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INDONESIA UPDATE:

Positive Developments in Singapore-Indonesia Cross-Border Restructurings

Jointly prepared by WongPartnership LLP and Lubis Santosa & Maramis

Positive Developments in Singapore-Indonesia Cross-Border Restructurings

Singapore as a regional restructuring hub

Singapore has grown into one of the leading jurisdictions for international debt restructuring. This has developed synergistically with its position as an international financial centre and preferred venue of international dispute resolution, particularly with the Singapore International Arbitration Centre, the Singapore International Commercial Court, and the Singapore International Mediation Centre. The recent reforms to Singapore's insolvency and restructuring framework have allowed Singapore to compete with other leading global restructuring and insolvency jurisdictions such as the U.S., the U.K. and Hong Kong.

The most notable reforms were premised on key features of Chapter 11 of the U.S. Bankruptcy Code, with amendments being made to the Companies Act in 2017, and subsequently the enactment of the Insolvency, Restructuring and Dissolution Act ("**IRDA**"), which consolidated Singapore's bankruptcy, corporate insolvency, and debt restructuring laws into a single piece of legislation.[1] These include super-priority rescue financing, the cross-class "cram-down" mechanism (which allows the court to sanction a scheme even if the approval threshold for one or more of the classes of creditors is not met), and "pre-packaged" restructuring plans (dispensing with the need for a formal creditors' meeting to vote on a restructuring plan if it is clear that the required thresholds of creditor support have been reached). Overall, these reforms have enabled Singapore to give parties more tools to effect a tailor-made restructuring. For further details on the recent developments on these reforms, you may wish to view our previous updates here.

Singapore also became a signatory to the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") in 2017, with the Model Law *via* Part 11 of IRDA now being in force in Singapore. This allows Singapore restructuring insolvency decisions and moratoriums to be more easily recognisable in other signatory jurisdictions, and *vice versa*. For instance, in the landmark case of *H&C S Holdings Pte Ltd v Glencore International AG* [2019] EWHC 1459 (Ch), the English courts, on the basis of the Model Law, recognised a Singapore court moratorium order pursuant to restructuring proceedings which a Singapore company was undergoing.

Strong ties between Singapore and Indonesia

Singapore and Indonesia have always had strong commercial ties, with Singapore being the top investor in Indonesia since 2014.[2] In the past year, despite the difficulties in the business climate and travel because of the COVID-19 pandemic, the ties between the two countries have grown even stronger. In 2020, total investments in Indonesia from Singapore went up by 30% and amounted to US$9.8 billion,

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1 *Insolvency, Restructuring and Dissolution Act – Key Changes from the Financiers' Perspective*, 22 February 2021, https://www.wongpartnership.com/insights/detail/insolvency-restructuring-and-dissolution-act-key-changes-from-the-financiers-perspective

2 *Remarks by President Halimah at Reception with Singapore and Indonesian Business Representatives*, 4 February 2020, https://www.istana.gov.sg/Newsroom/Speeches/2020/02/04/Remarks-by-President-Halimah-at-Reception-with-Singapore-and-Indonesian-Business-Representatives

across 15,088 projects.[3] Singapore is also Indonesia's third largest trading partner, and Indonesia is Singapore's sixth largest trading partner.[4] In 2020, bilateral trade between the two countries amounted to S$48.7 billion.[5] Indonesia is the fourth largest nation in the world with an estimated population of 270 million;, it is also the largest economy in Southeast Asia with a gross domestic product of US$1.06 trillion in 2020.[6] For the above reasons, and with Indonesia being one of Singapore's closest neighbours geographically, Singapore and Indonesia have always had close political ties.

For the most part, in its push to become a leading regional and global restructuring hub, Singapore is very receptive to foreign companies restructuring their debts in Singapore.[7] The IRDA allows unregistered foreign companies to be wound up if they have a "substantial connection" to Singapore.[8] Recent case law has shown that the Singapore courts are willing to adopt a flexible test to determine whether a foreign company has a "*substantial connection*" with Singapore. For example, in *Re PT MNC Investama TBK* [2020] SGHC 149, the Singapore High Court held that PT MNC Investama Tbk, an Indonesian company, had a substantial connection with Singapore because its securities were traded on the Singapore Exchange.

