Hitting the right notes

22 November 2016

We've successfully advised longstanding client, The Bank of New York Mellon, in its capacity as trustee (the “Trustee”) in relation to the US$300 million 12% Guaranteed Senior Secured Notes (the “2016 Notes”) due 2016 issued by Bumi Capital Pte. Ltd (“Bumi Capital”) and the US$700 million 10.75% Guaranteed Senior Secured Notes due 2017 (the “2017 Notes” and together with the 2016 Notes, the “Notes”) issued by Bumi Investment Pte. Ltd. (“Bumi Investment”), each guaranteed by Indonesian coal mining company, Bumi Resources Tbk. (“Bumi”).

Bumi Capital and Bumi Investment defaulted on their respective Notes in 2014. However, it was not until April 2016 that a third party creditor petitioned the Jakarta Commercial Court (the “Court”) to place Bumi Resources into a court supervised debt restructuring process known as Penundaan Kewajiban Pembayaran Utang (“PKPU”).

The Court approved the PKPU and appointed Administrators to collate and verify claims from creditors of Bumi Resources.

Working with our colleagues at Dewi Negara Fachri & Partners (DNFP), we succeeded in having the Trustee recognized as a rightful creditor for, what we believe, is the first time in a PKPU. This allowed the Trustee to submit votes in relation to the outstanding Notes, at the creditors’ meeting convened to consider the debt restructuring plan proposed by Bumi to its creditors (the “Composition Plan”). We were also successful in obtaining the Administrator’s approval for the Trustee to split its votes in accordance with instructions received from holders of the Notes in relation to the Composition Plan. This was a significant result as New York law, the governing law of the Notes, does not allow the Trustee to bind the minority where material amendments are being made to the terms of debt securities.

Following a number of extensions to the PKPU timetable, on 9 November 2016, the final creditors’ meeting took place and the Composition Plan was approved.

Subject to any successful application to refuse or annul, we expect the Court to ratify the Composition Plan at the hearing scheduled on 28 November 2016.

The team in Singapore was led by partner Andy Ferris with support from senior associate Ryan Spence. The DNFP team was led by partner Chalid Heyder with support from associate Triangga.
Kamal. Further assistance in relation to New York law was provided by partner Rob Ripin in New York with support from associate Patricia Ciccone.

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