

# INDONESIA

## DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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### FOR FURTHER INFORMATION

[GAP TABLE OF CONTENTS](#) | [GAP TRAFFIC LIGHTS FOR ALL JURISDICTIONS](#) | [FULL GAP ONLINE](#)

[GAP COMBINED SUMMARIES FOR IN-HOUSE AND CORPORATE COUNSEL](#)

[GAP COMBINED SUMMARIES FOR ARBITRATION PRACTITIONERS](#)

[EN DELOS MODEL CLAUSES & LIST OF SAFE SEATS](#)

[ES DELOS CLÁUSULAS MODELO & LISTA DE SEDES SEGURAS](#)

[FR DELOS CLAUSES TYPES & LISTE DE SIÈGES SÛRS](#)

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### JURISDICTION INDICATIVE TRAFFIC LIGHTS †

1. Law ●
  - a. Framework ●
  - b. Adherence to international treaties ●
  - c. Limited court intervention ●
  - d. Arbitrator immunity from civil liability ●
2. Judiciary ●
3. Legal expertise ●
4. Rights of representation ●
5. Accessibility and safety ●
6. Ethics ●

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction	Jakarta.
Civil law / Common law environment?	Indonesia's legal system is based on civil law, inherited from the Dutch, who ruled Indonesia until 1945.  As in civil law jurisdictions, the courts do not strictly follow precedent, but rely primarily upon written codes and/or laws.
Confidentiality of arbitrations?	Although it is generally considered that arbitration should be confidential, the Arbitration Law does not expressly provide for a very high degree of confidentiality. It requires only that the hearings be closed to the public.  Thus if the Parties wish to address the confidentiality of their arbitration with more clarity, or to provide for a higher degree of confidentiality, they should include relevant language in their agreement to arbitrate.
Requirement to retain (local) counsel?	There is no requirement to engage local counsel, although if the matter is governed by Indonesian law it would be advisable to do so.
Ability to present party employee witness testimony?	The general rule under Indonesian law is that an employee or family member of a party is not considered as a 'witness' but as part of such party. This does not prevent any such person from appearing as a witness in arbitration, but the relationship will be taken into consideration by the tribunal in evaluating the veracity of the testimony.
Ability to hold meetings and/or hearings outside of the seat?	φ
Availability of interest as a remedy?	Interest on a debt may be awarded only if the parties have agreed for interest to apply to an unpaid indebtedness. There is no such prohibition against imposing interest on late or unsatisfied awards.
Ability to claim for reasonable costs incurred for the arbitration?	Generally, the costs of an arbitration proceeding in Indonesia shall be borne by the losing party, but the award may rule otherwise. The parties' legal costs, however, can only be shifted if the Parties have so agreed in their agreement to arbitrate or otherwise.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fees and third-party funding are generally not utilised in Indonesia, but there is no prohibition against either.
Party to the New York Convention?	Indonesia has been a party to the New York Convention since 1981.  There is only one Arbitration Law and its procedures that apply to all arbitrations held in Indonesia, all of which are defined as

