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This issue covers the following topics:

Indonesia

GUIDANCE ON THE PROVISION OF INTEGRATED ONLINE LICENSING SERVICE THROUGH OSS SYSTEM

インドネシア投資調整庁は、2020 年 4 月 1 日、統合された事業許認可サービスの実施に関するガイドラインに関する規則を施行した。同規則は、Online Single Submission（OSS）と呼ばれるオンライン上の許認可制度の枠組に関する規則であるが、本稿では実務上の重要性の高い外国資本企業の最低投資金額に関する新たなルールについて概説する。

The Indonesian Investment Coordinating Board/*Badan Koordinasi Penanaman Modal* ("**BKPM**") has issued the Regulation BKPM No. 1 of 2020 on Guidelines for the Implementation of Integrated Business Licensing Services ("**BKPM Regulation 1/2020**"). The BKPM Regulation 1/2020 sets out the framework of business licensing through the OSS System. We summarize the key points that need to be taken into consideration by foreign investors:

1. Minimum Investment Value

BKPM Regulation 1/2020 gives clarity with respect to the requirement on minimum investment value for companies having foreign direct investment in Indonesia ("**PMA Company**"). Essentially, BKPM requires a PMA Company to have minimum investment value more than IDR 10billion, excluding land and building for each line of business under the Indonesian Standard Business Classification/*Klasifikasi Baku Lapangan Usaha Indonesia* ("**KBLI**") per project location. This means that if a PMA Company is carrying out businesses under 2 (two) different KBLI Codes or it is carrying out business under 1 (one) KBLI Code in 2 (two) locations, then it requires minimum investment amount of more than IDR 20 billion.

Nevertheless, BKPM provides exemption for (i) large trading business, (ii) food and beverages business, and (iii) construction business, as set out below:

Business Activities	Minimum Investment Value
Large trading business	More than IDR 10billion, excluding land and buildings for each 2-initial digits of KBLI Code
Food and beverages business	More than IDR 10billion, excluding land and buildings, within 1 (one) regency/city
Construction business	More than IDR 10billion, excluding land and buildings, for each

	construction activity.

- To illustrate, if a PMA Company engages in the businesses of large trading of new cars (KBLI Code: 45101) and large trading of used cars (KBLI Code: 45102), the required minimum investment value is more than IDR 10billion only because 2-initial digits of the KBLI Codes are same, namely "45". On the other hand, if a PMA Company engages in the business of large trading of new cars (KBLI Code: 45101) and large trading of household appliances (KBLI Code: 46491), then the minimum investment value shall be more than IDR 20billion.

- For food and beverages businesses, it has long been an unwritten policy that the minimum IDR 10billion investment value applies only for 1 (one) store. However, under the BKPM Regulation 1/2020, the BKPM now provides clear guideline for the investors that for PMA Companies engaged in F&B business, it is sufficient to have more than IDR 10billion investment value, as long as all stores are located in in 1 (one) city/regency. For example: If a PMA Company opens 2 (two) restaurants in Jakarta, it only needs more than IDR 10billion investment value. Whereas if the restaurants are located in Jakarta and Bekasi, the minimum investment value shall be doubled.

- For construction business, the BKPM did not provide clear definition of "construction activity". If what they meant by construction activity is a construction project, then a construction company which is engaged in 3 (three) construction projects is required to have minimum investment value of more than IDR 30billion. We are of the view that this policy is fair and reasonable only for the construction performer, but not for construction consultant business. Arguably, it may not be too necessary for the construction consultant companies to increase investment value if they are hired to provide consultancy service for new projects. Hence, we need to monitor how the BKPM implements this regulation in practice.

2. Main Projects and Supporting Projects

The BKPM Regulation 1/2020 regulates that companies may have supporting project to the extent it meets the following criteria:

- The supporting project falls under different KBLI Code with the main project;
- It is intended to support main project;
- It does not generate any revenues; and
- It is conducted in accordance with the prevailing laws and regulations.

The supporting project shall be required to obtain Business License and/or Commercial License as applicable. However, the supporting project is not subject to the minimum investment value requirement.

3. New Function of Business Identification Number

Prior to the issuance of BKPM Regulation 1/2020, Business Identification Number/*Nomor Induk Berusaha* ("**NIB**") served as Company Regulation Certificate, Import License, and Custom Access. Now, NIB will also be evidence of initial submission of Mandatory Manpower Report/*Wajib Lapor Ketenagakerjaan* ("**WLTK**") for the companies that have not submitted its WLTK and have not obtained NIB.

