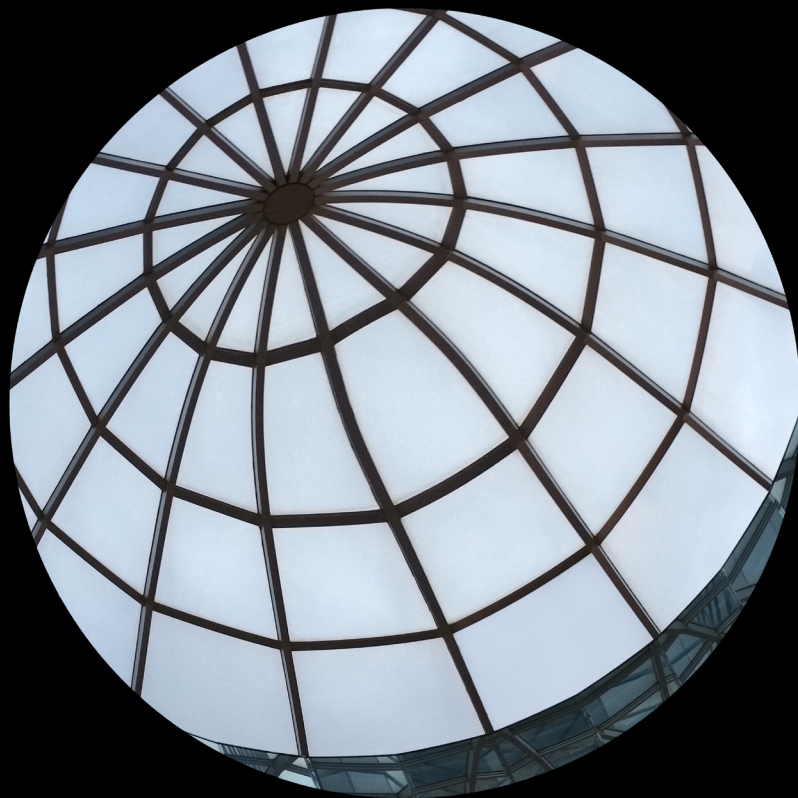


Deloitte.



**2023
Investment Window into Indonesia
(IWI)**

English



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ABBREVIATIONS

AANZFTA	ASEAN-Australia-New Zealand FTA
AEOI	Automatic Exchange of Information
ACFTA	ASEAN-China FTA
ADB	Asian Development Bank
AHKFTA	ASEAN-Hong Kong, China FTA
AHU Online	<i>Administrasi Hukum Umum Online</i> (online public services by Directorate General of General Law Administration)
AIFTA	ASEAN-India FTA
AJ-CEP	ASEAN-Japan Comprehensive Economic Partnership
AKFTA	ASEAN-Korea FTA
AMDAL	<i>Analisis Mengenai Dampak Lingkungan</i> (Environmental Impact Assessment)
ANDAL	<i>Analisis Dampak Lingkungan</i> (Environmental Impact Statement)
AOI	Articles of Incorporation
AP	<i>Akuntan Publik</i> (Public Accountant)
APA	Advance Pricing Agreements
APBN	<i>Anggaran Pendapatan dan Belanja Negara</i> (Indonesia State Revenue and Expenditure Budget)
API	<i>Angka Pengenal Impor</i> (Import Identity Number)
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
B20	Business 20, a part of the G20 Summit
BAL	Basic Agrarian Law
BANI	<i>Badan Arbitrase Nasional Indonesia</i> (Indonesian National Arbitration Body)
Bansos	<i>Bantuan Sosial</i> (a type of social security program, usually in the form of giving staple goods)
Bappenas	Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)

ABBREVIATIONS

BBM	<i>Bahan Bakar Minyak</i> (gasoline)
BEPS	Base Erosion and Profit Shifting
BI	Bank Indonesia (Central Bank of Indonesia)
BI FAST	Bank Indonesia Fast Payment (Bank Indonesia's retail payment system)
BIK	Benefit-in-Kind
BKPM	Badan Koordinasi Penanaman Modal (Indonesia Investment Coordinating Board)
BLU	Badan Layanan Umum (Public Service Agency)
BLT	<i>Bantuan Langsung Tunai</i> (a social security program in the form of giving direct cash assistance)
BOD	Board of Directors
BOC	Board of Commissioners
BOT	Build-Operate-Transfer
BPH Migas	Badan Pengatur Hilir Minyak dan Gas Bumi (Downstream Oil and Gas Regulatory Body)
BPJS	Badan Penyelenggara Jaminan Sosial (Social Insurance Administration Organisation)
BPK	Badan Pemeriksa Keuangan (State Audit Board)
BPN	Badan Pertanahan Nasional (National Land Agency)
BPS	Badan Pusat Statistik (Indonesia Central Bureau of Statistics)
BPT	Branch Profit Tax
BRI	Belt and Road Initiative
BRIN	Badan Riset dan Inovasi Nasional (National Research and Innovation Agency)
BSN	Badan Standarisasi Nasional (Indonesia National Standardisation Body)
BUJKA	Badan Usaha Jasa Konstruksi Asing (foreign construction company)
BUJKA RO	BUJKA Representative Office
BUJKN	Badan Usaha Jasa Konstruksi Nasional (local/national construction company)

ABBREVIATIONS

BUKU	Bank Umum berdasarkan Kegiatan Usaha (Commercial Banks based on Business Activities)
BUMN	Badan Usaha Milik Negara (State-Owned Enterprise)
BUMD	Badan Usaha Milik Daerah (Local Government-Owned Enterprise)
BUMDes	Badan Usaha Milik Desa (Village-owned Enterprise)
BUMS	Badan Usaha Milik Swasta (Private-owned Enterprise)
CbC	Country-by-Country
CbCR	Country-by-Country Report
CFC	Controlled Foreign Companies
CEX	Certified Exporter
CIT	Corporate Income Tax
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CN	Cetane Number (cetane rating on gasoline, mainly for diesel)
CoD	Certificate of Domicile
CoR	Certificate of Residence
CORS	Continuously Operating Reference Systems
COVID-19	Coronavirus Disease-2019, an infectious disease caused by the SARS-CoV-2 virus
CoW	Contracts of Work
CPO	Crude Palm Oil
CR	Company Regulation (Peraturan Perusahaan or PP)
CRS	Common Reporting Standard
CSR	Corporate Social (and Environmental) Responsibility
DDI	Domestic Direct Investment
DER	Debt-to-Equity Ratio
DGIP	Directorate General of Intellectual Property
DGPCR	Directorate General of Population and Civil Registration (Direktorat Jenderal Kependudukan dan Pencatatan Sipil)

ABBREVIATIONS

DGT	Directorate General of Taxes
DKI Jakarta	Special Territory of the Capital City (Daerah Khusus Ibukota) Jakarta
DPD	Dewan Perwakilan Daerah (Regional Representatives Council)
DPI	<i>Daftar Positif Investasi</i> (Positive Investment List)
DPIA	Data Protection Impact Assessment
DPO	Data Protection Officer
DPOaaS	Data Protection Officer-as-a-Service
DPR	Dewan Perwakilan Rakyat (People's Representative Council)
DSAK-IAI	Dewan Standar Akuntansi Keuangan-Ikatan Akuntan Indonesia (Financial Accounting Standards Board of the Indonesian Institute of Accountants)
EBITDA	Earnings Before Interest, Taxes, Depreciation, and Amortisation
EBT	<i>Energi Baru dan Terbarukan</i> (New and Renewable Energy)
e-FIN	e-Filing Number
EFTA	European Free Trade Association
EIU	Economist Intelligence Unit
EOBD	Ease of Doing Business
EPA	Economic Partnership Agreement
ETM	Energy Transition Mechanism
EU	European Union
EV	Electric Vehicle
F&B	Food and Beverage
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FY	Fiscal Year
G20	Group of 20
GCA	Government Contracting Agency

ABBREVIATIONS

GCG	Good Corporate Governance
GDP	Gross Domestic Product
GMS	General Meeting of Shareholders
GNSS	Global Navigation Satellite Systems
GRDP	Gross Regional Domestic Product
GSP	Generalized System of Preference
GW	Gigawatt
HDI	Human Development Index
HGB	<i>Hak Guna Bangunan</i> (Right to Build)
HGU	<i>Hak Guna Usaha</i> (Right to Cultivate)
HM	<i>Hak Milik</i> (Right of Ownership)
HMSRS	<i>Hak Milik Atas Satuan Rumah</i> (Right of Ownership over Condominium Units)
HP	<i>Hak Pakai</i> (Right to Use)
HPL	<i>Hak Pengelolaan</i> (Right to Manage)
HPP	<i>Harmonisasi Peraturan Perpajakan</i> (Harmonisation of Tax Regulations)
HPTL	<i>Hasil Pengolahan Tembakau Lainnya</i> (Other Tobacco Processing)
IACEPA	<i>Indonesia-Australia Comprehensive Economic Partnership Agreement</i>
IAI	Ikatan Akuntan Indonesia (Indonesian Institute of Accountants)
ICA	Indonesian Customs Authority
ICC	Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)
IC-CEPA	Indonesia-Chile Comprehensive Economic Partnership Agreement
ICP	Indonesian Crude Price (regulated price of oil per barrel in Indonesia)
ICT	Information and Communications Technology
ICSID	International Centre for Settlement of Investment Disputes
IDR	Indonesian Rupiah

ABBREVIATIONS

IDX	Indonesia Stock Exchange (Bursa Efek Indonesia)
IFC	International Finance Corporation
IFRI	International Food Policy Research Institute
IIA	Institute of Internal Auditor
IICPA	Indonesian Institute of Certified Public Accountants (Institut Akuntan Publik Indonesia)
IIGF	Indonesia Infrastructure Guarantee Fund
IIF	Indonesia Infrastructure Finance (IIF)
IHSG	<i>Indeks Harga Saham Gabungan</i> (Composite Stock Price Index)
IJEPA	Indonesia-Japan Economic Partnership Agreement
IKN Nusantara	Ibu Kota Negara Nusantara (Nusantara Capital City)
ILO	International Labour Organization
IMF	International Monetary Fund
INA	Indonesian Investment Authority
IPBUJKA	<i>Izin Perwakilan Badan Usaha Jasa Konstruksi Asing</i> (foreign construction service business entity representative business license)
IPO	Initial Public Offering
IPR	Intellectual Property Rights
IPR	<i>Izin Pertambangan Rakyat</i> (Community Mining License)
IPSKA	Instansi Penerbit Surat Keterangan Asal (Issuing Agency for Certificate of Origin)
ISIC	International Standard Industrial Classification
IUJK	<i>Izin Usaha Jasa Konstruksi</i> (Construction Business License)
IUP	<i>Izin Usaha Pertambangan</i> (Mining Business License)
IUPK	<i>Izin Usaha Pertambangan Khusus</i> (Special Mining Business License)
JETP	Just Energy Transition Partnership (JETP)
JICA	Japan International Cooperation Agency
KAP	<i>Kantor Akuntan Publik</i> (Public Accounting Firm)

ABBREVIATIONS

KBLI	<i>Klasifikasi Baku Lapangan Usaha Indonesia</i> (Indonesian Standard Industrial Classifications)
KBMI	<i>Kelompok Bank berdasarkan Modal Inti</i> (Bank Group based on Core Capital)
KEK	<i>Kawasan Ekonomi Khusus</i> (Special Economic Zone)
KITE	<i>Kemudahan Impor Tujuan Ekspor</i> (Import Concession for Export Purposes)
KMA	Keputusan Ketua Mahkamah Agung (Head of Supreme Court Decision)
KNKG	Komite Nasional Kebijakan Governansi (National Committee on Governance)
KP	<i>Kuasa Pertambangan</i> (Mining Authorisation)
KP3A	<i>Kantor Perwakilan Perusahaan Perdagangan Asing</i> (Foreign Trade Company Representative Office)
KPEI	<i>Kliring Penjaminan Efek Indonesia</i> (The Clearing and Guarantee Institution of Indonesia)
KPPA	<i>Kantor Perwakilan Perusahaan Asing</i> (Foreign Company Representative Office)
KPPIP	Komite Percepatan Penyediaan Infrastruktur Prioritas (Committee for Acceleration of Priority Infrastructure Delivery)
KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission)
KPPU	Komisi Pengawas Persaingan Usaha (Business Competition Supervisory Commission)
KSEI	Kustodian Sentral Efek Indonesia (The Indonesian Central Securities Depository)
LCS	Limited Concession Scheme
LPG	Liquid Petroleum Gas
LST	Luxury-good Sales Tax
M&A	Merger & Acquisition
MAP	Mutual Agreement Procedure
MEMR	Ministry of Mineral and Energy Resources (Kementerian Energi dan Sumber Daya Mineral Indonesia)
MK	Mahkamah Konstitusi (Indonesia Constitutional Court)

ABBREVIATIONS

MLI	Multilateral Instrument
MoF	Ministry of Finance
MoLHR	Ministry of Law and Human Rights (Kementerian Hukum dan HAM Indonesia)
MoPWP Reg.	Minister of Public Works and Public Housing Regulation
MPR	Majelis Permusyawaratan Rakyat (People's Consultative Assembly)
MRT	Mass Rapid Transit
MTN	Medium Term Notes
MVS	Multiple Voting Shares
NAM	Non-Aligned Movement
NIB	<i>Nomor Induk Berusaha</i> (Business Identification Number)
NIK	<i>Nomor Induk Kependudukan</i> (National Identification Number)
NJOP	<i>Nilai Jual Objek Pajak</i> (land and building tax imposition base)
NPPBKC	<i>Nomor Pokok Pengusaha Barang Kena Cukai</i> (Licensing of Excisable Goods Entrepreneur Registration Number)
NPWP	<i>Nomor Pokok Wajib Pajak</i> (Individual Tax Number)
NTA	Net Tangible Assets
NTEB	New Economy Trading Board
NZE	Net Zero Emission
OECD	Organization for Economic Co-operation and Development
OGWE	One Global Women Empowerment
OJK	Otoritas Jasa Keuangan (Financial Services Authority)
Omnibus Law	Law Number 11/2020 on Job Creation
OPEC	Organization of the Petroleum Exporting Countries
OSS	Online Single Submission
PAT	Profit After Tax
PDAM	Perusahaan Daerah Air Minum (Regional Drinking Water Company)
PDKB	<i>Pengusaha di Kawasan Berikat</i> (entrepreneur in a Bonded Zone)

ABBREVIATIONS

PDP	Personal Data Protection
PE	Permanent Establishment
PEN	<i>Pemulihan Ekonomi Nasional</i> (National Economic Recovery Program)
PERMA	Peraturan Mahkamah Agung (Supreme Court Regulation)
Permenaker	Peraturan Menteri Ketenagakerjaan (Indonesia Ministry of Manpower Regulation)
Perpres	Peraturan Presiden (Presidential Regulation or PR)
Persero	<i>Perusahaan Perseroan</i> (a state-owned limited liability company)
Perum	<i>Perusahaan Umum</i> (a public service entity wholly owned by the national government)
PIP	Pusat Investasi Pemerintah (Indonesia Investment Agency/ Government Investment Unit)
PKB	<i>Perjanjian Kerja Bersama</i> (Collective Labour Agreement)
PKLN	<i>Pinjaman Komersial Luar Negeri</i> (Offshore Commercial Loan Team)
PKP	<i>Pengusaha Kena Pajak</i> (VAT Entrepreneur)
PKPU	<i>Penundaan Kewajiban Pembayaran Utang</i> (Suspension of Debt Payment Obligations)
PKWT	<i>Perjanjian Kerja Waktu Tertentu</i> (Specified Time Work Agreement)
PKWTT	<i>Perjanjian Kerja Waktu Tidak Tentu</i> (Unspecified Time Work Agreement)
PLB	<i>Pusat Logistik Berikat</i> (Bonded Logistics Centre)
PLN	Perusahaan Listrik Negara (Indonesian state-owned electricity company)
PLTN	Pembangkit Listrik Tenaga Nuklir (nuclear energy power plant/ station)
PLTsa	Pembangkit Listrik Tenaga Sampah (waste-to-energy power plant/station)
PLTU	Pembangkit Listrik Tenaga Uap (steam-electric power plant/ station)
PMA	<i>Penanaman Modal Asing</i> (foreign capital investment)
PMDN	<i>Penanaman Modal Dalam Negeri</i> (domestic capital investment)

ABBREVIATIONS

PMK	Peraturan Menteri Keuangan (Minister of Finance Regulation)
PMSE	<i>Perdagangan Melalui Sistem Elektronik</i> (transactions through electronic system)
POJK	Peraturan OJK (OJK Regulation)
PP	Peraturan Pemerintah (Government Regulation or GR)
PPAT	<i>Pejabat Pembuat Akta Tanah</i> (Official Certifier of Land Deeds)
PPATK	Pusat Pelaporan dan Analisis Transaksi Keuangan (Indonesian Financial Transaction Report and Analysis Center)
PPKM	<i>Pemberlakuan Pembatasan Kegiatan Masyarakat</i> (Community Activities Restrictions Enforcement (i.e. COVID-19-related semi-lockdown restrictions))
PPMSE	<i>Penyelenggara Perdagangan Melalui Sistem Elektronik</i> (PMSE Providers)
PPP	Public Private Partnership
PSAK	<i>Pernyataan Standar Akuntansi Keuangan</i> (Indonesian Financial Accounting Standards)
PSN	<i>Proyek Strategis Nasional</i> (Strategic National Project)
PSCs	Production Sharing Contracts
PT	Perseroan Terbatas (limited liability company)
PUPR	Pekerjaan Umum dan Perumahan Rakyat (Indonesia Ministry of Public Works and Housing)
QE	Quantitative Easing
QRIS	Quick Response Indonesian Standard (a digital payment standard launched by Bank Indonesia)
R&D	Research and Development
RAPBN	<i>Rancangan Anggaran Pendapatan dan Belanja Negara</i> (State Revenue and Expenditure Budget Bill)
RDTR	<i>Rencana Detail Tata Ruang</i> (Detailed Spatial Plan)
REX	Registered Exporter
RI	Republic of Indonesia
RKL	<i>Rencana Pengelolaan Lingkungan Hidup</i> (Environmental Management Plan)
RO	Representative Office

ABBREVIATIONS

RON	Research Octane Number (octane rating on gasoline)
ROPA	Record of Processing Activities
RP	Recompense Payment (uang penggantian hak)
RPJPN	<i>Rencana Pembangunan Jangka Panjang Nasional</i> (Long-term National Development Plan)
RPJMN	<i>Rencana Pembangunan Jangka Menengah Nasional</i> (National Medium-term Development Plan)
RPL	<i>Rencana Pemantauan Lingkungan Hidup</i> (Environmental Monitoring Plan)
RPTAK	<i>Rencana Penggunaan Tenaga Kerja Asing</i> (Foreign Labour Utilisation Plan)
S&P	Standard & Poor's
SAK	<i>Standar Akuntansi Keuangan</i> (Financial Accounting Standards)
SAK ETAP	<i>Standar Akuntansi Keuangan untuk Entitas Tanpa Akuntabilitas Publik</i> (SAK for Entities that Have No Public Accountability)
SBN	<i>Surat Berharga Negara</i> (Indonesia Government Bonds)
SBSN	<i>Surat Berharga Syariah Negara</i> (Indonesian State Islamic Security)
SEZ	Special Economic Zone (Kawasan Ekonomi Eksklusif or KEK)
SEMA	<i>Surat Edaran Mahkamah Agung</i> (Circular of the Supreme Court)
SIPB	<i>Surat Izin Penambangan Batuan</i> (Authorisation Letter for Rock Mining)
SKD WPLN	<i>Surat Keterangan Domisili Wajib Pajak Luar Negeri</i> (Certificate of Domicile of Foreign Taxpayers)
SKK Migas	Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi (Special Task Force for Upstream Oil and Gas Business Activities in Indonesia)
SKPT	<i>Surat Keterangan Pendaftaran Tanah</i> (land registration certificates)
SME	Small and Medium-sized Enterprise
SMI	PT Sarana Multi Infrastruktur (Persero) (a state-owned company engaged in infrastructure project financing)
SNI	<i>Standar Nasional Indonesia</i> (Indonesia National Standard)
SoE	State-owned Enterprises

