites/g/files/zypfnx136/files/media/document/UCCDX0SEOBNUVHV860LY_Attachment.docx.

5. See, MPABD form available at https://www.mpa.gov.sg/web/wcm/connect/www/2ba569be-a673-46a8-84a6-c45bfca4f615/MPA+-+Application+for+exemption+from+regulation+%28ver.+3%29+%2810+Sep+2020%29.docx?MOD=AJPERES&CONVERT_TO=url&CACHEID=2ba569be-a673-46a8-84a6-c45bfca4f615.

6. See, <https://www.mpa.gov.sg/web/portal/home/media-centre/news-releases/detail/12d9e632-f030-4dc5-a007-d16019e02aec>.

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| - | - | Permits and authorizations | While there is a specific licence for operating sea freight forwarding (pursuant to Section 81 of the Maritime and Port Authority of Brunei Darussalam Order, 2017, which requires a licence for the provision of any marine service), no licence is required for road freight forwarding. | The different treatment of freight forwarding by sea and by road may create a distortion of competition and put sea freight forwarders at a competitive disadvantage. It may also constitute a significant administrative burden for sea freight forwarders, thus raising their costs and time of entry. | <p>We were not able to identify the policy rationale of this disparity of requirements for sea and road freight forwarding.</p> <p>International comparison: in many countries there is no regulation on the access of freight forwarders to the market; in other countries there are self-regulations of the profession.</p> <p>The World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services Reform" observes that "in most regions of the world, this profession is not regulated. In regions and countries where the forwarding activity is regulated, the conditions to access the profession are usually very simple and consist of a registration to a dedicated register held in general by the Ministry of Transport" (see p. 49).</p> <p>FIATA (Fédération Internationale des Associations de</p> | Align the requirements so that sea freight forwarders are not subject to more stringent or onerous licensing requirements than road freight forwarders. If the government wishes to guarantee a certain level of professional competence, it may consider promoting self-regulation of the profession. |

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| | | | | | <p>Transitaires et Assimilés, in English International Federation of Freight Forwarders Associations) has developed self-regulation of the profession in order to guarantee a certain level of professional competence by forwarders. However, these requirements are not mandatory to access the profession and the obligation to comply with them is left to the contracts between the carrier/shipper and the forwarder.</p> <p>In the Philippines, an accreditation with the Department of Trade and Industry is required to carry out the activity of sea freight forwarding. However, no such accreditation is required for road freight forwarding.</p> <p>In Germany, generally, no registration is necessary for freight forwarding. However, specific conditions exist for freight forwarding by road or rail (but not by sea).</p> <p>In many EU/EEA</p> | |

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| | | | | | <p>countries, there are no specific licensing requirements to operate as a freight forwarder. This is for instance the case in</p> <ul style="list-style-type: none"> - Germany, where there is no specific registration as a freight forwarder and newly-established companies only need to announce their foundation to the local authority. However, specific conditions exist for freight forwarding by road and rail (although not for freight forwarding by sea); - the Netherlands, where only a registration as a company or independent in the registry of the Chamber of Commerce is necessary, while no specific registration as a freight forwarder is required; - Sweden - Switzerland - UK, where there is no specific registration as a freight forwarder and only a registration as a company with the Companies House is required. | |

Warehouses

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| Market reports and market participants | - | Permits and authorization | <p>According to some market participants, the whole procedure required for opening a warehouse may take more than 6 months.</p> <p>Based on the World Bank Group Flagship Report "Doing Business 2019", p. 10)², in Bandar Seri Begawan, obtaining a construction permit for a warehouse may take 83 days on average and require 20 distinct procedures. Such procedures include, for instance, obtaining a copy of the survey plan for subsequently requesting a building permit, hiring a land surveyor to check the accuracy of the copy of the survey map and confirming the boundaries of the land provided in the survey copy, hiring a technical officer to conduct inspections during the construction.</p> | This long process may constitute a barrier to entry as it may increase costs and time of entry on the market. | <p>International comparison</p> <p>According to a World Bank Group Flagship Report on "Doing Business 2019" (p. 10)¹ in East Asia & Pacific dealing with construction permits may take on average 133.5 days and requires 15.1 separate procedures. In OECD high income countries, it may take up to 153.1 days on average and require 12.7 distinct procedures.</p> | No recommendation as procedure in Brunei Darussalam is already faster than in most East Asian & Pacific countries. However, the government should continue improving and fastening process, e.g. setting fixed deadlines after which an application if not denied is deemed to be approved, by consolidating application processes, making online applications possible or simplifying procedures. |
| Land Acquisition, Chapter 41 | Art. 3, paras 1-2 | Restrictions on acquiring land | Regulations about the possession and use of land are stipulated in the Land Code, while the acquisition of land is | Not being able to purchase and own land may prevent companies from entering the market or may result in increased costs of | The likely objective of this provision is to avoid circumvention of the prohibition for foreign individuals to own land | Allow companies to own land at least as long as majority owned by Brunei Darussalam citizens. |

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| | | | <p>defined separately in the Land Acquisition Act.</p> <p>Pursuant to Section 3(2) of the Land Acquisition Act, for a natural or legal person to be allowed to buy land, the Sultan must be satisfied that the acquisition is needed for some work that is "likely to prove useful to the public".</p> <p>According to some market participants, it seems that in practice, based on the current application of this provision, only natural persons are allowed to purchase and own land. Companies (irrespective of whether they are local or foreign entities) are usually not allowed to purchase land and own it under their own name, and can only lease it for their industrial activities. The OECD's FDI Regulatory Restrictions database reports that "locally incorporated or registered companies, domestically or foreign-owned owned, are only allowed to lease land up to 99 years for the purpose of conducting business operations."</p> <p>It seems that there are no</p> | <p>investment. This might be aggravated if they cannot conclude long-term leasing contracts either. For instance, it may be difficult for them to recoup the investment in a warehouse if they cannot buy the land and do not have a sufficiently long leasing contract.</p> <p>Also, natural persons might be reluctant to invest as they will face the risk of being personally liable.</p> <p>The negative effect might even be intensified for foreign companies by the fact that only Brunei Darussalam citizens can own land (see below) and that it is forbidden for Brunei Darussalam citizens to buy land as foreigners' nominees.</p> <p>Currently, foreign companies are left with two options: either to lease the land or to appoint Brunei Darussalam citizens in their board of directors that will then buy the land for the company.</p> <p>It is our understanding that the second option of appointing Brunei</p> | <p>(see below). If companies were allowed to own land, foreigners could in theory establish a legal person in Brunei Darussalam (possibly, majority-owned by Brunei Darussalam nationals) to buy and hold land.</p> <p>International comparison</p> <p>Similar restrictions do not exist in Europe. For example, in Germany, every entity (i.e., natural or legal person) is allowed to purchase and own real estate. There are no restrictions on ownership of land by foreigners either. In Italy, legal entities are entitled to purchase and own land in the same manner as natural persons.</p> <p>In other ASEAN countries (e.g., the Philippines, Thailand), there are restrictions on foreigners to purchase and own land (applying both to natural and legal persons), but there are no restrictions on legal entities as such to purchase land. Therefore, as long as shares in the company are held by nationals, it will be allowed</p> | |

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| | | | <p>alternative ways for companies to buy land. For instance, the previous practice of allowing equitable ownership for companies through a series of trustees and powers of attorney in Brunei Darussalam was banned by the Land Department in 2011.</p> | <p>Darussalam nationals in the board of directors may require careful consideration of the legal aspects of the acquisition in order to avoid that such natural person (e.g., in case of departure from the company) use the land for different purposes than those for which the company invested. Eventually, this may increase costs for foreign investments as it makes it necessary to set up complex legal structures.</p> <p>Although Brunei Darussalam has made significant steps in improving its legal environment for businesses, a recent report published by the Oxford Business Group confirms this issue and states that "[a]t present companies cannot own land in their own name. When compared with neighbouring countries in South-east Asia, there is often no or very little transparency in regards to the policies of the Land Department, and it is often very difficult, or even impossible, to transfer</p> | <p>to buy land.</p> | |

