

# Enforcement of foreign arbitral awards in Indonesia

In a recent [briefing](#), we outlined some of the unique features of Indonesia-seated arbitration. As **Rob Palmer** and **Baldev Bhinder** now explain, when it comes to enforcement of foreign arbitral awards, Indonesia can also throw up surprises for the unwary.<sup>1</sup>

In many cases, losing parties in an arbitration will voluntarily comply with the award, for example by paying to the winning party the damages awarded. Alternatively, the award may also provide a basis for a negotiated settlement, with the winning party accepting a "haircut" in return for prompt payment. On some occasions, however, a losing party will refuse to satisfy the award, and the winning party will be forced to proceed with enforcement, using the courts of the country or countries where assets are located.

Indonesia has obtained a reputation as being a difficult country in which to enforce arbitral awards. In this briefing we explain the procedures for enforcing arbitral awards in Indonesia, and comment on the practical implications for parties considering enforcement.

## The Arbitration Law

Indonesia's Law Concerning Arbitration and Alternative Dispute Resolution, Law No. 30 of 1999 (the Arbitration Law) draws a distinction between international and domestic awards. Arbitrations seated in Indonesia are classed as domestic, while those seated outside Indonesia are classed as international. The enforcement procedure differs depending upon whether an award is international or domestic; here, we comment only on the process for enforcing international awards.

## The enforcement procedure

Indonesia has ratified the New York Convention,<sup>2</sup> which among other things provides for the enforcement in a signatory State of arbitral awards made in the territory of another signatory State. The

Arbitration Law gives effect to these treaty obligations. In fact, the grounds for refusing enforcement of an international award under the Arbitration Law are more restrictive than those under the New York Convention, being confined to a limited number of situations such as those where the award is in conflict with public morality and order.

The first step in the enforcement of an international award in Indonesia is for it to be registered with the District Court of Central Jakarta. Importantly, registration must be carried out by the tribunal or its proxy (and not by the parties themselves). There is no time limit for registration of international awards.

The Arbitration Law also requires an application for registration to attach:

- the original or a certified copy of the award, with official translation into Indonesian;
- the original or a certified copy of the document containing the arbitration agreement; and
- certification from the Indonesian diplomatic mission in the country in which the award was rendered that such country and Indonesia are bound by a bilateral or multilateral treaty on recognition and enforcement of awards.

In our experience, the third of these requirements can give rise to extensive delays in practice; regular follow-up with the relevant diplomatic mission is advised.

Once an award is registered, the successful party must then apply for an order of *exequatur*. Once this is issued, the District Court of Central Jakarta will send the *exequatur* order to the District Court where the losing party is domiciled or has its assets. A refusal to grant *exequatur* can be appealed to the Supreme Court, however no appeal is available against a refusal to grant an order.

## Indonesia's track record

Official statistics as to enforcement of international awards in Indonesia are not available. Unofficial

surveys indicate that only a limited number of enforcement attempts have been made (with one recent survey suggesting a total of 57 applications to enforce international awards between 2000 and 2012).

Interestingly, and contrary to popular belief, these unofficial surveys indicate that only a very small number of enforcement applications have been rejected. Many of these refusals relate to awards by the tribunal in the *Astro Nusantara -v- Ayunda Prima Mitra* case; the Indonesian courts have refused enforcement of these on the grounds of public order, taking the view that the tribunal's orders for an anti-suit injunction and findings of fact interfered with parallel court proceedings brought in Indonesia.

### Parallel litigation

What these surveys do not show, however, are the cases where enforcement is delayed (or perhaps not even commenced) as a result of parallel litigation in the Indonesian Courts.

In our experience, it is not uncommon for a losing party in an Indonesia-related arbitration to commence Indonesian court proceedings by bringing actions in tort (unlawful act) on the basis that such disputes are said to fall outside the arbitration clause. The Court may be – or may be perceived to be – reluctant to register and enforce an award until the parallel litigation is resolved. As a result, enforcement may be held up or may not commence until the litigation is over. Taking into account the lengthy appeal process

available in Indonesian civil proceedings, the potential for extensive delay is clear.

### Practical tips

In summary, enforcement of international awards in Indonesia can prove difficult. However, the obstacles may not be as great as perceived. The process can be eased by steps such as:

- **Following the correct procedures:** in particular, the requirement for registration to be effected by the tribunal or its proxy is often not understood. It is advisable to obtain a Power of Attorney (PoA) from the tribunal in advance of any award so that registration can be progressed; once a final award has been issued, a tribunal may consider itself without jurisdiction to provide a PoA;
- **Considering the arbitration agreement:** in some situations, the risk of parallel litigation may be reduced by ensuring that the arbitration agreement extends to non-contractual claims, thereby reducing the scope for a losing party to bring actions in tort; and
- **Assessing alternatives:** it may be possible to avoid altogether the need to enforce in Indonesia if assets can be identified offshore, or if the award can be used as a basis to negotiate a commercial settlement.

#### Notes

- 1 Views expressed on Indonesian law in this briefing are provided by Indonesian-qualified lawyers at Ashurst's associated firm, Oentoeng Suria & Partners.
- 2 Subject to the so-called reciprocity and commercial exceptions.

### Further information

If you would like any further information about any of the issues raised in this briefing, please contact:



**Rob Palmer**  
Partner, Singapore

+65 6416 9504  
[rob.palmer@ashurst.com](mailto:rob.palmer@ashurst.com)



**Baldev Bhinder**  
Senior Associate, Singapore

+65 6416 9507  
[baldev.bhinder@ashurst.com](mailto:baldev.bhinder@ashurst.com)

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## Key contacts

### Singapore



**Ben Giaretta**  
Partner, Singapore  
Asia Head of International  
Arbitration

+65 6416 3353  
ben.giaretta@ashurst.com



**Rob Palmer**  
Partner, Singapore

+65 6416 9504  
rob.palmer@ashurst.com



**Baldev Bhinder**  
Senior Associate, Singapore

+65 6416 9507  
baldev.bhinder@ashurst.com



**Akshay Kishore**  
Associate, Singapore

+65 6416 3343  
akshay.kishore@ashurst.com



**Katherine McMenamin**  
Associate, Singapore

+65 6416 9517  
katherine.mcmenamin@ashurst.com



**Michael Weatherley**  
Legal Manager, Singapore

+65 6416 9509  
michael.weatherley@ashurst.com

### Hong Kong



**Gareth Hughes**  
Partner, Hong Kong  
Asia Head of Dispute Resolution

+852 2846 8963  
gareth.hughes@ashurst.com



**Angus Ross**  
Partner, Hong Kong

+852 2846 8909  
angus.ross@ashurst.com

### Jakarta



**Noor Meurling**  
Senior Foreign Legal  
Consultant, Oentoeng Suria &  
Partners, Jakarta

+62 21 2996 9200  
noor.meurling@oentoengsuria.com



**Debby Sulaiman**  
Partner, Oentoeng Suria &  
Partners, Jakarta

+62 21 2996 9200  
debby.sulaiman@oentoengsuria.com

### Port Moresby



**Derek Wood**  
Partner, Port Moresby

+67 5309 2006  
derek.wood@ashurst.com



**Chris Bailey**  
Partner, Tokyo  
Tokyo Head of Dispute Resolution

+81 3 5405 6081  
chris.bailey@ashurst.com

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