



RESPONDEK & FAN

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Dear Reader,

This edition of our Legal E-Bulletin features topics on **Singapore** (Establishment of the SICC and SIMC; important Employment Act changes) and on **Indonesia** (Termination of all BIT's?)

As usual, if you have any comments, remarks or questions, we would love to hear from you. Please contact me at +65-6324-0060 or by email: respondek@rflegal.com.

Kind regards,
RESPONDEK & FAN
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Managing Director

SINGAPORE Singapore to enhance its position as international dispute resolution hub

By opening two new dispute resolution centres, i.e. the Singapore International Commercial Court ("SICC")⁽¹⁾ and the Singapore International Mediation Centre ("SIMC")⁽²⁾, Singapore will enhance its role as international dispute resolution hub.

The SICC will be established as a division of the Singapore High Court to hear international commercial disputes

SICC cases will be heard before justices selected from an SICC Panel comprising existing Supreme Court Judges and ad hoc Associate Judges, including eminent international jurists. SICC shall hear cases governed by Singapore law or any foreign law chosen by the parties. In cases which have no substantial connection with Singapore, parties may be represented by foreign counsel registered with the SICC, with the

(1) <http://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Annex%20A%20-%20SICC%20Committee%20Report.pdf>

(2) <http://www.mlaw.gov.sg/content/dam/minlaw/corp/News/FINAL%20ICMWG%20Press%20Release%20-%20Annex%20A.pdf>

registration requirement aimed at securing counsel's adherence to a code of ethics. Decisions of the SICC will be appealable to a Court of Appeal comprising international jurists from the SICC Panel and/or existing Judges from the Singapore Court of Appeal. The aim for the SICC is to position itself as the premier forum for court-based commercial dispute resolution within and beyond Asia is well within reach.

The SIMC will comprise of an international board with international mediation experts. According to the Working Group, the SIMC will provide user-centric mediation products and services. The SIMC is expected to be launched later in 2014. At the same time to ensure professionalism and to raise standards in mediation, the Working Group recommended establishing a new, independent, non-profit entity called the Singapore International Mediation Institute ("SIMI").

SINGAPORE Changes to the Employment Act

The Employment Act is Singapore's main labour law and seeks to ensure reasonable employment standards while balancing businesses' need to stay competitive. The Ministry of Manpower ("MOM") has re-



Employment Act that came into effect 01 April 2014.

Major changes include:

- Legislative protection against unfair dismissal and sick leave benefits to all managers and executives earning a basic monthly salary of up to SGD 4,500
- Higher salary threshold of SGD 2,500 for non-workmen (clerical staff, frontline service staff etc) with overtime pay to be capped at a salary of SGD 2,250
- Higher penalties for failure to pay salaries etc.

MOM has published a detailed guidebook regarding the changes that can be downloaded from here:

<http://www.mom.gov.sg/Documents/employment-practices/ea-guidebook.pdf>

INDONESIA

Indonesia about to cancel all of its 67 Bilateral Investment Treaties?

Bilateral Investment Treaties („BIT“) are intended to offer certain protections to foreign investors, guaranteeing fair and equal treatment, protection and security and no arbitrary or discriminatory measures. They effectively prevent expropriation and effectively act to mitigate country risks. Non-observance results in recourse against the host state in arbitration.

Indonesia has advised the Netherlands Embassy in Jakarta that Indonesia will terminate its BIT with the Netherlands effective 01 July 2015⁽³⁾. The statement on the Embassy’s website also advises that Indonesia „intends to terminate all of its 67 bilateral investment treaties“ with other countries. This is in line with statements from Indonesia’s President stating that he does not want multinational companies „to pressure developing countries like Indonesia“.

According to Indonesia’s Vice President Boediono reported in the Jakarta Post (24.03.2014)⁽⁴⁾, “Indonesia will create a new bilateral investment agreement that will be adjusted to recent developments.” Indonesian legal scholars also propose that Indonesia should withdraw from ICSID altogether (Prof. Hikmahanto Juwana, Jakarta Post 02.04.2014)⁽⁵⁾.

BIT’s are regarded by many investors as risk stabilizers in jurisdictions where the rule of law and independent judiciaries are lacking. The arbitration mechanisms provided under the BIT’s are vital to encourage foreign direct investment.

Some of the BIT’s have “sunset clauses”, extending the protections for existing investors for a certain time period (in the case of the Netherlands BIT until 01.07.2030). In addition, foreign investors should consider investment protections afforded by other bilateral investment treaties, where there are no official announcements that they should also be cancelled, for instance the Association of Southeast Asian Nations (“ASEAN comprehensive Investment Agreement”), the World Trade Organisation Agreement on Trade Related Investment Measures (“TRIMs”) or the Investment Agreement of the Organization of the Islamic Conference (“OIC”).

(3) <http://indonesia.nlembassy.org/organization/departments/economic-affairs/termination-bilateral-investment-treaty.html>

(4) <http://www.thejakartapost.com/news/2014/03/24/boediono-meets-with-netherlands-pm.html>

(5) <http://www.thejakartapost.com/news/2014/04/02/indonesia-should-withdraw-icsid.html>