

Legal Alert

RECENT DEVELOPMENTS IN THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS AGAINST STATE OWNED ENTERPRISES TO SATISFY STATE LIABILITIES

I. Introduction

A trend emerging in cross border litigation is the action being taken by claimants against assets of State-owned enterprises (“**SOE**”) to satisfy the liabilities of those SOEs’ home State – for example, liabilities that arise based on adverse arbitration awards.

Given that trend, it is useful to highlight the importance of protection of SOEs’ assets, particularly those assets located in overseas operations. This issue is particularly relevant for an SOE that possess an extensive global asset portfolio. Such an SOE ought to be considering these threats to its assets, resulting not simply from its own liabilities incurred in overseas operations, but also and in particular resulting from its home State’s liabilities (incurred in any capacity, including but not limited to the State’s liabilities arising from an international arbitration proceeding).

II. Recent Examples Demonstrating Significant Risks

Two recent examples illustrate how significant these risks can be:

Case	Details
Sulu State v. Malaysia	Seizure of Petronas' assets to meet Malaysia's liability under a \$15 billion arbitration award
Tethyan Copper v. Pakistan	Seizure of assets and replacement of the Board without notice of Pakistan International Airways to meet Pakistan's liability under a \$6 billion arbitration award

III. Asset Protection Strategies

Asset protection strategies play a pivotal role in proactively safeguarding assets that may be subject to enforcement actions in international and/or foreign legal proceedings. Given the above developments, this is currently of acute relevance for SOEs.

Asset protection can be considered and implemented throughout these three main phases:

1. **Advance Planning Phase:** Addressing risks posed to assets in foreign jurisdictions (e.g., ownership structuring and contract structuring)
2. **Litigation Strategy Phase:** Developing strategies in the event a dispute resolution mechanism is triggered
3. **Enforcement Phase:** Implementing defensive measures when a liability under an award is executed against specific assets

IV. Conclusion

Seeing the above, it is important for SOEs to have an integrated and coordinated approach, managed together with a law firm with an extensive international network that is expert in arbitration and international litigation. That is necessary in order for the SOE both to take precautionary measures prior to the emergence of such enforcement actions, and also to defend against enforcement at a later stage.

At GHP we have access to this international network, including international counsel who are experienced in dealing with such matters. GHP is thus uniquely placed in the Indonesia market to assist on both the advisory and litigation sides of this issue.

We will continue to follow the developments of this topic. Should you have any queries on this topic, please contact our office:



World Trade Center 3, Level 27
Jl. Jend. Sudirman Kav. 29-31
Jakarta 12920, Indonesia

T: +6221 50110199

www.lawghp.com

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