



RESPONDEK & FAN



RESPONDEK & FAN

SINGAPORE □ BANGKOK

ATTORNEYS AT LAW

ASIA

ARBITRATION GUIDE

4th (Extended and Revised) Edition

DR. ANDREAS RESPONDEK

EDITOR



RESPONDEK & FAN

ASIA ARBITRATION GUIDE

DR. ANDREAS RESPONDEK, LL.M.
(EDITOR)

Status of Information: January 2015

4th Edition 2015

© 2015 Respondek & Fan Pte Ltd., Singapore

ISBN: **new**

RESPONDEK & FAN PTE LTD

1 North Bridge Road #16-03

High Street Centre Singapore 179094

Tel.: +65 6324 0060 Fax: +65 6324 0223

Email: respondek@rf-arbitration.com Website: www.rf-arbitration.com

NOTICE

The information provided in this Arbitration Guide has been researched with the utmost diligence, however laws and regulations in the Asia Pacific Region are subject to change and we shall not be held liable for any information provided. It is suggested to seek updated detailed legal advice prior to commencing any arbitration proceedings.



TABLE OF CONTENTS

INTRODUCTION - MR. NEIL KAPLAN CBE QC SBS	6
.....	
1. BANGLADESH	Error! Bookmark not defined.
2. BRUNEI	Error! Bookmark not defined.
3. CAMBODIA	Error! Bookmark not defined.
4. CHINA	Error! Bookmark not defined.
5. THE CHINESE EUROPEAN ARBITRATION CENTRE – HAMBURG	Error! Bookmark not defined.
6. HONG KONG	Error! Bookmark not defined.
7. INDIA	Error! Bookmark not defined.
8. INDONESIA	9
9. JAPAN	Error! Bookmark not defined.
10. KOREA	Error! Bookmark not defined.
11. LAOS	Error! Bookmark not defined.
12. MALAYSIA	Error! Bookmark not defined.
13. MONGOLIA	Error! Bookmark not defined.
14. MYANMAR	Error! Bookmark not defined.
15. PAKISTAN	Error! Bookmark not defined.
16. PHILIPPINES	Error! Bookmark not defined.
17. SINGAPORE	Error! Bookmark not defined.
18. TAIWAN	Error! Bookmark not defined.
19. THAILAND	Error! Bookmark not defined.
20. VIETNAM	Error! Bookmark not defined.



AUTHORS

- Introduction:** **MR. NEIL KAPLAN, CBE QC SBS**
- Bangladesh:** **MR. AJMALUL HOSSAIN QC, SENIOR ADVOCATE**
A Hossain & Associates
- Brunei:** **MR. AHMAD JEFRI ABD. RAHMAN**
Associate Professor, Universiti Brunei Darussalam (UBD)
- Cambodia:** **MR. THOMAS PEARSON**
BNG Legal
- China:** **DR. BJOERN ETGEN**
Beiten Burkhardt
- China/Europe:** **PROF. DR. ECKART BRÖDERMANN, LL.M.**
(Harvard)
Brödermann Jahn Rechtsanwaltsgesellschaft mbH
DR. CHRISTINE HEEG, LL.M. (Sydney)
KPMG Law
- Hong Kong:** **DR. NILS ELIASSON**
Mannheimer Swartling
- India:** **MRS. ZIA MODY; MR. ADITYA VIKRAM BHAT**
AZB & Partners
- Indonesia:** **MS. KAREN MILLS, MR. ILMAN RAKHMAT,
MR. TAUFAN FEBRIANTO**
KarimSyah Law Firm
- Japan:** **MR. MICHAEL A. MUELLER
MR. MAXIMILIAN HOCKE**
Mueller Foreign Law Office
- Korea:** **MR. YOUNG SEOK LEE; MR. MORITZ WINKLER**
Yulchon LLC



- Laos:** **MS. SIRI BOUTDAKHAM**
Lao Law & Consultancy Group
- Malaysia:** **TAN SRI DATO' CECIL ABRAHAM**
MR. THAYANANTHAN BASKARAN
Zul Rafique & Partners
- Mongolia:** **MS. ENKHTSETSEG NERGUI**
MR. DHIMAS MURTI
Anand & Batzaya Advocates
- Myanmar:** **MR. JAMES FINCH / MRS. THIDA AYE**
DFDL, Yangon
- Pakistan:** **MR. S. AHMED SARWANA**
Former Judge, High Court of Sindh, (Court of Appeal),
Pakistan
- Philippines:** **MS. RENA RICO-PAMFILO**
Associate Professor, Ateneo de Manila University School of
Law
- Singapore:** **MR. CHAN LENG SUN, SC**
MS. CELESTE ANG
Baker McKenzie
- Taiwan:** **MR. NATHAN KAISER, MR. L.C. HSU, MR. INDY
LIU, MR. HOUCIH KUO & MS. ANDREA NEUER**
Eiger Law
- Thailand:** **DR. ANDREAS RESPONDEK**
Respondek & Fan Ltd
- Vietnam:** **MR. DINH QUANG THUAN**
Phuoc & Partners

