

## Beyond the Singapore Convention: Lawsuit for Settlement Deed as a Way to Enforce Cross-Border Settlement Agreement in Indonesia



### Introduction

In an increasingly interconnected global landscape, the intricacies of cross-border disputes have underscored the need for effective resolution mechanisms. Among these mechanisms, international mediation has emerged as one of the avenues for achieving consensus in cross-border cases. However, many businesses still hesitate in choosing international mediation due to the differing practices on enforcement of mediated settlement agreements.

To respond to this pressing need, the Singapore Convention on Mediation (“**Singapore Convention**”) was conceived in 2019 as a solution to address the enforcement gap concerning mediated settlements across international borders. Its objectives centre around streamlining and standardising the recognition and enforcement of mediated agreements. By doing so, the Singapore Convention offers a systematic, cost-effective, and expeditious alternative to litigation.

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With respect to Indonesia, it has not ratified the Singapore Convention. Nonetheless, Indonesia has two legislative frameworks governing mediation: Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Law 30**"), which pertains to mediations stemming from alternative dispute resolution, and Supreme Court Regulation No. 1 of 2016 ("**Regulation**"), governing mediations emerging from court proceedings.

This writing will discuss how foreign businesses are increasingly turning to filing lawsuits for settlement deeds under the Regulation as a way to enforce their settlement agreements in Indonesia. It underscores the evolving landscape of cross-border dispute resolution in a nation grappling with the complexities of international mediation amidst the absence of direct adherence to the Singapore Convention.

## Legal Framework of Settlement Deed: From Creation to Confirmation

When parties reach an agreement in an out-of-court settlement or mediation, the terms of their settlement will be reflected in the form of a settlement agreement. Under Indonesian law, a settlement agreement has a legal force similar to ordinary agreements that merely document the occurrence of a legal relationship between the parties. If, at a later date, a party fails to fulfil the obligations they agreed upon, the aggrieved party can file a lawsuit for breach of contract. Therefore, the settlement agreement does not yet create legal certainty.

Legal certainty becomes effective when the parties agree to formalise the settlement agreement into a settlement deed endorsed by the court. Article 36(1) of the Regulation allows parties to turn their extrajudicial settlement agreement (effectively "elevating" it) into a settlement deed by filing a lawsuit for a settlement deed in the relevant District Court.

The examining judge will then assess whether the settlement agreement, in order to be confirmed as a settlement deed, contains any provisions contravening Article 27(2) of the Regulation, i.e., whether the settlement agreement is:

1. Contrary to the law, public order, and/or morality;
2. Detrimental to third parties; and
3. Impracticable.

These three fundamental aspects aim to prevent any legal manipulation that could substantively undermine the purpose of the Regulation and prevent it from becoming a means to infringe upon or control unrelated property rights.

A lawsuit for a settlement deed must be pronounced by the examining judge in a public session within a maximum of 14 days from the date of filing the lawsuit. However, this could take up to one month in practice, depending on the court's capacity. If the settlement agreement contains any provisions that

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contravene Article 27(2) of the Regulation, the examining judge must guide the parties to amend the settlement agreement.

Notably, within the framework of the Regulation, a mediator does not have to be present in forming a settlement agreement. Consequently, parties retain the liberty to craft a settlement agreement through negotiations without mediation. In such cases, parties possess the avenue to elevate their autonomously formed agreement into a legally recognised settlement deed by initiating a lawsuit for a settlement deed.

## Legal Attributes and Significance of Settlement Deed

Once formalised and elevated to the status of a settlement deed, a settlement agreement holds the same legal weight as a legally binding Indonesian court judgment. This grants the settlement deed three legal attributes akin to a regular judgment: a final and binding nature, the force of perfect evidence, and the strength of enforceability.

The "final" nature of the settlement deed corresponds to the definitive status of a judgment, protecting the settlement deed from subsequent legal challenges. On the other hand, being "binding" signifies that the judgment possesses legal force for both parties, necessitating the parties to honour the obligations outlined within the settlement deed.

As the "perfect evidence", a settlement deed carries full evidentiary weight. When presented as evidence, it removes the need for additional support to establish legal relationships (which form the ground for establishing rights and duties). The settlement deed has equal weight as an authentic instrument, one that is produced by officials like judges through the settlement judgment, purposely designed for evidentiary use. It also holds evidentiary force against third parties, even without binding them. Hence, aggrieved third parties can utilise the settlement deed for legal action.

A settlement deed has an "enforceable" nature. If a party fails to adhere to the settlement judgment's terms, the aggrieved party can seek execution through the issuing District Court. This avoids the need for a new lawsuit, streamlining the process.

## Filling the Gap: How Lawsuit for Settlement Deed Address the Singapore Convention Absence

As mentioned above, enforcing international mediated settlement agreements through filing a lawsuit for a settlement deed resonates with the principles of the Singapore Convention. Notably, this approach facilitates a streamlined and expeditious procedure for elevating settlement agreements to the status of settlement deeds. It also instils a sense of legal certainty, treating settlement agreements akin to court judgments.

Thus, since Indonesia has not ratified the Singapore Convention, a lawsuit for settlement deeds has emerged as a compelling mechanism to enforce cross-border mediated settlement in Indonesia. These

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procedures present a domestically rooted alternative that aligns with Indonesia's legal framework while offering solutions analogous to those envisioned by the Singapore Convention.