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| Land Code (amendment) order, 2016 | Art. 3A | Restrictions on acquiring land | <p>Only citizens of Brunei Darussalam can purchase and own land. No land or interest on land can be transferred to a non-Bruneian. It is also forbidden to create a trust on land in favour of a non-citizen. Any transfer or other disposal of land in breach of this provision will be null and void.</p> <p>The OECD's FDI Regulatory Restrictions database reports that according to Jones Lang Lasalle, a global professional services firm that specializes in real estate and investment management: "Any transfer of freehold and leasehold landed property (not strata units) may only be registered with approval of His Majesty the Sultan in Council. Generally, only individual citizens of Brunei Darussalam may be registered as owners of these types of landed property."</p> <p>Pursuant to Section 48 of the Land Code</p> | <p>land, private property or commercial property titles, even amongst Bruneian citizens"³.</p> <p>Although non-citizens are theoretically allowed to lease land for long periods (see below), the prohibition for non-citizens to purchase land or to create a trust on land may make it more difficult for foreigners to operate in Brunei Darussalam. For instance, they would have to lease land (instead of buying it) to open a warehouse in Brunei Darussalam, thus being subject to the limited duration of lease contract.</p> | <p>The likely objective of this provision seems to be avoiding acquisition of land by foreigners for speculation or real estate investment purposes only.</p> <p>International comparison: while in ASEAN restrictions on land purchase by foreigners are common, this is not the case in many other countries.</p> <p>ASEAN: The same objective is commonplace in other ASEAN countries. For instance, in Thailand, except for very specific circumstances or investments (approved by the Board of Investments), foreigners are not allowed to purchase and own land, and they are only allowed to lease it, subject to the time limitations laid down in the law for leasing contracts. Similarly, in Viet Nam, foreign individuals and enterprises are not allowed to own land either and they can only lease it</p> | No recommendation. |

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| | | | <p>Amendment Order (2016), the Sultan may exempt any person or class of persons from this provision. We understand from market participants that currently foreigners apply to the Land Department under the Ministry of Development for obtaining such an exemption to buy land. However, according to market participants, in practice, if a non-Brunei Darussalam citizen wants to buy land in Brunei Darussalam, such an application to the land office will often stall without yielding any results and it will not be possible to challenge it in court.</p> | | <p>to implement their investment projects. For an overview of foreign-ownership restrictions for land in ASEAN.⁴..</p> <p>Australia: In Australia, although the acquisition of vacant commercial land is subject to a notification requirement, there are no list or restrictions on the cases in which foreigners can purchase land, as long as they comply with some conditions (the foreign person commences the construction of the proposed development within 5 years from the approval and he/she does not sell the land until construction is complete).</p> <p>EU: In Europe, restrictions on foreigners to buy land are rare. For example, in France, foreign entities can freely make real estate investments. Also, the compulsory filing with the French Ministry of Economy of the foreign entity's investment in real estate was abolished in 2017. In Germany, foreign investors are not subject to</p> | |

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| | | | | | any restrictions other than those applicable to German investors. Although the government has the power to impose restrictions on the acquisition of property by foreign corporate investors (where German companies are subject to similar restrictions in the investor's country), no such restrictions are currently in place. | |
| Land Code | Art. 23 | Restriction of numbers of years for leasing land | As noted above, legal persons cannot purchase and own land. However, they can lease land for up to 60 years for industrial and commercial purposes. Pursuant to Section 23(2) of the Land Code, however, for long leases (i.e., of over 7 years), a registration with the Land Department with the Sultan's approval is necessary. We have not been able to identify the conditions for obtaining such approval. We understand from market participants however that generally the State leases its land out for only 5 years (though there might be exceptions for granting longer leasing contracts). | The requirements and difficulties for concluding a lease longer than 7 years may discourage investments and constitute a barrier to entry. According to some market participants, such limited duration may make it difficult to recoup a significant investment, for instance in a warehouse. | The likely policy objective of this provision is to avoid occupation of land by the same tenant for too long periods, thus ensuring that the land will be made available again for other uses after a certain period of time. International comparison Thailand: In Thailand, leasing contracts have a limited duration, i.e., 30 years or 50 years for industrial and commercial purposes. Germany: In Germany, contractual lease provisions are freely negotiated and the parties enjoy liberty to deviate from statutory legal provisions regarding | Permit long lease, for example of up to 99 years for industrial and commercial purposes, without any approval requirement. This would allow foreign companies to invest with a longer time perspective. |

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| | | | | | leases. Therefore, the parties can freely negotiate the length of the lease. If the length exceeds 30 years, each party can terminate the contract by giving notice to the other party after the 30-year period has elapsed. | |
| Land Code | Art. 23 | | According to the OECD's report on Good Regulatory Practices to support SMEs in Southeast Asia (2018), "Between 2015 and 2017, Brunei Darussalam had implemented a total of 10 reforms focused on improving the ease of doing business. These have been done in specific areas such as improving the amount of time and procedures to incorporating a company to obtaining a construction permit as well as providing alternative mediation for companies facing difficulties in meeting its financial obligations. The evaluation process is data-based and allows expedient re-alignment of any regulations or reforms should they deviate from or slow down the process of achieving pre-agreed targets." | The difficulties in transferring land may constitute a barrier to market entry or exit. For instance, it may delay purchase and sale of the assets, and thus entry and exit from the market. | <p>The requirement to obtain approval of land acquisition by His Majesty in Council aims at ensuring transparency and compliance with government land policies.</p> <p>International comparison</p> <p>According to the World Bank Group Flagship Report "Doing Business 2019" (p. 22), registering property in Brunei Darussalam takes on average 298.5 days, against 72.6 days on average in other East Asia & Pacific countries, and 20.1 days on average in OECD high income economies.</p> <p>For example, in Germany, in order to transfer land ownership, no formal approval by any public authority is required. To transfer land ownership</p> | Facilitate procedure with the goal of significantly reducing the number of days required for transferring land. This could be done for example by introducing statutory time limits for the whole process or by removing certain phases from the current process. |

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| | | | <p>However, according to some market participants and publicly available information, it may be difficult and sometimes significantly burdensome to transfer land, private ownership or commercial property titles, even between Bruneian citizens.</p> <p>The steps required to transfer property in Brunei Darussalam are the following:</p> <ul style="list-style-type: none"> - checking encumbrances, i.e., whether the seller is the lawful owners and is entitled to sell the property. This generally takes one day; - conducting a search at the High Court to determine whether any of the parties had a bankruptcy case or has any other pending case affecting the property. This can be done online and generally takes less than one day; - after signing the sale and purchase agreement, an application to the Land Department is required in order to obtain approval of the agreement by the "His Majesty in Council" (i.e., a council of officials representing the Sultan). | | <p>the following steps are required:</p> <ul style="list-style-type: none"> - concluding a sale and purchase agreement in a notarial deed; - the notary then applies to the local court holding the land register for the property in order to change the ownership in such register; - once the change of ownership is registered in the land register, the transfer of ownership becomes actual. | |

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| | | | <p>This generally takes 280 days since a number of checks need to be conducted (e.g., formal checks on the technicalities of the transaction, submission of a report to the Ministry of Development, review by the Ministry of Development, checking compliance with land policies of the government, submitting a report to His Majesty in Council).</p> <p>- a number of other checks and formalities (e.g., visit of the property by the Land Department in order to determine the actual stamp duty due, paying the stamp duty, registering the property in the Land Registry).</p> | | | |
| Brunei Darussalam Long-Term Development Plan Administrative Measures and Guidelines | - | | <p>If foreign investors want to utilise some of the land under the control of the Ministry of Primary Resources and Tourism and the Brunei Darussalam Economic Development Board for any "services incidental to manufacturing activities" (including freight transport services), they need to agree either (a) to purchase or generally accord a preference to</p> | <p>The obligation for such foreign freight transport service providers to purchase local goods or services may make their products/services more expensive than those of Bruneian market participants which might be able to buy better priced input abroad. As a result, their products will be less competitive in terms of price.</p> | <p>The likely policy objective of this provision is to stimulate the development of local companies, either by giving priority to the sale of their products or by transferring them technology or other proprietary knowledge that may boost their development.</p> <p>International comparison</p> <p>Similar local content</p> | <p>The OECD does not make any recommendation concerning national content, since helping the national industry is a legitimate objective. Brunei Darussalam's government should be aware, however, that requiring companies to use national content may make production more expensive. The provision on knowledge transfer can in any event assist in making</p> |