Amendments for the 4th edition

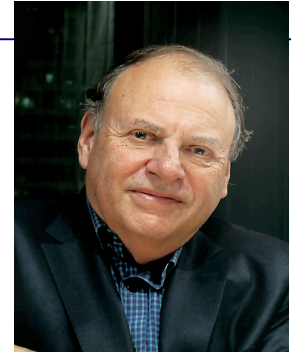
Each country report has been completely revised and updated and was finalized in February 2015. The 4th edition of the Asia Arbitration Guide includes now also a new country reports for **Brunei** and **Pakistan**.



RESPONDEK & FAN

INTRODUCTION

MR. NEIL KAPLAN CBE QC SBS



Respondek and Fan are to be congratulated on providing every two years a most useful summary of the arbitration laws of Asian jurisdictions.

The 2015 edition contains a review of 20 jurisdictions. By including Brunei and Pakistan they have increased by two the number of jurisdictions covered in the last edition.

Each chapter is written by experts from the relevant jurisdiction who bring to bear their unique experience of their jurisdiction. The chapters are not overlong and give the salient features of the law, practice and institutions of each jurisdiction. Each chapter has identical headings and thus one immediately gets the comparison needed.

With the huge increase in the interest in arbitration in Asia which naturally coincides with the increase of economic activity in the region it is essential for practitioners to have a composite one volume guide to all these jurisdictions. This Guide is not meant to rival the ICCA publication which covers all jurisdictions worldwide but is meant to serve the growing number of practitioners in the Asian region itself.

In recent years we have seen arbitration cases in several new jurisdictions. New arbitration laws abound. Centres are being set up in several new jurisdictions. The more established Centres like Hong Kong, Singapore, Malaysia, China and Korea are attracting many cases and this may well have a “knock on” effect throughout Asia. The ICC has seen a huge growth of cases involving Asian parties as well as those cases seated in Asia.

This edition should also be of interest to in-house counsel as well as teachers and students of the subject. Its readable style will I am sure make it “a must have” for all practicing in this field in Asia.



RESPONDEK & FAN

Andreas Respondek, the managing editor and founding senior partner of the firm, is to be congratulated for masterminding all this and for getting together the necessary experts to write the chapters for this hugely useful work which I look forward to placing on my shelf.

Neil Kaplan CBE QC SBS



Dear Reader,

Following the global trend in dispute resolution, arbitration has in recent years become the preferred method of alternative dispute resolution within the Asia-Pacific region, particularly where international commercial transactions are concerned. There is hardly any significant cross-border contract that does not include an arbitration clause.



Parties to international contracts have certain fears and reservations to sue or being sued in a jurisdiction they are not familiar with. Differences in the various laws, language and legal and business culture are perceived as distinctive disadvantages. To those parties arbitration seems preferable as arbitration proceedings tend to be significantly more flexible than in the courts, with proceedings conducted according to familiar and well established arbitration laws that are usually held in a neutral location. Last not least due to the lack of the possibility to appeal against an arbitral award, arbitrations tend to be faster than court proceedings. The confidentiality of the arbitration proceedings that court proceedings do not enjoy is another factor that makes arbitration look attractive. In addition, arbitration offers the disputing parties to choose “their” arbitrators that have specific expertise in the disputed matter, thereby further enhancing a speedy conclusion of the disputed matter.

The goal of this guide is not to provide a scholarly treatise on Asian arbitration but rather to summarize the practical aspects of the rules and regulations applying to arbitration in various Asian countries. This guide is designed to provide companies and their advisors with a basic understanding of the various Asian arbitration regulations and the legal issues related to arbitration in each country. For companies seeking to rely on arbitration clauses when doing business in Asia, it is important to have a good understanding of how the arbitral process works in each country. In addition, it is hoped that this guide will assist companies in selecting arbitration rules and facilitate the drafting of arbitration provisions for their international commercial contracts.