	<p>“domestic” regardless of nationality of the parties or other factors. With respect to foreign-rendered awards, i.e. awards made outside Indonesia, only the enforcement provisions of the Arbitration Law are applicable. These differ in some respect from those mentioned in the UNCITRAL Model Law, as well as the New York Convention</p> <p>Enforcement differs slightly between domestic and international awards, specifically the court to which one applies and the time limit to register the award, a prerequisite for enforceability (there is no time limit for international awards). Note that registration of foreign-rendered awards requires a certificate from the Indonesian diplomatic mission in the place of arbitration to the effect that that state and Indonesia are both signatories to the New York Convention.</p>
<p>Other key points to note</p>	<p>Under the Arbitration Law, anyone over 35 with over 15 years of experience in their field, and not a court or government official, may act as arbitrator.</p> <p>Arbitration in Indonesia is regulated by Law No. 30 of 1999 (the “Arbitration Law”). The Arbitration Law deals with matters such as the requirements for an arbitration agreement, qualification of arbitrators and also contains skeleton rules in case the parties have not designated others. It is not based on the UNCITRAL Model Law but has many similarities with it.</p> <p>Where Parties have agreed in writing to arbitrate their disputes, the Indonesian courts have no jurisdiction over such disputes. The only involvement of the courts is with the annulment and/or enforcement of final and binding awards, and the appointment of arbitrators, in cases where no other appointing authority has been designated by the parties or in rules chosen by the parties. Although the Arbitration Law gives arbitral tribunals the power to issue interlocutory or interim relief, such relief will not be enforced by the courts.</p> <p>The Arbitration Law provides that the Parties are free to hold their arbitration pursuant to whatever procedural rules or under whatever arbitral institution they may agree. Failing agreement, the Arbitration Law includes some procedural rules of its own. The Parties may choose <i>ad hoc</i> arbitration, the most common rules for which are the UNCITRAL Rules, or they may opt to have it administered by an arbitral institution (locally or elsewhere). They are also free to hold hearings or meetings wherever they may mutually agree. If the parties have not agreed upon a different language, the arbitral proceedings and hearings will be conducted in Indonesian.</p>
<p>WJP Civil Justice score (2017-2018)</p>	<p>0.52</p>

## ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Arbitration in Indonesia is governed by <a href="#">Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution</a> ("The Arbitration Law"), which came into force on 12 August, 1999.
UNCITRAL Model Law? If so, any key changes thereto?	The Indonesian Arbitration Law is not based upon the UNCITRAL Model Law, but has many similarities with it.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	∅
Availability of <i>ex parte</i> pre-arbitration interim measures?	Although the Arbitration Law gives arbitral tribunals the power to issue interlocutory or interim relief, such relief will not be enforced by the courts. Nor will the courts issue any interim orders in aid of an arbitration.
Courts' attitude towards the competence-competence principle?	<p>There is no explicit provision providing for <i>kompetenz-kompetenz</i>, but it should be implicit from <a href="#">Articles 3 and 11</a> of the Arbitration Law that only the arbitral tribunal has the jurisdiction to determine its own jurisdiction, as well as whether a matter is capable of being arbitrated or not.</p> <p>There is no specific reference to severability. However, <a href="#">Article 10</a> of the Arbitration Law states that the agreement to arbitrate shall survive even if the main contract expires or is declared void. This will not apply, however, if the contract is determined to be void <i>ab initio</i>, as in that case the arbitration clause will be deemed not to have been agreed upon at all.</p>
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	An arbitral award may be challenged through an application to the court for annulment of the award. <a href="#">Article 70</a> of the Indonesian Arbitration Law provides limited grounds for annulment. The three grounds for annulment are: false or forged letters submitted in the hearings, discovery after the award of decisive documents intentionally concealed by a party, and where an award was rendered as a result of fraud committed by one of the parties to the dispute. Likewise, a court may refuse to enforce an award if the dispute is not of a commercial nature or if it can be established that the Parties did not agree to arbitrate such dispute.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The Arbitration Law does not refer to awards annulled in the place of arbitration and, to the knowledge of the writers, the issue as to whether such awards may still be enforced in Indonesia has not arisen.

Other key points to note?

The Arbitration Law provides that only disputes of a commercial nature and those that are within the authority of the parties themselves to resolve may be arbitrated. [Articles 3 and 11](#) make it clear that where the parties have agreed to arbitrate their disputes, the courts do not have and may not take jurisdiction over such matters. The only role of the court is that of annulment and/or enforcement of final and binding arbitral awards (or the appointment of arbitrators if a party does not do so and the parties have not chosen any specific rules or otherwise designated a different appointing authority).

Although agreements in general are not required to be in writing to be valid and binding under Indonesian law, [Article 1\(3\)](#) of the Arbitration Law requires arbitration agreements to be in writing. Such agreement may be made either before or after a dispute has arisen. In the latter case, the contents of such written agreement must be more comprehensive, and even the arbitrators need to be named.