ABBREVIATIONS

SP	Severance Payment (uang pesangon)
SPC	Special Purpose Company
SPH	<i>Surat Pengungkapan Harta</i> (Asset Declaration Letter)
SPPIA	Standard for Professional Practice on Internal Auditing
SPPKP	<i>Surat Pengukuhan Pengusaha Kena Pajak</i> (Taxable Entrepreneur Confirmation Letter)
SPPL	<i>Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup</i> (Letter of Undertaking of Environmental Management and Monitoring)
SPRINT	<i>Sistem Perizinan Otoritas Jasa Keuangan</i> (Financial Service Authority Licensing System)
SPT	<i>Surat Pemberitahuan Tahunan</i> (Annual Notification Letter)
SRO	Self-Regulatory Organisation
SVP	Service Payment (uang penghargaan masa kerja)
SWIFT	Society of Worldwide Interbank Financial Telecommunication
TA	Tax Amnesty
TDP	<i>Tanda Daftar Perusahaan</i> (Company Registration Certificate)
THR	<i>Tunjangan Hari Raya</i> (Religious Festivity Allowance)
TNI	Tentara Nasional Indonesia (Indonesian National Armed Forces)
TPB	Tempat Penimbunan Berikat (Bonded Warehouse)
TPT	<i>Tingkat Pengangguran Terbuka</i> (open unemployment rate)
TRIPs	Trade Related Aspects of Intellectual Property Rights Agreement
UAE	United Arab Emirates
UK	United Kingdom
UKL/UPL	<i>Upaya Pengelolaan Lingkungan dan Upaya Pemantauan Lingkungan</i> (Environmental Management Efforts and Environmental Monitoring Efforts)
UNCTAD	United Nations Convention on Trade and Development
UMP	<i>Upah Minimum Provinsi</i> (Provincial Minimum Wage)
UNCITRAL	United Nations Commission on International Trade Law

ABBREVIATIONS

UNFPA	United Nations Population Fund
USA/US	United States of America
USD/US\$	US Dollar
UU	Undang-Undang (Law)
VAT	Value Added Tax (Pajak Pertambahan Nilai or PPN)
VDP	Voluntary Disclosure Program
WHT	Withholding taxes
WIBAC	Women in Business Action Council
WIPO	World Intellectual Property Organization
YoY	Year-on-Year
YTD	Year-to-date



Foreword



Selamat datang di Indonesia! (Welcome to Indonesia!)

Indonesia has demonstrated tremendous resilience during the three years of the COVID-19 pandemic. In 2021, the country's annual GDP growth increased to 3.7% from -2.7% in the previous year. Indonesia's growth ranked third highest among ASEAN countries after Singapore (7.6%) and the Philippines (5.7%). With increasing global confidence in Indonesia due to positive economic growth and the government demonstrating its ability to manage domestic inflation which had disrupted all sectors of the economy since 2021, the country is targeting annual growth of 5.2% by the end of 2022.

The Indonesian government has exhibited effective management through refocusing the State Revenue and Expenditure Budget in order to fund and successfully implement its COVID-19 vaccination program. The active involvement of various stakeholders, vigilant distribution management, and consistent target achievement combined with the government's semi-lockdown policy (PPKM), increased testing, tracing, and treatment with the assistance of the *PeduliLindungi* mobile app have been the keys to the success of this IDR57.84 trillion-vaccination program. 86% of Indonesians have received a first dose of vaccine, 73% have received a second dose, and 25% have received booster shots.

Building infrastructure connectivity remains the focus of the country's National Medium Term Development Plan (RPJMN). In early 2022, the Government introduced its "Industry 4.0" initiative which seeks to accelerate the use of advanced technology to expand and enhance Indonesia's manufacturing capabilities and output. Another area of focus for the government is continuing the development of dedicated industrial estates, or Special Economic Zones, as part of efforts to attract foreign companies to re-locate their operations to Indonesia.

Law Number 11/2020 on Job Creation (commonly referred to as the **Omnibus Law**) is a significant piece of Indonesian legislation which is intended to promote a more business-friendly environment to boost Indonesian economic growth and investment. Whilst this law remains in force, a 2021 judgement issued by the Constitutional Court requires the government to revise the procedure for ratifying the law within 2 (two) years. During this period, the government cannot

issue additional implementing regulations derived from the Law. Shortly after the Constitutional Court issued its ruling, President Joko Widodo (**Jokowi**) confirmed that the law and implementing regulations that had been issued to date all remain in effect. Jokowi assured investors that their investments would remain safe and that the government would work to keep these investments safe and secure.

The long-awaited plan to move Indonesia's capital to Ibu Kota Negara Nusantara (IKN), East Kalimantan, is starting to take shape. Overall construction is planned to be completed in 2045 at an estimated total cost of about IDR486 trillion. Currently, a phase 1 development project with an estimated cost of IDR5.3 trillion has begun. The 256,000-hectare Nusantara area will adopt a "**green and smart city**" concept. Several foreign countries are interested in investing in this major project, including United Arab Emirates (UAE) with US\$20 million funding which will be channelled through the Indonesian Investment Authority (INA), South Korea which has invested in technical cooperation between the South Korean Ministry of Land, Infrastructure and Transport and the Indonesian Ministry of Public Works and Housing in the field of knowledge & information exchange, and other countries such as Russia, China and Japan. Private companies from Taiwan and South Korea are also interested in investing in the IKN project.

From late 2021 to November 2022, Indonesia acted as the President of the G20, an international forum that focuses on coordinating global policies in the economic and development fields. The G20 represents the world's largest economic and political powers, consisting of 19 countries and 1 region. With the spirit of "Recover Together, Recover Stronger", the Indonesian Presidency focused on three priority sectors: (i) strengthening global health architecture, (ii) digital transformation, and (iii) energy transition. The Presidency successfully launched a joint Leaders' Declaration covering 52 points concerning global geopolitics tension, food security crises, climate change, global health, and digital transformation issues that highlight the need for cooperation to achieve global economic recovery, to tackle global challenges, and lay a foundation for strong, sustainable, balanced, and inclusive growth. Following on from the direct impact of holding the G20 Presidency, Indonesia has an opportunity to showcase its development and investment potential, which should create a multiplier effect for the regional economy. Indonesia's hosting of the recent G20 Summit in Bali seems to have been widely regarded as a success and has probably resulted in Indonesia's profile as a place to do business being raised considerably.

I am happy to share that Deloitte supported the B20-G20 Dialogue by providing the **One Global Women Empowerment** (OGWE) platform. This new digital platform was launched on 23 August 2022 by the Business 20's (B20) Women in Business Action Council (WIBAC) and covered women's empowerment in the global economy in Indonesia with the goal of helping more women to lead, participate in, and expand access to business and economic opportunities. The B20-G20 Dialogue highlighted the policy recommendations developed by the B20 WIBAC. These recommendations included initiatives to empower women entrepreneurs, enable women's digital and leadership capabilities, and promote safe and equitable workplaces.

Another significant regulatory event was the promulgation of personal data protection (PDP) on 17 October 2022 as Law Number 27/2022 on Personal Data Protection (**Undang-Undang PDP or the PDP Law**). The enactment of the PDP Law aims to guarantee the data protection rights of every individual, public entity, organisation, or institution within and outside the jurisdiction of the Republic of Indonesia. With the new law, we expect to increase the competitiveness of Indonesia's information and communications technology (ICT) sector and thereby drive the overall growth of the digital economy.

To support the government's efforts and to offer quick and clear answers to everyone who is contemplating investing in Indonesia, I am very pleased to present the newly redesigned, collaborative work from Deloitte Indonesia's dedicated team of experts, "**Investment Windows into Indonesia (IWI) – 2023 Edition**".

I believe that this publication will provide broad and impactful insights to all potential investors and become an important tool to help you explore the numerous opportunities that await you the moment you start doing business in Indonesia. We have also made this publication readily available in Japanese, Chinese, and Korean.

Claudia Lauw Lie Hoeng
Deloitte Indonesia Country Leader



A. Introduction to Indonesia

Republic of Indonesia

Archipelagic country with more than 16,700 islands.
Constitutional democracy with an executive presidency.

Nationality: Indonesian (40.2% Javanese, 15.5% Sundanese, 3.58% Batak, 3.22% Sulawesi ethnic groups, 3.03% Madurese, 2.88% Betawi and 31.59% other ethnic groups)

Languages: Bahasa Indonesia, English (business, professional), and local dialects

Currency: Indonesian Rupiah (IDR)

Figure 1: Overview of Indonesia's Geography and Demographics



1. General overview

The attractiveness of Indonesia from an investment standpoint is a combination of Indonesia's natural resource endowments, geographically strategic location, and its large and youthful population, with a relatively high Human Development Index (HDI). In 2021, the Indonesian Central Bureau of Statistics (Badan Pusat Statistik or BPS) reported that Indonesia attained a **Human Development Index of 72.29**, which represented a modest increase from the previous year's HDI (71.94).¹ These factors, paired with improvements in the ease of doing business governance reforms towards a more investment-friendly climate, send positive signals for investors to consider opportunities to invest in Indonesia. The country's vibrant e-commerce economic activity is also indicative of the growing entrepreneurship of the millennial generation in Indonesia and is a basis for building readiness to face the challenges of Industry 4.0.

Indonesia is a diverse archipelago nation of more than 300 ethnic groups and continues to be the largest economy in Southeast Asia. Indonesia ranks as the fourth most populous country in the world, the world's 7th largest economy in terms of purchasing power parity in 2021 and 2022 and is a member of the G20 group of nations – the only member from the Southeast Asia region. Indonesia's development goals and strategies are outlined in its current medium-term development plan (RPJMN) 2020-2024 and for the long run are reflected in Indonesia's 2045 Vision. While current challenges to Indonesia's development include global volatility related to geopolitics, health, and economics, in Q2 2022 Indonesia was ranked the fastest growing economy among G20 countries. Until recently, Indonesia held the 2022 G20 Presidency, promoting inclusive collaboration among countries to achieve global recovery post-COVID-19 and solving global crises in 2022.

Since 2021, the government has prioritised government spending in several sectors, mainly health, education, and social welfare protection to implement government programs to advance Indonesia and to foster Indonesia's economy during COVID-19. Moreover, the economy will continue to be supported by household consumption, which is forecast to increase by an average of 5% per annum over the next five years. Hence, **a combination of growth in private investment and consumption as well as net exports stimulated by government spending is needed in FY2023 to deliver a sustainable economic recovery.**

¹ Badan Pusat Statistik. 2022.

Figure 2: Indonesia's Key Economic Outlook Indicators

Indicator	2019	2020	2021	2022 ^f	2023 ^f
GDP Growth (% y-o-y)	5.0	-2.1	3.7	5.1 ^f	5.3 ^f
Private Consumption (% y-o-y)	5.2	-2.7	2.0	4.9 ^f	4.4 ^f
Government Consumption (% y-o-y)	3.3	2.0	4.2	3.2 ^f	3.0 ^f
Gross Fixed Investment (% y-o-y)	4.5	-5	3.8	6.1 ^f	4.7 ^f
Exports of goods & services (% y-o-y)	-0.5	-8.1	24.0	6.0 ^f	3.7 ^f
Imports of goods & services (% y-o-y)	-7.1	-16.7	23.3	7.1 ^f	4.0 ^f
Inflation (end period) (% y-o-y)	2.7	1.7	1.9	4.6 ^f	3.3 ^f
US\$ exchange rate (end period)	13,982	14,158	14,343	15,255 ^f	15,439 ^f

^fForecast

Source: EIU, World Bank, Bank Indonesia

■ Key drivers for Indonesian economic recovery

Based on the 20-year long-term national development plan (RPJPN) for the period 2005 - 2025, Indonesia had been targeting to achieve a per capita income equivalent to that of middle-income countries by 2025. The rebound in Indonesia's economic recovery from COVID-19 has proved to be robust. This feat is due to prudent refocusing of the State Revenue and Expenditure Budget (Anggaran Pendapatan dan Belanja Negara or APBN) which was run at a healthy deficit to fund and roll out the successful COVID-19 vaccination program, PPKM and expansion of public health capacity paired with effective economic stimulus programs (PEN) in impacted sectors and social welfare protection programs. This combined initiative ensured that public health and economic recovery objectives were kept aligned, which eventually saw PPKM measures relaxed, and pent-up domestic consumption demand released. The results were that by the end of 2021 the government of Indonesia announced it had reached its targeted annual GDP growth of 3.7%, **ranked third highest amongst ASEAN countries**.

Indonesia's Ministry of National Development Planning/National Development Planning Agency (Badan Perencanaan Pembangunan Nasional or Bappenas) targeted Indonesia's annual GDP growth to reach 5.2% by the end of 2022 and 5.3-5.9% in 2023. ²Meanwhile, the World Bank predicted Indonesia's GDP growth rate in 2022 would reach 5.1% and 5.3% in 2023. ³On 27 April 2022 S&P Global ratings

² "Bappenas Targetkan Pertumbuhan Ekonomi 5,3-5,9 Persen di 2023". ekonomi.bisnis.com. 21 April 2022.

revised Indonesia's outlook to stable from negative in recognition of "historically prudent policy dynamics" which managed to "improve Indonesia's external position and gradual progress towards fiscal consolidation".⁴ However, S&P Global ratings also echoed the same caution that the United Nations Conference on Trade and Development (UNCTAD) reported on concerns over the global spill-over effects of the Russia-Ukraine conflict combined with the expected rise in US interest rates over the next two years⁵.

The dynamics of: (i) maintaining the post-pandemic momentum for recovery; (ii) spill-over effects from the Russia-Ukraine conflict, particularly on food and energy security as well as managing geopolitical tensions; (iii) success in climate change mitigation and digital transformation; and (iv) managing a 'taper tantrum' in response to interest rate increases in the next two years, will colour investment opportunities and challenges affecting the world – including Indonesia. This section will highlight progress to date (November 2022) with respect to Indonesia's macroeconomic conditions and prospects for 2023. Indonesia requires continuation of 'historically prudent policy dynamics' in order to 'improve its external position and gradual progress towards fiscal consolidation' regardless of the dynamics of the current world economy.

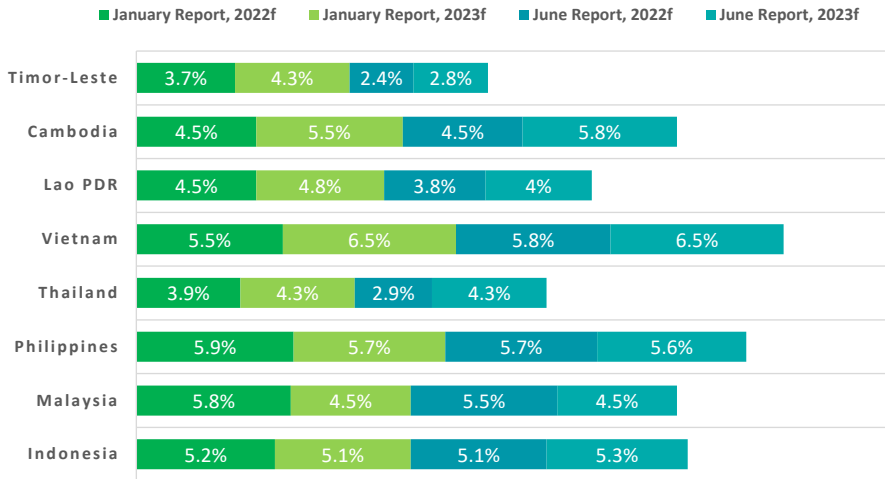
Figure 3 provides a snapshot of the World Bank's forecasts for Southeast Asian economies in 2022-2023, where the regional trend of stronger anticipated recovery has been dulled by the Russia-Ukraine conflict. Despite this, Indonesia's resilience and the myriad of opportunities due to the combination of its youthful demographics, relatively high HDI, access to natural endowments, vibrant domestic markets and e-commerce, and a pro-investment government mean that the government and domestic businesses would be keen on being more integrated to the global supply chain. Global investors would potentially benefit particularly from the investment-friendly ecosystem offered in Special Economic Zones (KEK) and partnerships with domestic businesses either to better serve the large domestic market or to invest in downstream industrialisation as part of the global supply chain.

³"Global Economic Prospects June 2022". World Bank. 07 June 2022.

⁴"Indonesia Outlook Revised to Stable from Negative; BBB/A2 Ratings Confirmed". S&P Global Ratings Direct. 27 April 2022.

⁵"Trade and Development Report Update: Tapering in a Time of Conflict". United Nations Conference on Trade and Development (UNCTAD). March 2022.

Figure 3: World Bank GDP Growth Rate Forecast of Several Southeast Asian Countries for 2022-2023, January and June 2022 Reports Comparison



Source: World Bank Global Economic Prospects, January and June 2022 Editions

2. How Indonesia handled external shocks and exhibited resilience in 2022

In early 2022, Indonesia experienced a “third wave” of COVID-19 largely due to the “Omicron variant”, which reached its peak in July 2022 with 16,000 reported cases. However, the third wave was more manageable compared to 2021’s “second wave” which was caused by the “Delta variant”. The key to this lies in Indonesia’s Ministry of Health’s quick, strategic response to prevent and control the Omicron variant’s further spread in Indonesia since January 2022, as well as pushing vaccination programs – first and second doses, and booster shots. Indonesia’s success in managing COVID-19 continued during 2022 and has impacted the country’s positive economic recovery. This is seen from various indicators that demonstrate improving conditions, such as increased people mobility, the spending index, increased electricity consumption in the industrial sector, and increased exports.

As the health sector consistently recovers from the pandemic, the world had to face another external challenge in early 2022: the Russia-Ukraine conflict. This conflict has created spill-over effects that have been felt across the globe, mainly in the energy and food sectors. Russia and Ukraine are major exporters of wheat and corn; while Russia alone is a top 3 global producer of oil and gas, and Ukraine alone is a top global producer of sunflower oil. The ongoing hostilities have disrupted both the energy and food supply chains, causing global spikes in prices and shortages in supplies of essential commodities.