This guide is based on the joint efforts of leading arbitration practitioners in each country. Without their dedicated efforts this guide would not have materialized and I am especially grateful for their participation and excellent contributions. Special thanks go also to my secretary Ms. Avelin Kaur, to Ms. Jin Yujia and Ms. Amelie Sulovsky.

Singapore, February 2015

RESPONDEK & FAN

Dr. Andreas Respondek

Chartered Arbitrator (FCIArb)

7. INDONESIA



**BY: MS. KAREN MILLS
MR. ILMAN RAKHMAT**

8.1 Which laws apply to arbitration in Indonesia?

Arbitration has long been recognized and applied as a formal means of dispute resolution in Indonesia. Arbitration was introduced since the Dutch colonial era in Indonesia by the enactment of the *Reglement op de Rechtsreglement (RV)*¹, *Het Herzijene Indonesisch Reglement (HIR)*² and *Rechtsreglement Buitengewesten (RBg)*³ and for more than 150 years all arbitrations in Indonesia were governed under these laws. There was no specific law which governs arbitration in Indonesia, until at last in late 1999 Indonesia promulgated Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution that superseded the former Dutch laws.

8.2 Is the Indonesian arbitration law based on the UNCITRAL Model Law?

Arbitration in Indonesia is governed under Law No. 30 of 1999 (“The Arbitration Law”) on Arbitration and Alternative Dispute Resolution. Although there are more similarities than differences, the Indonesian Arbitration Law is not based upon the UNCITRAL Model Law.

¹ Article 615 – 651, *Reglement op de Rechtsreglement (RV)*

² Article 377, *Herzijen Inlandsch Reglement (H.I.R)*

³ Article 705, *Rechtsreglement Buitengewesten (RBg)*



8.3 Are there different laws applicable for national and international arbitration?

Unlike such jurisdictions as Malaysia and Singapore, Indonesia only has one law which governs both domestic and international arbitration. As with the prior legislation under the RV, as referred to above, the Arbitration Law makes it clear that all arbitrations held within Indonesia are considered “domestic”, and all those held outside of this archipelago are characterized as “international” arbitrations, regardless of the nationality of the parties, location of the subject of the dispute, governing law, etc. Thus, there is, and need be, only the one Arbitration Law, which applies to all arbitrations held within Indonesia, and to enforcement in Indonesia of any international award as well.

8.4 Has Indonesia acceded to the New York Convention?

Indonesia ratified the New York Convention in 1981 with the issuance of Presidential Decree No. 34 of 1981.⁴ However it was not until 1990 that the Supreme Court issued Supreme Court Regulation No. 1 of 1990 to facilitate the enforcement of international arbitration awards. Enforcement of foreign awards was problematic in the interim. In its Regulation No. 1 the Supreme Court reserved to itself the authority to issue execution orders. This proved to cause considerable delay and thus the new 1999 Arbitration Law designated the District Court of Central Jakarta as the court authorized to issue execution orders, except where the state is a party, in which case such order must be issued by the Supreme Court. Most of the other problems encountered by some of the provisions of Supreme Court Regulation No. 1 of 1990, have also been eliminated with the promulgation of the Arbitration Law, which does not repeal the Regulation but reflects and improves upon it.

⁴ Published in the state Gazette of 1981, as No. 40, of 5 August, 1981. Indonesia made both the commerciality and the reciprocity reservations in its accession.



8.5 Can parties agree on foreign arbitration institutions (i) if both parties are domiciled in the country, (ii) if one party is domiciled in the country and the other party abroad?

Yes. Article 34 (1) of the Arbitration Law provides:

“Resolution of a dispute through arbitration may be referred to a national or international arbitration institution if so agreed upon by the parties.”

Regardless of where the parties are domiciled, the Arbitration Law allows for the choice of a any arbitral institution, foreign or domestic, or any other rules to be applied, to resolve a dispute by arbitration.

Does the Indonesian arbitration law contain substantive requirements for the arbitration procedures to be followed?

The Arbitration Law provides some skeletal procedural rules which will apply to arbitrations held in Indonesia if the parties have not designated other rules or administering institutions. These basic procedural rules can be found in Articles 27 through 51 of the Arbitration Law.

The substantive requirements for the procedures as set out in the Law are basically as follows:

1. Submissions shall be made in writing (this would be mandatory, whatever rules are followed);
2. The Statement of Claim shall include at least, the full name and address or the parties’ domicile;
3. The examination of witnesses and experts shall be governed by the provisions contained in the Civil Procedural Law;
4. The hearing shall be completed within 180 days from the date the arbitrator is confirmed or the tribunal is established. This is mandatory, unless the parties specifically waive it;
5. The award shall be issued within 30 days as of the close of the hearings. This is also mandatory, but also may be specifically waived.