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| | | | <p>goods produced in Brunei Darussalam, or (ii) to transfer technology or other proprietary knowledge to persons in Brunei Darussalam.</p> <p>According to market participants, this provision results in quotas of materials that such companies need to buy from local suppliers. For instance, if a freight transport company wants to operate in those areas currently under the Ministry of Primary Resources and Tourism, it must agree on purchasing goods (e.g., maintenance products for trucks) from local Bruneian companies.</p> | <p>The alternative requirement to transfer their technology or proprietary technology to persons in Brunei Darussalam may result in additional burden or costs (e.g., missed gains due to the loss of intellectual property rights) for foreign operators compared to local operators that are not subject to the same requirements, thus distorting competition.</p> | <p>policies (LCP) have been implemented in the oil&gas sector of many countries (e.g., Mexico, Angola, Brazil, Indonesia, Kazakhstan, and Trinidad and Tobago). Although specifically with regards to the oil&gas industry, in a 2013 report "Local Content Policies in the Oil and Gas Sector", the World Bank considers that LCP can yield mixed results⁵. While this report does not advocate in favour or against LCP, analysed case studies seem to suggest that certain factors are needed for LCP to be successful in improving the economy, including local companies having basic technological levels and industrial capacity, and financial strength, and local markets being competitive. The report also suggests that governments interested in implementing LCP should assess the extent to which it supports the development of adequate local skills; promotes competition and the emergence of an efficient domestic economy; and fosters technology and spill over effects.</p> | <p>companies become more competitive in the national and international market.</p> |

1. Available at <http://www.doingbusiness.org/content/dam/doingBusiness/country/b/brunei/BRN.pdf>.
2. Available at <http://www.doingbusiness.org/content/dam/doingBusiness/country/b/brunei/BRN.pdf>
3. See, <https://oxfordbusinessgroup.com/overview/law-land-breakdown-country%E2%80%99s-legal-environment>.
4. See, https://asean.org/?static_post=land-ownership
5. See, <http://documents.worldbank.org/curated/en/549241468326687019/pdf/789940REVISED000Box377371B00PUBLIC0.pdf>

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| Post Office Act, Chapter 52 | Art. 5-6 | <p>The Postal Services Department (under the Ministry of Transport and Infocommunications, hereinafter Ministry of Transport) has the exclusive right to deliver letters. The law specifies that "letter" includes postcards but does not provide any precise definition of "letter" in order to distinguish it from small packages and/or other services not covered by the exclusive right.</p> <p>The services that do not fall within such exclusive right are listed under Section 5. However, they are very limited and include: conveying maximum 3 letters by means of a friend; delivering letters concerning the affairs of the sender/receiver by means of a messenger employed for that purpose; delivering without any remuneration letters concerning goods or property attached with such goods or property.</p> <p>According to market participants, the "exclusive privilege" under Section 5 refers to deferred delivery (as opposed to express delivery) and does not cover express delivery services. However, this interpretation is unclear from</p> | <p>This provision gives the Postal Services Department the exclusive right to provide delivery services of letters. Due to the broad definition of letters, such exclusive right may also extend to small package delivery services or to express delivery. Although, according to market participants, the exclusive right does not cover parcels or express delivery services for letters, this is unclear from the letter of the law and this may result in uncertainty as to the boundaries of the monopoly, thus discouraging potential competitors from entering the market.</p> | <p>According to market participants, there have been discussion to introduce a definition of "letter" into the law. However, so far no amendment to the law has been introduced.</p> <p>International comparison: many countries have put an end to their national postal monopolies and opened the market to competition, while introducing compensation mechanisms to fulfil universal service obligations.</p> <p>According to the European Commission's policy on postal services, governments should reduce the scope of monopolies granted to postal operators. Member States should review their regulations and introduce more competition.</p> <p>In France, the government put an end to the last existing La Poste's monopoly (i.e., the monopoly over letters below 50 grams), thus fully opening the market to competition for any item. However, La Poste still has to provide universal service. The State will provide compensation for the costs stemming from such universal postal service obligation mainly</p> | <p>Option 1: clarify the boundaries of the Postal Services Department's monopoly so as to exclude expressly small package delivery and express delivery. This could be done for instance by defining precisely what falls within the notion of "letter" and exclusive privilege. The OECD supports Brunei Darussalam's efforts to provide more clarity in the Post Office Act.</p> <p>Option 2: consider lifting the monopoly granted to the Postal Services Department and, after assessing universal service obligation (USO) costs, if needed, introduce a mechanism to provide compensation for the additional costs stemming from such USO.</p> |

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| | | <p>the letter of the provision, thus making it unclear whether express delivery services also fall within the exclusive privilege.</p> <p>Pursuant to Section 63 of the Post Office Act, the breach of this exclusive right constitutes an offence and fines amount to \$50 for every letter.</p> | | <p>through a fund to whom other service providers must contribute.</p> <p>Similarly, in Germany, although the post monopoly has been lifted following EU directives, the Postal Universal Service Ordinance (Post-Universaldienstleistungsverordnung, PUDLV) provides that the following falls within the universal postal obligation: "the conveyance of letter items [...], provided their weight does not exceed 2,000 grams and their dimensions do not exceed those laid down in the Universal Postal Convention and its Detailed Regulations."</p> <p>In Sweden, the postal market was liberalized in 1993. In 2007 (i.e., 14 years after abolition of the postal monopoly), the regulator conducted a study on the liberalized market and concluded that service quality of Posten AB improved as a result of growing competition. Also, it found that new products have been developed and delays have been reduced.</p> <p>In Australia, the courier market is open to any business for most postal services, except letters which are dominated by the SOE Australia Post. By</p> | |

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| | | | | contrast, the parcel market is competitive and there is no monopoly of parcel services (see OECD Trade Restrictiveness Index). | |
| Post Office Act, Chapter 52 | Art. 6A(1) | <p>The Minister of Transport and Infocommunications can grant a licence for providing those services falling under the exclusive right of the Postal Services Department, as long as such activities do "not constitute a contravention of the exclusive right".</p> <p>The OECD has not been able to clarify as this is possible in practice and it is unclear from the letter of the law what such a licence could cover and what remains covered by the exclusive privilege of the Postal Services Department.</p> <p>According to market participants, 13 licences have been issued so far. However, such licences have been granted only for express delivery and not for deferred delivery (i.e., delivery which is not done immediately and is rather done within defined or unspecified time), as the latter is covered by the exclusive right granted to PSD.</p> | This may create legal uncertainty as to what activities are open to competition, thus discouraging potential entrants to enter the market. | <p>This provision likely aims to limit the scope of the monopoly granted to the Postal Services Department.</p> <p>International comparison: As described above, many countries have put an end to their national postal monopolies and opened the market to competition, while introducing compensation mechanisms to fulfil universal service obligations.</p> <p>According to the European Commission's policy on postal services, governments should reduce the scope of monopolies granted to postal operators. It therefore encourages Member States to review their regulations and introduce more competition.</p> <p>In France, the government put an end to the last existing La Poste's monopoly (i.e., the monopoly over letters below 50 grams), thus the market is fully open to competition for any item. However, La Poste still has to provide universal service. The State will provide compensation for the costs</p> | As above. |

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| | | | | <p>stemming from such universal postal service obligation mainly through a fund to whom other service providers must contribute.</p> <p>Similarly, in Germany, although the monopoly has been lifted following EU directives, the Postal Universal Service Ordinance (Post-Universaldienstleistungsverordnung, PUDLV) provides that the following falls within the universal postal obligation: "the conveyance of letter items [...], provided their weight does not exceed 2,000 grams and their dimensions do not exceed those laid down in the Universal Postal Convention and its Detailed Regulations."</p> <p>In Sweden, the postal market was liberalized in 1993. In 2007 (i.e., 14 years after abolition of the postal monopoly), the regulator conducted a study on the liberalized market and concluded that service quality of Posten AB improved as a result of growing competition. Also, it found that new products have been developed and delays have been reduced.</p> <p>In Australia, the courier market is open to any business for most postal services, except</p> | |