As a result of these spill-over effects, Indonesia experienced surges in prices in energy and agricultural commodities. Oil and energy sanctions imposed on Russia have resulted in Brent crude oil prices of more than US\$100 per barrel, leading to

increases in the Indonesian Crude Price (ICP) reference price.⁶ Consequently, the Indonesian government increased prices of gasoline to align domestic gasoline prices more closely to market prices – while still subsidising several grades of gasoline.⁷

As far as agriculture commodities are concerned, Crude Palm Oil (CPO) has been impacted by the Ukrainian situation. The vegetable oil – mainly sunflower oil – supply chain was disrupted by the conflict, leading to domestic and global increases in price and demand for CPO as an alternative source for basic needs (cooking) and biodiesel purposes.⁸

Indonesia, through its Ministry of Foreign Affairs, has called for the conflict to end immediately as it threatens regional and global peace and stability. As stated by President Jokowi during the 2022 G20 Summit, the conflict in Ukraine has set back the global recovery from COVID-19 and has increased the risk of food, energy, and financial crises. Moreover, President Jokowi emphasised that global economic recovery cannot be achieved without peace between Russia and Ukraine.⁹

Positive and resilient economic growth during multiple global crises

COVID-19 and the conflict in Ukraine have certainly created major challenges for the international community, including Indonesia. The International Monetary Fund (IMF) projects the global economy will only grow by 3.2% in 2022 and 2.7% in 2023. Moreover, the IMF estimates US' and China's annual economic growth will reach 1.6 % and 3.2% in 2022, and 1.0% and 4.4% in 2023, respectively. However, compared to the US and China, **the IMF projects Indonesia's annual economic growth will reach 5.3% in 2022 and 5.0% in 2023.** This projection compares to Malaysia's projected growth of 5.4% in 2022 and 4.4% in 2023 and is relatively higher than Thailand's projected growth of 2.8% in 2022 and 3.7% in 2023.¹⁰

Indonesia ranks seventh in the list of top 10 countries with the highest GDP in the world in the IMF World Economic Outlook October 2022 edition, only one rank below Russia and exceeding Brazil, United Kingdom (UK), and France.

Fortunately, since Q1 2022, Indonesia has experienced strong economic growth and incremental recovery. The government, along with relevant stakeholders, have been maximising their efforts to push Indonesia's recovery and stability in many sectors. Despite Indonesia experiencing a trade balance deficit with Russia and Ukraine respectively, **Indonesia's overall trade balance achieved a surplus** for 26 consecutive months by the end of July 2022. This trend continued, with 29 consecutive months of trade balance surplus by end of September 2022. From January 2022, BPS reported Indonesia's trade balance surplus worth US\$24.88 billion for semester-I of 2022 which continued to grow to US\$39.87

⁶ "Indonesia Jadi 'Tumbal' Perang Rusia vs Ukraina, Ini Buktinya". CNBC Indonesia. 04 June 2022; "ICP September 2022 Capai US\$86,07 per Barel". Ministry of Energy and Mineral Resources of RI. 04 October 2022; "ICP Oktober 2022 Naik Jadi US\$89,10 per Barel". Ministry of Energy and Mineral Resources of RI. 02 November 2022.

⁷ "Resmi Naik, Cek Harga Terbaru BBM Pertamina di Seluruh SPBU". CNBC Indonesia. 07 August 2022.

⁸ "The impact of the Ukraine crisis on the global vegetable oil market". International Food Policy Research Institute (IFPRI). 03 May 2022; "Indonesia Jadi 'Tumbal' Perang Rusia vs Ukraina, Ini Buktinya". CNBC Indonesia. 04 June 2022.

⁹ "Jokowi Ungkap Debat soal Sikap G20 terhadap Perang di Ukraina Berlangsung Alot". Kompas.com. 16 November 2022.

¹⁰ "World Economic Outlook, October 2022: Countering the Cost-of-Living Crisis". International Monetary Fund. October 2022.

billion by the end of September 2022.¹¹ CPO, coal, and iron and steel became the top performing commodity exports in Q3 2022, contributing US\$8.95 billion, US\$13.31 billion, and US\$6.38 billion to Indonesia's export revenue, respectively.¹² **Indonesia's Q1-Q3 2022 cumulative exports grew by 33.49% compared to the same period in 2021.**¹³

Figure 4. Indonesia's Q1-Q3 2022 Export Highlights



¹¹"Siap-siap, Kinerja Ekspor 2023 Tertahan". Kontan.co.id. 18 October 2022.

¹²"Berita Resmi Statistik, 07 November 2022". Badan Pusat Statistik. 07 November 2022.

¹³"Ekspor September 2022 mencapai US\$24,80 miliar, turun 10,99 persen dibanding Agustus 2022 dan impor September 2022 senilai US\$19,81 miliar, turun 10,58 persen dibanding Agustus 2022". Badan Pusat Statistik. 17 October 2022; "Berita Resmi Statistik, 17 Oktober 2022". Badan Pusat Statistik. 17 October 2022.

Export	Export Values		
	Description	Value	% Growth Compared to the Same Period in 2021
	Total Exports - September 2022	US\$24.80 billion	20.28%
	Total Cumulative Exports - Jan-Sep 2022	US\$219.35 billion	33.49%
	Total Oil & Gas Exports - September 2022	US\$1.33 billion	41.80%
	Total Oil & Gas Exports - Jan-Sep 2022	US\$12.16 billion	38.56%
	Total Non-Oil & Gas Exports - September 2022	US\$23.48 billion	19.26%
	Total Non-Oil & Gas Exports - Jan-Sep 2022	US\$207.19 billion	33.21%
	Export Contributors (Jan-Sep 2022)		
	Sector	Value	% Of Total Exports
Manufacturing	US\$156.18 billion	71.20%	
Mining	US\$21.68 billion	21.68%	
Oil and Gas	US\$12.16 billion	5.54%	
Agriculture, Forestry, and Fisheries	US\$3.46 billion	1.58%	
Top Non-Oil & Gas Export Destinations (September 2022)			
Destination	Value	% Of Total Exports	
China	US\$6.16 billion	26.23%	
United States of America	US\$2.11 billion	9.01%	
Japan	US\$2.10 billion	8.94%	
India	US\$175 billion	7.45%	
South Korea	US\$0.79 billion	3.38%	
ASEAN	US\$4.45 billion	18.95%	
European Union	US\$1.81 billion	7.70%	
Top Exporting Provinces (January-September 2022)			
Province/region	Value	% Of Total Exports	
West Java	US\$29.37 billion	13.39%	
East Kalimantan	US\$26.76 billion	12.20%	
East Java	US\$18.95 billion	8.64%	

Source: BPS, "Berita Resmi Statistik", 17 October 2022

As for imports, Indonesia's cumulative imports from January-September 2022 grew by 28.93% compared to the same period in 2021. Leading import categories during the January-September 2022 period were machinery/mechanical tools and parts, and machinery/electrical equipment and parts, which accounted for 15.63% and 13.47% of total non-oil and gas imports, respectively. Non-oil and gas imports in the January-September 2022 period were primarily from China, Japan, and Thailand, as well as other ASEAN and EU countries.¹⁴

Figure 5. Indonesia's Q1-Q3 2022 Import Highlights

Import	Import Value		
	Description	Value	% Growth Compared to the Same Period in 2021
	Total Imports - September 2022	US\$19.81 billion	22.01%
	Total Imports - Jan-Sep 2022	US\$179.49 billion	28.93%
	Total Oil & Gas Imports - September 2022	US\$3.43 billion	83.53%
	Total Non-Oil & Gas Imports - September 2022	US\$16.38 billion	14.02%
	Total Non-Oil & Gas Imports - Jan-Sep 2022	US\$148.44 billion	21.68%
	Import Contributors based on Use of Goods (Jan-Sep 2022)		
	Sector	Value	% Of Total Imports
	Consumer Goods	US\$14.60 million	8.13%
Raw/Auxiliary Materials	US\$138.46 million	77.14%	
Capital Goods	US\$26.43 million	14.73%	
Top Non-Oil & Gas Import Partners (Jan-Sep 2022)			
Partner	Value	% Of Total Imports	
China	US\$50.29 billion	33.88%	
Japan	US\$12.65 billion	8.52%	
Thailand	US\$8.52 billion	5.74%	
ASEAN	US\$25.37 billion	17.09%	
European Union	US\$8.40 billion	5.66%	

Source: BPS, "Berita Resmi Statistik", 17 October 2022

¹⁴ Ibid.

One of the strategies to mitigate the negative impacts of the ongoing Russia-Ukraine conflict in the trading sector is to increase export quotas for substitutes for commodities that have been harshly affected by the crisis. For example, coal exports have increased significantly due to many EU countries banning energy commodity imports from Russia. Indonesia has stepped in as a substitute supplier, providing several EU countries with coal supplies. So far, Poland, the Netherlands, and Italy are Indonesia's top export destinations in Europe for coal.¹⁵ Sanctions on Russia have also led to a spike in coal prices.¹⁶ In addition, exports of oil and natural gas have also driven Indonesia's export revenue, as Indonesia has benefitted from windfall profits from these commodities.¹⁷

For CPO, the Ministry of Trade has formulated and recently implemented new strategies to re-stabilize the price of cooking oil to its normal price (IDR14,000.00 per litre), such as abolishing export levies to increase CPO products' export quotas.¹⁸ Meanwhile, to deal with surging market prices, **the government has injected IDR502 trillion worth of subsidies into energy related products** – gasoline, liquid petroleum gas, and electricity – while also increasing the prices of several categories of gasoline since September 2022.¹⁹ As of September 2022, the government has committed to give direct cash assistance programs (Bantuan Langsung Tunai or BLT) to 20.7 million underprivileged families with estimated funds of up to IDR12.4 trillion to be distributed. According to Indonesia's President Jokowi, BLT funds will be given for four months starting from September 2022, ensuring that energy subsidy recipients are more targeted, which should foster people's purchasing power.²⁰

Figure 6. Comparison of Gasoline Prices in Jakarta Before and After the Start of the Conflict in Ukraine (Price in IDR/litre)

Type of Gasoline (Pertamina)	Jan-22		Aug-22		Sep-22	
	Pertamina	Market Price	Pertamina	Market Price	Pertamina	Market Price
Pertalite (RON 90)	7,650	11,850	7,650	17,195	10,000	10,900-15,320
Pertalite (RON 90)	9,000	11,900-12,040	12,500	17,300-17,500	14,500-15,200	15,400-16,470
Pertamax Turbo (RON 98)	12,000	12,790	17,900	18,520	15,900-16,600	16,510
Dexlite (CN51)	9,500	11,990	17,800	19,280	17,100-18,110	18,310

*Market price is based on gasoline prices with the same RON at private-owned gas stations

Subsidised by the government

Not subsidised by the government

Source: Kompas.com, CNBC Indonesia

¹⁵"Gara-Gara Krisis Energi, Eropa Terus Mengincar Batubara dari Indonesia". Business Insight. 25 October 2022.

¹⁶"Harga Batu Bara Naik 4%! Gara-gara Putin Nih...". CNBC Indonesia. 10 August 2022.

¹⁷"Berita Resmi Statistik, 07 November 2022". Badan Pusat Statistik. 07 November 2022.

¹⁸"Ini Strategi Mendag Zulhas Kerek Harga Tandem Buah Segar Kelapa Sawit". Kompas.com. 03 August 2022.

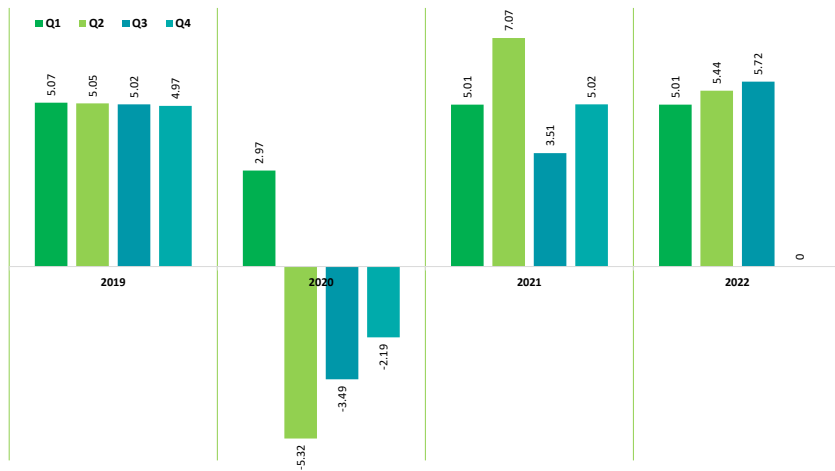
¹⁹"Pemerintah Sesuaikan Harga BBM, Menku Sampaikan Anggaran Subsidi Energi Tetap Naik". Ministry of Finance of RI. 03 September 2022.

²⁰"Pemerintah Putuskan Pengalihan Subsidi BBM untuk Bantuan Tepat Sasaran". Ministry of Communication and Informatics of RI. 04 September 2022.

Indonesia's Q1 2022 GDP growth reached 5.02% and continued to grow to 5.44% by Q2 2022, which represented consistent growth since Q3 2021. **According to the Minister of Finance, Sri Mulyani, Indonesia has a robust and resilient economy in facing the potential global economic recession.** This can be seen from several indicators, such as: (1) Indonesia's positive trend in GDP growth in 2022 and 2023 as projected by the government, BI, the World Bank, IMF, and ADB; (2) positive trends in household consumption and industrial productivity – reflecting high levels of mobility and positive consumer confidence index; (3) the increase in industrial sectors' production; and (4) a positive year-to-date trend in Indonesia's composite stock price index (Indeks Harga Saham Gabungan or IHSG).²¹

In early November 2022, it was revealed that **Indonesia's Q3 GDP grew by 5.72% YoY**, continuing the positive GDP growth trend since Q1 2022. This is in-line with the Ministry of Finance's and Bank Indonesia's GDP growth projections of more than 5.7% and 5.5%, respectively.²² The key driving factors behind Indonesia's economic recovery mainly lie in household consumption and mobility, which recovered significantly due to the loosening PPKM, travel, and event organising restrictions. Specific to Q2 2022, the quarter's economic growth was supplemented by increased personal consumption thanks to Eid Al-Fitr (*Idul Fitri*) celebrations. In Q3 2022, BPS recorded an increase in the number of passengers on all transportation modes, as well as a significant increase in the number of foreign tourists. Meanwhile, household consumption grew by 5.39% YoY thanks to increases in people's mobility and spending, especially among middle-upper socio-economic income groups.²³ Household consumption was the key growth factor in Q3, contributing 2.81% to the 5.72% GDP growth.

Figure 7. Indonesia's Quarterly GDP Growth Comparison, 2019-2022 (In %)



Source: Badan Pusat Statistik (BPS).

²¹"Menkeu: Ekonomi RI Kuat Hadapi Krisis Global". Investor Daily. 20 October 2022.

²²"Anti Resesi! Ekonomi Indonesia Kuartal III-2022 Tumbuh 5,72%". CNBC Indonesia. 07 November 2022.

²³"Berita Resmi Statistik, 07 November 2022". Badan Pusat Statistik. 07 November 2022.

Absorbing external shocks with prudent fiscal and monetary strategies

APBN is another key element that plays an important factor in Indonesia's economic recovery. APBN has been acting as a 'shock absorber' in response to external crises, such as COVID-19 and the conflict in Ukraine. As regulated under Presidential Regulation (Peraturan Presiden or Perpres) No. 98/2022, the budget for state spending is IDR3,106 trillion, while the revenue target is IDR2,266 trillion. The government has several spending priorities for APBN, mainly covering social welfare protection, health, and education. Social welfare protection includes social aids (such as through bantuan sosial or bansos) and subsidies and compensation for energy commodities – gasoline, electricity, and LPG. Moreover, according to the Minister of Finance, the government will allocate the remaining APBN budget to help prevent and reduce the effects of mass layoffs that are occurring in Indonesia's labour-intensive industries, mainly through bansos or other social security programs.²⁴

In addition to the priorities referred to above, government spending is also allocated for national strategic projects and National Economic Recovery (Pemulihan Ekonomi Nasional or PEN) programs. The National Economy Recovery program is a program started in 2020 that is targeted at achieving COVID-19 health and economic recovery. The Minister of Finance considers that reductions in health recovery expenditures is a good sign, indicating COVID-19 cases are decreasing and are at a more manageable state.²⁵

Indonesia's economic recovery resulted in optimism in the financial sector. Based on data from the Ministry of Investment/Investment Coordinating Board (Badan Koordinasi Penanaman Modal or BKPM), from Q1-Q3 2022, Foreign Direct Investment (FDI) in Indonesia was IDR479.3 trillion (around US\$30.6 billion), which represented around 53.7% of Indonesia's investment realisation. In total, investment realisation – Domestic Direct Investment (DDI) and FDI – from Q1-Q3 2022 totalled IDR892.4 trillion (around US\$56.9 billion), a 35.3% increase compared to the same period in 2021 and represented 74.4% of the 2022 investment realisation target (IDR1,200 trillion or around US\$76.5 billion) included in the national medium-term development plan (RJPMN).²⁶

Figure 8. Indonesia Q1-Q3 2022 Investment Realisation Highlights (in IDR Trillion)

	Q1	Q2	Q3	Q1-Q3 Total	2022 Target	Q1-Q3 as % of Target
DDI	135.2	139	138.9	413.1	572.4	72.2%
FDI	147.2	163.2	168.9	479.3	627.6	76.4%
Cumulative Total	282.4	302.2	307.8	892.4	1,200.0	74.4%

Source: BKPM, 2022

²⁴ "Pertumbuhan Ekonomi Kuartal III di Atas 5,5%". Investor Daily. 04 November 2022.

²⁵ Ibid.

²⁶ "Realisasi Invesasi PMA & PMDN Triwulan III (Juli-September) 2022". Ministry of Investment/Indonesia Investment Coordinating Board (BKPM) of RI. 24 October 2022.

According to Indonesia's Ministry of Finance, recent US Federal Reserve 'hawkish' policy initiatives have impacted capital flows into emerging market economy countries, which has slightly affected Indonesia's capital outflow from government bonds (Surat Berharga Negara or SBN) as well as resulting in the Rupiah weakening somewhat against the US dollar. The Ministry emphasises that the government bonds capital outflow did not affect Indonesia's monetary stability.²⁷ Fortunately, demand for Indonesian government bonds grew steadily despite experiencing capital outflows in semester-I 2022. This indicated a recovery in foreign investor confidence after Bank Indonesia released **Consumer Confidence Index** (Indeks Keyakinan Konsumen) surveys which **resulted in scores of over 120 (optimistic)** in August and October 2022.²⁸ On the other hand, the **Rupiah exchange rate has been maintained relatively stable**. The Rupiah only depreciated by 8.62%, compared to other emerging market economy currencies such as the Thai Baht (12.23%), the Malaysian Ringgit (11.86%), and the Indian Rupee (10.20%) YTD 20 October 2022.²⁹ Moreover, according to Bank Indonesia, Indonesia's foreign exchange reserves as of late October 2022 remain high at US\$130.8 billion, equivalent to financing 5.8 months' worth of imports or 5.6 months' worth of imports plus the government's foreign currency debt payments.³⁰

As of December 2022, **Bank Indonesia emphasises that Indonesia's current inflation rate of 5.42% is stable and manageable. The previous month's rate was 5.71%**. Some factors contributing to the month-on-month reduction include volatile food prices and gasoline prices that are more manageable. Indonesia's inflation rate is still relatively low compared to other emerging economy countries such as Thailand (5.98%), India (6.8%), and the Philippines (7.7%).³¹ Bank Indonesia has played a vital role in keeping the inflation rate stable with its flexible use of monetary policy. One policy tool has been to inject large amounts of liquidity – quantitative easing (QE) – into Indonesia's economy, referred to as a burden-sharing policy. Bank Indonesia has been helping the government by acting as a standby buyer for Indonesia Government Bonds (SBN).³²

Hence, in order to benefit from long-term economic recovery, maintaining the inflation rate at a manageable state is vital for the government. The government will still utilise APBN as a shock absorber against global crises, upholding the principles of **'prudent, flexible, and opportunistic' APBN** that can withstand uncertain global economic conditions.³³ Moreover, the Minister of Finance announced that **in 2023, COVID-19 will not be included as a priority in APBN**. Instead, the focus will shift to non-COVID-19 health spending – increasing the budget of the overall health sector from IDR133 trillion in 2022 to IDR168.4 trillion in 2023. The education sector will receive 20% of allocated budget from the

²⁷ "Perekonomian Domestik Masih Menunjukkan Tren Positif di Tengah Ketidakpastian Global". Ministry of Finance of RI. 27 July 2022.