On Indonesia's part, the courts have, for many years, generally been slow in recognising foreign judgments and have emphasised the principle of national sovereignty in refusing recognition of foreign judgments and arbitral awards. The seminal case is *Astro v. PT. Ayunda Primamitra* (Supreme Court Judgement No. 01 K/Pdt.Sus/2010), where the Indonesian Supreme Court rejected enforcement of a foreign arbitral award by Astro on the basis that the award violated Indonesian public policy with regards to sovereignty principle. The arbitral award contained an anti-suit injunction preventing PT Ayunda Primamitra from continuing with a parallel court proceeding that it had commenced in the Indonesian courts. Further, in the area of restructuring and insolvency, Indonesia is not a signatory to the Model Law and does not have provisions in its restructuring and bankruptcy legislation allowing for cross-border recognition of foreign restructuring and insolvency proceedings.

The *Pan Brothers* case

However, in a recent development, judicial attitudes in Indonesia appear to be changing. In *PT Bank Maybank Indonesia Tbk v PT Pan Brothers Tbk* (Judgment No. 245/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst) ("***Pan Brothers* case**"), the Central Jakarta Commercial Court

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3 *Singapore investments in Indonesia up 30%*, 17 August 2021, https://www.businesstimes.com.sg/hub/indonesia-76th-independence-day/singapore-investments-in-indonesia-up-30

4 *Remarks by President Halimah at Reception with Singapore and Indonesian Business Representatives*, 4 February 2020, https://www.istana.gov.sg/Newsroom/Speeches/2020/02/04/Remarks-by-President-Halimah-at-Reception-with-Singapore-and-Indonesian-Business-Representatives

5 *Singapore investments in Indonesia up 30%*, 17 August 2021, https://www.businesstimes.com.sg/hub/indonesia-76th-independence-day/singapore-investments-in-indonesia-up-30

6 Based on data from World Bank, see https://tradingeconomics.com/indonesia/gdp

7 Singapore's openness towards recognition of foreign restructuring proceedings is not uncaveated though, with the recent case of *Paulus Tannos v Heince Tombak Simanjuntak* [2020] SGCA 85 demonstrating that Singapore courts will refuse recognition of Indonesian court judgments in certain circumstances, such as where there has been a breach of natural justice. In this case, the Singapore Court of Appeal held that notices of the Indonesian Suspension of Debt Payment Obligation ("**PKPU**") court proceedings against the Appellants had not been properly served on the Appellants, and therefore the Indonesian bankruptcy orders which were ordered as a result of the Appellants' failure to agree on a successful composition plan with its creditors in the PKPU proceedings, had been obtained in breach of natural justice.

8 See section 246 of the Insolvency, Restructuring and Dissolution Act.

("**Commercial Court**") rejected an Indonesian Suspension of Debt Payment Obligation ("**PKPU**") petition filed by PT Bank Maybank Indonesia ("**Maybank**") against PT Pan Brothers Tbk ("**Pan Brothers**") largely because of a moratorium granted by the Singapore High Court in restructuring proceedings commenced by Pan Brothers in Singapore. The PKPU process is Indonesia's in-court restructuring process that allows debtors to suspend payments of debt obligations to its creditors pending the proposal of a rehabilitation plan for the debtor.

On 24 May 2021, Maybank filed the PKPU petition against Pan Brothers in Indonesia, which was scheduled for hearing on 8 June 2021.[9] On 1 June 2021, Pan Brothers filed an application to the Singapore High Court for a worldwide moratorium preventing the commencement or continuation of claims by creditors against Pan Brothers, pending the proposal of a scheme of arrangement (*ie.* an in-court restructuring plan) to Pan Brothers' creditors. On 4 June 2021, the Singapore High Court granted Pan Brothers' application for the moratorium.[10]

On 26 July 2021, the Commercial Court rejected Maybank's PKPU petition,[11] finding that Maybank did not have the capacity and legal standing to file the PKPU petition, and that the Commercial Court therefore did not have the authority to hear and adjudicate the PKPU petition.

The Commercial Court relied on three main reasons in reaching its decision.

First, it accepted Pan Brothers' argument that since it had already successfully obtained the Singapore High Court moratorium, Maybank's PKPU petition could not be granted in order to avoid any overlapping of restructuring proceedings between Pan Brothers and Maybank. This reasoning is very welcome, since it appears to signify the Indonesia courts' openness to recognising Singapore restructuring proceedings in Indonesia.

Second, the Commercial Court also accepted that the Singapore High Court moratorium was binding on Maybank as the facility agreement between Pan Brothers and Maybank allowed for Pan Brothers to file legal claims both in and out of Indonesia.

