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BUNJAMIN &
TANDJUNG

DISPUTE RESOLUTION AND GOVERNING LAW CLAUSES IN INDONESIA-RELATED CONTRACTS

LEGAL GUIDE
FIRST EDITION



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Publisher's note

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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 7 November 2017.

1. Introduction

What is this guide?

This guide is primarily intended to assist in-house counsel of multinational companies who handle contracts with a nexus to Indonesia (e.g. 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.

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, the PCA (where the State or an SOE is involved), or ICSID (for investment contracts between the State and an investor from a state party to the ICSID Convention).

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

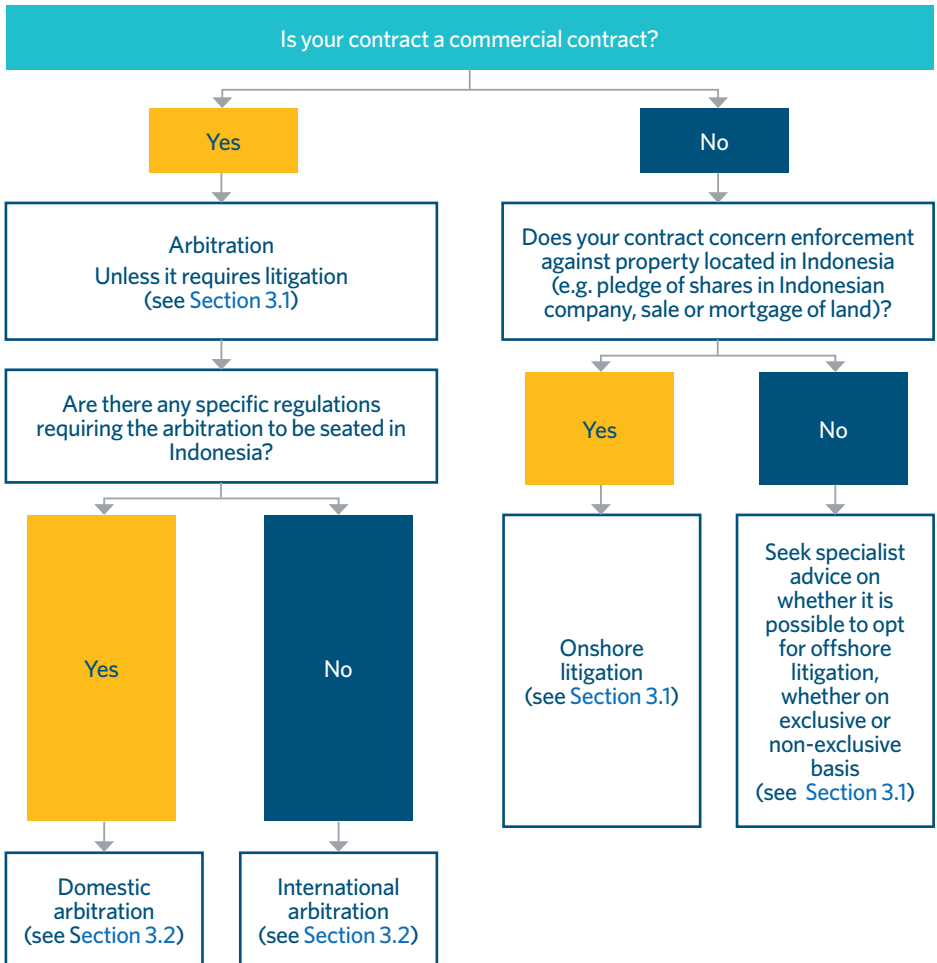
When selecting the law governing the contract, the key points are:

- parties are generally free to select any system of law to govern their Indonesia-related contracts, unless mandatory sector-specific laws prescribe otherwise;
- however, there is a risk that a choice of foreign law will not be given effect by the Indonesian courts. This risk is increased where the contract and parties have no foreign nexus, other than the selection of foreign law; and
- certain mandatory laws in Indonesia apply to Indonesian parties or to certain types of contracts and cannot be circumvented by the selection of foreign governing law.

Section 4 discusses these issues and circumstances in greater detail.

3. Dispute resolution clauses

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.



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