²⁸ Index score > 100: optimistic; Index score < 100: pessimistic based on "Laporan Survei Konsumen - Oktober 2022". Bank Indonesia. 08 November 2022.

²⁹ "Rupiah Melemah, Sri Mulyani: Masih Lebih Baik dari Malaysia dan Thailand". Kompas.com. 03 November 2022.

³⁰ "Cadangan Devisa Oktober 2022 Tetap Tinggi". Bank Indonesia. 07 November 2022.

³¹ "Inflasi November 2022 Terkendali dan Masih Berada di Bawah Prakiraan Awal". Bank Indonesia. 01 Desember 2022.

³² "Inflasi RI Aman Meski BI Nyuntik Rp 800 T, Apa Rahasiannya?". CNBC Indonesia. 24 June 2022; "BI 7-Day Reverse Repo Rate Naik 50 bps Menjadi 4,75%: Sinergi Menjaga Stabilitas dan Momentum Pemulihan". Bank Indonesia. 20 October 2022.

³³ "Presiden Jokowi Pimpinan Rapat Finalisasi RAPBN 2023". Cabinet Secretariat Republic of Indonesia. 09 August 2022

overall APBN budget. Subsidies for energy and F&B commodities are planned to be continued in 2023.³⁴ However, in the 2022 G20 Presidency Leader's Declaration, the members agreed to periodically cut subsidies for fossil-based energy to stimulate the transition to green energy.³⁵ Furthermore, the Minister also noted that focusing on human resources and infrastructure development are two of the four key strategies for Indonesia to break through the 2045 **middle-income trap**.³⁶

Overcoming challenges and seizing opportunities for long-term benefits

Indonesia's targets for long-term economic transformation by 2045 include upgrading Indonesia's human capital by retraining the workforce to be prepared for Industry 4.0, increasing Indonesia's overall global competitiveness, and reversing Indonesia's deindustrialisation. These targets are intended to take advantage of the demographic dividend of Indonesia's changing age composition, which has resulted in the population becoming concentrated in the working age group and as a result has the inherent potential of driving higher levels of per capita income. The United Nations Population Fund (UNFPA) estimates that this window of opportunity is only available in the 2020-2030 period.

With COVID-19 cases reducing and in a more manageable state than in previous years, Indonesia is focusing to get back on its track of economic recovery to achieve its 2045 target of escaping the middle-income trap. However, the Minister of Finance, Sri Mulyani, warned that several external factors may soon pose challenges for Indonesia.³⁷ First, **spill-over effects** from developed countries, mainly those who have a high degree of influence in the global economy. In this uncertain global economy, any decision they make on their domestic economic and regulation changes, as well as their economic conditions, may impact other countries' economies. For example, the US' economic condition and decision to increase interest rates have impacted global inflation to a certain extent.

The global economic condition may remain uncertain for the next few years. In late October 2022, several businesses in Indonesia – particularly labour-intensive industries – have been facing the possibility of economic recession in 2023, leading to a high risk of mass layoffs. In response, the government has formulated policies in order to mitigate the negative impact of layoffs, such as giving additional social security subsidies and incentives from the remaining 2022 APBN. Meanwhile, the Ministry of Manpower, House of Representatives, representatives from Indonesian business/labour associations, and other related stakeholders are in dialogue to solve this issue. The Ministry of Manpower has encouraged businesses to take necessary actions to reduce the possibilities of mass layoffs as stipulated in Minister of Manpower Circular Letter No. SE-907/MEN/PHI-PPHI/X/2004 concerning Prevention of Mass Layoffs, including reducing salaries and benefits for manager-level-and-above employees, reducing overtime benefits, and reducing working hours.³⁸

³⁴ Ibid.

³⁵ "KTT G20 Minta Subsidi BBM Dihapus, Ini Langkah-langkah RI". CNBC Indonesia. 28 November 2022.

³⁶ "Sri Mulyani Beberkan 4 Strategi RI Keluar dari Middle Income Trap". Kompas.com. 04 August 2022.

³⁷ "Sri Mulyani Warning Masyarakat RI: Waspada! Hal-Hal Ini". CNBC Indonesia. 08 August 2022.

³⁸ "Upah Minimum 2023 Naik di Tengah Bayang-bayang Badai PHK akibat Resesi". Kompas.com. 09 November 2022.

Second, **geopolitical tensions**. As evidenced by the ongoing conflict in Ukraine that has created disruptions to the global economy, any further geopolitical tension – especially if it involves strong-economy countries – may worsen the current state of the global economy. As one of the founders of the Non-Aligned Movement (NAM) and with its **independent and active foreign policy**, Indonesia can carefully navigate geopolitical tensions.

Third, **climate change**. Bank Indonesia emphasised the connection between climate change and inflation: climate change damages all aspects of the agriculture sector, from production to distribution.³⁹ In Indonesia, for example, climate change has contributed to the nation's inflation rate. Adverse weather conditions have disrupted the supply chain for several agriculture commodities such as shallots and chili pepper, which has inflated the price of these two commodities.⁴⁰ Therefore, Bank Indonesia emphasised the importance of addressing climate change to stabilise Indonesia's inflation rate.

Last, but not least, **digital transformation** may pose challenges to Indonesia. As a large country, Indonesia needs to be cautious with the ever-changing global dynamics and digital transformation needs to be carefully initiated.

To deal with climate change, Indonesia has ratified the Paris Agreement and is committed to reduce the nation's carbon emissions by up to 41% by 2030. In August 2022, Bappenas also launched Indonesia's first **Green Economy Index**. With this tangible instrument, Bappenas aims to assess and evaluate Indonesia's progress in achieving green economic transformation.⁴¹ In addition, during the recent series of G20 meetings, Indonesia introduced its vision of clean and renewable energy transition, promoting and encouraging countries to shift from brown to green energy to combat climate change. Moreover, during the 2022 G20 Presidency, Indonesia, along with the other G20 members, has agreed to form a funding scheme to help finance green energy transition, namely the **Just Energy Transition Partnership (JETP)**.⁴²

On the other hand, to deal with the impact of global digital transformation in the financial system, the strategy adopted has been to encourage digital payments to accelerate economic recovery, which is carried out through QRIS, electronification, BI FAST (Bank Indonesia – Fast Payment or retail payment system), forming cooperation for cross-border payment between Indonesia-Malaysia-Singapore-the Philippines-Thailand, and regulatory reforms.⁴³

Foreign Direct Investment Realisation

As a developing country, Foreign Direct Investment (FDI) is an important source of capital and contributes to national development through the transfer of assets,

³⁹“Bi: Perubahan Iklim Harus Diatasi untuk Menjaga Inflasi”. Repulika.co.id. 09 August 2022.

⁴⁰ Ibid.

⁴¹“Transformasi Ekonomi, Bappenas Luncurkan Indeks Ekonomi Hijau”. Investor.id. 10 August 2022.

⁴²“RI Dapat Dana Transisi Energi dari G20 Rp 300 Triliun, Pegiat Lingkungan Soroti soal Pensiun Dini PLTU Batu Bara”. Kompas.com. 16 November 2022.

⁴³“Gubernur BI Beberkan Tiga Strategi Hadapi Perlambatan Ekonomi Global”. Investor Daily. 18 October 2022; “Mimpi Jokowi Terwujud! Belanja di 4 Negara Bisa Pakai Rupiah”. CNBC Indonesia. 14 November 2022.

management, and technology to stimulate the country's economy. In 2021, FDI in West Java led with US\$5.22 billion, or 17% of FDI realisation by province, followed by DKI Jakarta with US\$3.33 billion or 11%. For FDI realisation in Q1-Q3 2022, Central Kalimantan took the lead, followed by West Java, as shown in **Figure 9**. Furthermore, in terms of FDI realisation based on origin of investment, in 2021 Singapore was the largest investor in the country with investment value worth US\$9.39 billion, which was followed by Hong Kong at US\$4.61 billion. The largest investments in 2021 were in Basic Metal, Metal Goods, Non-Machinery and Equipment with a value of US\$6.97 billion or 21% of total direct investment. These conditions did not change significantly until Q3 2022 as shown in **Figure 10 and 11**.

Figure 9: Regional FDI Realisation by Investment Value (In US\$ Million)

Province	2021		2022 (Q1-Q3)	
	Investment Value	% Of Total Value	Investment Value	% Of Total Value
Central Sulawesi	2,718	9%	5,135	15%
West Java	5,218	17%	4,649	14%
North Maluku	2,820	9%	3,275	10%
DKI Jakarta	3,331	11%	3,071	9%
Riau	1,921	6%	2,503	7%
Banten	2,190	7%	2,301	7%
East Java	1,849	6%	2,171	7%
Central Java	1,466	5%	1,869	6%
Other Provinces	9,580	31%	8,424	25%
Total Investment Value	31,093	100%	33,398	100%

Source: BKPM, "Realisasi Investasi PMA & PMDN Triwulan III 2022", 24 October 2022

Figure 10: FDI Realisation 2021-2022 by Origin of Investment (In US\$ Million)

Origin of Investment	2021		2022 (Q1-Q3)	
	Investment Value	% Of Total Value	Investment Value	% Of Total Value
Singapore	9,390	30%	10,543	32%
China	3,160	10%	5,187	16%
Hong Kong	4,609	15%	3,915	12%
Japan	2,263	7%	2,769	8%
Malaysia	1,364	4%	2,218	7%
USA	2,537	8%	2,124	6%
South Korea	1,640	5%	1,666	5%
Netherlands	1,762	6%	1,097	3%
Other Countries	4,367	14%	3,881	12%
Total Investment Value	31,093	100%	33,398	100%

Source: BKPM, "Realisasi Investasi PMA & PMDN Triwulan III 2022", 24 October 2022

Figure 11: FDI Realisation 2021 and Q1 2022 by Sector (In US\$ Million)

Sector	2021		2022 (Q1-Q3)	
	Investment Value	% Of Total Value	Investment Value	% Of Total Value
Base Metal, Metal Goods, Non-Machinery, and Equipment	6,974	22%	8,465	25%
Mining	3,817	12%	3,482	10%
Electricity, Gas, and Water Supply	2,939	9%	3,045	9%
Chemicals and Pharmaceuticals Industry	1,657	5%	2,709	8%
Transportation, Warehouse, and Telecommunications	3,159	10%	2,613	8%
Housing, Industrial Estate, and Office Building	2,186	7%	2,279	7%
Food Industry	2,337	8%	1,937	6%
Others	8,024	26%	8,870	27%
Total Investment Value	31,093	100%	33,398	100%

Source: BKPM, "Realisasi Investasi PMA & PMDN Triwulan III 2022", 24 October 2022

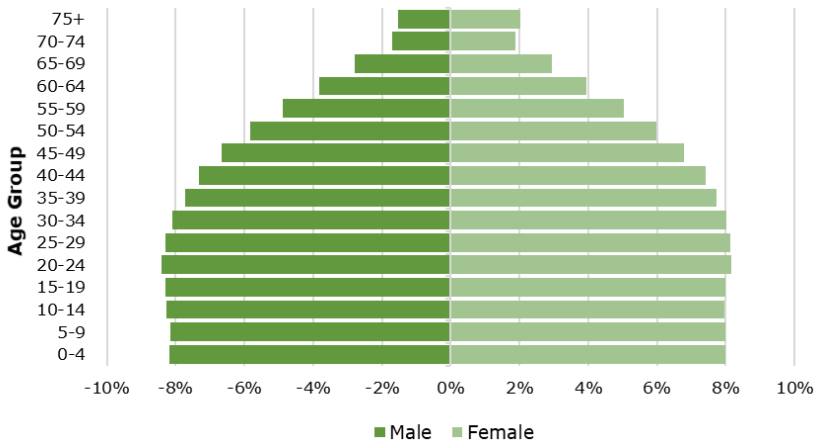
2. Demography

Indonesia consists of 38 provinces, more than 16,700 islands, and more than 275 million people, making Indonesia the fourth largest country in the world in terms of population. The demographic advantages of a population of 275 million people are:

- Over 66.5% of the population is aged between 15 and 65, with a low dependency ratio and a dynamic workforce with high literacy rates.
- Around 56% of the population lives in urban areas.
- Indonesia's population accounts for more than 40% of the total population of Southeast Asian countries combined.

According to BPS, Indonesia's labour force participation rate, which was recorded at 68.08% in 2021, reached 69.06% in August 2022 – the highest rate recorded during COVID-19. As the economy steadily recovers, the open unemployment rate (*Tingkat Pengangguran Terbuka* or TPT) fell to 5.86% in August 2022 from 6.49% in the same period in 2021. Employment rates are high in agriculture, trading, manufacturing, F&B, and transportation and warehousing sectors. Indonesia also has a large consumer base with fast-increasing spending power. The middle class is rising in Indonesia; around 7 million people are expected to join the middle class per annum.

Figure 12: The Population of Indonesia by Age and Gender (2021)



Source: BPS, 2022

3. New Investment Climate

A large part of Indonesia's economic success is a result of the growing middle class and stable economic growth. According to Indonesia's Ministry of Finance, Indonesia's debt-to-GDP ratio reached 39.3% on 30 September 2022 and will only be 42.71% by the end of 2022 based on an IMF projection. The government, however, is targeting to cap Indonesia's debt-to-GDP ratio at no more than 40% by the end of 2022 – lower than IMF's projection and still below the maximum limit stipulated in Law No. 17/2003 on State Finance, which is 60% of GDP. Indonesia's debt-to-GDP projection for 2022 is considered **the lowest among several ASEAN countries**, such as Malaysia (69.25%), Thailand (62.68%), and the Philippines (60.04%).

Indonesia's sovereign bonds were rated investment grade by all three major credit ratings agencies after Indonesia's outlook was revised to negative in April 2020 amid COVID-19. In April 2022, S&P assessed Indonesia's sovereign credit ranking to remain BBB with a stable outlook. These ratings, as summarised in **Figure 13**, reflect Indonesia's resilience to the global crises, improving government and external credit-metrics, and an ability to manage domestic political challenges to the reform agenda. With such performance, Indonesia is in a safe position and does not need to become one of IMF's "patients".⁴⁴

Figure 13: Indonesia Sovereign Credit Ranking

Rating Agency	Rate	Outlook	Date
Fitch rating	BBB	Stable	June 2022
Moody's	Baa2	Stable	February 2022
Standard and Poor's	BBB	Stable	April 2022

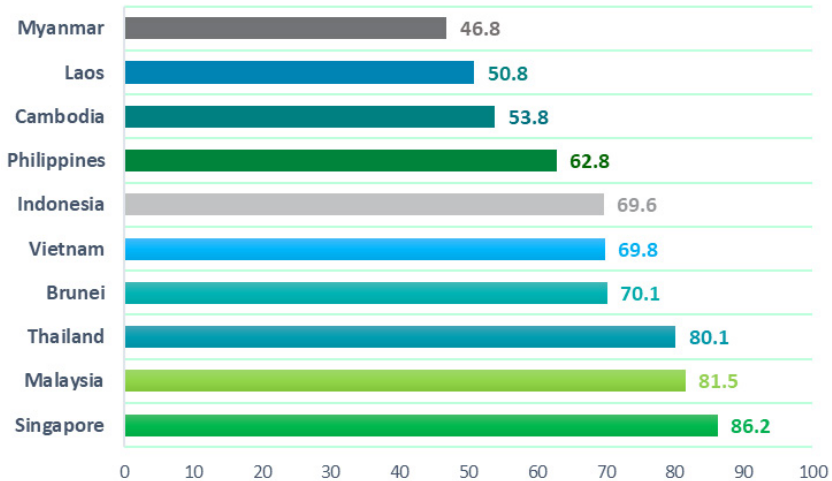
Source: Bank Indonesia, Fitch Ratings

Furthermore, according to Statista Research Department, in 2020 Indonesia ranked sixth in terms of Ease of Doing Business (EODB) in ASEAN countries with a score of 69.6. During the same year, Singapore ranked first with a score of 86.2. The table below indicates the EODB rankings for all Southeast Asia countries based on their respective index scores.⁴⁵

⁴⁴"Daftar Pasien IMF Bertambah, Indonesia Masih Kuat?". CNBC Indonesia. 28 October 2022.

⁴⁵"ASEAN: Ease of Doing Business (EODB) Score 2020". Statista.com. 2021.

Figure 14: Southeast Asia Ease of Doing Business (EODB) in 2020, by Index Score



Source: Statista, 2021

4. Industry overview and opportunities

Indonesia has a well-balanced economy, in which all major sectors play an important role. Agriculture historically has been the dominant sector in terms of both employment and output. The country has a vast range of mineral resources, which have been exploited over the past four decades, enabling the mining sector to make an important contribution to Indonesia's balance of payments.

Indonesia has a well-diversified trading economy. In 2022 (January-September), manufacturing industries are the country's largest exporters, followed by coal and other mining products, oil and gas products, and agriculture, forestry, and fishery products.⁴⁶ However, due to the recent drop in commodities prices, Indonesia must realign its trade strategy, focusing more on value-added industries and infrastructure development. In addition, the government plans to increase production of core commodities for domestic consumption and to reduce its heavy reliance on imports – especially on wheat.