The enforcement process for domestic and international awards differs slightly. Awards are defined as domestic, regardless of the nationality of the parties or other factors, where the arbitration is held in Indonesia. Awards are defined as international if they are rendered outside Indonesia. Regardless of whether the award is domestic or international, the award must first be registered with the court by the arbitrators or their duly authorised representatives. Note, therefore, that as a practical matter arbitrators issuing awards likely to be enforced in Indonesia should include in, or separately from, the award a power of attorney to the parties, or either of them, to effect registration of the award. Domestic awards must be registered, within 30 days of rendering, with the District Court having jurisdiction over the respondent. Foreign-rendered, or international, awards must be registered with the District Court of Central Jakarta. There is no time limit for registration of international awards. Registration of an international award will require submission of a certificate from the Indonesian diplomatic representative in the country in which the award is rendered to the effect that that country and Indonesia are both signatories to the New York Convention. (Indonesia has been a signatory since 1981.)

## JURISDICTION DETAILED ANALYSIS

### 1. Legal framework

Arbitration in Indonesia is regulated under [Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution](#), also known as the Arbitration Law. Prior to its enactment, arbitration was governed by a handful of clauses in a mid-19th Century Dutch-originated code of civil procedure, known as the “RV”. The Arbitration Law is not based on the United Nations Commission of International Trade Law (UNCITRAL) Model Law, although it does contain a number of similar provisions. One early draft was based upon the Model Law but the Arbitration Law, as eventually promulgated, is the result of many drafts and revisions by a number of different sources, and includes incorporation of a number of principles from the previous legislation. As a result, there is considerable similarity in principle between the Arbitration Law and the RV. Some practitioners have suggested that Law No. 30 of 1999 be amended to comply even more closely with the UNCITRAL Model Law, but there has been no such amendment considered by the Indonesian Parliament as yet.

There are a number of differences between the texts of the Model Law and that of the Arbitration Law. Perhaps the primary one is that the Arbitration Law applies to all arbitrations held within the territory of the archipelago of Indonesia and there is no distinction between “domestic” and “international” with regard to the nationality of the parties or the location of their project or dispute. The only effective difference between a *domestic* arbitration, defined in the Arbitration Law as one held in Indonesia, and an *international* one, defined as one held outside of Indonesia (or one which, under the provisions of Indonesian law (of which there are none so stating as yet) is deemed to be International), is the procedure and venue for enforcement of the award.

Some of the other differences from the Model Law include:

- Reference to Arbitration: the Arbitration Law does not specifically require a court to refer to arbitration a dispute brought before it where there is an agreement to arbitrate. It only states that the courts do not have jurisdiction to hear such case.
- Jurisdiction: the Arbitration Law does not specify that the arbitrators are competent to rule on their own jurisdiction (*kompetenz-kompetenz*), although this should be implicit from [Articles 3 and 11](#), which divest the court of jurisdiction where the parties have agreed to arbitrate.
- Language: unless the parties otherwise agree, the Arbitration Law ([Article 28](#)) provides that the language will be Indonesian, regardless of the language of the underlying documents.
- Arbitrators: criteria for arbitrators are stated in the Arbitration Law ([Article 12](#)). These criteria are very inclusive and a person independent of the parties who is over 35 years of age with 15 years of experience in his/her field may serve as arbitrator, except court or government officials.
- Hearings: the Arbitration Law states that the case is decided on documents unless the parties or the arbitrators wish to have hearings, whereas the Model Law requires hearings unless the parties agree otherwise.
- Awards: the Arbitration Law ([Article 54](#)) provides a list of requirements that apply to awards, including that they must be reasoned.
- Time-limit for Award: the Arbitration Law ([Article 57](#)) provides that the award must be rendered no later than 30 days after the conclusion of the hearings.
- Corrections: under the Arbitration Law ([Article 58](#)), only the parties may request typographical errors and similar to be corrected, unlike the UNCITRAL Model Law which provides both that parties may so request and that the tribunal may so correct on its own initiative, and parties have only 14 days from

the rendering of the award to so request, as compared to 30 days under the UNCITRAL Model Law.

