

"Do You Know" Series



Party Identification and Execution of Contracts in Indonesia

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In this collection, the Asian Business Law Institute ("ABLI") briefly discusses issues concerning the identification of parties under commercial contracts and the execution of such contracts in select civil, common and hybrid jurisdictions. Earlier collections have examined indemnity and liquidated damages clauses, contractual breach and remedy, interpretation of contracts, administrative and tax requirements of contracts, and choice-of-law and choice-of-forum clauses in commercial contracts in those same jurisdictions.

The short article below provides a brief overview of selected requirements and practices under Indonesian law.

Party Identification

Business entities, whether in the form of a legal entity or not, are among parties allowed by Indonesian law to enter into contracts.

To do business in Indonesia, a foreign investor shall form a limited liability company with foreign capital investment (*perseroan terbatas dengan penanaman modal asing*), commonly known in Indonesia as a PT PMA. Foreign companies are allowed to conduct business directly in Indonesia's upstream oil and gas sector and construction sector.

Foreign companies can enter into contracts after they have been duly incorporated in Indonesia. For example, they may enter into contracts once they are duly incorporated as PT PMAs based on Indonesian laws and regulations. Such incorporation is normally evidenced by an approval from the Minister of Law and Human Rights of a PT PMA's deed of establishment and its completed registration on the Online Single Submission business licensing system under the auspices of the Ministry of Investment or the Indonesian Capital Investment Coordinating Board. Direct foreign companies can enter into contracts after they have been fully incorporated and after the necessary licenses, as required and regulated under the relevant ministry for the companies' business, have been obtained by the direct foreign companies.

For a business entity, the parties section of a contract in Indonesia will usually list its name and address. It should be noted that it is not possible to differentiate between domestic limited liability companies and limited liability companies with foreign investment simply by referring to the parties section of a contract because both types of companies have "PT" in front of their names, with no other differentiator. One must review the incorporation documentation of a company to identify whether it is a domestic or foreign-invested limited liability company.

Execution of Contracts

One of the requirements under Indonesian law for a contract to be enforceable is "the agreement of the parties". Signatures of the parties are usually considered as evidence of such "agreement" on the contract they have entered into. Failure to obtain the signature of a party may cause the contract to be cancelled. In addition, Indonesia law only recognises the execution of a contract by signature (and not other means), and the

signature of one of the contracting parties must be executed over a stamp duty of a certain value. Otherwise, there is no mandatory legal requirement on the form of the execution block in a contract, or on whether the date and place of execution should be recorded (though such information is desirable).

The Law No. 11 of 2008 regarding Information and Electronic Transaction, as amended by Law No. 19 of 2016 ("Information and Electronic Transaction Law"), recognises electronic contracts as contracts made through an electronic system that generates electronic information. The requirements for electronic contracts to be valid are the same as those required by the Indonesian Civil Code for non-electronic contracts. Electronic signatures must fulfill applicable requirements, such as that the data of the electronic signature is related only to the signatory, under the Information and Electronic Transaction Law to be valid.

Others

Under Indonesian law, all contracts involving an Indonesian party must be made in the Indonesian language. A contract can be prepared in a bilingual or multi-lingual form, provided that the Indonesian language version is available. Therefore, contracts in a foreign language that involve an Indonesian party shall be valid if they are accompanied by an Indonesian translation. It is also common practice for parties to a contract to choose one of the languages as the prevailing language in the event of any inconsistencies or disputes between the Indonesian and non-Indonesian language versions.

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The experts are contributors to ABLI's latest project that aims at harmonising contractual clauses in Asia, covering 12 key contracting jurisdictions that include Australia, China, England, India, Indonesia, Japan, Malaysia, New York State, the Philippines, Singapore, Thailand and Vietnam.

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