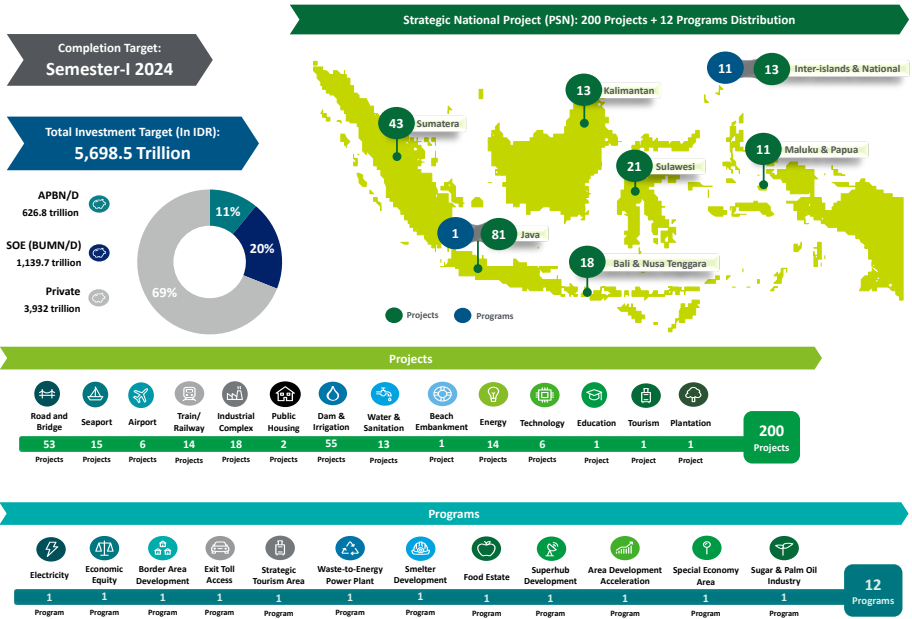
Infrastructure sector

The Jokowi administration aims to improve connectivity across the archipelago and promote balanced growth between the western and eastern parts of Indonesia. The government has introduced a "sea toll road" concept to connect Indonesia's archipelago through seaports in the main corridor between western and eastern islands to reduce high logistics costs. In addition, the government aims to build more public roads, toll roads, airports, seaports, railways, power plants, energy complexes, industrial complexes, dams, water & sanitation, agricultural

⁴⁶"Ekspor September 2022 mencapai US\$24,80 miliar, turun 10,99 persen dibanding Agustus 2022 dan impor September 2022d senilai US\$19,81 miliar, turun 10,58 persen dibanding Agustus 2022". Badan Pusat Statistik. 17 October 2022; "Berita Resmi Statistik, 17 Oktober 2022". Badan Pusat Statistik. 17 October 2022.

infrastructure, telecommunications infrastructure, and public transportation modes, not only focusing on Java but also on other islands. These projects are a part of the Jokowi administration's National Strategic Projects (Proyek Strategis Nasional or PSN), which comprise of 200 public infrastructure projects and 12 programs administered by Komite Percepatan Penyediaan Infrastruktur Prioritas (KPPIP). By the end of semester-I 2022, more than 130 projects had been completed which have been funded by IDR858 trillion of investment, while 70 projects remain to be completed by semester-I 2024.⁴⁷

Picture 1: Strategic National Projects (PSN) of Indonesia 2022



Source: Coordinating Ministry for Economic Affairs of RI Regulation No. 9 2022 and KPPIP Semester 2 2021 Report

In July and August 2022, Indonesia's President Jokowi conducted several state visits to Russia, Ukraine, China, Japan, and South Korea. In addition to attempting to promote peace talks between Russia and Ukraine, Indonesia also discussed trade and investment opportunities with China, Japan, and South Korea – mainly related to Electric Vehicles (EV), green development and technology, and Indonesia's infrastructure.⁴⁸ While South Korea expressed interest in the Ibu Kota Negara Nusantara project, Indonesia and China extended their Global Maritime Fulcrum and Belt and Road Initiative (BRI) cooperation. After a period of delay, the Jakarta-Bandung high-speed railway – a product of Global Maritime Fulcrum and BRI – continued construction in August 2022. Indonesia became the first-ever country in the world to receive China's high-speed train capsule. As of September 2022, the Jakarta-Bandung high-speed railway was 85 percent complete.⁴⁹

Meanwhile, Indonesia and Japan agreed to complete infrastructure development for three National Strategic Projects: Jakarta Mass Rapid Transit (MRT) extension, development of West Papua Industrial Complex, and expansion of Patimban Harbour and Toll Road Access.⁵⁰

Indonesia's infrastructure cooperation with Japan was further discussed during the 2022 G20 leaders' summit, when Indonesia had bilateral dialogues with several state representatives – notably USA, China, Japan, Turkiye, EU, and Australia, in which the topics discussed related to infrastructure cooperation, resolving the Russia-Ukraine conflict, economic issues, education, trade, defence, and green energy transition.⁵¹ During the Presidency, Indonesia successfully formed cooperation with several countries, mainly on infrastructure development. UK and South Korea have agreed to participate in Jakarta MRT infrastructure development, joining Japan in completing the project. Meanwhile, Indonesia, through the Ministry of Public Works and Public Housing, has also secured cooperation with Turkiye for the development of the Trans-Sumatra Toll Road project.⁵²

New State Capital – Ibu Kota Negara Nusantara Project

A new project was added to the government's National Strategic Projects – the new State Capital project called IKN or Ibu Kota Negara Nusantara.⁵³ IKN project was first introduced in 2019 by Jokowi's second administration and is targeted to be completed in 2045. Located in East Kalimantan, the government envisions IKN to be "Indonesia's superhub" as well as the centre of Indonesia's government. It will cover an area of 256,000 hectares and will adopt green and smart city concepts. In late August 2022, the Ministry of Public Works and Housing (Pekerjaan Umum dan Perumahan Rakyat or PUPR) began Phase 1 development of IKN, which comprises of 19 projects worth IDR5.3 trillion.⁵⁴ According to the IKN Authority Body, the whole project will utilise around IDR486 trillion worth of funding over the period to 2045, for which the government greatly welcomes foreign investment.



⁵⁰ "Simak Lagi! Oleh-oleh Jokowi dari China, Jepang & Korsel". CNBC Indonesia. 30 July 2022

⁵¹ "Ini Hasil Pertemuan Presiden Jokowi dengan Lima Pemimpin Negara G20". Indonesia.go.id. 14 November 2022.

⁵² "Ri Ketiban Durian Runtuh di KTT G20 Bali, Nih Rinciannya!". CNBC Indonesia. 17 November 2022.

⁵³ "Jokowi Tetapkan IKN Jadi Proyek Strategis Nasional". CNN Indonesia. 06 September 2022.

⁵⁴ "Ministry begins Rp5.3-trillion first phase of IKN development". AntaraNews.com. 29 August 2022.

As of September 2022, BKPM stated that there are several government-linked and private actors that are going to invest in the IKN project, as well as cooperate with the Indonesian government for the development of IKN. United Arab Emirates (UAE) alone has invested US\$20 million in the IKN project via the Indonesia Investment Authority (INA). South Korea has formed a technical cooperation between South Korea's Ministry of Land, Infrastructure, and Transport and Indonesia's Ministry of Public Works and Housing – on knowledge & information exchange, sending experts, prototype projects and capacity building, etc.⁵⁵ Meanwhile, Russia, China, Japan,⁵⁶ and private companies such as Foxxcon (from Taiwan), Pohang Iron and Steel Company (from South Korea),⁵⁷ and LG (from South Korea)⁵⁸ are in talks with the Indonesian government regarding their investment interest in the IKN project. BKPM highlights the smart and green development of IKN as well as the reasonable cost of land development as aspects that drew investors' interest in the IKN project.

Green and renewable energy transition

With a waste-to-energy power plant (Pembangkit Listrik Tenaga Sampah or PLTSa) program listed as one of the 12 programs in the National Strategic Projects, Indonesia is ready to take serious action in achieving its net zero emission targets by 2060 and commit to clean and renewable energy transition, becoming one of Indonesia's main priorities deriving from its G20 Presidency. This is supported by the enactment of **Perpres No. 112/2022** concerning the Acceleration of Renewable Energy Development in Indonesia and the Ministry of Energy and Mineral Resources' commitment to **ease green investment regulatory matters in Indonesia**. As a start, State Electric Company (Perusahaan Listrik Negara or PLN) promotes green investment to Indonesia, accelerating the "early retirement phase" of several Steam (or coal-fired) Power Plants (Pembangkit Listrik Tenaga Uap or PLTU) and decommissioning fossil-based power plants periodically to be replaced by renewable energy (Energi Baru dan Terbarukan or EBT) power plants.⁵⁹ Several countries and institutions have shown interest in investing in PLN's PLTU early retirement program, the PLTSa establishment program, and the renewable energy development program. PLTSa development in Makassar, for example, has attracted dozens of investors, including multi-national companies from China, Australia, and Germany.⁶⁰

Indonesia offers great prospects for renewable energy-based investments, as emphasised by the Ministry of State-owned Enterprises (Badan Usaha Milik Negara or BUMN). For example, Indonesia possesses huge potential in geothermal energy with up to 23.76-gigawatts (GW) worth of potential – the second largest in the world. By 2030, the government aims to develop renewable energy power plants with a total capacity of up to 20.9 GW, and at a total estimated investment of about US\$55.2 billion. Hydroelectric power plant holds the largest renewable energy

⁵⁵"Indonesia dan Korea Selatan Lanjutkan Kerja Sama Teknis Pemindahan Ibukota dan Pembangunan IKN Nusantara". Ministry of Public Works and Housing of RI. 30 July 2022.

⁵⁶"Luhut Buka-bukaan Investasi China hingga Minat Rusia Join IKN". CNBC Indonesia. 08 August 2022.

⁵⁷"Bahilil Beberkan Empat Negara Berkomitmen Investasi di IKN Nusantara". Katadata.co.id. 20 July 2022.

⁵⁸"LG Bakal Investasi di IKN dan Relokasi Pabrik dari China ke Indonesia". CNN Indonesia. 30 July 2022.

⁵⁹"Berjibaku Padamkan PLTU". Bisnis Indonesia. 19 October 2022.

⁶⁰"Pembangkit Listrik Tenaga Sampah Diminati Asing". Bisnis Indonesia. 19 October 2022.

potential in Indonesia, followed by solar, and then geothermal.⁶¹ Additionally, Indonesia is abundant with uranium and thorium, elements that are utilised to fuel nuclear power. Despite being geographically located in the “**Ring of Fire**”, the development of nuclear power plants (Pembangkit Listrik Tenaga Nuklir or PLTN) in Indonesia is still safe and possible according to National Research and Innovation Agency’s (Badan Riset dan Inovasi Nasional or BRIN) assessment, specifically in Banten, Jepara, West and East Kalimantan.⁶² Nuclear-based clean energy has become a top energy priority that Indonesia aims to further develop.⁶³

In early November 2022, PLN attracted and received funding worth US\$750 million from eight multinational banks for Indonesia’s green energy transition projects, as well as signing a MoU with Japan International Cooperation Agency (JICA) on green energy transition acceleration studies in Indonesia.⁶⁴ Additionally, during the 2022 G20 Presidency, Indonesia received US\$20 million worth of funding from the Just Energy Transition Partnership (JETP) for green and renewable energy transition-related projects, such as PLTU early retirement projects and investment in green and renewable energy technology and industry.⁶⁵ ADB has also agreed to contribute to Indonesia’s PLTU early retirement projects. Through the Energy Transition Mechanism (ETM), ADB will cooperate with PLN in decommissioning the 660 megawatt Cirebon-1 PLTU plant, aiming to reduce CO₂ emissions in the Asia Pacific region. Aside from decommissioning coal-based power plants, Indonesia, through its State-owned Enterprise (SoE) Pertamina New & Renewable Energy has secured cooperation with ACWA Power – an electricity company from Saudi Arabia – to develop a clean energy electricity power plant under the Grass Root Refinery and Petrochemical project.⁶⁶ The Indonesian government has also been accelerating enactment of laws and regulations on green and renewable energy, as well as introducing tax incentives for green and renewable energy developments in Indonesia – particularly for power plants. Hence, investing in clean and renewable energy projects is expected to be a worthwhile option for investors in the coming years.

5. Regional snapshot

For those who are targeting appropriate locations to invest in or expand current business scope, we have selected the top 10 provinces and present a regional snapshot, by regional GDP on an annual basis and several indicators relevant to foreign investment, such as FDI by value, FDI by number of projects, as well as monthly minimum wage in 10 Provinces in the figures below for further reference. As a note, in relation to **Figure 19**, the Ministry of Manpower has announced a new formula for 2023 minimum wage calculation and set the maximum 10% wage increase for 2023, as stipulated in Ministry of Manpower Regulation (Peraturan Menteri Ketenagakerjaan or Permenaker) No. 18/2022 on 2023 Minimum Wage Provision.⁶⁷

⁶¹ “Swasta Dilibatkan dalam Proyek EBT Rp 861,6 Triliun”. Investor Daily. 26 October 2022.

⁶² “Dukung Program NZE 2060, Keberadaan PLTN Dinilai Layak Diperhitungkan”. Investor Daily. 25 October 2022.

⁶³ “Pemerintah Dorong Investasi Sektor EBT”. Media Indonesia. 04 November 2022.

⁶⁴ “PLN Peroleh Pembiayaan USD 750 Juta untuk Proyek Transisi Energi Hijau”. Investor Daily. 04 November 2022.

⁶⁵ “RI Dapat Dana Transisi Energi dari G20 Rp 300 Triliun, Pegiat Lingkungan Soroti soal Pensiun Dini PLTU Batu Bara”. Kompas.com. 16 November 2022.

⁶⁶ “RI Ketiban Durian Runtuh di KTT G20 Bali, Nih Rinciannya!”. CNBC Indonesia. 17 November 2022.

⁶⁷ “Sah! Pemerintah Tetapkan Upah Minimum 2023 Maksimal Naik 10%”. Detik.com. 19 November 2022.

Figure 15: Top 10 Regional Demographics*

Province	Provincial Capital	Area (sq/km)	No. of Islands	No. of Regencies	No. of Cities	Population (in millions)	Human Development Index
DKI Jakarta	Jakarta	664	113	1	5	10.6	81.1
West Java	Bandung	35,378	30	18	9	48.8	72.5
Central Java	Semarang	32,801	71	29	6	36.7	72.2
East Java	Surabaya	47,803	504	29	9	40.9	72.1
Banten	Serang	9,663	81	4	4	12.1	72.7
Riau	Pekanbaru	87,024	144	10	2	6.5	72.9
North Sumatra	Medan	72,981	229	25	8	14.9	72.0
South Sumatra	Palembang	91,592	23	13	4	8.6	70.2
East Kalimantan	Samarinda	129,067	243	7	3	3.7	76.9
South Sulawesi	Makassar	46,718	355	21	3	9.1	72.2

*Based on 2021 data

Source: BPS, 2022; Dukcapil, 2022

Figure 16: Top 10 Gross Regional Domestic Product (In IDR Billion)

Province	2018	2019	2020	2021	% Of National GRDP 2021
DKI Jakarta	2,592,607	2,815,636	2,768,190	2,914,581	17%
East Java	2,188,766	2,345,549	2,299,791	2,454,499	14%
West Java	1,960,628	2,123,154	2,084,620	2,209,822	13%
Central Java	1,268,261	1,360,960	1,347,923	1,420,800	8%
North Sumatra	741,347	799,609	811,188	859,871	5%
Riau	752,263	760,248	728,650	843,211	5%
Banten	613,804	661,321	625,979	665,922	4%
East Kalimantan	635,499	652,480	607,586	695,158	4%
South Sulawesi	461,775	504,321	504,059	545,230	3%
South Sumatra	419,392	453,403	456,648	491,566	3%
Total Top 10	11,634,342	12,476,680	12,234,635	13,100,661	77%
Total National GRDP	14,838,756	15,832,657	15,438,018	16,970,789	100%

Source: BPS, 2022

Figure 17: Top 10 Regional FDI Realisation by Investment Value (In US\$ Million)

Province	2018	2019	2020	2021	2022 (Q1-Q3)
Central Sulawesi	672	1,805	1,779	2,718	5,135
West Java	5,573	5,881	4,794	5,218	4,649
North Maluku	1033	1,009	2,409	2,820	3,275
DKI Jakarta	4,857	4,123	3,613	3,331	3,071
Riau	1,033	1,034	1,078	1,921	2,503
Banten	2,828	1,868	2,144	2,190	2,301
East Java	1,333	866	1,575	1,849	2,171
Central Java	2,373	2,723	1,364	1,466	1,869
South Sumatra	1,079	737	1,544	1,260	946
Papua	1,132	941	568	1,489	932
North Sumatra	1,228	380	975	580	910
East Kalimantan	588	861	378	745	867
Southeast Sulawesi	673	988	1,269	1,617	703
Riau Islands	831	1,363	1,649	1,044	660
Bali	1,002	426	293	452	324
Total Top 10	22,469	21,735	22,140	24,618	26,852
Total Investment Value	29,307	28,208	28,666	31,093	33,398

Source: BPS, 2022; BKPM, 2022

Figure 18: Top 10 Regional FDI Realisation by Number of Projects

Province	2018	2019	2020	2021	2022 (Q1-Q3)
DKI Jakarta	6,499	8,092	16,787	7,620	7,221
West Java	4,713	5,526	11,031	5,244	5,565
Bali	1,490	2,443	3,967	2,798	3,538
Banten	1,895	2,559	4,288	1,939	1,971
East Java	1,441	2,142	4,059	1,815	1,841
Central Java	801	1,249	2,795	1,293	1,253
Riau Islands	804	1,279	2,143	992	930
North Sumatra	491	805	1,465	690	677
West Nusa Tenggara	651	1,223	1,776	824	668
East Kalimantan	275	524	722	428	442
West Kalimantan	305	403	805	337	319
Riau	252	416	823	331	300
Total Top 10	19,090	25,842	49,134	23,643	24,106
Total FDI Projects	21,972	30,354	56,726	27,271	27,591

Source: BPS, 2022; BKPM, 2022

Figure 19: Top 10 Provincial Minimum Wage (UMP) per Month (in US\$)

Province	2019	2020	2021	2022
DKI Jakarta	251	273	282	292
Papua	207	224	224	227
North Sulawesi	195	211	211	211
Bangka Belitung	190	206	206	208
Aceh	186	202	202	202
West Papua	187	200	200	204
South Sulawesi	182	198	202	202
South Sumatra	179	194	194	201
Riau Islands	177	192	192	195
North Kalimantan	176	191	191	192

***Based on 01 November 2022 exchange rate (1 US\$ = IDR15.673,98)**

Source: Ministry of Manpower of RI, 2021; Kompas.com, 2022; BPS, 2021

6. Legal and political system

Civil law tradition and gradual reform

Indonesia's legal system originated from the laws and practices of the Dutch colonial era, which lasted for approximately 350 years before Indonesia declared independence. The independence era was characterised by policy reforms, a transition from parliamentary democracy to a more centralised system of "guided democracy" (known as *demokrasi terpimpin*), nationalisation of Dutch enterprises and the expulsion of Dutch citizens from Indonesia.

During the President Soeharto era (the so-called *Orde Baru* or New Order), the Indonesian government's attitude towards foreigners underwent a significant change, with a series of policy initiatives and large-scale legal reforms aimed at attracting international investors to improve the country's economy. These efforts were considered successful in many areas.

Following the Asian Financial Crisis (1997-1998), Indonesia's government devolved significant political and legal authority to the provinces, regencies and cities. It re-initiated widespread legal reform in an effort to improve government institutions, reduce corruption, improve the country's fiscal and monetary policies and meet other policy goals. The reform period also saw Indonesia successfully transition from an authoritarian state to a democracy, with elections being held in 1999, 2004, 2009, 2014, and 2019 (the latter of which resulted in the re-election of President Jokowi). The next presidential election is scheduled for 2024.

Despite this series of reforms, many of Indonesia's laws and regulations are still based on the Dutch colonial codes that were effective as of independence and remain valid until they are revoked and replaced by new laws or regulations. For example, the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) remains the foundation of Indonesian law regarding contracts and many general

rights and obligations relevant to commercial activities. Aside from the Indonesian Civil Code, the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana) sets out certain provisions on criminal code and the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang) has become the foundation of Indonesian law on commercial activities conducted within the Indonesian territory.