- **Annulment:** the grounds for annulment of awards under the Arbitration Law ([Article 70](#)) are far more limited than those set out in the Model Law, as the former provides for annulment of an award only in cases involving fraud, forgery or deliberately concealed material documents.
- **Enforcement:** the grounds for refusing enforcement of an international arbitration award under the Arbitration Law ([Article 66](#)) are different from those set out in the Model Law – limited to the violation of public order or the failure to obtain an order of Exequatur from the Chief Judge of the District Court of Central Jakarta – and puts the burden of proof on the award creditor rather than the award debtor.

## 2. The agreement to arbitrate

The crux of the Arbitration Law is to ensure that where parties have agreed to arbitrate their disputes, the Indonesian courts do not have and may not take jurisdiction over such matters. This right is limited to commercial disputes, being those that the Parties have the authority to resolve themselves, thereby giving them the right to delegate that authority to an arbitral tribunal and divest the courts of jurisdiction thereover. The only role of the courts then becomes that of the annulment or enforcement of final and binding arbitral awards, and the appointment of arbitrators where a party fails to do so, or the two party appointed arbitrators cannot agree upon the chair and the parties have not chosen any specific rules or otherwise designated a different appointing authority.

Although agreements in general are not required to be in writing to be valid and binding under Indonesian law, [Article 1\(3\)](#) of the Arbitration Law requires the agreement to arbitrate to be in writing. The validity of contracts in general is covered in the Indonesian Civil Code, of which Article 1320 sets out the basic requirements for a valid contract: (i) free consent of the parties to be bound, (ii) competence/authority of the parties to contract, (iii) clearly defined subject matter/rights and obligations and (iv) a lawful purpose. Writing is not required, but becomes an evidentiary matter, as it is difficult to prove consent and subject matter where there is no writing to evidence it. The agreement to arbitrate must, of course, meet the general contractual requirements, but, unlike other agreements, it must also be in writing in accordance with [Article 1](#) of the Arbitration Law. Where Indonesian law governs the contract, or in most cases where an arbitration is held in Indonesia, the validity of the agreement to arbitrate will be a matter of Indonesian law and it must in such cases comply with the above requirements.

The Arbitration Law recognises agreements to arbitrate made before a dispute arises, most commonly in an arbitration clause in a contract, and also agreements to arbitrate made after a dispute has already arisen. The latter case is covered by [Article 9](#) of the Arbitration Law, which sets out the components that must be included to render such agreement valid and binding. These include, *inter alia*, clear identification of the elements of the dispute and relief requested and also identification of the arbitrators and a statement of their willingness so to serve.

Incorporation by reference is not recognized in Indonesia unless it can be shown that the party contesting actually read and agreed to the arbitration clause in the document sought to be incorporated. This is based upon the freedom of contract principles embodied in Articles 1320 *ff* of the Indonesian Civil Code (also based upon pre-Independence Dutch law).

While there is no specific reference to severability, *per se*, of the agreement to arbitrate, [Article 10](#) of the Arbitration Law states that the agreement to arbitrate shall survive even if the main contract expires or is declared void. The arbitration clause will not, however, survive a court declaration that the underlying contract is void *ab initio*, in which case the arbitration clause will be deemed never to have been agreed upon at all.

Although an agreement, including an agreement to arbitrate, binds only the parties who have concluded it, [Article 30](#) of the Arbitration Law provides that a third party who is not a party to the arbitration agreement may be allowed to participate in the arbitration proceedings if he or she has a relevant interest in the

proceedings, upon the consent of all of the parties and arbitrator(s). However, there is no mechanism to force the joinder of a non-consenting third party. Therefore, not unexpectedly, this provision is unlikely to be invoked.