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| | | | | letters which are dominated by the SOE Australia Post. By contrast, the parcel market is competitive and there is no monopoly of parcel services (see OECD Trade Restrictiveness Index). | |
| Post Office Act, Chapter 52 | Art. 32 | <p>The Minister of Transport and Infocommunications may define the conditions and the limits for liability of the Postal Services Department in case of loss or damage of postal articles. The Postal Services Department cannot be sued and the Postmaster has wide discretion on the amount of compensation.</p> <p>The OECD has not been able to determine whether such limitation of liability applies only within the framework of the Postal Services Department's exclusive right or also to services provided in competition with private operators that are not subject to the same liability limitation.</p> | This provision may reduce costs and constitute an advantage for the Postal Services Department compared to its competitors that have been duly licensed. As the latter do not enjoy any limitation of liability, they may have to bear higher costs in case of liability for lost or damaged items. | <p>International comparison</p> <p>In the UK, Royal Mail pays compensation for damage or loss of an item in a postal package if the degree of harm reasonably impairs the material function or content of the item, solely as a result the transmission by post (thus excluding liability for pre-existing damage). The compensation policy is available on Royal Mail's.¹</p> <p>In Australia, the Australian Postal Corporation Act provides that Australian Post is not liable for loss or damage to a letter or article, unless it has given the claimant a receipt for the article. However, there are some cases where the terms and conditions provide for compensation to be paid (e.g., item sent by registered post or cash on delivery) within some specific thresholds.</p> | Apply the same liability limitations to the Postal Services Department and private operators with regards to the activities conducted in competition with each other. The Postal Service Act should be amended to fully reflect the UPU standards and international conventions on liability to PSD non-express delivery services. |

¹. See, website at <https://www.royalmail.com/retail-compensation-policy-damage>.

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| Companies Act, Chapter 39 | Art. 138(2) | Need to appoint local as directors | <p>In case the company has two directors, one of them (or at least two of them where there are more than two directors) shall be "ordinarily resident" in Brunei Darussalam, even though they do not need to be Brunei Darussalam nationals.</p> <p>There is no legal definition in the Companies Act of the status of "ordinarily resident". However, the Registry of Companies and Business Names Division (ROCBN), Ministry of Finance and Economy, issued "Guidelines for applying for 'ordinarily resident' status for purposes of section 138(2) of Companies Act (Chapter 39)".¹ These guidelines provide that an ordinarily resident is a person that is physically present or exercised an employment (other than as a director of a company) in Brunei Darussalam for at least 183 days in the year preceding the assessment.</p> <p>Market participants claim</p> | The requirement to have directors with Bruneian nationality or ordinarily resident status may in theory act as a barrier to entry for foreign companies. However, it seems that foreigners can easily obtain the ordinarily resident status that allows them to be appointed as company's directors. | <p>The likely policy objective of this provision may be to ensure close management of the company by guaranteeing that directors are actually present in Brunei Darussalam rather than always residing abroad and disregarding or overlooking local needs of the company.</p> <p>Brunei Darussalam is a signing party to the ASEAN Comprehensive Investment Agreement (ACIA), whose Article 8 provides that Member States shall not require that companies appoint to senior management positions persons of a particular nationality. Article 8, para.2, of the ACIA refers to residence requirements and provides that "A Member State may require that a majority of the board of directors of a juridical person of that Member State, be of a particular nationality, or resident in the territory of the Member State, provided that this requirement does not</p> | No recommendation. The law already provides for foreigners to obtain the ordinarily resident status, thus being allowed to be part of the company's board of directors. Brunei Darussalam should continue ensuring that such ordinarily resident status is actually granted to foreigners in practice on a non-discriminatory basis. |

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| | | | <p>that in practice foreigners face problems in obtaining the ordinarily resident status. However, the ROCBN confirmed that foreign nationals who wish to apply to obtain the ordinarily resident status can download the form online at Ministry of Finance and Economy's website² and submit the application via the Registry of Companies and Business Names Division, Ministry of Finance and Economy. If the application is successful, the applicant will be issued an Ordinarily Resident certificate with a validity of 6 months. Within the 6 months period, the Ordinarily Resident certificate has to be submitted to ROCBN for the purpose of registering the foreign national as a director of the company of which he/she has applied for.</p> | | <p>materially impair the ability of the investor to exercise control over its investment." For an analysis of how ACIA is influencing investment policy of ASEAN member States, see OECD's Southeast Asia Investment Policy Review, p. 120 (2019).</p> <p>International comparison: Residence requirements for directors exist in many countries under different forms. For example:</p> <p>According to the OECD Services Trade Restrictiveness Index Regulatory Database, there is no rule in Australia that the majority of the board of directors of a company must be nationals. There is no rule that managing directors must reside in or be nationals of Australia (Part 2D.3 Section 201J of the Corporations Act 2001). However, if a company only has one director, they must ordinarily reside in Australia. If a company has more than one director, at least one or two of the directors (in the case of public companies)</p> | |

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| | | | | | <p>must ordinarily reside in Australia, but there is no majority requirement (Part 2D.3, Section 201A).</p> <p>In the Philippines, all executives and managing directors of a public utility company must be Filipino citizens. There is a restriction of foreigners as members of the Board Of Directors of corporations or associations engaging in partially nationalised activities. Examples of partially nationalized activities are advertising (30% foreign ownership), operation of public utilities (40%), and those listed in the 11th Foreign Investment Negative List (Executive Order 65, series of 2018) with a specified percentage allowed for foreign ownership.</p> <p>It seems that there are no nationality requirements for directors in Indonesia. The law does not even require them to be resident in Indonesia. According to the OECD Services Trade Restrictiveness Index Regulatory Database, in Indonesia, the employment</p> | |

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| | | | | | <p>of foreigners for the position of 'chief executive officer' is prohibited. This is considered as a key management position for the purposes of the OECD index.</p> <p>In Malaysia, there are no nationality requirements for directors but at least two directors need to have their principle or sole place of residence in Malaysia.</p> <p>In Singapore, a company must have at least one director and one shareholder, and at least one director has to be ordinarily resident in Singapore (although not Singapore national). He/she can therefore also be a permanent resident or a foreigner holding another valid residence permit.</p> <p>For more details on the requirements for directors in ASEAN, see website.³</p> | |
| Employment Order, 2009 | Art. 112, paras 1-2 | Workers' requirements | If a company wants to hire foreign workers, the Employment Order foresees a specific procedure. First, the employer must register and advertise all vacancies (up to the CEO level) through a job centre for a | According to market participants, the assessment by the job centre of the suitability of the local candidate may not be based on objective grounds and this may lead to discrimination or to restricting in practice | <p>The objective of this provision is to ensure labour opportunities and high levels of employment for Brunei Darussalam citizens.</p> <p>International comparison</p> | No recommendation as promoting the national labour market is a valid policy maker objective. However, the government may consider facilitating access to employment for people with ordinarily resident status. |

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| | | | <p>minimum of two weeks. If there are no suitable Brunei Darussalam citizens that want to take that job, the employer will receive clearance to hire foreigners within certain quotas that are specified on a case-by-case basis. The job centre will make sure that companies give local candidates a fair opportunity of being hired (e.g., it will review a sample of rejected local candidates). Once clearance has been granted, the employer must pay a security deposit (cash, bank guarantee or Takaful [sic] Contribution for Foreign Workers (JITPA)). The rates vary depending on the country of origin of the foreign worker (e.g., \$3,500 for an EU citizen, \$4000 for a US citizen, \$700 for workers from Myanmar, Laos, Cambodia and Vietnam). Finally, once all conditions are fulfilled, a Foreign Workers Recruitment Licence will be granted to the employer.</p> <p>According to market participants, it is often</p> | <p>companies' ability to hire foreigners. This may in turn result in additional costs for companies, for instance because of the time and burden for hiring , or the obligation to make a security deposit for each foreigner hired.</p> <p>Furthermore, this provision may result in foreigners being prevented from having full control of the operations of their subsidiary as a result of the obligation to advertise all vacancies (including for the CEO level) for finding suitable Bruneians.</p> <p>Finally, local people may not necessarily have the right competences and/or have deep knowledge of the company's business and this may result in poor management of the company.</p> | <p>In Switzerland, Swiss and EU/EFTA nationals are given priority, so that foreigners can be admitted to take up a gainful employment only if no qualified worker can be found in the domestic or European labour market. Domestic employees with priority rights include however not only Swiss nationals, but also permanent foreign residents and other foreign nationals with temporary residence permits permitting a gainful employment.</p> <p>According to the OECD Services Trade Restrictiveness Index Regulatory Database, in Indonesia, the employment of foreign key personnel is subject to governmental approval, and the employment of foreigners to certain key management positions, namely for Chief Executive Officer, is prohibited. It seems that government approval for the employment of foreigners in key management positions is based on economic needs test.</p> | |