4. Registration of and NIB for Representative Office

The BKPM Regulation 1/2020 regulates that the application to obtain the license to operate Representative Office is now conducted through OSS System. Therefore, Representative Office is now required to obtain the NIB.

5. Business License for Merging Companies

In the event that two or more companies are merging and all business activities of merging companies are transferred to the surviving company, all business licenses owned by merging companies need to be transferred to the surviving

company. Under BKPM Regulation 1/2020, the surviving company can now apply for the merging of Business License which was previously owned by merging companies through the OSS system. In this case, it would be more efficient for the surviving company as it will not be required to submit the license transfer application manually to each issuing authority.

Conclusion

The BKPM Regulation 1/2020 provides clearer guidelines on licensing service through OSS system and sets out important provisions on minimum investment value requirement that sometimes caused difficulties to existing and prospective foreign investors. Previously, it was an unwritten policy that if a PMA Company engages in the businesses which fall under more than 1 (one) KBLI Codes, then the investment value shall be adjusted with the total of relevant KBLI Codes. This acted as a deterrent to foreign investors especially in large trading business to expand their business in Indonesia. For example, when they wished to distribute fruits and vegetables, they were deemed to engage in 2 (two) line of businesses because large trading of fruits and large trading of vegetables fall under different KBLI Codes. Therefore, such foreign investors were required to satisfy minimum investment value of more than IDR 20billion, while in fact the trading of fruits and vegetables are conducted simultaneously and in practice do not require more than IDR 20billion investment value. The government through BKPM Regulation 1/2020 has responded to the recommendations from the stakeholders on this minimum investment value requirement so that the businesses which are "similar" in nature are not required to have huge amount of investment value. This is also one of the efforts being made by the government to attract foreign investors to Indonesia.

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Singapore

COURT OF APPEAL CLARIFIES POSITION OF WINDING UP VS ARBITRATION

本稿では 2020 年 4 月に出されたシンガポール控訴裁判所の判決を紹介する。契約上の仲裁合意がある場合に、一方当事者が相手方の債務不履行を理由に会社清算の申立てを行った事案で、債務の存在自体に争いがある場合には、まずは仲裁合意に基づき仲裁によって解決されなければならない旨判示したものである。

Background

In a recent judgment rendered in April 2020, the Singapore Court of Appeal set aside a winding up order issued by the High Court at first instance and upheld an arbitration agreement pursuant to which a dispute in relation to the underlying debt claim was to be determined.

This decision, *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2020] SGCA 33 ("***AnAn Group v VTB Bank***") is significant on two fronts. First, it affirms the generally pro-arbitration stance adopted by the Singapore courts. Second, the position in Singapore is now clear that winding up proceedings will ordinarily be stayed or dismissed where the debtor can show that (i) there is a valid arbitration agreement between the parties and (ii) the dispute in respect of the debt falls within the scope of the arbitration agreement. The court would only refuse to grant a stay or dismissal in exceptional circumstances, such as where the debtor engages in an abuse of process or there is no genuine dispute in relation to the debt.

Summary

The appellant, Anan Group (Singapore) Pte Ltd ("**AnAn**"), is a holding company incorporated in Singapore. The respondent, VTB Bank (Public Joint Stock Company) ("**VTB Bank**"), is a state-owned Russian bank.

The dispute between the parties arose out of a global master repurchase agreement ("**Agreement**") under which AnAn was to sell global depository receipts ("**GDRs**") of certain shares in EN+ Group PLC ("**EN+**"), a Russian energy and metals company, to VTB Bank. AnAn would later repurchase these GDRs from VTB Bank at higher, prior agreed rates. The rates AnAn agreed to pay VTB on the date of repurchase comprised the original purchase price for the GDRs plus interest and other costs. The transaction thus effectively operated as a loan from VTB Bank to AnAn.

The Agreement contained an arbitration clause, pursuant to which any dispute arising out or in connection with the Agreement was to be referred to arbitration under the SIAC Rules.

Under the Agreement, AnAn was required to maintain sufficient collateral by providing cash to VTB Bank in the event that the prevailing value of the GDRs fell below a certain level. As things transpired, a few months after AnAn sold the EN+ GDRs to VTB Bank, the United States Treasury's Office of Foreign Assets Control imposed sanctions on major shareholders of EN+. This led the price of the EN+ GDRs to plummet by more than 50% compared to the prevailing price at the time AnAn sold these GDRs to VTB Bank.

VTB Bank subsequently issued a notice requiring AnAn to provide sufficient cash to meet its collateral obligations. AnAn failed to do so and VTB Bank later issued a statutory demand for a debt of approximately USD 170 million. AnAn did not comply with this demand within the prescribed three-week period, upon which VTB Bank filed a winding up petition in the Singapore courts against AnAn.