8.6 Does a valid arbitration clause bar access to state courts?

Yes, Article 3 of the Arbitration Law clearly states that the District Court has no jurisdiction to try disputes between parties bound by an arbitration agreement. Further, Article 11 of Arbitration Law upholds the provision under Article 3 which states that the existence of a written arbitration agreement eliminates the right of the parties to submit resolution of the dispute or difference of opinion contained in the agreement to the District Court. The District Court also must refuse to and must not interfere in any dispute settlement which has been determined by arbitration.

8.7 What are the main arbitration institutions in Indonesia?

There are a number of arbitration institutions in Indonesia, most of them industry specific but also some are general. Probably the most commonly used arbitral body is *Badan Arbitrase Nasional Indonesia* (BANI),⁵ which maintains a panel of local and international arbitrators and utilizes relatively modern rules of procedure, which are available in both Indonesian and English, although some of its less conventional policies are not provided to prospective arbitrants, so some due diligence is recommended.

Other established institutions include the Capital Market Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia*, or BAPMI)⁶, set up in 2002 to administer arbitrations relating to capital market disputes and the National Sharia Arbitration Board (*Badan Arbitrase Syariah Nasional*, or Basyarnas), established by the Indonesian Ulema Council in 1993, originally under the name of *Badan Arbitrase Muamalat Indonesia*, to resolve disputes arising out of *shariah* transactions or transactions based on Islamic principles. There is also an arbitration institution to settle disputes in futures exchanges, called *Badan Arbitrase Perdagangan Berjangka Komoditi* (BAKTI)⁷ which was established on 7 November 2008. Each of these bodies maintains its own panel of approved arbitrators and has its own rules of procedure and arbitrator conduct but only the official Indonesian version of this set of

⁵ See <http://www.bani-arb.org>

⁶ See <http://www.bapmi.org>

⁷ See <http://www.bakti-arb.org>



rules is available online. So far the services of these institutions have not been widely used in practice, but their case loads are growing.

There is also an Indonesian Chapter of the Chartered Institute of Arbitrators based in Jakarta. The Chapter is involved primarily in the training of arbitrators and does not administer cases, although it can act as appointing authority if so designated.

While most local arbitrations between or among Indonesian parties only, are held at BANI, the majority of those with a more international character, unless held offshore (and the majority of these would be in Singapore) tend to apply the UNCITRAL rules or opt for ICC administration.

8.8 Addresses of the major arbitration institutions in Indonesia?

BANI's address is as follows:

Head office : Wahana Graha, 2nd Floor
Jl. Mampang Prapatan No.2
Jakarta, 12760
Tel : +6221 7940542
Fax : +6221 7940543
Website : www.bani-arb.org
E-mail : bani-arb@indo.net.id

BAPMI's address is as follows:

Head office : Indonesia Stock Exchange Building Tower 1, 28th
Floor, Jl. Jenderal Sudirman Kav. 52-53, Jakarta
12190
Tel : +6221 5150480
Fax : +6221 5150429
Website : www.bapmi.org
E-mail : secretariat@scbd.net.id

BASYARNAS' address is as follows:

Head office : MUI Building, Jl. Dempo No. 19, Central Jakarta,
10320
Tel : +6221 31904596
Fax : +6221 3924728
E-mail : basyarnas-pusat@commerce.net.id



BAKTI's address is as follows:

Head office : Graha Mandiri 3rd Floor, Jl. Imam Bonjol No.61
Central Jakarta, 10340
Tel : +6221 39833066 (ext. 706)
Fax : +6221 39833715
Website : www.bakti-arb.org
E-mail : secretariat@scbd.net.id

8.9 Arbitration Rules of major arbitration institutions in Indonesia?

As the most commonly used arbitration institution, BANI has its own rules in administering an arbitration case, the rules known as BANI's "Rules of Arbitral Procedure". These rules can be found in both Indonesian and English on BANI's website.⁸

The Rules of BAPMI can be found on www.bapmi.org/in/rules.php .

The Rules fo BAKTI can be found on www.bakti-arb.org/rule.html .