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| | | | difficult to find suitable people for certain positions in Brunei Darussalam. In their view, locals are not always fully suitable for the specific position. | | In Viet Nam, at least 20% of the total number of managers and executives shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise. For the purpose of the OECD FDI Regulatory Restrictiveness Index, since the measure may restrict, but not entirely precludes the nomination of foreign personnel to key management positions, it is assumed equivalent to a restriction on nationality requirement for board of directors. | |
| Local Business Development Directive No. 2 of the Energy Department, Prime Minister's Office | - | Foreign ownership | If a foreign person or enterprise has a contract for the provision of certain logistics services (such as warehousing for storage - see below for more details) to a company active in the petroleum industry in Brunei Darussalam, it is required to provide such services through a Brunei Darussalam national or Bruneian enterprise. These obligation concerns specific logistics services, i.e., warehousing for storage, courier services to | This provision may result in imposing, upon foreign operators, an obligation to sub-contract to a Bruneian national or enterprise the provision of certain logistics services to the petroleum industry. In practice, in certain circumstances (i.e., when these services are provided to a company in the petroleum industry), foreign companies are prevented from directly providing these services themselves and this may | This provision aims at facilitating "the sustainable development of capacities, capabilities, competencies and competitiveness of local contractors/suppliers in supporting the oil and gas industry within Brunei Darussalam and provide a sound foundation for pursuit of opportunities outside Brunei Darussalam". International comparison The use of national- | No recommendation. However, Brunei Darussalam government should be aware that the requirement for companies to use national content service providers may make production more expensive. |

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| | | | worldwide locations and within Brunei Darussalam, clearing and forwarding services for air and sea freight, and provision of chartered anchor handling tugs and chartered supply vessels. In practice, such services can only be provided to the company in the petroleum industry through a Brunei Darussalam enterprise, even though the signing party to the contract is a foreign company. As a result, such foreign nationals or companies are required to sub-contract to a Brunei Darussalam natural or legal person. | result in higher costs. This may make foreigners' services more expensive and therefore less competitive. | content clauses is common in certain industries (e.g., oil and gas industry). In Mexico, for instance, the 2013 energy reform establishes that to promote the participation of national enterprises, a minimum percentage of national content should be used. This is applicable for instance to goods and services, qualified Mexican labour, training of Mexican labour (see Report on Competition Assessment in Mexico (2019), p. 79-80). | |
| - | - | Company registration | Since 2015, it is possible to register a company in Brunei Darussalam within a day through the Registry of Companies and Business Names, MOFE (ROCBN) online system ⁴ . MOFE provides a step-by-step guide on how to use the ROCBN system. It seems that the process is easy and one only needs to register the account by filling in an application and uploading the relevant documents (see OECD's report on Good Regulatory Practices to support Small | The lack of sufficient communication/advertising on the new digital tools to register a company online may result in potentially interested persons bearing extra costs due to the legal advice they will get from lawyers and/or consultants. This may in turn result in a barrier to entry, especially in the initial phase (where many significant investments need to be made) and especially for smaller companies. However, the ROCBN confirmed that it | International comparison In a World Bank Group Flagship Report on "Doing Business 2019", the World Bank also acknowledges the utmost importance of effective public communication of business regulatory reform, as it constitutes a good practice and improves compliance by private firms. It observes that "economies where governments communicate regulatory changes through media—such as | No recommendation. The OECD supports Brunei Darussalam's efforts in raising public awareness about the new online registration system. The government may consider going further and introducing a comprehensive communication plan valid across several departments in order to build awareness of the recently implemented reforms. The government can issue guidelines and |

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| | | | <p>and Medium Enterprises in Southeast Asia (2018), p. 40). Criteria for registration are not restrictive: for all types of businesses (partnerships or company), one needs to be at least 18 years old and not have been declared bankrupt.</p> <p>Although registration of companies with the ROCBN can be easily done online, this information has not been sufficiently communicated to the business community and the public in general, thus there are still private consultants being employed for registration for which they charge high prices. However, the ROCBN confirmed that it has been actively promoting the online registration system through workshops and dialogue sessions with stakeholders. It has also requested stakeholders' feedback for improvements.</p> | <p>has been actively promoting the online registration system through workshops and dialogue sessions with stakeholders. It has also requested stakeholders' feedback for improvements.</p> | <p>broadcast advertisements and announcements, social media, and mobile applications - are likely to have a higher ease of doing business score. Governments that make changes to laws or procedures publicly available through regulatory websites are also likely to perform better on the Doing Business indicators" (see p. 15 of the WB report).</p> <p>Similar reforms have been successfully launched in other countries. For example, in India, after introducing several business friendly reforms (aimed at reducing regulatory burden on companies), the Department of Industrial Policy and Promotion asked other ministries and department to conduct demonstration workshops with stakeholders in order to build awareness on the progressive reforms as well as the changes introduced in the procedures and their impact. Generally, it requested them to develop a communication plan to publicize the implemented</p> | <p>instructions to publicize such reforms.</p> |

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| | | | | | reforms (for instance through social or printed media or other platforms) ⁵ | |

¹. Available at https://www.mofe.gov.bn/Shared%20Documents/rocbn/Ordinarily_Resident_Guidelines_and_Forms.pdf.

². See <https://www.mofe.gov.bn/divisions/or-application.aspx>

³. See <https://www.aseanbriefing.com/news/2015/11/26/nationality-residency-requirements-directors-across-asean-part-one.html>.

⁴. See https://www.roc.gov.bn/brunei-master/viewInstance/view.html?id=69d4905983746cac3166aa6b9512e73abac5e56e174936be&_timestamp=19268069041922300

⁵. See <https://economictimes.indiatimes.com/news/economy/policy/dipp-writes-to-central-ministries-to-better-communicate-business-reforms/articleshow/54360210.cms>).

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| - | - | Access to laws and regulations | The Attorney General's Chambers' website ¹ is the main website for finding Brunei Darussalam legislation. Legislation there is organized in alphabetical order. However, to the best of our knowledge, amendments to legislation are not always incorporated into the original piece of legislation. Also, many pieces of legislation are not in a searchable format. | Due to the way the database is organized, legislation for the Brunei Darussalam logistic sector (as well as for other sectors) is not always easily searchable and accessible. The fact that amendments are not always incorporated into the original piece of legislation may create legal uncertainty and increase costs for market players (e.g., fees for legal advice). | <p>It is likely that the exercise of amending the public legal database would be costly and it would take a significant amount of time.</p> <p>International comparison</p> <p>Portugal: Since 2016, the Portuguese government launched the "Simplex +" Programme, which aims at reducing administrative burdens and improving quality of regulations. The programme includes the "Unilex" project, whereby "all new draft regulations are subject to a legislative consolidation test, and when possible new proposals for consolidation and unification of related legislation are adopted" (OECD Competition Assessment on Portugal, p. 35). Consolidated versions are then published online.²</p> <p>Singapore: In Singapore, the Singapore Statutes Online (SSO) is a free service provided by the Attorney General's Chambers which</p> | <p>Option 1: Authorities should publish all consolidated relevant pieces of legislation (including all subsequent amendments) within their responsibility on their respective websites.</p> <p>Option 2: It is suggested to organize the database in an easily accessible way. Although in some occasions this has been done manually by pen, the OECD recommends that authorities revise all legislation to include new amendments in the original main piece of legislation or, alternatively, list the main legislation and then provide a link to any amendments. This could be done for instance by the Attorney General's Chambers that is currently responsible for improving and updating the existing legal online system.</p> |