AnAn resisted the winding up application on the basis that, among others, there was a dispute in relation to the debt claimed by VTB Bank, which should first be determined by an arbitral tribunal pursuant to the arbitration agreement.

The Singapore High Court held in favour of VTB Bank and issued a winding up order against AnAn. In coming to this decision, the Singapore High Court applied the "triable issue standard" which permits the winding up court to examine the merits of the debtor's disputed debts and cross-claims. This approach, laid down in the prior Court of Appeal decision in *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] SGCA 6, meant that even where the debtor company disputes the debt (which dispute the parties have agreed to be resolved by arbitration), the winding up court can nevertheless proceed to order the debtor company to be wound up if the court was satisfied that there was no substantial and *bona fide* dispute over the debt.

AnAn then appealed to the Singapore Court of Appeal.

Grounds of decision

The Singapore Court of Appeal overturned the decision of the High Court and held that where a debtor company challenges a winding up application on the grounds of a disputed debt that is subject to an arbitration agreement, a lower standard of review should apply.

The Court of Appeal formulated a lower standard of review, namely, the "prima facie standard", by which the winding court should ordinarily dismiss or grant a stay of the winding up proceedings when two conditions are met: (i) the debtor and creditor have entered into an arbitration agreement and (ii) the dispute over the debt falls within the scope of the arbitration agreement.

The Court of Appeal further held that it is only in exceptional circumstances that a court should refuse to dismiss or stay winding up proceedings. Such exceptional circumstances include where the debtor challenges the winding up proceedings in abuse of the court's process, or there is no genuine dispute over the debt.

The Court of Appeal provided guidance on scenarios where the threshold for abusive conduct, which it cautioned was "very high", may be met. Examples considered by the Court include where (i) the debtor has previously admitted the debt as regards both liability and quantum; (ii) the debtor is seeking to obstruct a creditor's legitimate resort to the insolvency regime (for example, where there is evidence of asset dissipation or fraud on creditors); (iii) the debtor has waived or may be estopped from asserting that the dispute over the debt should be resolved by arbitration (for example, where the parties subsequently agree that disputes may be resolved by litigation).

The Court of Appeal reasoned as follows. Where the parties have entered into an arbitration agreement, the courts should give effect to the parties' freedom to contract and the policy reflected in Singapore arbitration legislation to support party autonomy. In addition, the "triable issue standard" is susceptible to abuse by creditors. For example, creditors may use winding up proceedings as a tactic to pressure debtors into paying a debt claim or to accept unfavourable settlement terms despite having a genuine dispute against the debt. Creditors may also attempt to use the winding up proceedings to effectively have the dispute over the debt adjudicated in a manner akin to summary judgment, when such summary determinations by the court would be inconsistent with the parties' agreement to have their disputes resolved by arbitration. The "prima facie standard" would circumvent the scope for abuse of winding up proceedings by creditors.

On the facts of the case, the Court of Appeal allowed AnAn's appeal. The Court held that there was a clear *prima facie* dispute over the debt claimed by VTB Bank, which justified a stay of the winding up proceedings against AnAn pending a determination by the arbitral tribunal. The Court considered that there was no abuse of process by AnAn in resisting the winding up proceedings. In particular, AnAn did not make any prior admissions of the debt claim and, given the relatively short timelines in the proceedings, AnAn's delay in preparing its defence could not be said to rise to the high threshold required to establish abusive conduct. Accordingly, the appeal was allowed and the winding up order against AnAn was set aside.

Conclusion

The decision of the Singapore Court of Appeal in *AnAn Group v VTB Bank* is consistent with the pro-arbitration stance for which Singapore is well known. The judgment also clarifies that winding up proceedings stayed or dismissed where the underlying debt is disputed and the subject of a valid arbitration agreement.

In view of the position established by the Court of Appeal, creditors should give due consideration to whether selecting arbitration as a dispute resolution method will advance or impede their ability to seek effective recovery against a debtor. Debtors should also be mindful of their right to enforce an arbitration agreement where a dispute over the debt exists, and to carefully consider whether their conduct may construed as an admission as to liability and quantum of a debt.

