



## Loss of IMF insolvency advisor in Indonesia erodes confidence in reform programme

**B**ack in November 1997, Jerry Hoff, an idealistic young partner and bankruptcy expert with Dutch firm Loeff Claey's Verbeke, accepted the exciting challenge of heading up the firm's Singapore office and deploying his skills and experience in assisting clients throughout the region restructure their stricken enterprises.

On March 12 this year, news of the murder of a foreign professional who had been engaged in a restructuring project in Thailand finally evaporated the remaining confidence he held in the viability of conducting his business in the region. He took the next flight out and has no plans to return.

The rollercoaster of events that filled the period between these two decisions could not have remotely figured in Mr Hoff's thoughts when he first decided to make the move to Asia. But his story, which has been surprisingly largely overlooked in the international press, serves as a stark indication not only of the mounting tensions between sections of the Indonesian legal profession and foreign legal consultants, but of the pressures applied on professionals employed by international companies to work on the region's huge and complicated rebuilding programme in general.

Mr Hoff was recently quoted in the *Asian Wall Street Journal* as saying he had decided to leave the country because he wanted "a rest." However, the truth is he was left with little alternative after a vitriolic campaign originating from within the Indonesian legal profession created an atmosphere of tension which pinpointed him as a target for recrimination at a time of mounting resentment towards foreign professionals in Indonesia. Acute frustration at the pace of progress in implementing the new bankruptcy law is also understood to have contributed to his decision to leave.

Mr Hoff had been feeling increasingly isolated while acting as an advisor to the IMF and World Bank while 'of counsel' to a local Jakarta firm, and increasingly intimidated by the weight of the task of

taking a lead role in introducing reforms to the country's bankruptcy code - reforms that would inevitably seek to overturn long-established practices within the country. Analysts agree that the bankruptcy law's failure to function effectively remains a serious obstacle to Indonesian corporate debt restructuring.

In February, the Indonesian high court

upheld an earlier ruling that rejected a bankruptcy petition filed by a subsidiary of the World Bank against agricultural company PT Dharmala Agrifood. In the Dharmala judgement, the court ruled that a secured creditor can not petition for bankruptcy unless it has waived its security right. Mr Hoff was

surprised by this judgement, maintaining that every debtor can be declared bankrupt when he does not pay his creditor. Only in cases when a creditor is fully secured, and enforcement is very easy, is it possible to defend that bankruptcy is not the appropriate way, he argued.

Mr Hoff also felt that a creditor is entitled to make his loan due and payable on the basis that interest has not been paid. Loan agreements contain events of default, and one of them is normally non-payment of interest. Mr Hoff felt the court did not recognise the terms and conditions of the loan agreement.

These and other differences lead Mr Hoff to express his disappointment at the ruling. The lawyer, who had not only assisted in rewriting the bankruptcy law, but had given more than 50 lectures to judges and legal practitioners, and written a handbook, *Bankruptcy Law in Indonesia*, subsequently received a broadside from Makarim & Taira S lawyer Hotman Paris Hutapea.

Mr Hotman, who has been engaged in high-profile disputes with foreign lawyers in the past, wrote a critical letter to Mr Hoff, which was also widely circulated within Jakarta, sections from which subsequently made their way into the *Jakarta Post*. According to Mr Hoff, Mr Hotman later added in an appearance on Indonesian tele-

vision that the country's people could feel proud to have defeated the foreign "bachelor." Mr Hotman had earlier written that the courts had the opportunity to demonstrate that they were "prestigious and can not be lectured to by foreigners." Mr Hotman denied trying to undermine Mr Hoff's position or drive him out of the country, but claimed he had merely been seeking to engage him in "open debate."

Mr Hoff believes that the IMF may struggle to find a replacement who is prepared to take up where he left off, and feels that any technical approach to implementing Indonesia's new bankruptcy law is doomed to frustration.

Many members of the domestic legal profession in Indonesia are understood to be concerned by the signals that Mr Hoff's departure has sent out to the international business community. One human rights lawyer was quoted in the press as saying the episode would "send chills" through the legal profession.

Since his departure, Indonesia's chances of economic recovery have been dealt another blow by the bankruptcy courts following more controversial verdicts that analysts say will complicate the country's efforts to pursue bad debtors.

The commercial court recently ruled that it was unable to proceed with bankruptcy hearings brought by PT Bank Papan Sejahtera shortly before the bank was closed by the government two months ago. The Bank was one of 38 recently closed down by the government.

The Indonesian Bank Restructuring Agency (IBRA), the body that has been placed in charge of trying to rescue the stricken bank sector, had hoped the bankruptcy proceedings could still continue, but the court ruled that Bank Papan had no right to pursue the cases following its closure.

Letters from IBRA asking for the cases to proceed were rejected by the court on the grounds that they had no basis in law, creating fears that the ruling could set a precedent for similar judgements.

Mr Hoff now intends to rebuild his practice in the Netherlands. ■



Jerry Hoff