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| | | | | | <p>consists of a complete list of current and historical versions of legislation, including revised and consolidated editions of pieces of legislation.</p> <p>Australia: In Australia, all federal laws are published on the Federal Register of Legislation Website. The latest consolidated version of the legislation is clearly marked by 'In force - Latest Version'. Users are able to 'View Series'- which shows all the versions of the legislation in question and also can easily find any amending Acts. Users can easily identify the legislation that is currently in force, they can see previous versions (i.e. to know what law applied at a particular time) and can see what and when amendments were made. There is also a link to related bills.</p> | |

1. See, <http://www.agc.gov.bn/AGC%20Site%20Pages/Legislation.aspx>

2. See, <https://dre.pt/>.

International agreements

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| ASEAN Framework Agreement on Multimodal Transport | - | Cross-border freight transit | <p>Brunei Darussalam has not yet implemented the ASEAN Framework Agreement on Multimodal Transport, that was agreed among ASEAN countries in 2005.¹</p> <p>This framework regulates liability, documents and operations of multimodal transport operators across ASEAN countries. Thus, it should facilitate Multimodal Transport Operators' activities across ASEAN countries.</p> <p>As to its scope, the agreement only concerns multimodal transport, i.e., carriage of goods by at least two different modes of transport combined in a single multimodal transport contract. Thus, Outside the covered scope, it does not replace existing national regulations on liability and authorizations for maritime and road transport.</p> | <p>The lack of implementation of the ASEAN Framework Agreement on Multimodal Transport results in additional costs for operators and limits their possibility to provide their services across ASEAN Member States, thus raising geographic barriers to the provision of services.</p> <p>In particular, according to market participants, the lack of implementation makes it necessary to issue different documents for each leg of the transport by different means (e.g., bill of lading for the maritime leg and CMR -Convention relative au contrat de transport international de marchandises par route - for the road leg), thus making it more burdensome to transfer cargo from one mode of transport to the other. Furthermore, the liability regime is unclear and the lack of implementation also limits the operators' ability to provide their services in other ASEAN</p> | <p>The objective of the ASEAN Framework Agreement on Multimodal Transport (signed by Brunei Darussalam in 2005) is to facilitate "the expansion of international trade among the members of ASEAN" and "to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade".</p> <p>International comparison</p> <p>While some ASEAN countries (Cambodia, Indonesia, Lao PDR, Myanmar, Philippines and Viet Nam) have ratified and/or implemented this agreement, others like Brunei Darussalam and Malaysia have not, yet.</p> | <p>Introduce specific provisions or amend existing provisions to implement the ASEAN Framework Agreement on Multimodal Transport into the national legal order.</p> |

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| <p>BIMP (Brunei Darussalam, Indonesia, Malaysia, the Philippines) EAGA (East ASEAN Growth Area) Memorandum of Understanding (MOU) on Transit and Inter-State Transport of Goods</p> | <p>-</p> | <p>Cross-border freight transit</p> | <p>The BIMP EAGA MoU on Transit and Inter-State Transport of Goods was signed in 2009 among BIMP (Brunei Darussalam, Indonesia, Malaysia, the Philippines) EAGA (East ASEAN Growth Area) countries. This agreement contains a limitation on the number of vehicles (500) that can operate cross-border across BIMP EAGA countries. Regarding the level of private sector utilization, as of August 2014, the Motoring Transport Licensing Authority of Brunei Darussalam has issued 979 permits to transport operators from Sarawak and Sabah (in East Malaysia), while the CVLB of Sabah had issued 61 permits to transport operators from Brunei Darussalam and the Commercial Vehicles Licensing Board (CVLB) of Sarawak had issued 414 and 275 permits to transport operators from Brunei Darussalam and Sabah respectively (see Asian Development Bank's</p> | <p>countries. The limited number of licences allowing trucks to operate cross-border may constitute a barrier to entry if there are not sufficient licences available for every interested company.</p> | <p>The likely objective of this provision seems to be the protection of national road transport service providers against competition from other neighbouring countries. International comparison The World Bank and IRU's Guiding Principles for Practitioners and Policy Makers on "Road Freight Transport Services Reform" (p. 45) observes that "access to international markets is still largely dominated by quantitative restrictions. Despite quota limitations, bilateral agreements have played a crucial role in developing international road freight transport during decades. They supported the spectacular growth of export-import and transit operations as well as to a certain extent third-country road freight traffic. International organizations have done their utmost to harmonize these agreements, with mixed success. In order to maximize national reforms of the road transport</p> | <p>Option 1: remove this provision and grant a licence to all those that request it, based on qualitative criteria. Such qualitative criteria may concern the good repute of the operator, its adequate financial standing and its professional competence. Each of these criteria should be clearly defined in the international agreement or implementing laws or regulations. Option 2: Regularly assess the market's need and demand, and consider increasing the number of licences that can be issued. The phrase "from time to time" in the provision should be more clearly defined in order to ensure regular and timely assessments. Both these recommendations would require negotiations between the two co-signatories</p> |

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| | | | Review of the BIMP-EAGA Land Transport MoU, p. 15). The same report highlights that there are significant cross-border truck operators between Brunei Darussalam and neighbouring Malaysia. | | <p>sector, governments should overcome the drawbacks of bilateralism and quantitative restrictions."</p> <p>The report also contains interesting observations on the system of quotas for international transport as opposed to a system based on qualitative criteria to be met by operators for obtaining a licence. It refers to the Consolidated Resolution on the Facilitation of International Road Transport (R.E.4) as a good example and explains that R.E.4 was adopted to liberalize the international road transport market among the 56 UNECE (United Nations Economic Commission for Europe) Member States by providing some uniform minimum conditions and requirements to be met by international road transport operators to obtain a licence from the competent authority of their respective countries. It laid down three basic criteria:</p> <ul style="list-style-type: none"> - Good repute, consisting in the absence of conviction for criminal offences (including | |

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| | | | | | <p>commercial crimes), an assessment of whether the person is unfit for the occupation and has been convicted of serious breaches of labour, and transport law;</p> <ul style="list-style-type: none"> - Adequate financial standing, i.e, the undertaking has available sufficient resources to ensure that the company is properly set up and managed; - Professional competence, which is met by the person managing the activity when he/she demonstrates that he/she has sufficient knowledge to "engage properly and viably in the occupation" in particular in the fields of commercial and business administration, technical standards and operations, road safety, access to market, elements of company law, social and labour law, and civil and fiscal law." <p>In the authors' view, this qualitative criteria-based system should replace the system based on quotas of licences. They also suggest that, in order to avoid certain countries</p> | |

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| Protocol 3 of the ASEAN Agreement on the Facilitation of Goods in Transit (1998) - Types and quantity of road vehicles | Art. 4 | Cross-border freight transit | The ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) was signed in 1998 in Hanoi. Pursuant to its Protocol 3, ² the number of licences that allow trucks to provide cross-border services across ASEAN countries is limited to 60 trucks per country. We have not been able to check whether this number has been reviewed since then. | The limited number of licences allowing trucks to operate cross-border may constitute a barrier to entry if there are not sufficient licences available for every interested company. | <p>feeling threatened by the sudden abandonment of quotas, a gradual approach may be desirable, towards the introduction of qualitative rather than quantitative conditions.</p> <p>The likely objective of this provision seems to be the protection of national road transport service providers against competition from other neighbouring countries.</p> <p>See above for international comparison, in particular on the Consolidated Resolution on the Facilitation of International Road Transport (R.E.4).</p> | <p>Option 1: remove this provision and grant a licence to all those that request it, based on qualitative criteria. Such qualitative criteria may concern the good repute of the operator, its adequate financial standing and its professional competence. Each of these criteria should be clearly defined in the international agreement or implementing laws or regulations.</p> <p>Option 2: Regularly assess the market's need and demand, and consider increasing the number of licences that can be issued. The phrase "from time to time" in the provision should be more clearly defined in order to ensure regular and timely assessments.</p> <p>Both these recommendations would require negotiations</p> |

