ASIA TIMES Online
June 28, 2002 atimes.com

Southeast Asia

Indonesia: No insurance against failure

By Bill Guerin

JAKARTA - With all of its 72 branches closed down, PT Asuransi Jiwa Manulife Indonesia (AJMI), the Indonesian unit of Canada's insurance giant Manulife Financial Corp, could be forgiven for wondering why it ever invested in Indonesia in the first place.

Last Friday AJMI halted all operations at its branches that service 33 Indonesian towns and cities and sent its staff home after being declared bankrupt.

Despite the distinctly undiplomatic growling from Canadian Foreign Minister Bill Graham, and the utter disbelief of Indonesia watchers, AJMI's onetime subsidiary, the now-defunct PT Dharmala Sakti Sejahtera, continues to hold its former parent company to ransom.

Dharmala, founded by Suyanto Gondokusumo and his family, is the country's third-largest corporate debtor behind Texmaco's Marimutu Sinivasan and Barito Pacific's Prajogo Pangestu, and was described by the Indonesian Bank Restructuring Agency (IBRA) in January 2001 as one of the country's "naughtiest debtors" after being declared bankrupt by the Jakarta Commercial Court in June 2000.

The Canadian-based company, on the other hand, has operated in Indonesia for 16 years, has 4,000 staff and 400,000 policyholders, but it is being battered into submission by highly controversial legal processes instigated by the Gondokusumos, aided by their aggressive Jakarta litigator Lucas, known for his dedicated "get me out of bankruptcy" services.

The Gondokusumos succeeded in winning a verdict of bankruptcy against a company (AJMI) that had posted a 2001 net profit of 75.5 billion rupiah (US$8.59 million) and which had assets worth 3.1 trillion rupiah. On June 13, the Jakarta Commercial Court declared AJMI

bankrupt because it didn't pay a dividend in 1999, and thus had an unpaid debt to Dharmala, which owned 40 percent of the company at the time. An appeal has been lodged with the Supreme Court.

Manulife (Manulife Financial Corp) owned 51 percent of AJMI when the investment was set up with Dharmala (40 percent) and the World Bank's International Finance Corp (IFC) (9 percent) making up the remainder.

The Dharmala receiver Paul Sukran lodged the petition on the grounds that Manulife had failed to pay 3.6 billion rupiah in dividend profits owed to Dharmala from 1998. Manulife blamed the plaintiff, saying that it did not have an account with a reputable bank. Sukran's lawyer, Yuhelsom, of Bramm and Associates, threatening more legal wizardry, said that Manulife should also pay interest on its retained profit amounting to 1.9 billion rupiah and said that it still owed Dharmala another 204 billion rupiah in dividends from Dharmala's share of Manulife Indonesia's net profit in 2000.

AJMI says the case against it is groundless, as the company's shareholders never approved the demanded dividend payment, and it also claims that the court's presiding judge, Hasan Basri, received "significant financial enticement" to make the bankruptcy ruling.

AJMI also wanted its court-appointed receiver, S H Kalisutan, who Canadian Secretary of State for Asia-Pacific David Kilgour said was aiming to "ruin the company", removed on grounds of bias.

The judgment follows a legal victory for Manulife in Singapore, where it won a court order freezing up to $36 million in assets held there by Dharmala's owner Suyanto and his family. The court order followed a Manulife suit against Suyanto and six other defendants last month.

Manulife bought the 40 percent stake of its bankrupt former Indonesian partner through a government-sponsored fire sale in Jakarta in October 2000. It paid 170 billion rupiah in an auction deal that was set up and approved by IBRA and held by the State Auction House.

Theoretically, this would have given Manulife a 91 percent stake in AJMI, up from its earlier 51 percent, but a company called Roman Gold Assets popped up and claimed proof of ownership of the same Dharmala shares. Roman Gold had apparently bought the shares a week before the IBRA auction through the West Samoan company Highmead Ltd, based in Singapore.

Local media at the time reported that Highmead Ltd was given power of attorney over the shares from Harvest Hero Hong Kong director Lay Le Heng way back in 1996. Lay was said to have obtained the shares through a transaction with Suyanto Gondokusumo himself in February that year. On March 1, 1996, Lay authorized the West Samoan company to sell the shares.

Philip Hampden-Smith, president director of AJMI, dismissed this as fabrication and pointed out that the pledging was never reported to the Jakarta Stock Exchange, Bapepam (the supervisory board for share trading supervision) or the tax office, let alone to the board of AJMI. Harvest Hero, in turn, established an irrevocable trust to Highmead, which then sold to Roman Gold less than 48 hours before the auction.

Manulife's recent successful suit in Singapore alleged that this mechanism was blatant misuse by the family of a shell company to try to retain ownership of Dharmala's shareholding in Manulife and was intended to block Manulife from acquiring it after Dharmala was declared bankrupt in 2000. Manulife also said it had subsequently obtained documents showing that Suyanto's sister-in-law, Lanny Angkosubroto, owned Roman Gold.

After the auction the Indonesian police froze the proceeds on the grounds that the sale was illegal and promptly arrested AJMI's vice president, Adhie Purnomo Wijaya, whom they detained for three weeks, claiming that he had admitted forging the shares, thus making the auction illegal.

