

Mars challenges Indonesian fine

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Mars is appealing to Indonesia's supreme court to overturn two lower court verdicts in which the chocolate bar maker was fined \$6.4m for breaching its distributor's contract.

Mars claims it has been forced into the move after becoming the latest in a long line of foreign investors to suffer questionable judicial verdicts in Indonesia.

It also claims the case further tarnishes Indonesia's investment environment, which many western companies regard as chilly, due largely to widespread legal uncertainty.

The confectioner's troubles began after it fired Smak Snak as its Indonesian national distributor in 2004. Mars says it had met all its legal obligations, including paying Smak Snak's outstanding operational costs, which both sides agreed were Rp2.65bn (\$290,000).

Mars also claims it offered to pay Smak Snak \$500,000 as a mutuality payment, which it estimated to be equivalent to 10 years of the distributor's profits.

Smak Snak rejected this and sued Mars for \$39m, 15 times the American group's average annual revenue from confectionery sales in Indonesia for 2001-2005. Smak Snak argued that Mars' termination was unlawful.

Smak Snak's audited accounts for 2003 show it made a loss of about \$250,000.

A Jakarta court found in Smak Snak's favour, with virtually none of Mars's evidence appearing in the verdict. Smak Snak won Rp59bn, including Rp3.45bn for outstanding operational costs even though these had been settled.

Mars appealed, but the verdict was upheld late last year. The appeal took only four weeks – six times quicker than average – and was delivered only weeks before the chief judge on the panel retired.

The supreme court has just accepted to hear the latest appeal. It usually takes years to rule on cases.

Khaled Rabbani, a Mars lawyer, said the group is appealing on the grounds that "there is clear evidence that undisputed facts were glossed over and not even considered".

"This business and Indonesia is more important to us than the volume of our sales because of our manufacturing operations in the country," he said.

Jolleen Harsojo, the owner of Smak Snak, refused to comment.

Indonesia's uncertain legal system is already under the spotlight after a senior prosecutor was caught last month with \$660,000 in his car as he left the house of a tycoon whom the prosecutor had recently determined should not be prosecuted for alleged criminal financial irregularities.

The prosecutor has been arrested and two of his superiors transferred from their posts pending further investigations.

Frans Winata, a leading advocate of judicial reform, said the push for change had virtually stalled. "Institutionally it's not going anywhere," he said. "Virtually every decision is appealed now because of the poor quality of the lower courts."

Insurance companies Manulife and Prudential are among the companies to have overturned lower court verdicts in the Indonesian supreme court.

Intel, the computer chipmaker, expressed great disappointment last year at the court's failure to rule in its favour in a 13-year trademark dispute.

And Time, an American news magazine, has filed for a judicial review after the supreme court last year awarded the former dictator Suharto \$106m in a libel suit, overturning two lower courts' verdicts.

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