



HERBERT  
SMITH  
FREEHILLS

IN ASSOCIATION WITH  
HISWARA  
BUNJAMIN &  
TANDJUNG

# GUIDE TO DISPUTE RESOLUTION AND GOVERNING LAW CLAUSES IN INDONESIA RELATED CONTRACTS

LEGAL GUIDE  
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# Contents

	page
1. Introduction.....	03
2. Definitions.....	04
3. Dispute resolution clauses.....	08
3.1 What are your options?.....	08
3.2 Litigation.....	09
3.3 Domestic arbitration.....	10
3.4 International arbitration.....	15
3.5 Other dispute resolution mechanisms.....	17
3.6 Issue checklist.....	18
4. Governing law clauses.....	23
4.1 When should you apply Indonesian law?.....	24
4.2 Choice of foreign law.....	24
4.3 Are there mandatory rules of Indonesian law not ousted by a foreign choice of law clause?.....	25
4.4 What happens if there is no governing law clause?.....	26
4.5 Checklist for contracts governed by Indonesian law.....	27
Appendix.....	29
Contacts.....	31

## Publisher's note

This guide is published by Herbert Smith Freehills in association with Hiswara Bunjamin & Tandjung.

The contents of this guide are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice should always be sought separately before taking any action based on this guide. The information provided in this guide is accurate as at 1 February 2020.

# 1. Introduction

## What is this guide?

This guide is primarily intended to assist in-house counsel of multinational companies who handle **commercial contracts with a nexus to Indonesia** (eg where one of the contracting parties is Indonesian, where the subject matter or performance under the contract is in Indonesia, or where Indonesian law is the governing law). It is intended to help readers understand:

- whether there are applicable legal or other restrictions on a party's ability to select a governing law and/or dispute resolution clause and when these restrictions apply;
- what issues should be considered when selecting a governing law and dispute resolution mechanism for your Indonesia related contracts;
- drafting tips.

**Section 2** contains a list of defined terms used in this guide.

## What are the key points?

### When selecting and drafting the dispute resolution clause, the key points are:

- arbitration is generally preferred to civil litigation unless there are compelling reasons otherwise;
- arbitration seated outside Indonesia is generally a better option for non-Indonesian parties than arbitration seated in Indonesia;
- if arbitration seated in Indonesia is necessary, it is generally best to opt for either ad hoc arbitration under the

UNCITRAL Arbitration Rules, or arbitration administered by institutions such as the SIAC, ICC, PCA (typically where the State or an SOE is involved), LCIA, or any other established arbitral institutions.

**Section 3** explains these points in greater detail, provides a flow chart and a checklist as guidance on drafting a more effective dispute resolution clause.

### When selecting the law governing the contract, the key points are:

- parties are generally free to select any system of law to govern their Indonesia-related contracts, unless mandatory sector-specific laws in Indonesia prescribe otherwise;
- there is a risk that a choice of foreign law will not be given effect by the Indonesian court if proceedings relating to the contract are brought before it. This risk is increased where the contract and/or parties have no foreign nexus, other than the selection of foreign law or an offshore dispute resolution forum; and
- certain mandatory laws in Indonesia apply to Indonesian parties, or to certain types of contracts, and may not be displaced by the selection of foreign governing law.

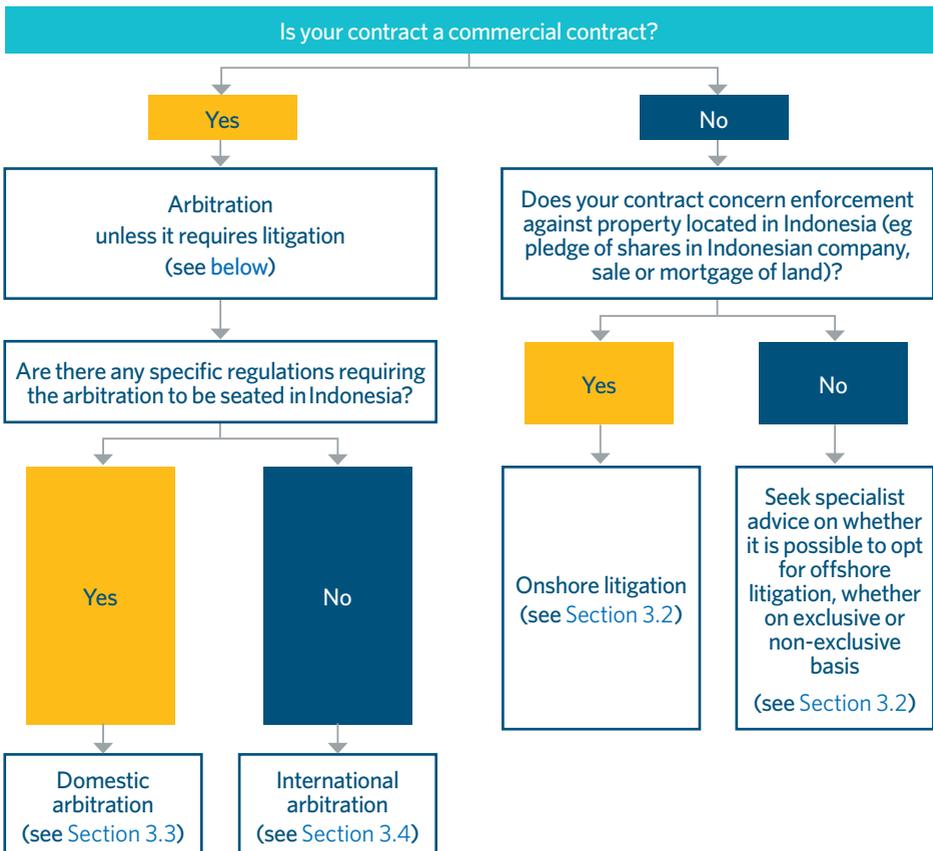
**Section 4** discusses these issues and circumstances in greater detail.

# 3. Dispute resolution clauses

## 3.1 What are your options?

The two basic options for finally resolving disputes are litigation and arbitration. Litigation is discussed in [Section 3.2](#) below. Arbitration, which is the focus of this guide, is discussed in [Sections 3.3](#) and [3.4](#). [Section 3.5](#) briefly discusses other alternative dispute resolution mechanisms, such as negotiation, mediation, and expert determination, and [Section 3.6](#) provides a checklist of issues, tips, and pitfalls to avoid when drafting your arbitration agreement.

The flowchart summarises the issues to consider in selecting the appropriate dispute resolution mechanism for your contract. This flowchart should be read in conjunction with the explanation in the following Sections.



# Contacts

## Key contacts



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