As mentioned above, the Arbitration Law ([Article 5](#)) provides that only disputes of a commercial nature and those that are within the authority of the parties themselves to resolve may be arbitrated. The rationale for this is that parties to commercial transactions always have the ability, and the right, to resolve by themselves any disputes that might arise between or among them. Accordingly, they also have the authority to delegate that right to others, most commonly to an arbitrator or arbitral tribunal. By agreeing to arbitrate the Parties divest the court of jurisdiction over any such disputes. This is, of course, not possible where some nature of state participation or confirmation is sought or needed (such as for adoption, divorce, or when it involves any criminal matter). This right and limitation is implicit in all arbitration systems and explicit in Indonesia's Arbitration Law.

### 3. The role of the courts

[Articles 3 and 11](#) of the Arbitration Law make it clear that where the parties have agreed to arbitrate their disputes, the courts do not have and may not take jurisdiction over such matters. The only role of the court is that of annulment and/or enforcement of final and binding arbitral awards.

Aside from that, [Article 14](#) allows a party to request the court to appoint a sole arbitrator if the parties cannot agree upon one, and in the case of three arbitrators, [Article 15](#) allows a party to request the court to appoint the chair of the arbitral tribunal if the two appointed arbitrators are unable to agree on one. This is only effective, of course where the parties have not chosen specific rules to govern the procedure, nor otherwise designated a different appointing authority, and thus is rarely, if ever, applied in practice.

[Article 32](#) of the Arbitration Law gives the Tribunal the power to issue a provisional award or order other interlocutory relief. However, such interim orders will not be enforced by the courts as only final and binding awards and court judgements may be enforced. Thus there is no effective recourse if the subject party does not comply with the Tribunal's order. Nor will the Indonesian courts issue any injunctions or other interim orders in aid of an arbitration, regardless of where the arbitration is held. Even injunctions issued by courts of another jurisdiction will not be enforced by the Indonesian courts. Judgements of foreign courts are not enforceable in Indonesia at all ([Article 463](#) of the Dutch-era Code of Civil Procedure, known as the RV, still in force). Even for court cases, the case would have to be heard again in the Indonesian courts, with the foreign judgement utilised as *prima facie* evidence of what it holds. Thus the courts are not permitted to interfere in arbitrations in Indonesia in any manner, negative or positive, other than to annul and/or enforce the eventual final and binding award.

### 4. Arbitration procedure

[Article 34](#) of the Arbitration Law recognises the parties' right to hold their arbitration before any institution or pursuant to any rules they may mutually agree. Only to the extent that the parties have not designated different rules will the procedural guidelines set out in the Arbitration Law be applicable. These latter guidelines are skeletal, but sufficient for an arbitration procedure to be conducted. However, parties do invariably opt for either *ad hoc* arbitration with rules designated, almost always UNCITRAL, or institutional arbitration, normally either ICC, SIAC, HKIAC, or one of the institutions in Indonesia itself. Although the primary arbitral institution in Indonesia is BANI, there are also a growing number of industry-specific institutions as well.

#### 4.1 Representation

The Arbitration Law does not regulate who may represent a party in an arbitration, so it is left up to the parties to choose their own counsel or even to represent themselves, although the latter is very rarely, if ever, done. Nor is there any requirement to engage local counsel, although if the matter is governed by

Indonesian law it would be advisable to do so. The rules of BANI do require the participation of at least one Indonesian qualified counsel if the governing law is Indonesian.

#### 4.2 Arbitrators

[Article 12](#) of the Arbitration Law sets out the qualifications for those who may be appointed as arbitrators. These include only that the arbitrator must be mentally competent, over 35 years of age and have at least 15 years of experience in their field, and must not be a court or government official. There is no citizenship or residency requirement.