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| ASEAN Agreement on the Facilitation of Goods in Transit (1998) | | Digitalization | <p>There is a strong emphasis on regulatory delivery in Brunei Darussalam and on improving public service. The Brunei Darussalam government created indeed the Civil Service Framework (CSF) identifying some goals and strategies to strengthen the public sector's ability to deliver programmes and policies. Within this general framework, the Business Process Re-engineering is one of the initiatives aimed at "re-modelling and streamlining existing processes or procedures to improve the quality of provisions of services to the public or stakeholders. This is done by reviewing the different business processes and eliminating overly bureaucratic processes and any work duplications to improve the efficiency of a service and increase organisational productivity" (see OECD's report on Good Regulatory Practices to support SMEs in Southeast Asia, 2018). According to the same</p> | <p>The requirement to physically take the permit from one country to the other is burdensome and costly for companies. It may therefore constitute a barrier to entry for potential competitors.</p> <p>International comparison</p> <p>Most OECD countries allow online application processes for transport and logistics-related licences and authorisations. In the UK, for instance, there is a user-friendly online procedure for transport operator licences (with possibility to pay fees online with credit card), although it is also possible to file an application by post if one cannot use the online service for whatever reason. Decisions are usually issued within shorter time in case of online application (7 weeks) compared to applications by post (9 weeks).</p> | <p>The lack of online applications for cross-border transport permits for trucks and the requirement to submit hard copies of applications could be explained by the fact that the old procedure has never been updated.</p> | <p>between the two co-signatories</p> <p>Introduce online applications and remove the requirement to submit hard copies of applications.</p> |

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| | | | <p>report, "Brunei Darussalam has made concerted efforts within the different ministries in the recent years to make government services available online as a way to improve or simplify the regulatory environment for businesses."</p> <p>However, notwithstanding these improvements, today there is still no online application for cross-border transport permits for trucks. In order to obtain recognition of the permit issued by one country (e.g., Brunei Darussalam) in the other country (e.g., Malaysia), it is necessary to take the permit physically to the office of the other country.</p> <p>For example, based on the report by the Asian Development Bank on "Review of the BIMP-EAGA Land Transport MoUs",³ Bruneian transport operators serving the Brunei Darussalam-Sabah, Brunei Darussalam-Sarawak and Brunei Darussalam-Labuan routes have to approach three offices of the Malaysian Commercial</p> | | | |

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| | | | <p>Vehicles Licensing Board (CVLB) in three different locations for permit renewal and for new permit applications, i.e., the CVLB in Sabah, CVLB in Sarawak and CVLB in Labuan, respectively.</p> <p>Also, according to market participants, approval is not granted immediately and drivers need to physically go to offices of the other country at least twice. They claim that the whole process may take weeks or months.</p> | | | |

¹. See <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2005-ASEAN-Framework-Agreement-on-Multimodal-Transport.pdf>.

². Available at <http://agreement.asean.org/media/download/20140718165726.pdf>.

³. Available at <https://www.adb.org/sites/default/files/page/34232/review-bimp-eaga-land-transport-mou.pdf>

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Notes

¹ See for instance EC merger case COMP/M.7630 – *Fedex / TNT Express* of 8 January 2016, EC merger case COMP/M.6570 – *UPS/ TNT Express* of 30 January 2013.

² The separation between inland waterway transport and maritime transport is not always clear-cut, as shown for instance in Viet Nam by the overlap of responsibilities between the Viet Nam Inland Waterway Administration (VIWA) and the Viet Nam Maritime Administration (VINAMARINE).

³ See, www.worldshipping.org/about-the-industry/how-liner-shipping-works.

⁴ See European Commission, Case AT.39850, *Container Shipping*, closed with commitments on 7 July 2016.

⁵ The methodology followed in this project is consistent with the product market regulations (PMR) index developed by the OECD. To measure a country's regulatory stance and track progress of reforms over time, in 1998, the OECD developed an economy-wide indicator set of PMR (Nicoletti and Scarpetta, 2000^[41]); this indicator was updated in 2003, 2008 and 2013.

⁶ Fournier, et al. (2015^[12]) find that national regulations, as measured by the economy-wide PMR index, have a negative impact on exports and reduce trade intensity (defined as trade divided by GDP). Differences in regulations between countries also reduce trade intensity. For example, convergence of PMR among EU member states would increase trade intensity within the European Union by more than 10%. Fournier (2015^[13]) studied the impact of heterogeneous PMR in OECD countries and concluded that lowering regulatory divergence by 20% would increase FDI by about 15% on average across OECD countries. He investigated specific components of the PMR index and found that command-and-control

regulations and measures protecting incumbents (such as antitrust exemptions, entry barriers for networks and services) are especially harmful in reducing cross-border investments.

⁷ Arnold et al. (2011_[15]) analysed firm-level data in 10 countries from 1998 to 2004 using the OECD's PMR index at industry-level, and found that more stringent PMR reduces firms' MFP.

⁸ Égert (2017_[16]) investigates the drivers of aggregate MFP in a sample of 30 OECD countries over a 30-year period.

⁹ The study of 15 countries and 20 sectors from 1985 to 2007 estimated the effect of regulation of upstream service sectors on downstream productivity growth. The productivity frontier refers to the most productive countries and sectors in the sample. The farther a sector is from the frontier, the less productive it is.

¹⁰ Égert (2018_[42]) investigated the link between product and labour-market regulations with investment (capital stock) using a panel of 32 OECD countries from 1985 to 2013.

¹¹ Employment growth in France increased from 1.2% a year between 1981 and 1985 to 5.2% a year between 1986 and 1990. Between 1976 and 2001, total employment in the road transport sector doubled, from 170 000 to 340 000.

¹² The sample includes 18 countries over a 10-year period.

¹³ Using the OECD's summary index of PMR in seven non-manufacturing industries in the energy, telecom and transport sectors, Causa, O., A. de Serres and N. Ruiz (2015_[43]) found stringent PMR had a negative impact on household disposable income. This result held both on average and across the income distribution, and led to greater inequality. The authors noted that lower regulatory barriers to competition would "tend to boost household incomes and reduce income inequality, pointing to potential policy synergies between efficiency and equity objectives".

¹⁴ Multi-factor productivity (MFP) is a measure of the "efficiency with which labour and capital inputs are used together in the production process" (see, <https://data.oecd.org/lprdy/multifactor-productivity.htm>).

¹⁵ China's Belt and Road Initiative is a programme to connect Asia with Africa and Europe via land and maritime networks along six corridors. One of them is the Silk Road Economic Belt, which links China with Southeast Asia, south Asia, Central Asia, Russia and Europe by land. The initiative comprises also the Maritime Silk Road, a sea route connecting China with southeast and south Asia, the South Pacific, the Middle East and Eastern Africa, all the way to Europe. In a China-Brunei joint statement of November 2018, Brunei Darussalam confirmed its efforts to "continue to support and jointly promote cooperation in the Belt and Road Initiative, and the two sides will work closely on the implementation of the Memorandum of Understanding on Jointly Promoting Cooperation within the Framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative between the two Governments and the newly signed Cooperation Plan" (see <https://eng.yidaiyilu.gov.cn/zchj/sbwj/72138.htm>).

¹⁶ At the global level, the first wealthiest countries based on their GDP PPP are Qatar, Luxembourg and Macao.

¹⁷ Data refer to the GDP originating from the transportation and storage sector at constant prices. See http://deps.gov.bn/DEPD%20Documents%20Library/DOS/BDKI/BDKI_2018.pdf, p. 17.

¹⁸ The industry sector comprises value added in mining, manufacturing, construction, electricity, water, and gas.

¹⁹ See IMF's 2018 Article IV consultation with Brunei Darussalam. A press release with a summary is available at <https://www.imf.org/en/News/Articles/2018/10/12/pr18389imf-executive-board-concludes-2018-article-iv-consultation-with-brunei-darussalam>.

²⁰ For the full list of countries with their respective rankings, see www.doingbusiness.org/en/rankings.

²¹ Another factor is the time necessary to register property; see Section 1.9.1.3 for more details.

²² This Master Plan follows the adoption of a first Master Plan on ASEAN Connectivity 2010. The full text of the Mater Plan on ASEAN Connectivity 2025 is available at <https://asean.org/storage/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf>.

