Indonesian Supreme Court bows to international pressure in key bankruptcy case

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Under considerable international pressure, the Supreme Court of Indonesia on July 8 overruled a decision by the country's Commercial Court declaring bankrupt the local subsidiary of the Canadian-based Manulife Financial Corporation. The June 13 Commercial Court judgment, which threatened Manulife's assets in a company considered solvent by Indonesia's finance ministry, had provoked outrage in international financial circles and warnings of a collapse of foreign investment.

At the heart of the protracted legal dispute is a determined rearguard action by sections of Indonesian business to hold together empires that collapsed in the course of the Asian financial crisis in 1997-98. Many of their holdings plummetted in value and were bought up at firesale prices by investors, local and foreign, or were taken over by the Indonesian Bank Restructuring Agency. The IMF and World Bank are insisting that the Indonesian judicial system be reformed to protect the interests of international investors.

The original bankruptcy ruling was sought by Indonesian tycoon Suyanto Gondokusumo, whose family company PT Dharmala Sakti Sejahtera (DSS), owned a 40 percent share in the Manulife subsidiary, PT Asuransi Jiwa Manulife Indonesia (AJMI). DSS, however, declared bankruptcy in May 2000 and Manulife bought up the share in a government-supervised auction sale in October 2000.

The purchase has been subject of bitter legal wrangling. It was immediately challenged by a company called Roman Gold Assets based in the British Virgin Islands, which claimed to have bought the stake two weeks before the auction. Manulife alleged that Roman Gold Assets was simply a front for the Gondokusumo family. But on the basis of the challenge, AJMI vice-chairman Adi Purnomo was accused of fraud and jailed in Jakarta. He was only released after Canadian Prime Minister Jean Chrétien personally intervened to warn Indonesian President Abdurrahman Wahid of adverse consequences.

Gondokusumo then launched bankruptcy proceedings in the Commercial Court, which was established in 1999 at the behest of the international finance institutions to reform business law. Far from being insolvent, AJMI is Indonesian's fourth largest life insurer with 400,000 policy holders and assets of some $US360 million. But the petitioners claimed that AJMI had failed to pay a dividend to Gondokusumo's DSS in 1999, even though the company had made a profit.

In June, three Commercial Court judges ruled in Gondokusumo's favour, pointing out that the terms of the joint venture had included the payment of a dividend if profits were registered. Manulife argued that it had been bound by a decision of its shareholders, who had voted in mid-2000 to withhold any payment because of economic certainty. Manulife was the majority stakeholder in AJMI with 51 percent of shares.

A little over a week later, Manulife found a full-page advertisement placed by the court-appointed receiver, Kalisutan, in the daily *Bisnis* newspaper announcing that AJMI would cease trading and close the doors of its 75 branches. Manulife Indonesia chairman Victor Apps declared: "We have been threatened (by the receiver) to close our offices or our employees will be arrested. We will not be in a position of jeopardising the safety of our people." Company president Philip Hampden-Smith denounced Kalisutan's actions as "trying to ruin the business".

Both the company and the Canadian government responded angrily to the Commercial Court ruling and the receiver's actions. Manulife attacked the ruling as "bought and paid for" by the Gondokusumo family. The chief executive of the Canadian parent, Dominic D'Alessandro, said his company had been the victim of "a public mugging" and the company launched an appeal in the Supreme Court in Jakarta. Manulife lawyers

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pointed out that Kalisutan had connections to the Gondokusumo family company and was not a current member of Indonesian Receivers Association.

Canadian Secretary of State for Asia-Pacific, David Kilgour, visited Jakarta calling for a reversal of the decision. He told the media: “The Indonesian government should seek a court order to preclude the receiver from disbursing any money and begin an immediate investigation of all those involved in the campaign against Manulife.” Canadian officials hinted at economic retaliation against Indonesia.

Canada’s open intervention provoked a reaction in Indonesia. Vice-President Hamzah Haz told the Canadian government to back off and leave the matter to the Indonesian courts. “[They] can complain through the mechanism but don’t try threats,” he told the journalists. But Jakarta was quickly forced to change its tune as it faced a barrage of protests and threats by the spokesmen of international finance capital.

The IMF seized on the Manulife case to demand that the Indonesian government speed up the reform of the Commercial Court and the revision of the country’s bankruptcy laws. “Legal and judicial sector reforms remain critical to a sustained improvement in investment climate. A recent high-profile controversial ruling underscores the need for an acceleration of reforms in this area,” Anne Krueger, IMF first deputy managing director, declared in late June.

The implied threat was obvious. Unless the Manulife decision was reversed, Indonesia faced a flight of international capital and the danger that the IMF could withhold its loans. Foreign investment has already been plummetting. Foreign direct investment approvals, which were $15.4 billion in 2000, fell to $9 billion in 2001 and by a massive 59 percent to $1.6 billion in the first five months of 2002.

US Chamber of Commerce president in Jakarta, Carol Hessler, declared: “Unfortunately decisions like this are more routine than shocking. It is a desperate situation for foreign investment. How can you invest in Indonesia in this environment?”

The commercial arm of the World Bank, the International Finance Corporation (IFC), which owns a 9 percent stake in Manulife Indonesia, said it would be reviewing its investment activities in the light of the June 13 ruling. IFC official Amitava Banerjee told the *New York Times* that the case had shown that big companies “can be bought down by the machinations of malicious parties, and there is no legal protection in the court of law”.

The *New York Times* commented that the situation facing foreign investors was more chaotic than under the Suharto regime. “Foreign executives say it is increasingly difficult to do business in Indonesia because the courts are often a marketplace where the sizes of bribes decide cases. Under Suharto, they say, corruption was at least organised in a fairly predictable hierarchical system; now it is running out of control.”

Faced with this mounting pressure, President Megawati Sukarnoputri’s administration began to move against the Commercial Court. The three judges who authored the June 13 decision were relieved of their duties. Their ruling was subject to an investigation by the Jakarta High Court, which reported to Supreme Court Chief Justice Bagir Manan. In addition the Ministry of Justice and Human Rights began a separate investigation.

On June 27, in response to Canadian demands, the receiver Kalisutan announced that he had resigned following further developments in the case and comments from government officials. On July 6, at the instigation of the Ministry of Justice and Human Rights, police began to examine the bank accounts of the three Commercial Court judges to determine whether there was any evidence of bribery.

The international reaction to the July 8 Supreme Court decision overturning the bankruptcy ruling has been generally favourable. Manulife executive Victor Apps told journalists in Hong Kong that he regarded the decision as “a watershed”. “There’s nothing to be gained by continuing this (corrupt) process, everybody is a loser,” he said.

The Supreme Court ruling was, however, based a technicality. It found that the original bankruptcy petition did not have prior approval from a judge as required by Indonesia’s bankruptcy laws. The decision opens up the possibility of new bankruptcy proceedings, which have already been mooted by the receiver of the Gondokusumo family’s failed company DSS.

Whatever the exact legal outcome, the Manulife case is going to be used by international investors to step up pressure on the Megawati administration for far-reaching legal changes to protect their interests.

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