The rules of BASYARNAS are not available online. These can be obtained by sending a request to BASYARNAS' e-mail at basyarnas-pusat@commerce.net.id

8.10 What is/are the Model Clause/s of the arbitration institutions?

BANI recommends the use of the following model clause for parties wishing to settle their dispute through their institution:

"All disputes arising from this contract shall be binding and be finally settled under the administrative and procedural Rules of Arbitration of Badan Arbitrase Nasional Indonesia (BANI) by arbitrators appointed in accordance with said rules".

⁸ See www.bani-arb.org/bani_prosedur_ind.html (Indonesian version) and www.bani-arb.org/bani_prosedur_eng.html (English version)



But the writers would recommend that parties wishing to avail themselves of BANI arbitration also specify the language of the arbitration, as the Arbitration Law requires arbitrations to be held in Indonesian if not otherwise agreed upon the parties. Other provisions might also be included to counteract some of BANI's policies, such as a provision to the effect that transcripts or other records must be made available to the parties and not only the arbitrators, and also that the parties shall have the absolute right to appoint whomsoever they wish to act as arbitrator, subject only to conflicts of interest and misconduct and that the two party appointed arbitrators (or the parties jointly) have the unimpeded right to designate a qualified Chair.

8.11 How many arbitrators are usually appointed?

Under the prior legislative regime of the RV, parties were free to designate any number of arbitrators, so long as it was an odd number. This restriction is continued by the new Arbitration Law, but only where the parties have not previously agreed upon a certain number of arbitrators. Article 8 (2) (f) of the Arbitration Law, in setting out the requirements for the notice of arbitration, requires such notification, among other things to include:

“The agreement entered into by the parties concerning the number of arbitrators or, if no such agreement has been entered into, the Claimant may propose the total number of arbitrators, provided such is an odd number.”

Under the BANI Rules, parties may appoint either a sole arbitrator or three arbitrators to sit as the arbitral tribunal adjudicating their dispute. If the parties have not previously agreed as to the number of arbitrators, the Chairman of BANI shall rule whether the case in question requires one or three arbitrators, depending on the nature, complexity, and scale of the dispute in question. However, in special circumstances where there are multiple parties in dispute, and if so requested by the majority of such parties, the BANI rules allow the Chairman of BANI to approve the formation of a tribunal comprising of five arbitrators.⁹

⁹ BANI Rule No.10



As to the arbitrators' qualifications, there is no restriction on the nationality or profession of arbitrators. The Arbitration Law only requires that arbitrators be competent and over the age of 35 years, have at least 15 years experience in the "field" (not defined) and have no conflict of interest or ties with either party. Furthermore, judges, prosecutors, court clerks or other officials of justice may not be appointed or designated as arbitrators.¹⁰

8.12 Is there a right to challenge arbitrators, and if so under which conditions?

Article 22 of the Arbitration Law states that the parties are allowed to challenge, or request for a recusal of, an arbitrator if there is found sufficient cause and authentic evidence to give rise to doubt that the arbitrator will not perform his/her duties independently, or will be biased in rendering an award. Demands to recuse an arbitrator may also be made if it is proven that there is any family, financial or employment relationship with one of the parties or its counsel.

This stipulation under Article 22 is further supported by Article 26 Paragraph 2 which states that an arbitrator may be dismissed from his/her mandate in the event that he/she is shown to be biased or demonstrates disgraceful conduct, which must be legally proven.

8.13 Are there any restrictions as to the parties' representation in arbitration proceedings?

The Arbitration Law does not impose any conditions as to what counsel may represent a party in an arbitration, as long as such counsel is given power of attorney to do so. Thus there is no impediment to foreign counsel appearing on behalf of any party, whether foreign or Indonesian.

¹⁰ Article 12 Law No.30 of 1999



In arbitrations before BANI, however, Indonesian counsel will be required to accompany any foreign counsel if Indonesian law governs the merits of the dispute.¹¹ Although this is not a legal requirement for non-BANI arbitration, it would certainly be foolhardy of any party not to engage counsel conversant with the governing law wherever their arbitration is held.

8.14 When and under what conditions can courts intervene in arbitrations?

According to Article 3 and 11 of the Arbitration Law the court has no jurisdiction over a dispute if the parties have agreed to settle their dispute through the arbitration. Application to a court may be made only if the appointment of an arbitrator is challenged and the parties have not designated rules which give this power to a different institution.¹²

National courts become involved most commonly at one of three stages of the arbitration process: (i) at the outset of the dispute; to enforce the agreement to arbitrate or to appoint or recuse an arbitrator; (ii) during the arbitration proceedings: through request to enforce interim measures (although not yet tested, it is widely assumed that courts will not take such jurisdiction); and (iii) after the close of arbitration to enforce or annul the final award.

