

2012 EDITION

IFLR 1000

The Guide to the World's Leading Financial Law Firms

www.iflr1000.com

Indonesia

Chamber of commerce:

Jakarta Chamber of Commerce and Industry
Majapahit Permai Block B 21-23
Majapahit 18-20
10160 Jakarta
Indonesia
Tel: +62 21 380 8091
Fax: +62 21 384 4549
Email: kadinjkt@indosat.net.id
Web: www.kadin.or.id

Professional body:

Ikatan Advokat Indonesia
Complex Duta Merlin Block B-30
J1 Gajah Mada 3-5
Jakarta 10130
Indonesia
Tel: +62 21 633 1636
+62 21 633 5138
Fax: +62 21 633 3326

Recent legislative updates

Rusmaini Lenggogeni and David Gaida
Soewito Suhardiman Eddymurthy Kardano
Jakarta

Indonesia continues to attract significant global investor interest in all sectors and a number of new regulations have recently come into effect that may have an impact on foreign and domestic investment.

New fund transfer law and currency law

In response to Indonesia's growing integration with global financial markets, the Government of Indonesia recently issued Law No 3 of 2011 (the Fund Transfer Law). This is intended to provide a legal framework for a secure national payment system that provides security and legal certainty for fund transfer transactions performed within Indonesia and/or cross border fund transfers.

One of the original motivations for the Fund Transfer Law was to better combat money laundering and terrorism financing, and the Law stipulates that Bank Indonesia has the authority to monitor the fund transfers by a provider. Importantly, the Fund Transfer Law also reiterates a provision in the 2008 Electronic Information and Transaction Law confirming that electronic transaction evidence is valid and legal.

On May 31 2011 the Indonesian parliament passed the new Currency Law, which requires the use of Indonesian Rupiah for all business transactions within the country, although noting that international commercial transactions are exempt.

M&A: new KPPU rules

In July 2010 the government passed the implementing regulation for Articles 28 and 29 of the Anti-Monopoly Law. Article 28 prohibits mergers or acquisitions that may result in monopolistic practices and/or unfair business competition, while Article 29 requires

post-notification for mergers or acquisitions which meet a certain minimum threshold in terms of assets and/or sales value within 30 days of the transaction. The regulation also increases the authority of the Business Supervisory Commission (KPPU) to conduct assessments of mergers or acquisitions suspected of creating monopolistic practices and/or unfair business competition.

Importantly, the government regulation also provides businesses with an option to have a pre-merger consultation with the KPPU. While the consultation is voluntary, the main benefit is that the KPPU is committed to making only one evaluation of each acquisition, as long as there are no material changes in the data submitted by the businesses conducting the acquisition and no material changes in the prevailing market conditions. Therefore, if a business has voluntarily conducted a pre-completion consultation in writing, the KPPU will not change its post-completion decision which will give more certainty in future M&A transactions.

Cabotage amendment

The Government of Indonesia recently amended regulations to permit foreign flagged vessels to operate in Indonesia under certain circumstances to support the oil and gas industry. Previously, the 2008 Shipping Law provided that only Indonesian flagged vessels owned by Indonesian shipping companies can engage in domestic sea transportation, and that foreign ownership of Indonesian shipping companies be limited to 49%. These requirements were broadly interpreted to include companies, such as the oil companies, that arguably do not engage in the domestic sea transportation of goods and persons as their primary business. The oil and gas industry, which viewed the conditions as onerous, had been particularly affected due to the lack of alternative vessels.

To alleviate the expected negative effect of the Shipping Law on the country's oil and gas

industry, the government, through Government Regulation No 22 of 2011, broadened the rules on use of foreign flagged vessels through definitional changes and to exclude certain vessels from the cabotage requirements. However, the regulations are still very restrictive on the use of foreign vessels and set forth significant conditions for companies to prove that Indonesian-flagged vessels are not available.

Oil and gas cost recovery

Coming into effect in December 2010, the government clarified operating costs that can be recovered and the income tax treatment of the upstream oil and natural gas business sector through Government Regulation No 79 of 2010 (GR 79). While GR 79 establishes additional limitations on cost recovery, it also provides greater clarity that may positively affect the interests of investors in the upstream oil and gas sector.