#### 4.3 Recusal

[Article 22](#) of the Arbitration Law gives the parties a right to demand recusal of their arbitrator(s) if *“there is found sufficient cause and authentic evidence to give rise to doubt that such arbitrator will not perform his/her duties independently or will be biased in rendering an award.”* The recusal application shall be made to the arbitral tribunal itself, unless the arbitrator concerned was appointed by the court, in which case it is made to the President of the relevant court. Note that in this, as all other procedural matters, if the parties have designated institutional or *ad hoc* rules, then those rules will supersede the provisions of the Arbitration Law. Only mandatory provisions of the Arbitration Law must be complied with. As mentioned above, the courts will not otherwise get involved in the arbitral process at all; it is simply outside of their jurisdiction.

#### 4.4 Confidentiality

In accordance with [Article 27](#) of the Arbitration Law, all hearings of the arbitration are closed to the public. Although this means that the hearings are private, and not necessarily confidential, the elucidation of that provision also states that the award and the dispute are not to be disclosed to public. Parties wishing a broader degree of confidentiality will need to provide for this in their agreement to arbitrate. Note, however, that awards must be registered with the court to be enforceable and once an award is so registered it can no longer be fully confidential.

#### 4.5 Venue

[Article 31](#) of the Arbitration Law provides that the time frame and venue of the arbitration, and place of the hearings, if different, shall be agreed upon by the parties. If the parties have not, or cannot, so agree, it will be left to the tribunal to decide.

#### 4.6 Hearings

[Article 36](#) of the Arbitration Law provides that the arbitral hearings of the dispute shall be done by written documents. However, oral hearings may be held if so desired by the parties or if deemed necessary by the arbitrator or arbitration tribunal. As a practical matter, most arbitrations do involve at least one oral hearing. Generally, if one party wishes to be heard, the tribunal will agree.

#### 4.7 Evidence

The general rule under Indonesian law is that an employee or family member of a party is not considered as a ‘witness’ but as part of such party. This does not prevent any such person from appearing as a witness in arbitration, but any relationship with the party or parties will be taken into consideration by the tribunal in evaluating the veracity of the testimony.

[Article 37\(3\)](#) of the Arbitration Law provides: *“[e]xamination of witnesses and expert witnesses before the arbitrator or arbitration tribunal shall be carried out in accordance with the provisions of the Code of Civil Procedure.”* This restriction is generally considered superseded where the parties have chosen other procedural rules to govern the arbitral proceedings, as mentioned above.

## 4.8 Language

Pursuant to [Article 28](#) of the Arbitration Law, the language of the arbitration will be Indonesian unless all the parties agree to a different language, which is still subject to the consent of the tribunal. Parties should take note of this and be sure to provide a different language in the agreement to arbitrate if they do not wish to submit all documents and argue in Indonesian.<sup>1</sup>

## 4.9 Time limitations

[Article 48](#) of the Arbitration Law imposes a time limit of 180 days from the constitution of the tribunal for completion of hearings, and [Article 57](#) imposes a time limit of 30 days from close of conclusion of hearings for issuance of the award. However, these time limits may be waived by the parties and such waivers are invariably found in the agreement to arbitrate. It is incumbent upon the tribunal to ensure that the parties agree at least to an extension of time for the issuance of the award if they anticipate it will take more than the 30 days. If the tribunal fails to do so, [Article 20](#) provides that the arbitrators may be ordered to pay compensation to the parties for any costs and losses occasioned by the delay. However, it is not clear who could issue such order, since the courts would not ordinarily have jurisdiction, unless of course the issue were to arise in conjunction with an action to annul an award for failure to meet such time limit. Otherwise the arbitrators are immune from liability. [Article 21](#) of the Arbitration Law states: *"The arbitrator or arbitration tribunal may not be held legally responsible for any action taken during the proceedings to carry out the function of arbitrator or arbitration tribunal unless it is proved that there was bad faith in the action"*.