Thus, the courts have no jurisdiction to deal with any matters subject to arbitration, other than enforcement or other relief that may be sought after issuance of the final award. An exception might be to enforce interim measures of relief granted by a tribunal, but this has not yet been tested and, as interim relief is generally available only for cases already commenced and under court jurisdiction, any such application in aid of an arbitration is most unlikely to be entertained by the courts.

¹¹ BANI Rule No.5

¹² Article 13, Law No.30 of 1999



8.15 Do arbitrators have powers to grant interim or conservatory relief?

Article 32 of the Arbitration Law provides:

- (1) *At the request of one of the parties, the arbitrator or arbitration tribunal may make a provisional award or other interlocutory decision to regulate the manner of running the examination of the dispute, including decreeing a security attachment or ordering the deposit of goods with third parties, or the sale of perishable goods.*

However, the Tribunal has no power of execution as only a court would have the power to execute such orders. But courts can only enforce final and binding awards and court judgments. Article 64 of the Arbitration Law also allows enforcement only of judgments and awards that are final and binding, and thus not subject to any further review. Thus compliance depends primarily on the good will of the party affected, and, one would hope, the reticence to defy the tribunal, which surely could not help their case.

Nor does the Arbitration Law provide sanctions for failure of a party to comply with orders of the tribunal. Article 19(6) of the BANI Rules does give the tribunal authority to impose such sanctions, but, again, enforcement of any such sanction would require court intervention, which would not be available unless and until in the final award. Although, to the knowledge of the writers, it has not as yet been tested, it is certainly highly questionable whether the courts would enforce any such interlocutory orders if an affected party fails to comply.



8.16 What are the formal requirements for an arbitral award (form; contents; deadlines; other requirements)?

- **Formal requirements for arbitral awards**

Article 54 of the Arbitration Law sets out the standard for an arbitral award, as follows:

- a) The heading “*DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA*” (In the Name of Justice, Based on Belief in One God);
- b) Full names and addresses of the parties;
- c) A short description of the dispute;
- d) The arguments of the parties;
- e) Full names and addresses of the arbitrators;
- f) The considerations of the arbitrator or arbitration tribunal regarding the whole dispute;
- g) The opinion of each arbitrator, if any differences of opinion arise within the arbitration panel;
- h) The award;
- i) The place and date of the award; and
- j) The signature of the arbitrator or arbitration panel.

- **Deadlines for issuing arbitral awards**

After the close of hearings (which are required to be completed within 6 months of the date of constitution of the full Tribunal,¹³ unless such time limit is extended by mutual written consent of the parties¹⁴), the tribunal is allowed only thirty days to render its award,¹⁵ but this time limit also may be extended by mutual written consent of the parties, in which case an alternative limitation should be designated or the extension may be deemed ineffective.

¹³ Article 48, Law No.30 of 1999

¹⁴ Article 33, Law No. 30 of 1999

¹⁵ Article 57, Law No.30 of 1999



- **Other formal requirements for arbitral awards**

Article 54 Paragraph (2) of the Arbitration Law states that the validity of the award will not be affected even if one of the arbitrators is unable to sign the arbitration award due to sickness or death. The reason of the absence of one arbitrator's signature must, however, be recorded in the award.¹⁶

The Tribunal, or its duly authorized representative, is required to register a signed original, or authentic copy, of the award with the court within 30 days of its rendering.¹⁷ This time limit does not apply to registration of foreign-rendered awards as this stipulation is only regulated under the chapter of the enforcement of national arbitration awards, but in either case the award must be registered in order to be enforceable.¹⁸ Domestic awards (those rendered in Indonesia) are registered in the District Court having jurisdiction over the respondent.¹⁹ International awards are registered in the District Court of Central Jakarta.²⁰

In order to register an award the court will require an original or authenticated copy to be submitted in the Indonesian language.²¹ Although not specified in the law, for purposes of registration and eventual enforcement in Indonesia, that Indonesian version will be considered as the original. Therefore it would be wise, if possible, for any award that may require enforcement in Indonesia to be rendered in Indonesian, as well as in whatever language the arbitration is held, in most cases in English. At the very least any translation, which must be by government licensed "sworn" translator, should be carefully vetted before submission for registration. Note also that BANI will deem the Indonesian version as the original even if in fact the award has been drafted in another

¹⁶ Article 53 (3), Law No.30 of 1999

¹⁷ Article 59 (1), Law No.30 of 1999

¹⁸ Article 59 (4), Law No. 30 of 1999

¹⁹ Articles 59 (1) and 1 (4), Law No. 30 of 1999

²⁰ Article 65, Law No. 30 of 1999

²¹ Article 67, Law No. 30 of 1999



language and the Indonesian version is a translation.²² It is important to ensure that any translation into Indonesian is accurate, because that is the version which will be operative in case the award must be enforced in Indonesia.