Mining and geothermal updates

Two years after the promulgation of Indonesia's new law on mineral and coal mining, the Indonesian regulatory regime is still far from ideal. The government has not determined national mining zones nor issued regulations on the bidding process for acquiring a mining area. Therefore, the government has not been able to issue new mining licenses for new investors but can only extend or upgrade existing licenses. As a result, potential investors are limited to exploring or producing by way of acquiring shares in existing mineral and coal concession holders.

The outlook for geothermal investment however is more promising. With the country possessing approximately 40% of the world's geothermal potential, the Government of Indonesia is looking at the area as an alternative energy source with an eye towards accelerating investment, production and tax incentives for geothermal producers. A Presidential Decree in 2010 urged the State Electricity

Company (PLN) to accelerate the development of renewable energy, and more efforts are underway in the fields of energy and mineral resources, finance and forestry to support the industry's development.

Forestry

The Ministry of Forestry issued a regulation concerning the guidelines for using forestry areas for non-forestry related development. Forest areas can only be used for non-forestry related development that has strategic purposes, such as mining, electricity, water installations, telecommunications, public facilities, toll roads and railways.

Supreme courts

The Indonesian Supreme Court continues its efforts to improve efficiency, effectiveness, transparency and accountability in the courts by requiring an electronic copy of all documents for appeals and judicial reviews submitted to the Supreme Court. If the electronic copy of such appeal or judicial reviews is not submitted, such submission shall be deemed incomplete and will be rejected.

Capital markets

Recommended firms	
Tier 1	Assegaf Hamzah & Partners Hadiputranto Hadinoto & Partners Makes & Partners Melli Darsa & Co
Tier 2	Ali Burdiardjo Nugroho Reksodiputro Bahar & Partners Hiswara Bunjamin & Tandjung Lubis Ganie Surowidjojo Makarim & Taira S MKK - Mochtar Karuwin Komar Soemadipradja & Taher
Tier 3	Hendra Soenardi Hutabarat Halim Rekan Kartini Muljadi & Rekan Soewito Suhardiman Eddymurthy Kardono

Mergers and acquisitions

Recommended firms	
Tier 1	Assegaf Hamzah & Partners Hadiputranto Hadinoto & Partners Hiswara Bunjamin & Tandjung Melli Darsa & Co
Tier 2	Ali Burdiardjo Nugroho Reksodiputro Hendra Soenardi Lubis Ganie Surowidjojo Makarim & Taira S Makes & Partners MKK - Mochtar Karuwin Komar Soemadipradja & Taher Soewito Suhardiman Eddymurthy Kardono
Tier 3	Bahar & Partners DNC Advocates At Work Hanafiah Ponggawa & Partners Hutabarat Halim Rekan Kartini Muljadi & Rekan

Soewito Suhardiman Eddymurthy Kardono (SSEK)

SSEK "are a very professionally run firm, work product is quite clear and high professional standards, very knowledgeable in their understanding of Indonesian law", comments a client. The firm has built a solid reputation and clients have taken note: "[SSEK] are most likely the only firm to be able to pull off the complex structures we look for in a successful conclusion to an acquisition," says one.

Darrell Johnson is a highly commended "top dawer" foreign counsel, say peers, and his work this year included leading the team in advising Toyota in a joint venture company with PT Astra Otoparts to acquire the existing compressor production business from PT Denso Indonesia.

The M&A team advised GE Capital last year as it divested several financial holdings in Indonesia through various projects. These projects include the sale of GE Capital Banking shares in PT GE Finance Indonesia. SSEK worked extensively with Bank Indonesia, the Ministry of Finance and GE's international counsel throughout the complex transaction to complete the sale.

A major asset to the M&A team is foreign counsel Michael Carl. "Michael displays a deep knowledge of Indonesian law. He identifies the key issues and is able to explain them clearly and yet propose innovative suggestions," comments a client. Another client offered further praise: "Michael is very good at explaining things in detail for example the inconsistency in certain legislations."