## 4.10 Costs

The costs of arbitration are covered in [Articles 76 and 77](#) of the Arbitration Law. Generally, the costs of an arbitration proceeding shall be borne by the losing party, but where a claim is only partially granted, these costs shall be charged to the parties equally. The parties' legal costs, and those of their expert and other witnesses, however, can only be shifted if the Parties have so agreed in their agreement to arbitrate or otherwise.

## 4.11 Interest

In keeping with general principles of Indonesian law, interest on a debt may be awarded only if the Parties have agreed for such interest to apply to an unpaid indebtedness. There is no such prohibition against imposing interest on late or unsatisfied awards.

## 5. The award

### 5.1 Requirements

[Article 54](#) of the Arbitration Law contains specific requirements for arbitral award. An arbitral award, wherever rendered, must contain:

- (a) the heading: *'Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa'* (For the sake of Justice based on belief in One Almighty God);
- (b) the full name and addresses of the disputing parties;
- (c) a brief description of the matter in dispute;
- (d) the respective position of each of the parties;
- (e) the full names and addresses of the arbitrators;
- (f) the considerations and conclusions of the arbitrator or arbitration tribunal concerning the dispute as a whole (*in other words, it must be reasoned*);
- (g) the opinion of each arbitrator in the event that there is any difference of opinion within the arbitration tribunal (*if one arbitrator fails to sign, the reason for this must be stated*);
- (h) the order of the award;

<sup>1</sup> Note that BANI, the primary local arbitral institution, normally insists that hearings are held, and often documents submitted, in Indonesian, or at best two languages, even where the parties have agreed upon a different language.

- (i) the place and date of the award;
- (j) the signature(s) of the arbitrator or arbitration tribunal; and
- (k) a time limitation within which the award must be implemented.

The above requirements are mandatory, and not waivable. As explained below, the place of its issuance is also relevant, and may have substantial consequences.

## 6. Enforcement

As mentioned earlier, pursuant to [Article 1\(9\)](#) of the Arbitration Law, awards are defined as *domestic* if they have been rendered within the archipelago of Indonesia, regardless of the nationality of the parties, location of the project and other factors, and defined as *international* if rendered elsewhere. This distinction affects primarily the enforcement process, which differs slightly between the two, primarily on administrative elements.

### 6.1 Registration

Regardless of whether the award is domestic or international, the award must first be registered with the court, by the arbitrators or their duly authorised representatives. Therefore, in practice, arbitrators issuing awards likely to be enforced in Indonesia should include in and/or separately, with the award, a power of attorney to the parties, or either of them, to effect registration of the award. Domestic awards must be registered within 30 days of rendering with the District Court having jurisdiction over the respondent, while international awards are registered with the District Court of Central Jakarta. There is no time limit for registration of international awards. Awards must be in the Indonesian language, or, if the original is in another language, must be accompanied by a translation into Indonesian prepared by a licensed "sworn" translator. For enforcement purposes, the court will refer to the Indonesian version, so any translation should be carefully vetted before registration.

Registration of an international award must also be accompanied by (i) the original or a certified copy of the document containing the parties' agreement to arbitrate and (ii) a certificate from the Indonesian diplomatic representative in the country in which the award is rendered to the effect that that country and Indonesia are both signatories to the New York Convention.

All awards must be registered to be enforceable. Application for an Exequatur Order for an international award is made to the District Court of Central Jakarta, unless the state is a party, in which case the Exequatur Order can only be issued by the Supreme Court.

### 6.2 Execution

Once the Exequatur Order is issued, the issuing court will send it to the District Court having jurisdiction over the losing party for execution over the identifiable assets of such party. As domestic awards are registered with the latter court, a sometimes lengthy step is eliminated when the arbitration is held in Indonesia (and the award is thereby defined as domestic). Note that the party seeking such execution must be able to identify the assets to be executed against, including their location and, where a bank account, the account number, in order to allow the court bailiff to locate and attach such assets.

Execution may take some time, depending upon the nature and location of the assets, but the process is reliable if a bit lengthy, despite uninformed writings to the contrary.