8.17 On what conditions can arbitral awards be (i) appealed or (ii) rescinded?

There is no appeal against the substance of an arbitration award. However, the Arbitration Law does provide for annulment of an arbitral award, either domestic or international, but on very limited grounds which primarily involve withholding of decisive documentation, forgery or fraud.²³

Any such application must be submitted within 30 days of registration of the award,²⁴ and a decision must be made upon such application within 30 days of submission thereof. An appeal may be made to the Supreme Court against any such decision, and the Law requires the Supreme Court to decide upon such appeal within 30 days of application.²⁵

8.18 What procedures exist for enforcement of foreign and domestic awards?

8.18.1 Domestic Awards

The enforcement procedure for domestic awards allows the appropriate District Court to issue an order of execution directly if the losing party does not satisfy the award, after being duly summoned and so requested by the court. Although no appeal is available, the losing party does have the opportunity to contest execution by filing a separate contest. Although the District Court may not review the reasoning in the award itself,²⁶ it may only execute the award if both the nature of the dispute and the agreement

²² BANI Rule 14 (d)

²³ Article 70, Law No. 30 of 1999

²⁴ Article 71, Law No.30 of 1999

²⁵ Article 72, Law No. 30 of 1999

²⁶ Article 62 (4), Law No. 30 of 1999



to arbitrate meet the requirements set out in the Arbitration Law²⁷ (the dispute must be commercial in nature and within the authority of the parties to settle, and the arbitration clause must be contained in a signed written document) and if the award is not in conflict with public morality and order.²⁸ There is no recourse against rejection by the court of execution.²⁹

8.18.2 International Awards

As in the case of domestic awards, international awards must also be registered with the court before one can apply to have them enforced. There is no time limit for registration of international awards. However such registration is required to be effected by the arbitrators or their duly authorized representatives. Arbitrators who regularly sit in arbitrations within Indonesia are aware of this requirement and will provide a power of attorney to the parties to effect registration *on behalf of the arbitrators*. However, arbitrators sitting outside of Indonesia generally are not aware of this requirement and, unless so requested by one or both of the parties, are unlikely to grant such authority. This can cause considerable delay, and often difficulty, for a party seeking to register the award later on, as the arbitrators will need to be contacted and requested to provide powers of attorney after the end of the proceedings. Aside from such powers of attorney, applications for registration of International Awards must attach the following:

- “(i) the original or a certified copy of the award, in accordance with the provisions for authentication of foreign documents, together with an official translation thereof (into Indonesian, unless the original award is rendered in Indonesian);*

- “(ii) the original or a certified copy of the agreement which is the basis of the International Award, in accordance with the provisions for authentication of foreign documents, together with an official Indonesian translation thereof; and*

²⁷ Articles 4 and 5, law No. 30 of 1999

²⁸ Article 62 (2), Law No. 30 of 1999

²⁹ Article 62 (3), Law No.30 of 1999



(iii) a certification from the diplomatic representative of the Republic of Indonesia in the country in which the award was rendered, stating that such country and Indonesia are both bound by a bilateral or multilateral treaty on the recognition and implementation of International Arbitration Awards.”³⁰

Despite the Arbitration Law having been in effect for almost fifteen years at the time of writing, this last-mentioned requirement still often proves difficult to satisfy. Unfortunately the Foreign Ministry has not advised its diplomatic missions of the requirement and thus many Consulates are at a loss when asked to provide such certification. This can also cause considerable delays, as well as some annoyance for all concerned.

Orders of *exequatur*, granting enforcement of an award, including those ordering injunctive relief, will be issued by the court as long as the parties have agreed to arbitrate their disputes, unless the subject matter of the award was not commercial³¹ and therefore not arbitrable, and as long as the award does not violate public order.³²

8.18.3 Execution

Once an order of execution is issued, for either a domestic or an international award, the same may be executed against the assets and property of the losing party in accordance with the provisions of the RV, in the same manner as execution of judgments in civil cases which are final and binding. But note that only those assets which can be specifically identified can be attached or seized and sold. There is no provision for general orders of attachment or seizure in Indonesia.