Third, because of the Singapore High Court moratorium, the PKPU petition did not satisfy one of the requirements under Indonesian law – that the facts or circumstances of the case are proven to be simple. Generally, the Indonesian courts have taken the position that this requirement is satisfied as long as there is a debt that is due and payable. In the present case, the Commercial Court found that the Singapore High Court moratorium and the issue of potential overlapping restructuring proceedings meant the process of debt settlement between the parties was no longer simple, and hence did not satisfy that requirement under Indonesian law.

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9 *PB International B.V. Announcement – Application for Moratorium*, 4 June 2021, https://links.sgx.com/1.0.0/corporate-announcements/FF8ZO30SEMENB1G5/2899b04e3ef6045a072158d77f623b36d3e3ded2efe51a2e9039ea09ee1e8d81

10 *Indonesian Court recognises Singaporean moratorium,* 27 July 2021, https://globalrestructuringreview.com/financial-restructuring/indonesian-court-recognises-singaporean-moratorium

11 PT Pan Brothers Press Release dated 27 July 2021, https://www.panbrotherstbk.com/public/uploads/news-events/pdfen_1627367805-PBRX-Press-Release-Updated-PKPU.pdf

While the Commercial Court in the *Pan Brothers* case did not expressly recognise the Singapore High Court moratorium and restructuring proceedings in Singapore in Indonesia, its decision to reject Maybank's PKPU petition because of the existence of the Singapore restructuring proceedings, and the potential for conflicting overlapping proceedings in Singapore and Indonesia, is a significant positive development for Indonesian debtors intending to seek restructuring in Singapore.

What the future holds

The reforms to the Singapore insolvency and restructuring framework have already seen Indonesian companies coming to the Singapore courts.

In January 2021, PT MNC Investama Tbk obtained the approval of noteholders and the Singapore High Court to pass a pre-packaged scheme of arrangement in relation to US$231 million of secured notes.[12]

In April 2021, PT Sri Rejeki Isman Tbk filed applications to the Singapore High Court for its Singapore subsidiaries to propose scheme of arrangements.[13] This was done in response to the PKPU proceedings commenced earlier against its Indonesian subsidiaries. In July 2021, the U.S. Bankruptcy Court for the Southern District of New York recognised both the Indonesian and the Singapore proceedings.[14]

In August 2021, PT Modernland Realty Tbk obtained approval from the Singapore High Court for a pair of pre-packaged schemes of arrangement to restructure its debts of over US$400 million.[15] PT Modernland Realty Tbk is also seeking recognition of these schemes of arrangement in the U.S. Bankruptcy Court for the Southern District of New York and the hearing is scheduled for 14 October 2021.[16]

The *Pan Brothers* case is significant because, should the Indonesian courts continue to adopt the same approach in future cases, it can provide Indonesian debtors greater certainty towards management of a restructuring process, especially if they should choose restructuring in Singapore as a first port of call. In the past, an Indonesian debtor that commenced restructuring proceedings in Singapore was likely to have to deal with PKPU proceedings brought by its creditors in Indonesia. In consequence, to ensure control of the Indonesian PKPU proceedings, debtors would strategically and pre-emptively file for PKPU proceedings in Indonesia first, and try to file for parallel proceedings in Singapore or the U.S. subsequently. This however, leads to increased costs and time required to successfully implement a restructuring across multiple jurisdictions.

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12 *Singapore schemes sanctioned in new first for Asiatravel.com and MNC*, 1 February 2021, https://globalrestructuringreview.com/scheme-of-arrangement/singapore-schemes-sanctioned-in-new-firsts-asiatravelcom-and-mnc

13 *Gibson Dunn advising as Indonesian clothing manufacturer seeks US recognition,* 8 June 2021, https://globalrestructuringreview.com/recognition/gibson-dunn-advising-indonesian-clothing-manufacturer-seeks-us-recognition

14 *Indonesian Court recognises Singaporean moratorium,* 27 July 2021, https://globalrestructuringreview.com/financial-restructuring/indonesian-court-recognises-singaporean-moratorium

15 *Modernland pre-pack schemes sanctioned in Singapore*, 31 August 2021, https://globalrestructuringreview.com/scheme-of-arrangement/modernland-pre-pack-schemes-sanctioned-in-singapore

16 *Modernland seeks US recognition to cement Singaporean schemes*, 28 September 2021, https://globalrestructuringreview.com/adversary-claim/modernland-seeks-us-recognition-cement-singaporean-schemes

Meanwhile, the *Pan Brothers* case appears to be a first step in the right direction, and provides debtors and creditors alike increased confidence that kickstarting restructuring proceedings in Singapore to take advantage of recent reforms has a higher chance than before of not being impeded by Indonesia PKPU petitions filed by creditors.

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