The investigation went ahead very slowly amid speculation that top police generals had been bribed to bring the charges. Senior Manulife executives complained of harassment from the police, a campaign in the press against them by Dharmala-connected lawyers, and a bogus insurance claim (the Marcellina case) that was set up to make them look bad.

The police also froze a bank account holding the 170 billion rupiah proceeds from Manulife's purchase though clearly most of this should have gone to the IBRA, which at the time was struggling to meet its target for the state budget.

There were allegations that Suyanto was well connected to the then police chief General Bimantoro when the latter was chief of police in Surabaya, Indonesia's second-largest city.

Whether or not this speculation was well founded, despite pressure from some cabinet ministers, an investigation by IBRA and the attorney general's office, and Bapepam's actions against Suyanto for securities violations relating in the Manulife case, the police persisted with their anti-Manulife action.

Hampden-Smith also claimed to have been approached at the time by an intermediary on behalf of Dharmala/Roman Gold, called George Gunawan of the auction house PT Balindo, who offered him an illegal backdoor deal whereby they would have taken part in an auction where the price would have been agreed beforehand, at more than 400 billion rupiah, far more than the stake was worth. The inference was that all the money would go to Roman Gold, that is, Dharmala, while the creditors

and IBRA would get nothing.

This was confirmed by Manulife's lawyer Hotma Sitompoel, who said Gunawan had claimed that he had connections with high-level people able to stop the police case against Manulife.

A few months later, Chris Bendl, managing director of PT Manulife Aset Manajemen Indonesia, AJMI's investment and pension arm, claimed that a Dharmala lawyer had approached him. Bendl claimed that he was quoted a figure of 60 billion rupiah, a big drop from earlier demands of 400 billion rupiah, in exchange for stopping the legal harassment of Manulife.

Manulife's lawyers point out that this latest court action is the fourth that AJMI has faced in recent months, and slammed it as an attempt "to use the judicial system in an attempt to extort money from Manulife".

The battle, like the war of words, is high-profile and with no holds barred. The World Bank (through its IFC), as it holds 9 percent of AJMI shares has, through Amitava Banerjee, the IFC representative in Indonesia, not minced its words. He said the Jakarta court bankruptcy decision showed that strong, well-run companies "can be brought down by the machinations of malicious interested parties, and there is no protection in the court of law".

Justice and Human Rights Minister Yusril Ihza Mahendra has ordered an investigation of the three judges who made the decision, but has also publicly slammed the Canadian ambassador for a statement criticizing the Indonesian system of law. "What is scrambled is the brain of the ambassador himself. This is a conflict between two separate parties and is merely a standard process of law, there's no need to blow the case up," Yusril said.

The presiding judge, Hasan Basri, on the panel of three that decreed the bankruptcy actually dissented from the verdict, but oddly enough Manulife has still accused him of bribe-taking.

Indonesian Vice President Hamzah Haz also warned Canada off when telling a press conference, "I think Canada should not [overreact]. We, you know, have a legal process which is in effect ... but Canada should not try threatening us."

Indonesian courts' propensity to issue such unpredictable judgments on commercial matters and the high-profile nature of this Manulife battle underscore growing alarm among the business community and foreign investors. If would-be investors see that they can't rely on Indonesia's judicial system to enforce contracts or to protect their legal rights, they will write Indonesia off for a long time to come.

One other after-effect of the Singaporean court order to freeze the Gondokusumo assets may be an alarm call to wealthy Indonesians (not

all of them Chinese) who park their money and their assets in Indonesia's tiny but wealthy neighboring country.

One reason for this is the lack of an extradition treaty with Indonesia, despite both countries having discussed the possibility many times. Singapore will certainly want to guard against any suggestion that the island state harbors criminals or those who take refuge from legal process. Many of IBRA's debtors live in Singapore by choice and they will be closely monitoring Manulife's actions there against their Indonesian debtors.

Manulife's Singapore court order on May 18 against Suyanto, his wife Jacqueline and his mother Tinawati, prevents them from "disposing of any of their assets in Singapore [including bank accounts, motor vehicles, shares and property] up to a maximum of $36 million" [US].

These defendants, as well as Suyanto's sister-in-law, Lanny Angkosubroto, Roman Gold and its director, Surabaya-businessman Haryono Winarta, as well as the lawyer Lucas are being sued for damages for conspiring to defraud Manulife.

The case also impacts heavily on the beleaguered IBRA. If the Manulife case is not resolved to IBRA's satisfaction, then it also sets a dangerous precedent for every other rogue debtor in Indonesia to imitate.

Finally, the fate of policyholders remains unclear. Notwithstanding constant assurances that Manulife would back them to the hilt, some major Jakarta hospitals are now refusing to accept AJMI policies as guarantees for medical treatment and the court-appointed receiver S H Kalisutan has paid for space in local newspapers to warn policyholders and other creditors "to immediately submit their claims".

Hampden-Smith slammed this tactic as "basically inciting customers to cash in policies ... it is totally irresponsible, part of the overall plan to damage and ruin the company".

However, should Manulife lose the battle, or tire of the apparent hopelessness of their attempts to defy the corrupt judiciary in Indonesia, not only the Indonesian taxpayer may pay the price, but also many of those who had been assured they were insured.