

Electronic Evidence Fiche: BRUNEI DARUSSALAM

1) DEFINITIONS

Brunei Darussalam
What are the definitions in your laws/regulations, if any, of:
Electronic evidence
There is no specific definition for the term “electronic evidence”. However, in the Evidence Act (Part I, Chapter I, paragraph 3), the interpretation of “document” includes “any sound recording or any electronic, magnetic, mechanical or other recording, whatsoever and however made, or any sound, electronic impulse or other data whatsoever”.
Computer system
There is no definition of “computer system”. However, the term “computer” is defined under the Computer Misuse Act (Part I, paragraph 2) as “an electronic, magnetic, optical, electrochemical, or other data processing device, or a group of such interconnected or related devices, performing logical, arithmetic or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device or group of such interconnected or related devices, but does not include – (a) a similar device which is non-programmable or which does not contain any data storage facility; or (b) such other device as the Minister may, by notification in the Gazette, prescribe”. The Computer Misuse Act also states that “electronic, acoustic, mechanical or other device” means “any device or apparatus that is used or is capable of being used to intercept any function of a computer”.
Computer data
Under the Computer Misuse Act (Part I, paragraph 2), “data” means “representations of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer”.
Categories of computer data (e.g. basic subscriber information, traffic data and content data)
The categories of computer data are not defined under Brunei Darussalam’s laws.

Electronic surveillance or real-time collection of computer/communication data

There is no definition of “electronic surveillance” or “real-time collection of computer/communication data”. The Computer Misuse Act provides that “intercept, in relation to a function of a computer, includes listening to or recording a function of a computer, or acquiring the substance, meaning or purport thereof”.

Service provider (e.g. ISP, hosting)

There is no definition of service provider in Brunei Darussalam’s laws.

2) DATA RETENTION REGIME

Brunei Darussalam

Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?

There is no specific law for data retention.

3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CRIMINAL TRIAL

Brunei Darussalam

What is the requirement under your domestic law for electronic evidence to be admissible in a criminal trial?

Any evidence produced during a criminal trial, including electronic evidence, must comply with the Evidence Act, in particular sections 35A (Admissibility of statements produced by computers), 35B (Provisions supplementary to section 35A), 62 (Primary evidence) and 63 (Secondary evidence). A statement contained in a document produced by a computer shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, with certain conditions regarding the proper/regular use of the computer. In any proceedings where it is desired to give a statement in evidence, a certificate signed by a person holding a responsible position in relation to the operation of the relevant device or the management of the relevant activities shall be evidence of any matter stated in the certificate. Where in any proceedings a statement contained in a document is admissible in evidence, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve. “Primary evidence” means the document itself produced for the

inspection of the court while “secondary evidence” includes (a) certified copies given under the provisions hereinafter contained; (b) copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies; (c) copies made from or compared with the original; (d) counterparts of documents as against the parties who did not execute them; (e) oral accounts of the contents of a document given by some person who has himself/herself seen or heard it or perceived it by whatever means.

4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

4.1. Direct requests from foreign authorities to service providers

4.1.1. Requests for preservation

Brunei Darussalam
What legal framework(s) is/are applicable, if any?
No information provided.
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
No information provided.
If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?
The Mutual Assistance in Criminal Matters Order (2005) does not prevent international assistance in criminal matters to or from the International Criminal Police Organization (Interpol) or any other international organization.
Is a judicial order required from the requesting state?
No information provided.
Are there any time limits for data preservation? Any possibility of extension?
No information provided.
Would service providers in your country notify the data subjects of the request?
No information provided.

4.1.2. Requests for voluntary disclosure

Brunei Darussalam
What legal framework(s) is/are applicable, if any?
There is no law on voluntary disclosure.
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
No information provided.
If they are prohibited or if there are limitations, are there any alternative options to obtain the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?
No information provided.
Is a judicial order required from the requesting state? Are there any time limits?
No information provided.
Would service providers in your country notify the data subjects of the request?
No information provided.
How can the process be simplified or quickened in emergency situations?
No information provided.

4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

Brunei Darussalam
How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?
No information provided.
Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?

No information provided.
What are the central and competent authorities in your country to: a) Receive a request for MLA in criminal matters? b) Execute/recognize the measure (if other than the receiving authority)?
a) Attorney General's Chambers b) The Mutual Legal Assistance Secretariat Any request for mutual legal assistance is to be directed to the Attorney General of Brunei Darussalam. The Mutual Assistance in Criminal Matters Order (2005) gives powers to the Attorney General to consider any MLA request and then for the relevant authority to exercise their powers within the bound of the law.
What are the accepted languages for MLA requests?
The request should be submitted in English. Should it be in another language, the Mutual Legal Assistance Secretariat will ask the requesting state to translate it into English.
Can the request be submitted electronically to the central authority?
Yes. However, if electronic copies are received, hard copies must be submitted later on.
Can the request be submitted directly to the central authority?
Yes
What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?
Should there be no treaty with Brunei Darussalam on the issue of mutual legal assistance, Brunei Darussalam will seek assurance that the requesting state will entertain a similar request by Brunei Darussalam for assistance in criminal matters (on the basis of international courtesy with the assurance of reciprocity).

5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

5.1. Direct requests to foreign service providers

5.1.1. Requests for preservation

Brunei Darussalam
What legal framework(s) is/are applicable, if any?
No information provided.

Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers?

Any request for mutual legal assistance from Brunei Darussalam to a foreign country is to be made by the Attorney General of Brunei Darussalam.

If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

The Mutual Assistance in Criminal Matters Order (2005) does not prevent international assistance in criminal matters to or from the International Criminal Police Organization (Interpol) or any other international organisation.

Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons?

No information provided.

5.1.2. Requests for voluntary disclosure

Brunei Darussalam

What legal framework(s) is/are applicable, if any?

There is no law on voluntary disclosure.

Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?

No information provided.

If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

No information provided.

Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?

No information provided.

5.2. Requests sent by your central authority for **Mutual Legal Assistance (MLA)**

Brunei Darussalam

What is your central authority to send requests for MLA in criminal matters?

Attorney General's Chambers through its Mutual Legal Assistance Secretariat.

Are informal contacts with the central authority of the requested states allowed and used?

Yes, for example through the South East Asia Justice Network (SEAJust).