³⁰ Since Indonesia is not party to any such bilateral treaty, in effect the certification should state that both countries are parties to the New York Convention. It is implicit that awards rendered in states that are not party to the New York Convention (or other such conventions, such as the ICSID, Washington convention, to which Indonesia is also a party) will not be enforced in Indonesia.

³¹ Elucidation of Article 66 b, Arbitration Law. “Commercial” refers to activities in trade, banking, finance, investment, industry, and intellectual property.

³² Article 66 (c), Law No. 30 of 1999.



8.19 Can a successful party in the arbitration recover its costs?

8.19.1 Costs of Arbitration

Under the Arbitration Law, arbitrators shall determine the arbitration fee, which consists of the arbitrators' honoraria, expenses incurred by the arbitrators and costs for (expert) witnesses and administrative matters.³³ The fee shall be borne by the losing party. In the event that a claim is partially granted, the arbitration fee shall be charged to the parties equally.³⁴

8.19.2 Legal Costs

Generally under Indonesian Law, parties do not have the right to recover their legal costs in litigation or arbitration, unless they have agreed that such costs can be recovered, either in their underlying agreement or in any other valid contract. Despite this general rule, many arbitrations with an international character do see legal costs awarded and as far as the writers can determine, this has never been challenged.

8.20 Are there any statistics available on arbitration proceedings in Indonesia?

Indonesia being a Civil Law jurisdiction, where prior cases do not have precedential value, very few cases are reported. This lack of reported information, coupled with the fact that both registration and enforcement of domestic awards is effected in the District Court in the domicile of the losing party, and since there are 292 judicial districts spread throughout the archipelago, it is almost impossible to obtain reliable data on enforcement of domestic awards, except with respect to cases sufficiently notorious to raise a stir in legal or business circles or warrant comment in the press. It is generally understood, however, that most domestic awards have been enforced without delay or difficulty as a matter of course.

³³ Article 76, Law No. 30 of 1999

³⁴ Article 77, Law No. 30 of 1999



The Clerk of the Central Jakarta District Court does keep records of the registration of international awards, indicating when application is made to enforce any of these, and when the execution order is issued. Between 2010 and 2014 there were 63 international awards registered and, to our knowledge, there have been no significant difficulties in execution. BANI keeps records of the cases it administers, but these records are not publicly accessible.

8.21 Are there any recent noteworthy developments regarding arbitration in Indonesia (new laws, new arbitration institutions, significant court judgments affecting arbitration etc)?

In early 2014, the Constitutional Court received a request to test the Arbitration Law specifically the elucidation of Article 70. The Applicants stated that the elucidation of Article 70 of the Arbitration Law caused legal uncertainty.

Article 70 governs that nullification of an arbitration award may be made if the award contains elements of forgery, concealment of material documents or fraud. The elucidation of Article 70 makes it clear that an application for nullification shall be supported by a court decision proving that there has been such a forgery, concealment of material documents, or fraud.

Article 71 provides that an application for annulment shall be submitted within 30 days as of the date when the award was registered.

The Applicants claimed that it is impossible to obtain a court decision proving such ground for annulment within the 30-day time limit and thus claimed Article 70 to be inoperable.

On 11 November 2014, the Supreme Court rendered its judgment stating that the Elucidation of Article 70 is now revoked since it has caused legal uncertainty and injustice, thereby contravening the Indonesian Constitution. A party may now apply for nullification of an award on the ground that the award contains elements of forgery, concealment of



material document or fraud, without having to have a court decision to support it.

Name of Authors:	MS. KAREN MILLS with MR. ILMAN RAKHMAT and MR. TAUFAN FEBRIANTO
Name of Firm:	KarimSyah Law Firm
Brief Profile:	KarimSyah is Indonesia's market leader in Dispute Resolution, Financing and Natural Resources. Areas of specialization on the transactional side include Oil, Gas, Mining and Energy and Infrastructure matters, Insurance, all manner of Financing and Restructuring, Information Technology, Land Transactions, Bankruptcy, Joint Ventures and other cross-border transactions and business structures. On the contentious side the firm handles commercial litigation and both local and international arbitration and mediation, with recent new specializations in medical malpractice defense and aviation disaster settlements.
Telephone No.:	+62 21 2966 0001
Fax No.:	+62 21 2966 0007
Email:	kmills@cbn.net.id ; info@karimsyah.com
Website:	www.karimsyah.com