Hierarchy of laws and regulations in Indonesia

Set out below is the hierarchy of laws and regulations in Indonesia:

- a. 1945 Constitution (Undang-Undang Dasar 1945), which serves as the basic foundation of the state and constitutional arrangements.
- b. Assembly Decree (Ketetapan MPR) sets forth a determination of the People's Consultative Assembly.
- c. Law or Government Regulation in Lieu of Law (Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang) regulates subjects that are governed by the 1945 Constitution.
- d. Government Regulation (Peraturan Pemerintah) implements laws.
- e. Presidential Regulation (Peraturan Presiden) covers subjects mandated by law or the implementation of government regulations.
- f. Provincial Regional Regulation (Peraturan Daerah Provinsi) implements principles of regional autonomy and laws, government regulations, and presidential regulations in respect of the relevant province.
- g. Regency/Municipality Regional Regulation (Peraturan Daerah Kabupaten/Kota) implements principles of regional autonomy and laws, government regulations, and presidential regulations in respect of the relevant regency/city.

The abovementioned hierarchy may be used as a reference to resolve issues regarding which regulations should take precedence in the event of a conflict between laws and regulations.

Indonesian law also recognises the following additional sources of law which are not specifically mentioned in the hierarchy, namely: treaties, customs (*adat*), case precedents (civil jurisprudence or *jurisprudensi*), and opinions of legal experts (*doktrin*). Case precedents and expert opinions are only referred to as references for the application of law, rather than as a source of binding legal authority.

National political system

Indonesia is a presidential representative democratic republic, with an independent legislature and judiciary. The main components of the national political system are:

- a. President of the Republic of Indonesia: elected for a five-year term; the President is the head of state, head of Government, and head and elector of the Council of Ministers (Indonesia's cabinet), as well as the commander-in-chief of the Indonesian army.
- b. People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR): the highest representative and law-making body that has the power to impeach

the President. It is composed of two houses or chambers: the People's Representative Council (Dewan Perwakilan Rakyat or DPR) and the Regional Representatives Council (Dewan Perwakilan Daerah or DPD). All legislation is passed by the DPR, which also supervises the executive branch. The DPD's authority is limited to regional autonomy related matters, the relationship between central and local government, formation, expansion and merger of regions, natural resources and other economic resources management, and bills related to the financial balance between the central government and the regions.

- c. Supreme Court (Mahkamah Agung): the highest-level judicial body in Indonesia. The President appoints the judges of the Supreme Court. All civil disputes appear first before a State Court (Pengadilan Negeri), before being heard in the High Court (Pengadilan Tinggi), the intermediate appellate court. Other components of the judiciary include the Commercial Court (Pengadilan Niaga), which hears bankruptcy and insolvency cases, as well as intellectual property cases; the Industrial Relations Court (Pengadilan Hubungan Industrial), which examines cases on disputes of rights, interests, termination of employment, and disputes among labour unions within a company. Further, the State Administrative Court (Pengadilan Tata Usaha Negara), which hears administrative law cases against the government; Religious Court (Pengadilan Agama) which examine specific religious cases; and Military Court, which has judicial power in the military.
- d. Constitutional Court (Mahkamah Konstitusi), a judicial body authorised to administer constitutional justice in Indonesia. The Constitutional Court has the same position as the Supreme Court and hears disputes concerning the legality of laws, dissolution of political parties, general elections, and the scope of authority of a state institution.
- e. Indonesian Cabinet (Kabinet Indonesia): appointed by the President, the Indonesian cabinet is composed of coordinating ministers, departmental ministers, state ministers, and certain non-minister positions (attorney general, cabinet secretary, commander of the Indonesian Armed Forces, chief of the Indonesian National Police, chief of presidential staff, head of the national research and innovation agency, and head of the Nusantara capital authority). Both the state ministers and the departmental ministers lead the ministries with specific regulatory authority over assigned areas.
- f. National Ministries, Departments and Bodies: Implementation of Indonesia's laws and regulations are formulated and carried out by an array of ministries, bodies, and agencies, many of which have a sector-specific authority (such as authority to regulate the oil and gas industry) or area-specific authority (such as authority to regulate land use). Some regulators – such as the Ministry of Trade or the Ministry of Industry – have authority over multiple sectors, and overlapping authority is common. Ministries are sub-divided into directorates general, which may have specific authority over a portion of the responsibilities of the ministry.

In addition to the ministries, there are also various national bodies, agencies and institutions including state auxiliary bodies that play important roles in formulating,

supervising, and implementing government policy.

The reporting lines of these bodies vary: some report directly to the President, others report to a minister and others report to the legislature. Generally, the various national agencies maintain their head offices in Jakarta but may also maintain regional offices. These regional offices should be viewed as distinct from any local government offices operating in the same region. However, the capital city of Indonesia is planned to move from Jakarta to Ibu Kota Negara Nusantara starting in 2024, in parallel with the further development of Nusantara and such plan has been determined as set forth under Law No. 3/2022 concerning the Capital City.

Local governments and local autonomy

The local government (*pemerintah daerah*) refers to both Indonesia's provincial governments and regency/municipal governments. Indonesia consists of 34 existing provinces (*provinsi*) with 4 additional new provinces in Papua that have just been established; thus, Indonesia has a total of 38 provinces. Each of these provinces has its own provincial parliament and governor (*gubernur*). Each province is further divided into regencies (*kabupaten*) and municipalities (*kota*), which also have their own parliaments and chief executives (regents (*bupati*) and mayors (*walikota*), respectively). In most aspects, regencies and municipalities are legally independent of the provinces. The head of a local government is entitled and subject to the approval of the regional parliament (Dewan Perwakilan Rakyat Daerah) to enact regional regulations which are independent from the national government.

Indonesia established regional autonomy based on a law passed in 1999, which was amended in 2014 and further amended by the Omnibus Law. Under such laws, the national government and the local governments share regulatory authority over all matters, except for policies of foreign affairs, defence, justice, religion, and fiscal and monetary affairs which are reserved to the national government.

In addition, some laws and regulations provide that authority over certain sectors or affairs is retained at the national level. If there is a conflict between national and regional legislation, the legislation enacted by the national government will prevail, as it ranks above regional legislation in Indonesia's hierarchy of legislation. The role of the provinces is primarily to coordinate internal matters among the regencies and municipalities and act as a regional policy maker. In detail, regencies and/or municipalities have the same role as provinces which is aimed at formulating local policies and planning on a smaller scale. Nonetheless, if there is a conflict between a provision governed under the provinces and regencies and/or municipalities' regulation, the province's regulation shall prevail to ensure certainty and consistency in the application of such regulation. Further, the regional administration is frequently implemented through regional service agencies known as "*dinas*". This regional service agency or *dinas* is responsible for assisting the head of each respective region in conducting governmental activities in accordance with their respective divisions/related field.

B. Legal and Regulatory Overview of Doing Business in Indonesia

1. Getting the Business Started

Indonesia has become a favoured investment destination since the country has a young workforce, abundant natural resources, and a growing local market. The Indonesian government has been working to attract more investment by expanding investment opportunities for foreign investors, including specific schemes for the development of Indonesian natural resources and the provision of public infrastructure.

Despite the government's objective of boosting foreign investment, the regulation of foreign direct investment includes several protections for local businesses, labour/workforce, goods and services, and requirements for minimum local ownership.

Under the applicable laws, a foreigner or foreign company may set up a presence in Indonesia by means of setting up a Representative Office (Rep-Office), or a limited liability company (known as a foreign capital investment company – Penanaman Modal Asing or PMA company).

Any proposed foreign direct investments that are carried out through a PMA company may be conducted either by way of acquiring shares in an existing local company or establishing a new company.

Foreign investors may also carry out business in Indonesia through several types of Representative Offices, such as Foreign Company Representative Office, Foreign Trade Company Representative Office, Construction Service Provider Representative Office, and Foreign Electrical Power Support Representative Office. We will discuss these in turn.

Foreign company representative office and foreign trade company representative office

The main purpose of a foreign company representative office is to market and promote the interests of its principal company, liaise with affiliates and engage in other non-profit activities (e.g., procuring goods, giving presentations and conducting market research). A foreign company representative office is prohibited by law from engaging in profit-making activities in Indonesia, including entering into any agreements/sale and purchase transactions for goods and commercial services with local companies or individuals.

On the other hand, the main purpose of a foreign trade company representative office is to market and promote the interests of the foreign trading company which acts as the principal of the foreign trade company representative office. It is

noteworthy that the foreign trade company representative office is only available if the principal is a trading company. Foreign trade company representative office is prohibited from conducting direct trading and sales-purchase activities, including participating in tenders, signing any contracts, settling any claims, and conducting any activities related thereto.

An application for the establishment of a Foreign Company Representative Office and a Foreign Trade Company Representative Office can be conducted through an online system, namely the Online Single Submission System (OSS System). Both types of Representative Office are intended to market and promote the principal foreign company's interests, liaise with relevant affiliates and engage in other non-profit activities.

These Representative Offices could purchase items and enter into contracts but are restricted from making a profit by engaging in business activities in Indonesia.

Construction service provider representative office

A foreign construction company (Badan Usaha Jasa Konstruksi Asing – BUJKA) may establish its presence in Indonesia in the form of a representative office (BUJKA RO) in order to participate in and bid for potential projects and carry out construction services in Indonesia. BUJKA RO may be a profit-generating operation, which is different than a regular foreign company representative office or a foreign trade company representative office.

Prior to performing construction services, a BUJKA RO is required to obtain a Construction Representative Office License (IPBUJKA) from the Minister of Public Works and Public Housing and Certification through the OSS system. The BUJKA RO may only carry out construction services in a high-risk, high-tech, and/or high-cost market segment. In addition, BUJKA RO must also enter into a joint operation with a local construction company (BUJKN) to implement any construction services in Indonesia.

Foreign electrical power supporting services representative office

A foreign electrical power supporting services company may perform its business activity in Indonesia by way of establishing a representative office. Similar to BUJKA RO, Foreign Electrical Power Supporting Services Representative Office may also perform income generating activities.

In performing its business activity, a Foreign Electrical Power Supporting Services Representative Office is required to obtain Business Entity Certification and an Electrical Power Supporting Services Business License and shall only be engaged in high-cost business activities relating to consultation for electrical power plant, construction and installation of electrical power plant, and maintenance of electrical power plant, subject to the additional requirements as follows:

- a. May only carry out high-value electrical power supporting services activities such as construction and installation of electrical power plant with the minimum

- project value of IDR100 billion; and
- b. May only carry out high-value electrical power supporting services activities relating to consultation services for the installation of electrical power plant or maintenance of electrical power plant with the minimum project value of IDR10 billion.

Limited Liability Companies

In the context of investment, Indonesian companies are categorised as follows:

- a. Foreign capital investment company (PMA company): Having foreign shareholding with certain minimum capital requirement established by minimum two (2) shareholders, entitled to fiscal incentives and other investment incentives, registered with the Ministry of Law and Human Rights (MOLHR) and the OSS System, licensed by the OSS Institution (currently the Institution is managed by BKPM) and/or other relevant sectoral Authorities.
- b. Domestic capital investment company (Penanaman Modal Dalam Negeri or PMDN company): Having only domestic shareholding established by minimum two (2) shareholders, entitled to fiscal incentives and other investment incentives, registered with MOLHR and the OSS System, licensed by the OSS Institution (currently the Institution is managed by BKPM and/or other relevant sectoral Authorities).

In practice, a foreign company intending to carry out business activities in Indonesia that are open for foreign investment would do so by establishing a PMA company or acquiring an equity stake in an Indonesian company. Additionally, in certain sectors, such as upstream oil and gas, and construction services, a foreign entity may become licensed to do business in Indonesia.

State-owned Enterprises

There are two types of state-owned enterprises (Badan Usaha Milik Negara or BUMN), which are:

- a. Persero, a limited liability company with 51% or more of its shares owned by the national government, which is engaged in commercial activities for profit; and
- b. Perum, an entity wholly owned by the national government (without share capital), for the purpose of providing public services.

However, in practice, the differences between the roles of the two types of state-owned enterprises may not be particularly clear cut. For instance, the government may task a Persero to act as a pioneer in a less desirable business sector, with an obligation to implement public services, and/or with a requirement to maintain close relationships with, and provide support to small businesses and cooperatives.⁶⁸

⁶⁸ Under Indonesian company law concept, the main purpose and objective of a limited liability company is to generate profit and conduct business activities based on its KBLI (Indonesia Classification Business Code) as mentioned in Articles of Association. However, SOE companies which have a "Persero" status, such may also have public service obligations as assigned by the government.

Regional-owned Enterprises

Local governments are authorised to establish regional-owned enterprises (Badan Usaha Milik Daerah or BUMD). In practice, there are two forms of regional-owned enterprises, which are regional-owned companies 'for profit' (Perusahaan Perseroan Daerah) and companies carrying out a public function (Perusahaan Umum Daerah).

Village-owned Enterprises

Indonesian traditional communities may individually or jointly form village-owned enterprises (Badan Usaha Milik Desa - BUMDes) to manage business, utilise assets, develop investment and productivity, and provide services and/or other business activities to achieve the welfare of local communities. Village-owned enterprises are given more flexibility in managing their assets and business by enabling them to set up business units in the form of single-shareholder limited liability companies in accordance with their needs and goals. Such flexibility is given by the recently issued Omnibus Law that will be specifically discussed hereunder.

Public Service Agencies

An office or working unit within a government institution, both national and regional, may establish a public service agency (Badan Layanan Umum or BLU) to provide services to the public on a non-commercial basis, which will be in the form of sales of goods and/or services. Examples of BLU are the Indonesia Investment Agency (Pusat Investasi Pemerintah or PIP) and BLU TransJakarta, a BLU that was established to operate and manage Jakarta's bus rapid transit system.

Positive Investment List

On 2 February 2021, President Jokowi announced new Perpres No. 10/2021, as most recently amended by Perpres No. 49/2021 concerning Investment in Business Sectors (the Positive Investment List). The Positive Investment List replaced the previous Negative Investment List as regulated under Presidential Decree No. 44/2016. Business sectors that are open to foreign investment under certain conditions or closed to foreign investment completely are primarily identified by the Positive Investment List. Business sectors that are not identified in the Positive Investment List are generally considered to be open to foreign investment without restriction, unless another law and/or regulation provides otherwise.

Previously, the Negative Investment List summarised business activities that were closed or partly open to foreign investment. With the current Positive List, the general principle is that all lines of businesses are 100% open to foreign investment except for those restricted or limited under the Positive List.

Foreign ownership restrictions under the Positive List:

- a. Business activities that are reserved for domestic investors (cooperatives and small-medium enterprises).
- b. Business activities that are open to foreign ownership with limitations.

- c. Business activities that are subject to special licensing requirements; or
- d. Business activities that are limited and closely monitored and regulated in separate laws and regulations in the field of control and supervision of alcoholic beverages.

The conditions for foreign investment imposed by the Positive Investment List include the imposition of a maximum amount of foreign shareholding, requiring a local partner, reserving certain areas for micro, small, and medium-sized enterprises and cooperatives, and imposing special licensing requirements. Despite its objective to promote investment in Indonesia, the recently issued Omnibus Law also adds certain types of restricted sectors/business activities into the Positive Investment List due to their harmful nature.

The Omnibus Law restricts businesses from undertaking the following activities: (i) cultivating and producing class 1 narcotics; (ii) gambling/casinos; (iii) fishing certain types of fish species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (iv) making use of and collecting any living/recently-dead coral (including natural coral) for building materials/lime/calcium/aquariums/souvenirs/jewellery; (v) manufacturing chemical weapons; and (vi) manufacturing industrial chemicals and ozone-depleting substances. Further, the Omnibus Law also prohibits private businesses from conducting certain business activities that may only be carried out by the central government.

The Positive Investment List acknowledges business sectors that are generally based on the Indonesian Standard Industrial Classifications (Klasifikasi Baku Lapangan Usaha Indonesia or KBLI). The KBLI have been developed with reference to, among others, the International Standard Industrial Classification of All Economic Activities (ISIC) of the United Nations and the ASEAN Common Industrial Classification. The KBLI is periodically updated, with the most recent version (as of this publication) having been enacted on 24 September 2020.

BKPM determines the appropriate business sector for a proposed investment as part of its review and processing of registrations and approvals. Some proposed business activities may not clearly fall into one category in the DPI (Daftar Positif Investasi or Positive Investment List) or KBLI; either multiple categories may appear to apply, or the business activity does not appear to fit in any category. In such cases, investors are well advised to seek a preliminary opinion from BKPM before lodging a formal application.

Aside from restrictions under the Positive Investment List, laws and regulations may have further restrictions and conditions on foreign involvement in certain business sectors. Such conditions may include special licensing regimes for foreign entities, capacity/output requirements, or personnel requirements. Consequently, the legal feasibility of a proposed foreign investment should be assessed with reference to both the Positive Investment List and applicable sectoral regulations.

The Positive List also introduces 246 “Priority Sectors” consisting of several lines

of businesses focusing on research and development, and involves a pioneer industry such as metals, oil refinery, renewables, and marine transportation.

Foreign business actors investing in the Priority Sector will be eligible to receive fiscal incentives (such as tax holidays, tax allowances, and tax import-duty exemptions) and/or non-fiscal incentives, such as ease of submission of licenses, work permits, energy, raw-materials, labour and infrastructure subject to the prevailing laws and regulations.

Prohibition on nominee arrangements

Law No. 25/2007 on Investment (the 2007 Investment Law) strictly restricts arrangements where a person holds shares in a company for the benefit of another person. Such arrangements are deemed null and void by the Law. This restriction applies both to PMA companies and to domestically owned companies. However, the main purpose of the restriction on nominee arrangements is to prohibit arrangements that might be made to circumvent Indonesia's foreign investment restrictions, by having a domestic party hold shares on behalf of a foreign investor.

In the spirit of promoting beneficial ownership disclosure, the Government through Perpres No. 13/2018 on the Application of the Principle of Identifying the Beneficiary of the Corporate in the Framework of the Prevention and Eradication of the Crime of Money Laundering and the Criminal Action of the Financing of Terrorism, has required any form of entities (either limited liability company, foundation, association, cooperative, limited partnership, commercial partnership, and other forms of entities) to implement the so-called "know your beneficial ownership" principle. Any violation of this regulation may be subject to sanctions based on prevailing laws and regulations.

Establishing a PMA company

A PMA company may only be established to carry out a particular "line of business" as stated in its articles of association upon obtaining investment licenses issued through the OSS system. Further, PMA companies shall be established with at least IDR10 billion issued and paid-up capital for each business activity (or as determined otherwise by the relevant regulation) and at least more than IDR10 billion of investment value (excluding land and building). PMA companies are subject to foreign ownership thresholds under the Indonesia Positive Investment List with reference to the KBLI.

Foreign investors need to carry out the following steps, amongst others, in order to establish a PMA company:

- a. Execute the deed of establishment and the articles of association of the PMA company before a public notary.
- b. Have the Notary process the deed of establishment with the MOLHR through its electronic filing system, AHU Online, and arrange for publication of the deed of establishment in the State Gazette (Berita Negara Republik Indonesia).

- c. Open an Indonesian bank account and deposit share capital in said account.
- d. Obtain a company's Taxpayer Registration Number (Nomor Pokok Wajib Pajak or NPWP) and Taxpayer Registration Certificate (*Surat Keterangan Terdaftar Wajib Pajak*); and
- e. Obtain a certificate of domicile (not applicable in DKI Jakarta).