²³ See, http://deps.gov.bn/DEPD%20Documents%20Library/DOS/GDP/2019/GDP_Q42019.pdf

²⁴ See, http://www.deps.gov.bn/DEPD%20Documents%20Library/DOS/Labour%20force%20survey_KTK/2019/KTK_2019.pdf

²⁵ See IMF's 2018 Article IV consultation with Brunei Darussalam. A press release with a summary is available at <https://www.imf.org/en/News/Articles/2018/10/12/pr18389imf-executive-board-concludes-Note2018-article-iv-consultation-with-brunei-darussalam>. See Sections 1.4.1 on GDP and economic growth and 1.4.2 on contribution to GDP growth by sector and the importance of services.

²⁶ See Section 2.1.3.

²⁷ See, <https://www.mordorintelligence.com/industry-reports/brunei-freight-and-logistics-market>.

²⁸ See, <http://afeo.org/wp-content/uploads/2018/08/Brunei-Land-Transport-Master-Plan-Summary.pdf>.

²⁹ We understand that there is a plan to extend another 250 metres to the container wharf, in Muara, to serve as a second container berth to a total quay length of 500 metres.

³⁰ See, <https://stats.unctad.org/handbook/Services/ByCategory.html>.

³¹ See, <https://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/096/index.html>.

³² UNCTAD explains that the current version of the index is based on six components, i.e., 1) the number of scheduled ship calls per week in the country; 2) deployed annual capacity in Twenty-Foot-equivalent Units (TEU): total deployed capacity offered at the country; 3) the number of regular liner shipping services from and to the country; 4) the number of liner shipping companies that provide services from and to the country; 5) the average size in TEU (Twenty-Foot-equivalent Units) of the ships deployed by the scheduled service with the largest average vessel size; and 6) the number of other countries that are connected to the country through direct liner shipping services.

³³ See Section 1.4.

³⁴ The World Bank categorises Brunei Darussalam as a high-income economy. The only other ASEAN country in the same income group is Singapore. The full list of the countries within the high-income group is available at <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>.

³⁵ Wawasan Vision 2035 is a long-term development plan that sets out Brunei's collective aspirations "as to maintain the political stability in Brunei Darussalam; to preserve social, cultural, spiritual and historic values; to help people meet the practical challenges of the modern world successfully and to give families and communities confidence in the future." The overall purpose is to develop Brunei "into a nation which will be widely recognised for the accomplishment of its educated and highly skilled people measured by the highest international standards; quality of life that is among the Top 10 nations in the world and a dynamic and sustainable economy with income per capita within the Top 10 countries in the world." In 2014, the Champions of Strategies developed 13 strategies to ensure that all the development aspects of Vision 2013 were correctly implemented. The 13 strategies are: (i) education, (ii) economy, (iii) security, (iv) institutional development, (v) local business development, (vi) infrastructure development, (vii) social security, (viii) environment, (ix) health, (x) religion, (xi) land use, (xii) infrastructure and info-communication technology, and (xiii) manpower planning.

³⁶ Tieman defines Halal logistics as "the process of managing the procurement, movement, storage and handling of materials, parts, livestock, semi-finished or finished inventory both food and non-food, and related information and documentation flows through the organization and the supply chain in compliance with the general principles of Shariah" (Tieman, 2013^[40]).

³⁷ The Ports Department has introduced a 36% reduction if import and export container charges. It has extended the free storage period for all import and export containers from 2 days to 5 days. This is expected to potentially save storage costs for consignees and consignors. For more details, see <http://www.mtic.gov.bn/Lists/News/NewItemDisplay.aspx?ID=346&Source=http%3A%2F%2Fwww%2Emtic%2Egov%2Ebn%2FPages%2FPress%2520Release%2Easpx%23InplviewHashcd9d18b3%2D915b%2D4ecd%2D9c81%2D04f668e6d84d%3DPaged%253DTRUE%2Dp%5FID%253D347%2DPageFirstRow%253D91&ContentTypeld=0x0100261110CA923B9A43ADE68C6FD788196C>.

³⁸ Following the ASEAN Strategic Transport Plan / Brunei Action Plan (BAP) of November 2010, the ASEAN Ministers agreed to formulate a transport vision for post-2015 and develop the successor of BAP. Therefore, in December 2015, they signed the ASEAN Transport Strategic Plan or Kuala Lumpur Transport Strategic Plan (KLTSP) to support the realisation of the ASEAN Economic Community 2025, in particular the creation of a highly cohesive ASEAN Economy. The KLTSP outlines 30 specific goals, 78 actions and 221 milestones in the areas of air transport, land transport, maritime transport, sustainable transport and transport facilitation. For more details, see https://www.asean.org/storage/2016/01/11/publication/KUALA_LUMPUR_TRANSPORT_STRATEGIC_PLAN.pdf.

³⁹ See, <https://www.nationthailand.com/asean-plus/30289929>.

⁴⁰ OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Brunei Darussalam.

⁴¹ See, <http://www.brufa.com/home.asp>.

⁴² See for example, European Commission (2014), *Report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market*, https://ec.europa.eu/transport/sites/transport/files/modes/road/news/com%282014%29-222_en.pdf.

⁴³ This is to ensure continuity of the services during the transitional period between the old and new legal framework.

⁴⁴ A concession is the grant of the right to operate a defined service and receive revenues deriving from it. The concessionaire takes possession of the relevant assets (but ownership usually remains with the government) and uses them to provide the relevant product or service according to the terms of the

contract. By contrast, licences are limited to giving the right to provide a service, once all conditions have been fulfilled.

⁴⁵ See <https://sagc.sabah.gov.my/sites/default/files/law/PortsAndHarbours%28SabahLicensedSmallShips%29Regulations2008.pdf>.

⁴⁶ This provision specifies that only citizens of Brunei, bodies corporate incorporated in Brunei and international business Companies or foreign international Companies incorporated, converted or registered in Brunei under the International Business Companies Order are "qualified" (i.e., have the right to be registered) to own Brunei ships.

⁴⁷ See <http://www.imo.org/en/OurWork/HumanElement/VisionPrinciplesGoals/Pages/PrinciplesOnSafeManning.aspx>.

⁴⁸ Article 40 of the MPABD Order also gives the Minister the power to issue regulations on the percentage of seamen that must be citizens of Brunei.

⁴⁹ Article 81 of the Maritime and Port Authority of Brunei Darussalam Order, 2017 requires a licence for the provision of any marine service.

⁵⁰ The services that do not fall within such exclusive right are listed under Article 5. However, they are very limited and include: conveying maximum 3 letters by means of a friend; delivering letters concerning the affairs of the sender/receiver by means of a messenger employed for that purpose; delivering without any remuneration letters concerning goods or property attached with such goods or property.

⁵¹ The (OECD, 2015^[39]) defines administrative burdens as “The costs involved in obtaining, reading and understanding regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing, reporting and storage, but NOT including the capital costs of measures taken to comply with the regulations, nor the costs to the public sector of administering the regulations”.

⁵² For the full text of the agreement, see https://www.parliament.go.th/aseanrelated_law/files/file_20170808165335_txtattactEN_.pdf.

⁵³ The priority sectors included in the ASEAN Framework Agreement for the Integration of Priority Sectors were: agro-based products, air travel, automotive, e-ASEAN, electronics, fisheries, healthcare, rubber-based products, textiles and apparels, tourism, and wood-based products.

⁵⁴ See, <https://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/services/logistics-services/>.

OECD COMPETITION ASSESSMENT REVIEWS: LOGISTICS SECTOR IN BRUNEI DARUSSALAM

Efficient logistics can play a significant role in increasing a country's economic development by facilitating international trade and improving its competitiveness. This report provides an overview of the logistics sector in Brunei Darussalam and offers recommendations to lower regulatory barriers to competition. It covers freight transport by land and by water, freight forwarding, warehousing, small parcel delivery and value-added logistics services.

This report and the accompanying "OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Brunei Darussalam" are contributions to an ASEAN-wide project that implements part of the ASEAN Competition Action Plan 2016-2025 and is funded by the UK Prosperity Fund (UK Government). Designed to foster competition in ASEAN, the project involves conducting assessments of regulatory constraints on competition in the logistics services sector in all 10 ASEAN countries to identify regulations that hinder the efficient functioning of markets and create an unlevel playing field for business.

Access all reports and read more about the project at [oe.cd/comp-asean](https://www.oecd.org/comp-asean).

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