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Myanmar

INDUSTRIAL ZONE LAW ENACTED

ミャンマーでは 2020 年 5 月 26 日付で工業地域法が制定された。同法は、工業地域の社会的・環境的影響を適切に管理し、工業を発展させると共に雇用機会の増加を目的とするものである。本稿ではこの新たに制定された工業地域法の概要を紹介する。

Background

Pyihtaungsu Hluttaw, the Assembly of the Union of Myanmar, enacted the Industrial Zone Law 2020 on 26 May 2020 by Law No.7/2020 ("**Industrial Zone Law**"). The objective of Industrial Zone Law 2020 is to implement industrial zones and sustainable development of the industrial business, to properly manage the social and environmental impacts of industrial business and to increase job opportunities by developing industrial zone business.

Presently, there are 60 industrial zones in Myanmar, 29 of which are in Yangon and three special economic zones (Thilawa, Kyauk Phyu and Dawei) have been established. While the special economic zones are governed by the separate Special Economic Zone Law 2014 and Special Economic Zone Rules 2015, there is no specific law governing the industrial zones in Myanmar before the enactment of Industrial Zone Law.

Key Provisions

1. **Establishment of an Industrial Zone**

   The Industrial Zone Law is silent on the definition of "Industrial Zone" and prescribes that the definition of Industrial Zone will be specified by the notification of the Union Government. The existing industrial zones are included in the definition of "Established Industrial Zone". An "Established Industrial Zone" is defined as an industrial zone, industrial sub-zone, industrial area, industrial ward or industrial park existing before the enactment of the Industrial Zone Law. Currently, established industrial zones are either operated by a government department (e.g., the Yangon City Development Committee) or a private developer (e.g., i-Land in Bago Region).

   The Industrial Zone Law provides that the Union Government may form the Central Committee for industrial businesses and industrial zones development. And the responsibilities of the Central Committee are to form Regional Committees, to specify revenues, rental fees, land use fees within industrial zones, to coordinate and guide on matters such as establishment of industrial zones, investment proposals, development plans and policies submitted by a Regional Committee. In addition, the Central Committee may arrange to establish new industrial zone based on the criteria including location designed for regional development, having enough land and infrastructure for the investments, existence of international gateways and enough industrial raw materials, availability of skilled worker. The developer can submit a proposal for the establishment of a new industrial zone through the Regional Committee. The Regional Committee may select a developer base on his creativity, quickness, transparency and experience. In the formation of the Industrial zone, the land use figures and percentages shall be meet within the following structure and ratio of the land:

Industrial Area	60% - 70%
Commercial Area	1% - 5%
Assistance Area	20% - 25%
Green Belt Area	9% - 10%

2. **Involvement of investors in the management committee of industrial zones**

   Under the Industrial Zone Law, the Regional Committee shall form a Management Committee for each industrial zone with 15-21 members comprising of representatives nominated by the investors (no minimum or maximum number provided), relevant government departments or organizations and the persons appointed by the Nay Pyi Taw Council or Regional or State government. The chairman shall be appointed with the consent of the members from among the representatives appointed by the investors.

   The functions of the Management Committee are drafting and implementing of projects plans, annual basic plan,

obtaining approval from the Regional Committee for the development of the industrial zone, announcing the types of investments to the public, issuing recommendation to the relevant department within 15 days from the proposal days and coordination with the relevant government department.

3. Land Matters

Similar to the Special Economic Zone Law 2015 and the Myanmar Investment Law 2016, the Industrial Zone Law allows the developer and investor the right to use the land for the initial period of 50 years and further two consecutive period of 10 years.

It is important to note that the Industrial Zones Law for the first time stipulates penalties if land is left unused. The investor shall be required to submit a project plan with estimated completion date to the Regional Committee within 6 months from the date of the announcement as industrial zone. If the project plan approved by Central Committee cannot be implemented within two years, 10% of the land value specified by the Central Committee shall be paid every year to the relevant Regional Committee. The land use permit or grant shall be revoked if the fines are not paid.

4. Granting Incentives to Industrial Zones

Industrial Zones Law further provides that developer and investors are allowed to temporarily import machinery and equipment according to the procedure prescribed in the Sea Customs Act. Moreover, the Central Committee may grant special incentives period by issuing notification to the business including, investment business in industrial development business and underdeveloped areas, business which provide vast employment opportunities, export-oriented investment which produce value-added agricultural goods, business which produce high-quality agriculture machines and innovative businesses.

Conclusion

The enactment of Industrial Zones Law is good step forward towards the development of industrial sector and provides guidance on the conditions for the establishment and management of investment in industrial zones. The Industrial Zones Law, while in some ways unclear and lacking in details, is clearly a positive development and will certainly have a significant impact on the investment in Myanmar. Further clarification of details and requirements for industrial zones are expected in Rules and/or notifications to be subsequently issued.

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