After the incorporation process, the company needs to obtain various licenses, permits and approvals necessary to enable it to commence commercial operations, employ personnel, commence construction, import capital goods and carry out other activities. These include Business Identification Number (Nomor Induk Berusaha – NIB), which serves as Company Registry Certificate (TDP or Tanda Daftar Perusahaan), Import Identify Number (API or Angka Pengenal Impor) and Customs Figure (*Akses Kepabean*). This is aligned with the provision of the Omnibus Law that ended the previous requirement for companies to obtain a separate Company Registry Certificate (TDP) by revoking Law No. 3/1982 on Company Registration Obligations.

Prior to 2007, the now-revoked BKPM principal license would include a requirement that a portion of the PMA company's shares must be divested to Indonesian shareholders after a certain time period (generally 15 years after the commencement of commercial operations). The 2007 Investment Law removed the general divestment requirement for a PMA company. However, a PMA company incorporated before the promulgation of the 2007 Investment Law may still be subject to the divestment requirement and companies operating in regulated industries (such as mining) may be subject to divestment requirements specific to their industry.

BKPM Regulation No. 4/2021 regarding Guidelines and Procedures for Investment Licensing and Facilities requires PMA companies to fulfil the divestment obligation stated in the previous approval/business license. The shares may only be divested to Indonesian citizens or 100% Indonesian-owned companies. There are two ways of conducting the divestment, namely by way of direct sale of shares or through the Indonesian capital market. Furthermore, the regulation opens the opportunity to conduct a share buyback, subject to Ministry of Law and Human Rights' approval and complying with prevailing laws and regulations.

There are exemptions for the mandatory divestment that may only be implemented after fulfilling the following requirements:

- a. If the PMA company is a not 100% foreign-owned company, the Indonesian shareholder(s) is required to confirm that it is not interested in owning the shares; and
- b. If the PMA company is a 100% foreign-owned company, the shareholders should state that they do not have any commitments/agreements to sell the shares to any Indonesian third party.

Figure 20: Timeline for Establishment and Basic Licensing of a PMA Company

No	Work Description	1 st Month				2 nd Month				3 rd Month			
		1	2	3	4	1	2	3	4	1	2	3	4
1.	Company name reservation	█											
2.	Drafting and preparing the draft Deed of Establishment (DOE) of the PMA Company	█	█										
3.	Finalizing and executing the DOE of the PMA Company		█										
4.	Obtaining the ratification of incorporation of the PMA Company issued by MOLHR and arranging announcement of PMA Company's legal entity in the State Gazette		█										
5.	Investment database registration on the OSS system			█									
6.	Obtaining Business Identification Number (NIB) (including obtaining of Company Registration Certificate (TDP), General Importer Identification Number (Angka Pengenal Importir – Umum/API-U), and customs access (akses kepabeanan).				█								
7.	Obtaining Taxpayer Identification Number (NPWP)				█	█							
8.	Opening Company's bank account (timeline and required documents would depend on the relevant bank)				█	█							
9.	Obtaining Taxable Entrepreneur Confirmation (Surat Pengukuhan Pengusaha Kena Pajak - SPPKP)					█	█						
10.	Obtaining Business License (not effective yet)				█								
11.	Fulfilment of commitments as set out in the Business License, including Operational/Commercial License (as necessary)				█	█	█	█	█	█	█	█	█
12.	Obtaining Business License (effective)												█

Note: In practice, the time required to complete the PMA's establishment and obtain all licenses will be subject to the availability of documents required by the relevant authority. The application shall be processed after the documents are deemed complete by the authority.

Omnibus Law

On 2 November 2020, the Indonesian government enacted the Omnibus Law - a much anticipated piece of Indonesian legislation that had been long awaited by various stakeholders, including Indonesian business owners who are seeking a more business-friendly environment to boost Indonesian economic growth and investment. The primary purpose of the Omnibus Law is to create greater job opportunities for Indonesians by promoting greater investment growth. Prior to the promulgation of the Omnibus Law, the regulatory framework for business and investment affairs included many instances where regulations overlapped with one another which resulted in slow economic growth and a lack of job opportunities.

The Indonesian government intends to make the Omnibus Law a single legal instrument that amends or removes all the provisions in several existing regulatory frameworks that hinder investment. The Omnibus Law seeks to amend, delete, and/or add any provisions in 78 (seventy-eight) existing laws that cover various sectors. The law comprises 15 Chapters with 186 Articles which cover 10 (ten) primary "clusters" that deal with the following matters:

- a. Investment ecosystem and businesses improvement.
- b. Employment.
- c. Facilities, protection, and empowerment of cooperatives as well as micro, small and medium enterprises.
- d. Ease of doing business.
- e. Research and innovation support.
- f. Land acquisition.
- g. Economic zone.
- h. Central government investment and acceleration of national strategic projects.
- i. Government administration implementation to support job creation; and
- j. Imposition of sanctions.

With regards to the investment and licensing aspects which will directly impact business sectors, the Omnibus Law introduces substantial breakthroughs that will reduce the burden on businesses in carrying out their businesses in Indonesia. In terms of licensing requirements, businesses may expect a much simpler licensing regime. Unlike the previous regime, the requisite licenses for each business will be determined based on the risks and potential risks posed by the business activities. By taking health, safety, environment, and resources aspects into account, the Omnibus Law differentiates business risks into 3 (three) categories, as follows:

a. Low Risk Business Activities

Business activities that are classified as low risk business activities will only be required to obtain a Business Identification Number (NIB) that serves as proof of registration to carry out business activities.

b. Medium Risk Business Activities

This category consists of medium-low risk business activities and medium-high risk business activities. Business activities that are classified as medium-low and

medium-high risk business activities are required to obtain NIB and a Standard Certificate (*Sertifikat Standar*).

It is noteworthy, however, that the Standard Certificates for medium-low and medium-high business activities are different. The Standard Certificate for medium-low risk business activities serves as a statement from the entrepreneur that it has fulfilled all requirements to conduct business activities, while the Standard Certificate for medium-high risk business activities serves as a verification of the fulfilment of requirements to conduct business activities issued by the central/regional government.

c. High Risk Business Activities

Business activities that are classified as high-risk business activities are required to obtain NIB and a license. The license is granted by the central/regional government to carry out business activities. The license must be obtained prior to conducting the business activities.

The risk-based licensing regime will streamline the complexity of licensing requirements under the preceding regulatory framework. Under this approach, **not** all business activities are required to obtain business licenses.

The Omnibus Law also streamlines licensing requirements in 15 (fifteen) sectoral laws and regulations. Currently, there are several different licenses that must be obtained by a single business to carry out its activities. Under the Omnibus Law, businesses will only be required to obtain a single business license (subject to the risk-based licensing regime explained above) granted by the central government to carry out their commercial activities. The sectors cover the following:

- a. Marine affairs and fisheries.
- b. Agriculture.
- c. Forestry.
- d. Energy and mineral resources.
- e. Nuclear.
- f. Industry.
- g. Trade, legal metrology (the application of legal requirements to measurements and measuring instruments), halal product guarantee and standardization of suitability assessment.
- h. Public works and public housing.
- i. Transportation.
- j. Health, medicine and food.
- k. Education and culture.
- l. Tourism.
- m. Religious affairs.
- n. Postal, telecommunications and broadcasting; and
- o. Defense and security.

Other than business licensing streamlining, the Omnibus Law also presents investment-related breakthroughs that will be discussed separately in each relevant section hereunder. However, please note that many of the provisions introduced by the Omnibus Law will require follow-up implementing regulations to become fully effective. In essence messages from the Indonesian government are clear that the law and its implementing regulations are intended to accelerate and provide a more friendly investment and business climate to support further growth of the Indonesian economy.

However, on 25 November 2021, the Indonesian Constitutional Court rendered Decision No. 91/PUU-XVII/2020 (MK Decision) in relation to a petition filed on 15 October 2020 for a formal judicial review of the Omnibus Law. The Constitutional Court ruled that the enactment of the Omnibus Law contravened the 1945 Constitution of the Republic of Indonesia due to legislative procedural errors. Therefore, the Court further ruled that the Indonesian government is required to implement a corrective action to correct the flaws in the Omnibus Law. In the meantime, the Court's ruling provides that no new implementing regulations deriving from the Omnibus Law may be enacted.

The MK Decision further states that a revision must be completed by the Indonesian Government within 2 (two) years after the MK Decision was rendered or otherwise, the Omnibus Law shall be deemed permanently unconstitutional. As such, it is understood that the Omnibus Law along with those implementing regulations that have been enacted to date will remain in force for the next 2 (two) years. In addition, it is noted that shortly after the Court issued its ruling President Jokowi stated that the material, substance, and regulations set out by the Omnibus Law are still in force. He added that the Indonesian Government will guarantee the safety of the investment process in Indonesia⁶⁹.

Indonesian Company Law

An Indonesian limited liability company (Perseroan Terbatas or PT) is a legal entity governed by the Company Law which is separate from its shareholders. Upon approval of the company's establishment by the Minister of Law and Human Rights, the limited liability of the shareholders becomes effective. During the period from when the articles of association of the company are signed until prior to obtaining approval from the Minister of Law and Human Rights, the founders of the company are considered to be partners and may still be held liable for the obligations of the proposed company. In practice, a newly established company will adopt any obligations of the founders shortly after the Minister's approval is obtained and ratify such assumption of obligations in the first general meeting of shareholders of the newly established company.

The Company Law recognises the concept of "piercing the corporate veil", by which a shareholder may be held liable for fraud or other wrongful acts committed in the name of the company. A shareholder may be held liable for the company's acts if the requirements to form the company as a statutory body are not fulfilled;

⁶⁹ "Presiden Jokowi: Undang-undang Cipta Kerja tetap berlaku - ANTARA News". ANTARA News. 29 November 2021.

a shareholder directly or indirectly, with bad intention, utilises the company for personal interests; a shareholder is involved in an unlawful act committed by the company; or the shareholders, directly or indirectly, unlawfully use the assets of the company, which causes the assets of the company to become insufficient to settle the liabilities of the company.

Once the Omnibus Law becomes effective, a limited liability company may also be established by 1 (one) founder under certain requirements. The Omnibus Law adds new types of limited liability companies that are exempted from the minimum of 2 (two) founders' requirements. Regional-owned enterprises, village-owned enterprises, and companies that meet the criteria of micro-small enterprises may be formed by a single individual. As such, it is now permissible for an individual to form a single-shareholder legal entity in the form of a limited liability company if the business is classified as a micro and small enterprise by registering a Statement of Establishment with MOLHR. The criteria of micro and small enterprises will be based on the net worth and annual sales revenue of the business, including the number of shareholders. It is noteworthy, however, that when such a company is no longer classified as a micro and small enterprise and/or has more than 1 (one) shareholder, it shall be reclassified as an ordinary type of limited liability company.

Corporate Governance

The activities of an Indonesian company are governed by three bodies, namely: the Board of Directors (BoD), the Board of Commissioners (BoC), and the General Meeting of Shareholders (GMS). The BoD is responsible for the day-to-day management of the company. The BoC is responsible for the supervision of the management of the company and advising the BoD. The General Meeting of Shareholders has all the authorities that are not given to the BoD or BoC within the limits provided in the Company Law and/or the articles of association.

BoD

The BoD shall serve as the management of the company. The BoD shall consist of at least one member (except for a company whose line of business is in the collection and/or management of the public's funds). A company that issues acknowledgements of indebtedness to the public or is a listed company shall have at least 2 (two) members of the BoD.

Members of a BoD shall be appointed for a certain period and may be re-appointed. If there is a change in the composition of the BoD (either by way of the new appointment, replacement, or dismissal), the BoD shall notify the Ministry of Law and Human Rights no later than 30 (thirty) days from the GMS date approving such appointment, replacement, or dismissal. Furthermore, the BoD is also required to report his/her shares ownership and/or their families in the respective company and other company, to be later registered in the Special Register of the company.

In addition, specific industry and sectoral regulations may also require a minimum

number of members of the BoD in a particular company, for example, an insurance company would need to have at least 3 (three) directors, one of whom shall be a director specifically in charge of compliance matters.

BoC

The BoC shall be responsible for the supervision of the company's management policies, and course of management in general, including with respect to the company as well as its business activities, and provide advice to the BoD. The BoC shall consist of at least 1 (one) member. The articles of association of a company may stipulate the presence of an independent commissioner who is selected from a person who is not affiliated with any of the shareholders, BoD, and other members of the BoC.

Members of the BoC shall be appointed for a certain period and may be re-appointed. If there is a change in the composition of the BoC (either by way of the new appointment, replacement, or dismissal). The BoD shall notify the Ministry of Law and Human Rights no later than 30 (thirty) days as from the GMS date approving such appointment, replacement, or dismissal. Furthermore, the BoC is also required to report his/her shares ownership and/or their families in the respective company and other company, to be later registered in the Special Register of the company.

Similar to the above, specific industry and sectoral regulations, such as those applied in the insurance sector, may also require a minimum number of members of the BoC (i.e., minimum 3 (three) commissioners, half of whom shall be independent commissioners, for an Indonesian insurance company) which need to be complied with.

Corporate Social Responsibility (CSR)

The Company Law and other relevant regulations require companies that carry out business activities in the field of, and/or related to natural resources, to implement annual corporate social and environmental responsibility (CSR). Furthermore, such companies are also required to include a report on the implementation of the CSR program in the company's annual report and such CSR report must be disclosed to the shareholders.

Capitalisation and shareholding structure of a private company

The Company Law initially provides that the minimum authorised capital of an Indonesian company is IDR50 million (approximately US\$3,565) and at least 25% of such authorised capital must be fully paid-up. That requirement, however, has been updated by the Omnibus Law and Government Regulation No. 8/2021 regarding the Company Authorised Capital and Registration for Establishment, Change, and Dissolution of Companies Classified as Micro and Small-Scale Enterprise, which sets out that the authorised capital of a limited liability company shall be based on the agreement of the company's founders. As such, the founders will have flexibility in determining the authorised capital when establishing a limited liability company depending on the company's needs and

objectives. Certain sectors, however, may impose higher capital requirements. For a PMA company, the minimum issued, and paid-up capital is IDR10 billion or its equivalent value, while the minimum total investment value is more than IDR10 billion or its equivalent value, including working capital for one year, machinery and others, excluding land and buildings. The funding realisation consists of: (i) capital; (ii) retained earnings (applicable for business expansion); and (iii) loan. Please note that BKPM may require higher capital for PMA companies depending on their proposed investment. Certain sectors, however, may impose higher capital requirements. For a PMA company, the minimum issued and paid-up capital is IDR10 billion or its equivalent value, while the minimum total investment value is more than IDR10 billion or its equivalent value, including working capital for one year, machinery and others, excluding land and buildings. The funding realization consists of: (i) capital; (ii) retained earnings (applicable for business expansion); and (iii) loan. Please note that BKPM may require higher capital for PMA companies depending on their proposed investment.

The share capital may be paid up in the form of money and/or in other forms which shall be specified based on a reasonable value determined in accordance with market prices or by an expert (appraiser) not affiliated with the Company. The shares paid up in the form of immovable property must be announced in 1 (one) or more Newspapers within a period of 14 (fourteen) days after the deed of establishment is signed or after the General Meeting of Shareholders resolves on the relevant subscription.

The capital of a company may be increased upon approval of the general meeting of shareholders and such increase shall be reported to the Minister of Law and Human Rights. All shares issued for the increase of capital must first be offered to each of the existing shareholders in proportion to their ownership of shares with the same classification (pre-emptive rights).

A company may also make a reduction of capital. Reduction of capital may be made upon approval from a general meeting of shareholders. Such general meeting of shareholders shall be communicated to all creditors by the BoD by an announcement in one or more newspapers within a period of no later than 7 (seven) days from the date of such general meeting. Within a period of 60 (sixty) days as from the date of the announcement, the creditors may submit written objections to the resolution to reduce capital together with the reasons thereof to the company (copied to the Minister of Law and Human Rights), and the company shall respond within 30 (thirty) days thereafter. The capital reduction constitutes an amendment of articles of association which must have approval from the Minister of Law and Human Rights. The capital reduction may be made by way of withdrawal of shares or a reduction in the nominal value of shares.

The Company Law requires that every limited liability company shall have at least 2 (two) shareholders. The company's paid-up capital shall be divided into shares, which reflect the portion of the company's ownership.

The value of shares must be stated in Indonesian Rupiah (IDR) and shall have a nominal value that can be issued. All shares issued shall be recorded in a shareholder register which should be maintained by the BoD and such relevant shareholders shall be given evidence of share ownership (a share certificate). In addition, the BoD shall also make and keep a special register that contains information regarding shares in the company or in other companies owned by the members of the BoD and BoC together with their families and the date when such shares were obtained.

A share shall give the owner the right to attend and cast one vote in the general meeting of shareholders (although it is possible for the creation of shares that do not give the owner any voting rights) and receive payment of dividends and the remainder of assets from liquidation.

2. Joint Ventures

Incorporated joint ventures involving a foreign investor may be established as a new PMA company (in the case of 'greenfield' projects and new business operations) or through the foreign investor acquiring a stake in an existing company.

The parties to the incorporated joint venture will typically enter into a joint venture agreement or shareholders' agreement to supplement the terms of the company's articles of association. There are no specific requirements for the agreement except that its terms should not contravene the mandatory corporate governance requirements of the Company Law, the applicable foreign investment regulations, or matters of public policy. It is increasingly common for the agreements to be in dual-language (English and Indonesian) due to the requirements of Law No. 24/2009 and for such agreements to be governed by Indonesian law (even where a choice of foreign law clause would be enforceable). This is further enforced with Perpres No. 63/2019. Generally, such agreement will include an arbitration clause, with parties tending to select regional arbitral forums.

Indonesian state-owned enterprises, however, have exhibited a strong preference for BANI arbitration (domestic arbitration). Foreign investors acquiring a stake in an existing joint venture established by domestic investors may find no joint venture or shareholders' agreement in place among the existing domestic shareholders, which may be comfortable only relying on the articles of association.

Although the time required for establishing a PMA company has become shorter in recent years, the process is relatively time consuming when compared to other jurisdictions. Accordingly, a joint venture agreement may appropriately address the process of company establishment in detail and allocate responsibilities among the parties for facilitating this process.

3. Mergers and Acquisitions (M&As)

The Company Law regulates mergers, consolidations, acquisitions, and splits of companies. Mergers generally are permitted with the consent of 75% of the

shareholders. Some protection for minority shareholders is provided, particularly with respect to the share sale price, which must be “fair.” Unless the surviving company retains its name and management, a merged entity must adopt a new name and management.

Mergers of limited liability companies are possible where one or more companies are merged into a single surviving company (with the simultaneous dissolution of the other company or companies). In a consolidation, two or more companies merge into a new entity and each of the original companies is dissolved; in an acquisition, an individual or legal entity takes over all or most of the shares of a company, resulting in a transfer of control.

Under Law No. 5/1999 regarding Restriction of Monopoly Practices and Unfair Business Competition in relation to KPPU Regulation No. 3/2019 regarding the Assessment of Merger or Consolidation of Business Entity, or Share Acquisition (the Competition Law), a company is required to report mergers and acquisitions to the Business Competition Supervisory Commission (Komisi Pengawas Persaingan Usaha or KPPU), so long as the transaction meets the thresholds set out below:

- a. The combined value of the assets of the relevant companies would be more than IDR2.5 trillion (or IDR20 trillion for banks).
- b. The combined value of the turnover of the relevant companies would be more than IDR5 trillion; and
- c. There is no affiliation between the relevant companies conducting the proposed merger or acquisition.