Both exequatur and execution may also be delayed where the losing party applies unconscionable tactics such as bringing a related action in the court based on a non-commercial issue such as tort, or involving a third party who is not a party to the agreement to arbitrate, in order to circumvent the [Articles 3 and 11](#) restrictions on the court's jurisdiction. This does in fact occur with some regularity, but the courts almost invariably will enforce the awards, even if they will await the outcome of the jurisdictional challenge and dismissal of such unauthorized suits.

### 6.3 Recourse

[Article 60](#) of the Arbitration Law clearly states that the award is final and binding upon the parties. This clearly means that there can be no amendment procedure for awards (subject to the limited availability of a request to the tribunal for correction for administrative or typographical errors), which coincides with the restriction on court involvement of [Articles 3 and 11](#), mentioned above.

An arbitral award may only be challenged through an application to the court for annulment of the award. [Article 70](#) of the Arbitration Law provides limited grounds for annulment. The three grounds set out in [Article 70](#) are: false or forged letters or documents submitted in the hearings, discovery after the award of material documents intentionally concealed by a party, or where an award was rendered as a result of fraud committed by one of the parties to the dispute. Likewise, a court may refuse to enforce an award if the dispute is not of a commercial nature, or if can be established that the Parties did not agree to arbitrate such dispute, or that enforcement would violate public order.

A decision by the applicable court to issue the Exequatur Order is not subject to appeal, whereas a decision to refuse to issue such an order can be appealed to the Supreme Court except where the state is a party, in which case there is no appeal against the Supreme Court's action in either issuing or refusing to issue the Exequatur. As to annulment proceedings, both an order to annul and a decision not to annul may be appealed to the Supreme Court.

### 6.4 Awards annulled at seat

The Arbitration Law makes no reference to awards annulled in the place of arbitration nor its impact on enforcement in Indonesia. To the knowledge of the writers, the issue as to whether such awards may still be enforced in Indonesia has not arisen. The writers believe it unlikely that should such a situation arise, the Indonesian courts would follow the example of the French courts and enforce anyway, over proof of such annulment presented by the losing party, although it is debatable whether the Code of Civil Procedure prohibition against enforcement of foreign court judgments, referred to above, might not be used to persuade a court to disregard such annulment, if the grounds relied upon for annulment did not coincide with those set out in the Arbitration Law.

## 7. Other matters

### 7.1 Liability and Immunity

[Article 21](#) of the Arbitration Law provides that the arbitrator(s) may not be held legally responsible for any action taken during the proceedings in carrying out their function as arbitrator(s) unless bad faith can be proven. The only possible liability otherwise would be under [Article 20](#), as mentioned above, in the event the tribunal were to take more than 30 days after close of hearings to issue their award where the parties had not agreed to a waiver or extension of such time limit.

### 7.2 Third-Party Funding

Neither the Arbitration Law, nor any other law, restricts the freedom of parties to either agree with their counsel as to the quantum or method of payment of their fees, nor whether they may utilise external/third-party funding. Contingency fee arrangements, or a variation thereof, are not common but may occasionally be applied, depending upon the agreement of the parties and their counsel. Third-party funding is generally not utilised as of yet, and the writers are not aware of any such arrangement having been applied, although the possibility exists as there are no requirements for transparency in such regard.

### 7.3 Reform or Revision of Arbitration Law

The Arbitration Law was issued less than 20 years prior to time of writing of this note, and it has proven for the most part to be quite flexible and certainly serves the purpose of divorcing the arbitral process almost completely from the Indonesian court system, which has fallen into unfortunate repute. A few

practitioners occasionally suggest that the Arbitration Law ought to be revised, or replaced by one following the UNCITRAL Model Law, but there has been no serious effort on the part of the legislature to make any such changes. It is not an issue that will gain political capital for anyone, nor is there really any pressing necessity, so it is unlikely there will be any significant revision in the near future.