Leading lawyers

Michael Carl
Ira Eddymurthy
Darrell R Johnson

Banking

Recommended firms	
Tier 1	Ali Burdiardjo Nugroho Reksodiputro Hadiputranto Hadinoto & Partners Melli Darsa & Co
Tier 2	Assegaf Hamzah & Partners Bahar & Partners DNC Advocates At Work Hiswara Bunjamin & Tandjung Lubis Ganie Surowidjojo Makarim & Taira S Makes & Partners Soemadipradja & Taher Soewito Suhardiman Eddymurthy Kardono
Tier 3	Hanafiah Ponggawa & Partners Hendra Soenardi Hutabarat Halim Rekan Kartini Muljadi & Rekan MKK - Mochtar Karuwin Komar

Project finance

Recommended firms	
Tier 1	Ali Burdiardjo Nugroho Reksodiputro Hadiputranto Hadinoto & Partners Makarim & Taira S
Tier 2	Assegaf Hamzah & Partners Hiswara Bunjamin & Tandjung Lubis Ganie Surowidjojo Soemadipradja & Taher Soewito Suhardiman Eddymurthy Kardono
Tier 3	Bahar & Partners Hanafiah Ponggawa & Partners Hendra Soenardi Makes & Partners MKK - Mochtar Karuwin Komar

Restructuring and insolvency

Recommended firms

Tier 1

Hadiputranto Hadinoto & Partners
Lubis Ganie Surowidjojo

Tier 2

Ali Burdiardjo Nugroho Reksodiputro
Makarim & Taira S
Makes & Partners

Tier 3

BT Partnership
DNC Advocates At Work
Hiswara Bunjamin & Tandjung
Hutabarat Halim Rekan
Kartini Muljadi & Rekan
Lubis Santosa & Maulana
Soewito Suhardiman Eddymurthy Kardono

Leading lawyers

Ira Eddymurthy
Darrell Johnson
Michal Twomey

Soewito Suhardiman Eddymurthy Kardono (SSEK)

“SSEK is a very well known and respected project finance firm”, comments a rival law firm. One client adds that SSEK produces “strong work generally and I’ve found their responses are well thought out”.

Another rival partner praises partner Ira Eddymurthy as “not only a good lawyer but she is also very resilient”, and special foreign counsel Michal Twomey for having “a lot of experience and being a good operator who is very knowledgeable”.

Clients also appreciate the firm’s up to date knowledge of the law: “The new laws have impacted our project and with nobody fully understanding the operation of a new law with no clear precedence, SSEK found a solution,” says one.

The banking team advised Chartis Insurance (formerly AIU Insurance) in connection with the restructuring of PT Chartis Indonesia, one of the largest insurance companies in Indonesia. SSEK worked closely with the Indonesian Insurance Bureau, the Ministry of Finance and the Capital Investment Coordinating Board to substitute a new local shareholder in this transaction.

The team also advised PT Arpeni Pratama Ocean Line on the ongoing complex debt restructuring of a large shipping company, which operates ships in both Indonesian and international waters. This transaction involved domestic and foreign debt including US dollar bonds, Rp bonds, and Rp *sukuks* (Islamic bonds).

Another notable highlight was advising Adani Group India and its Indonesian subsidiary, PT Adani Global, in connection with a \$1.6 billion rail and port infrastructure project in South Sumatra.

SOEWITO SUHARDIMAN EDDYMURTHY KARDONO

14th Floor, Mayapada Tower, Jl. Jend. Sudirman Kav. 28
 Jakarta 12920, Indonesia
 Tel: +62 21 5212038, 5212130 Fax: +62 21 5212039
 Web: www.ssek.com Email: ssek@ssek.com

Managing Partner: Rusmaini Lenggogeni

**The firm:**

Soewito Suhardiman Eddymurthy Kardono (SSEK) was established in 1992 and is now the largest independent corporate and commercial law firm in Indonesia. Enjoying a strong reputation in Oil and Gas, Mining, and the full range of Corporate and Financial services, SSEK was named the 2011 Indonesian Law Firm of the Year by Chambers Asia. SSEK has developed a strong working relationship with the Indonesian government which assists our lawyers in keeping you up to date on new legislation, whilst providing the depth of knowledge and experience needed to help you minimise risk and achieve your business goals.

Main areas of practice:

Banking • Financing & Insurance • Capital Markets & Securities • Infrastructure Development & Project Finance • Mergers & Acquisitions • Oil & Gas • Arbitration & Dispute Resolution • Antitrust & Competition Law • Energy • Mining & Natural Resources • IT & Telecoms • Labour & Employment • Real Estate • Restructuring & Insolvency • Shipping & Logistics • Tax Law • Risk Management & Compliance

INTERNATIONAL WORK: SSEK is familiar with the legal systems of Singapore, Thailand, Malaysia and other Asian countries, as well as Europe, Canada and the United States, through the involvement of its attorneys in various international projects. SSEK maintains close relationships with major law firms throughout the ASEAN region as well as other jurisdictions.

LANGUAGES: Indonesian and English.