A noteworthy similarity can be observed in the criteria for refusing to enforce mediated settlement agreements under the Singapore Convention and the Regulation. Specifically, both legal frameworks encompass provisions that would prevent the enforcement of a settlement agreement under circumstances where it contradicts public policy, exhibits an incapability of being carried out, or pertains to a subject matter deemed unsuitable for mediation. The similarity in the grounds for refusal underscores the universality of the ideals encapsulated within the Singapore Convention and the Regulation, both of which emphasise the pivotal role of mediation in achieving a fair, efficient, and just resolution of disputes across diverse jurisdictions.

While the Singapore Convention accentuates international enforceability, the lawsuit for a settlement deed, operating within the ambit of the Regulations, thrives within the national legal landscape. The lack of international reach might appear as a limitation, yet this approach capitalises on its adaptability. It caters to Indonesia's unique legal context, enabling agreements to harmonise more closely with local norms and regulations. This highlights the versatility of the lawsuit for a settlement deed as a pragmatic solution that navigates the intricacies of Indonesia's legal milieu while addressing the challenges posed by the absence of direct adherence to the Singapore Convention.

## Conclusion

In a cross-border dispute resolution, the Singapore Convention undeniably marks a significant stride in bolstering the enforceability of international mediated settlement agreements across borders. However, within the current framework, where Indonesia has yet to ratify the Singapore Convention, exploring effective alternatives becomes imperative for parties seeking enforcement of their cross-border settlement agreements in Indonesia.

In this context, resorting to a lawsuit for settlement deeds under the Regulations emerges as a pragmatic and domestically aligned solution. This method streamlines the elevation of settlement agreements to the stature of settlement deeds, fostering a sense of legal certainty akin to court judgments. Amid Indonesia's non-ratification of the Singapore Convention, the lawsuit for a settlement deed offers a compelling domestic substitute, reflecting adaptability within Indonesia's legal framework. While the Singapore Convention highlights global reach, the lawsuit for a settlement deed effectively navigates Indonesia's legal landscape, showcasing versatility in addressing cross-border disputes.

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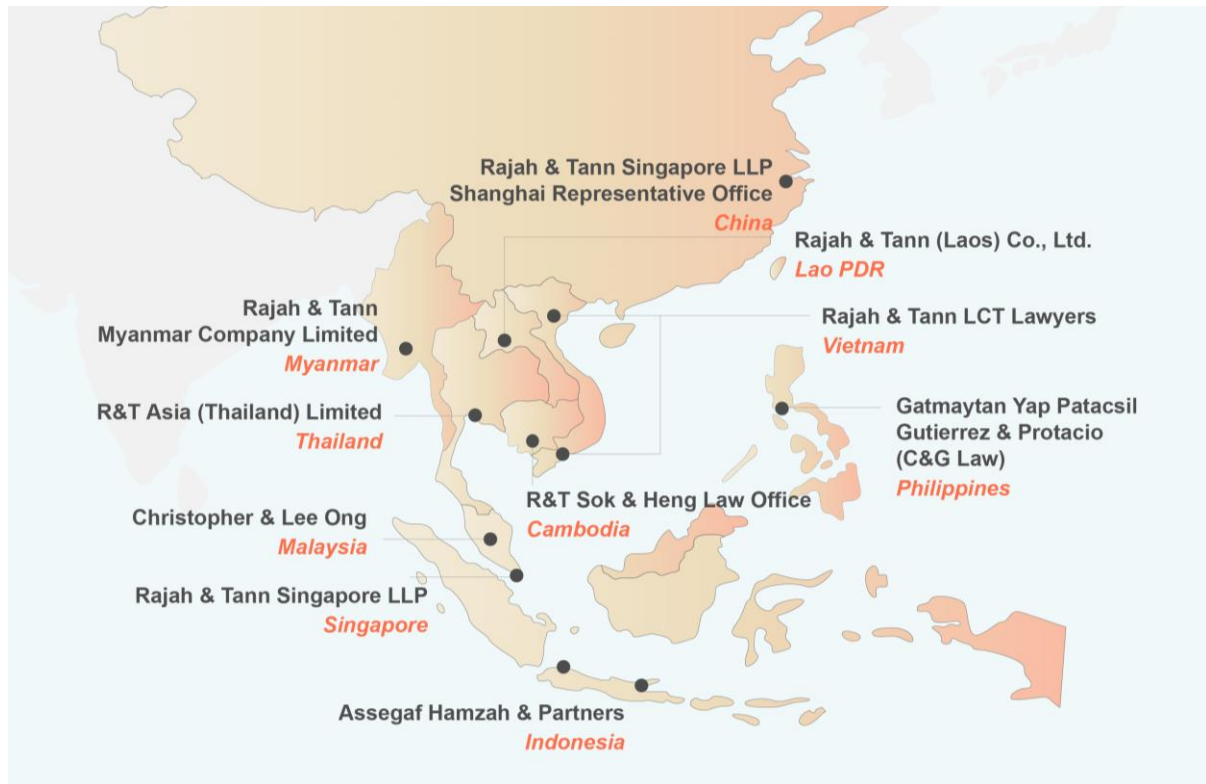
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