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Dear Reader,

In this issue we will summarize important legal developments with practical implications in INDONESIA (new language requirement for contracts), SINGAPORE (Amendments to International Arbitration Law), THAILAND (abolishment of company seals for checks) and VIETNAM (New Decree for BOT projects).

As usual, if you have any comments, remarks or questions, we'd love to hear from you.

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Kind regards,
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INDONESIA : New Indonesian language requirement for contracts in Indonesia - scope uncertain

On July 9, 2009 the Government of Indonesia enacted Law No. 24 of 2009 regarding the National Flag, Language, State Symbols and National Anthem. This law regulates – inter alia - the use of the Indonesian language for contracts and imposes new requirements regarding the use of the Indonesian language in written contracts. So far there were only certain mandatory legal requirements to have contract drafted in Bahasa for certain real estate, franchise and share transfer transactions. However the new law seems to curtail the freedom to contract as expressed in Art. 1338 of the Indonesian Civil Code further, by requiring foreign contracting parties to translate their contracts under certain conditions into Bahasa.

Art. 31 of the Law No. 24 of 2009 states in the English translation as follows:

“(1) Indonesian must be used in memoranda of understanding and/or agreements that involve state organs, government institutions of the Republic of Indonesia, private Indonesian institutions or individuals who are citizens of the Republic of Indonesia.

“(2) Memoranda of understanding and/or agreements as specified in paragraph (1) that involve foreign parties shall also be written in the national language of the foreign parties and/or English.”

The wording and scope of the law are rather vague. It appears that the following issues are not addressed by the law:

- What happens to agreements that have been closed before July 2009, do they have to be translated too or can they stay as they are?

- Does the law also apply if the parties choose a foreign legal system to govern their contracts?
- Is there any transition period for the provisions to apply?
- In case dual language is used as required under Art. 31 (2), which language is going to prevail?
- The law does not state any consequences for non-compliance with the law, i.e. what are the consequences and sanctions if a contract is not translated into Bahasa, does it invalidate the contract?
- Shall this law also apply if Indonesians contract overseas?

It should be noted that under the law the Indonesian government is required to issue an implementing regulation within 24 months to provide details what the above general and broad provisions are supposed to mean in practical terms. Until the implementing guidelines are promulgated, it seems advisable to take a cautious approach and translate all English contracts also into Bahasa Indonesia.

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**SINGAPORE : Amendments to International Arbitration Law**

On 19.10.2009 the Singapore Parliament promulgated the “International Arbitration (Amendment) Bill (No. 20/2009)”. The amendments concern the following three key areas:

(1) Electronic Communications

The amendments clarify that arbitration clauses in electronic form fulfil the “written form” requirement (Sec. 2)

(2) Interim orders

In addition, the Bill authorizes the Singapore High Court to grant interim protective measures for arbitration proceedings (Sec. 12A).

(3) Authenticating Agents

Further, the Bill provides that the Minister of Law shall appoint individuals or entities that shall be officially authorized, to authenticate arbitral

THAILAND : Company seals on checks abolished

Due to the introduction of a new “Imaged Check Clearing and Archive System” by the Bank of Thailand (“BOT”) in February 2010, the BOT has asked all commercial banks to request their customers to discontinue the use of company seals, embossed seals or coloured seals together with the signature(s) on checks. To reflect these changes, companies that required so far the use of company seals should pass a board resolution to reflect the new procedures and liaise with their banks accordingly.

VIETNAM : New Decree on BOT Projects

On 27 November 2009, the VN Government issued Decree No. 108/2009/ND-CP on Investment in the Form of Build-Operate-Transfer, Build-Transfer-Operate or Build-Transfer Contracts (“**Decree No.108**”). Decree No.108 will take effect from 15 Jan 2010, and replace Decree No. 78/2007/ND-CP on the same topic.

According to Decree no 108, the Government still encourages the investments in the form of Build-Operate-Transfer, Build-Transfer-Operate or Build-Transfer Contracts (collectively referred to as “BOT Project”) in the following sectors:¹

- (i) Roads, bridges, tunnels and relevant utilities and facilities;
- (ii) Railways and tramways;

- (iii) Airports, seaports, river-ports and ferry-landings;
- (iv) Water plants, drainage systems and waste or sewage treatment systems;
- (v) Power plants, power transmission lines; and
- (vi) Other infrastructure facilities as decided by the Prime Minister.

With respect to the sources of investment capital for a BOT Project, the investor’s equity must reach the following minimum ratio:

- (i) for a BOT Project with total investment capital up to 1,500 billion VND (approx. USD 82 million), the investor’ equity must not be lower than 15% of the total investment capital;² and

¹ Decree No.108, Article 4.1.

² Decree No.108, Article 5.2.

**VIETNAM : New Decree on BOT Projects (continued)**

- (ii) For a BOT Project with total investment capital exceeding 1,500 billion VND (approx. USD 82 million).³ (1) for the proportion up to 1,500 billion VND, the investor' equity must not be lower than 15%; and (2) for the proportion exceeding 1,500 billion VND, the investor' equity must not be lower than 10%.

The State owned capital used for making capital contributions to a BOT Project must not be more than 49% of the total investment capital of a BOT Project.⁴

Besides BOT Projects calling for investments published by the government in January every year, investors may proactively formulate and propose a BOT Project for an approval of the government.⁵ The BOT Projects with the total investment capital exceeding 1,500 billion VND or with the land use area of 200 ha or more will be subject to the approval of the Prime Minister.⁶

In addition, Decree No. 108 provides an article that allows investors to wholly or partly assign their rights and obligations under a BOT contract.⁷ The assignment, however, must not influence the objective and scale of the BOT Project, and the performance of the BOT contract.⁸

Similar to Decree 78/2007/ND-CP, under Decree No. 108, investors are entitled to investment incentives of taxes, land rent, and import of machinery and equipment for implementation of the BOT Project. The government also guarantees the right to mortgage assets relation to the BOT Project, the right to purchase foreign currencies, and the right to access public services of the investors.⁹

³ Decree No.108, Article 5.3(a and b).

⁴ Decree No.108, Article 6.1.

⁵ Decree No.108, Articles 10.1 and 11.1.

⁶ Decree No.108, Article 12.5.

⁷ Decree No.108, Article 18.1.

⁸ Decree No.108, Article 18.3.

⁹ Decree No.108, Chapter VII.

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