The business entity is obliged to notify KPPU when the merger or acquisition becomes effective (or obtains the approval of the Minister of Law and Human Rights for a private company, or OJK (Otoritas Jasa Keuangan or Financial Services Authority) approval for a public company pursuant to OJK Regulation No. 74/POJK.04/2016). The business entity also has a right to consult with KPPU before the merger or acquisition becomes effective (pre-evaluation), under the condition that the company meets the abovementioned threshold.

The notification must be submitted at the latest 30 (thirty) days after the merger or acquisition is in effect. KPPU has the authority to impose monetary fines from IDR1 billion to IDR25 billion on a business entity that does not fulfil the applicable reporting obligations.

Due Diligence

Conducting due diligence on Indonesian companies has proven to be rather difficult considering the lack of easy access to, or reliable public records of, constitutional corporate documentation, encumbrances on corporate assets, share capital or land ownership and related encumbrances. Even though Indonesian companies are required to publish their articles of association in the State Gazette (*Berita Negara*), which is a matter of public record, the available

information is frequently incomplete and may omit, among other things, records of share transfers completed after the company's establishment. In short, a search of public records may not be reliable as the records of the changes of: (i) company's name; (ii) its shareholders; and (iii) its directors or commissioners, or amendment to the articles of association are not updated regularly. Public records can, however, establish some historical information about a company in relation to the foregoing matters except for encumbrances and liens.

Performing due diligence on an Indonesian company is also complicated by the seemingly countless licenses, permits and approvals required to conduct business in Indonesia and the related reporting requirements. Even though the said requirements are commonly viewed as administrative in nature, in many cases, the penalty for failing to comply includes the warning letter, administrative fines, temporary suspension, or revocation of license. Furthermore, the terms of a license may impose various obligations and conditions to be performed by the license holder, some of which frequently cannot be verified by documentary evidence.

Acquisitions of Private Companies

Performing an acquisition of a private Indonesian company primarily involves compliance with the Company Law and the foreign investment regulations. There may be approvals that have to be obtained prior to performing an acquisition. It is important to note, that in certain cases, the approval needed for the acquisition may differ, depending on the type of business sector of the company.

Further, the Company Law imposes various requirements in connection with the direct change of control of an Indonesian company (including public notice requirements and a requirement that employees be notified).

If the target of a foreign buyer is a PMDN company, the process of acquisition involves conversion to a PMA company. This conversion raises issues similar to those faced by parties that intend to establish a new PMA company. These issues include assessing whether the type of business activities of the target is eligible for foreign investment in accordance with the DPI and, if so, whether there are any restrictions involved. The conversion of a PMDN company to a PMA company would be a condition to complete the acquisition.

Acquisitions of Public Companies

Acquisitions of Indonesian public companies (known as Perusahaan Terbuka, which have the "Tbk." suffix following their corporate name) are subject to regulations promulgated by OJK, which serves as Indonesia's capital markets regulator, and, for listed companies, the rules of the IDX (Indonesia Stock Exchange). By law, a public company is defined as a company that has at least 300 shareholders and issued capital of at least IDR3 billion, or such other number of shareholders and issued capital that may be stipulated under government regulations.

Acquisition of a public company must also comply with the relevant provisions referred to in the Company Law. Additional regulatory requirements may apply for the acquisition of a company in a regulated sector, such as banking, insurance, or oil and gas.

Defining an Acquisition

The capital markets regulations define an acquisition of a public company as any direct or indirect action that results in a change of control over the public company. A controlling party is defined as:

- a. A party that owns more than 50% of a company's shares; or
- b. A party that can control the company directly or indirectly (e.g., by way of appointing or dismissing the BoD or BoC of the company or amending the articles of association of the company).

Under OJK Regulation No. 9/POJK.04/2018 regarding the Acquisition of Public Company (OJK Regulation No. 9/2018), the ability to control the company directly or indirectly could be evidenced by:

- a. An agreement with other shareholders that shows possession of more than 50% of the voting rights.
- b. A document/information providing evidence of the authority of a shareholder to control the financial and operations policy of the publicly listed company based on the articles of association/agreement.
- c. A document/information providing evidence of the authority to appoint or dismiss most members of the BoD and BoC.
- d. A document/information providing evidence of the power to control the majority voting rights in the BoD and BoC meetings; and/or
- e. A document/information providing other means to exercise control over a publicly listed company.

The Company Law provides that the acquisition of an Indonesian company can be executed through either the sale and purchase of shares from an existing shareholder (or shareholders) or through the acquirer's subscription to newly issued shares (through a capital increase or rights issue). In the case of a public company, the sale and purchase of already issued shares may be achieved through a negotiated transaction with the target's controlling party or through a voluntary tender offer.

A directly negotiated sale and purchase transaction with a controlling party will generally be followed by a mandatory tender offer in respect of the shares held by the public.

Negotiation and Disclosure

An acquisition of a public company is typically initiated by negotiations between the potential acquirer and either the controlling shareholders of the target company (in the case of an acquisition of existing shares) or the BoD of the target company

(in the case of an acquisition of newly issued shares).

A prospective acquirer who initiates such negotiations for the purpose of acquiring a public company and has decided to disclose the negotiation, is required to make an announcement in at least one nationally circulated Indonesian language newspaper and to convey such announcement directly to the target company, OJK and, if the company is listed, the IDX. The announcement could also be conducted through the IDX website and conveyed such announcement directly to the target company and OJK.

Under OJK Regulation No. 9/2018, the announcement must include at least the following information:

- a. The name of the target company.
- b. An estimate of the number of shares that is proposed to be acquired.
- c. The identity of the prospective acquirer, including its name, address, phone number, email, business activity, and the potential acquirer's reason for pursuing the acquisition.
- d. The amount of any securities in the target which are already owned by the prospective acquirer (if any).
- e. The purpose of control.
- f. Any plan, agreement, or determination among parties to cooperate in an organised group to act as the potential acquirer (e.g., acting as a consortium).
- g. The proposed method and procedure for the negotiation; and
- h. Negotiation material.

If following the announcement of negotiations, no agreement is reached, the relevant parties must announce the termination of negotiations in at least one nationally circulated Indonesian language newspaper and convey such announcement directly to the target company, OJK and, if the company is listed, the IDX. The announcement could also be made through the IDX website and convey such announcement directly to the target company and OJK.

Shareholder Approval

The proposed terms of the transaction will require the approval of the target's shareholders to the extent required by laws and regulations in the capital market sector and the company's articles of association.

Unless the articles of association provided a higher threshold:

- a. An amendment to the articles of association of a public company, or an increase in authorised capital, requires the approval of 2/3 of the shareholders with valid voting rights in attendance at the shareholders meeting; and
- b. An acquisition, merger, encumbrance, or sale of substantially all the assets of a public company requires the approval of 3/4 of the shareholders with valid voting rights in attendance at the shareholders' meeting.

Because the existing shareholders of a company have pre-emptive rights in respect of any new issue of shares, if the acquisition is proposed to be conducted through the issue of new shares, existing shareholders will have to agree to waive their pre-emptive rights, or to transfer their right to acquire the newly issued shares, to an extent that allows the acquisition of a controlling interest by the proposed acquirer.

Capital markets regulations specify the procedures for convening a meeting of the shareholders of a public company, including related formalities and notice requirements (as well as the procedures for convening electronic general meetings of shareholders for Indonesian public companies).

Announcement of a Successful Acquisition

A successful acquirer is required to announce the acquisition in at least one nationally circulated Indonesian language newspaper or the IDX website and to convey the result to OJK within one working day after the completion of the transaction. Under OJK Regulation No. 9/2018, such announcement should include at least the following information:

- a. The number of shares which were acquired, name of the shareholder whose shares are acquired by the acquirer, acquisition price per share, total value of the acquisition and total ownership of the shares.
- b. The identity of the acquirer, including its name, address, telephone, email, business activity, structure of the shareholders, BoC, and BoD, as well as the capital structure.
- c. The acquirer's reason for pursuing the acquisition.
- d. If applicable, a statement that the new controlling party is an organised group.
- e. The beneficiary of the acquirer.
- f. The nature of the affiliate relationship; and
- g. Description of the approval from the authorised party.

Mandatory Tender Offer

Following a change in the controlling party of a public company, the new controlling party is required to conduct a mandatory tender offer for the remaining shares of the company, subject to the following exceptions:

- a. Any shares owned by the shareholder from whom the new controlling party acquired the shares to effect the acquisition.
- b. Any shares that the new controlling party has separately offered to purchase on the same terms and conditions as were agreed with the predecessor controlling party.
- c. Shares owned by any other party who also conducted a mandatory tender offer or voluntary tender offer for shares of the same public company at the same time (i.e., another potential acquirer).
- d. Shares owned by any shareholder who owns at least 20% of shares of the public company; and
- e. Shares owned by any other controlling shareholder.

The new controlling party is required to announce the mandatory tender offer along with necessary supporting documents to OJK and the target company within two days after the announcement of the successful acquisition. Moreover, if any additional information and/or amendments to the initial announcement are requested by OJK, the additional information and/or amendments must be submitted no later than five working days after receipt of the request.

OJK will review the initial announcement and will determine whether the new controlling party is permitted to disclose the information to the public. The new controlling party is required to announce information disclosure for the purpose of the mandatory tender offer in a nationally circulated Indonesian language newspaper within two working days after receiving written confirmation from OJK, authorising the new controlling shareholder to disclose the information.

Following the publication of the notice of the mandatory tender offer, the shareholders of the target company have 30 days to accept or reject the offer at the price stipulated. The process of acceptance by the shareholders is proscribed by regulation, with all share transfers and payments being effected through the buyer's and seller's respective securities companies or custodian banks. The offeror is required to acquire any shares in respect of which the tender offer has been accepted within the offering period (the 30-day period following the public notice of the tender offer). Payments must be received from the offeror within 12 days of the end of the offering period.

Free Float Requirement

If the acquisition results in a controlling party owning more than 80% of the issued capital of the target company (except, in each case, where the company is taken 100% private), then the new controlling party is required to divest or re-float sufficient shares, or to cause the company to issue new shares, to reduce its shareholding to below 80%. The shareholding shall be reduced within two years of the initial acquisition.

Voluntary Tender Offer

A voluntary tender offer is an alternative way for potential acquirers to acquire a controlling stake in a target company by way of purchase or exchange with other securities. The offer can be made by any party (whether an existing shareholder or not) and is typically made through the media, meaning that an offer will be made to the public at large through newspapers or magazines, film television, radio, and other electronic media, or letters brochures, and other media distributed to more than 100 parties. The party who intends to conduct a voluntary tender offer is required to convey a voluntary tender offer statement to the target company, OJK, any other party who has also announced a voluntary tender offer concerning the same target company but whose tender period has not ended yet and, for listed companies, the IDX.

Additionally, the party who intends to conduct a voluntary tender offer is also required to announce such statement in at least two Indonesian language

newspapers, one of which is nationally circulated, on the same day as the submission of the voluntary tender offer statement to OJK.

A voluntary tender offer statement will become effective on the occurrence of the following, whichever is earlier:

- a. OJK issuing a written approval of the voluntary tender offer;
- b. Where OJK has not requested, and the potential offeror has not, any changes to the voluntary tender offer statement, 15 days having elapsed from the date the voluntary tender offer statement is received by OJK; or
- c. Where OJK has not requested, and the potential offeror has not proposed, any changes to the voluntary tender offer statement, 15 days having elapsed from the date of last changes submitted by the potential offeror or based on OJK's request.

A voluntary tender offer must commence within two working days upon the voluntary tender offer statement becoming effective. The period of a voluntary tender offer is at least 30 days and may be extended up to 90 days, unless otherwise approved by OJK.

4. Infrastructure

Indonesia has substantial infrastructure needs and has therefore instituted large-scale legal and institutional reforms (including unbundling and liberalisation) to encourage private investment and increased transparency in the infrastructure procurement process. Among the various initiatives, the Indonesian government has established a public-private partnership (PPP) scheme, with numerous projects now in various stages of development. With the PPP scheme, opportunity for private sector along with the government and State-owned Enterprises/Regional-owned Enterprise to be actively involved in infrastructure delivery in Indonesia is opened. Further, on 18 February 2020, the Indonesian government enacted Perpres No. 32/2020 on Infrastructure Financing through Limited Concession Rights, which introduces an alternative scheme for financing public infrastructure through utilisation of existing assets that are currently being operated by the central government and/or state-owned enterprises.

In accordance with Indonesian laws and regulations, infrastructure is categorised and governed by sector or type (for example, roads, railways, electricity, telecommunications, water supply and sanitation – including solid waste, etc.), with a specific ministry or regulatory body assigned to regulate a particular sector or sectors. State-owned enterprises also play a main role in these sectors (although in most cases the legal monopolies and quasi-regulatory powers these enterprises previously enjoyed have been eliminated, and the private sector may participate in infrastructure development in Indonesia without being obliged to enter into joint ventures with state-owned enterprises).

Procurement Regulations

Indonesia's public procurement rules have been the subject of extensive reforms, both in terms of improving procurement procedures and accommodating the enhanced fiscal authority of local governments under principles of regional autonomy.

The regulations extend to the procurement of goods and services by the national and local governments, state-owned legal entities (such as public universities) and state-owned enterprises or regionally owned enterprises that are financed, wholly or partially, from state or regional budgets. Perpres No. 16/2018 on Government Procurement of Goods/Services in Indonesia is the base for procurement of goods and services by the Government, while Minister of State-owned Enterprises Regulation No. 08/2019 is the base for procurement of goods and services by State-owned Enterprises.

As for privately funded projects, Indonesian law does not provide any specific regulation on the definition and mechanism to procure service providers. The procurement process will typically refer to the respective procuring entity's guidelines/regulations. Fundamentally, it is possible for the Indonesian public procurement regulations to be referred to even where the procuring body is not directly a governmental institution. In the field of infrastructure, the general procurement regulations are especially relevant in traditional state-financed modes of infrastructure delivery, as well as in cases where the project structure may not be deemed to fall within the PPP program and therefore has an impact on the state budget.

Competitive public tender is mandatory, except for limited cases. While the Indonesian public procurement regulations govern general requirements, certain areas or sectors may have particular regulatory requirements and may be subject to specific government procurement guidelines.

Public-Private Partnerships (PPP) regulatory framework

In recent years, the Indonesian government has acknowledged the urgency for using the PPP scheme to meet the infrastructure financing gap in Indonesia. For example, in 2018, based on the Infrastructure Sector Assessment Program by the World Bank, the Indonesian government estimated that about 37 percent of the US\$415 billion in investment targeted in the RPJMN will need to come from the private sector, with an additional 22 percent from state-owned companies. Significant improvements have been made to the legal and institutional framework for PPP projects in Indonesia, with the Indonesian government expressing its policy commitment to improve risk allocation for infrastructure projects and support competitive bidding from the private sector. For example, projects procured under the PPP regulations may be developed under a solicited or unsolicited scheme but in all instances, the selection of winning bidders would be initiated through an open tender process and such projects are designed to allocate risks to a party to manage the risks. This contrasts with the various Build-Own-Transfer, Build-Own-Operate and other privatisation schemes conducted by Indonesia in the 1980s

and 1990s, where many projects were initiated through direct negotiation with the government.

In this regard, Perpres No. 38/2015 on Public-Private Partnership for Infrastructure Procurement and Bappenas Regulation No. 4/2015 as amended by Bappenas Regulation No. 2/2020 on Procedures for the Implementation of Public-Private Partnership Scheme in the Provision of Infrastructures are the bases for PPP implementation in Indonesia (PPP Regulations). Under the PPP Regulations, the types of infrastructure which are eligible for implementation as a PPP include:

- a. Transportation infrastructure.
- b. Road infrastructure.
- c. Water resources and irrigation infrastructure.
- d. Drinking water infrastructure.
- e. Centralised wastewater management infrastructure system.
- f. Local wastewater management infrastructure system.
- g. Waste and/or hazardous and toxic wastewater management infrastructure system.
- h. Telecommunications and informatics infrastructure.
- i. Electric power infrastructure.
- j. Oil & gas and renewable energy infrastructure, including bioenergy.
- k. Energy conservation infrastructure.
- l. Urban facilities economy infrastructure.
- m. Education, research, and development facilities infrastructure.
- n. Sports, art, and cultural facilities infrastructure.
- o. Infrastructure zone.
- p. Tourism infrastructure.
- q. Health care infrastructure.
- r. Prison infrastructure.
- s. Public housing infrastructure; and
- t. State building infrastructure.

The Indonesian Parliament has passed new laws for specific sectoral infrastructure which are intended to streamline and provide clarity on the procurement and private sector development and participation for projects in these sectors, including:

- a. Law No. 17/2019 regarding Water Resources (as amended by the Omnibus Law).
- b. Law No. 38/2004 regarding Roads (as amended by the Omnibus Law and Law No. 2/2022 regarding Second Amendment of Law No. 38/2004 regarding Roads).
- c. Law No. 23/2007 regarding Railways (as amended by the Omnibus Law).
- d. Law No. 17/2008 regarding Maritime Transportation (as amended by the Omnibus Law).
- e. Law No. 18/2008 regarding Waste Management.
- f. Law No. 1/2009 regarding Aviation (as amended by the Omnibus Law); and
- g. Law No. 30/2009 regarding Electricity (as amended by the Omnibus Law).

Subject to the relevant sectoral laws and regulations, infrastructure projects may be procured by ministries, institutions, and agencies of the Indonesian national government or a local government. A PPP project may also be procured by a state-owned enterprise or regional-owned enterprise where such an entity has been appointed to provide a public infrastructure service. Examples include Indonesia's state-owned electricity company, PT PLN (Persero), and the regional-owned water supply companies, Perusahaan Daerah Air Minum or PDAM. The procuring party is generally referred to as the Government Contracting Agency (GCA).

Based on the tender results, the winning bidder (or a new company established by the winning bidder) and the GCA will enter into a Cooperation Agreement (Perjanjian Kerjasama) to govern and regulate the implementation of the PPP project. The term "Cooperation Agreement" is a general term used to apply to the main project agreement between the public and the private sector. Depending on the sector and project type, the form of agreement will follow a power purchase agreement, a water purchase agreement, a concession agreement, or some other type of agreement.

The Cooperation Agreement must include terms and conditions regarding, among other things, the scope of work and duration of the project, provision of a performance bond, an initial tariff and adjustment mechanism, rights and obligations including risk allocation, service performance standards, sanctions, dispute resolution mechanisms, force majeure conditions, asset ownership status, and the terms for returning the project assets back to the GCA at the end of the project term. Additionally, the governing law must be Indonesian law. The Cooperation Agreement may be executed in more than one language and, in case of an inconsistency between the two languages; the prevailing language shall be Indonesian as stipulated under Perpres 38/2015. The terms of the Cooperation Agreement may also be subject to additional sector specific requirements.

Institutional framework to Support PPP

In order to promote and support PPP in Indonesia, the government provides supporting facilities to the private sector using various funds and financing facilities.

For instance, in order to address difficulties arising from land acquisition for PPP projects by the private sector, the Indonesian government has sought to provide financial support for the said private land acquisition as well as to clarify laws and regulations on both public and private land acquisition – including by passing Law No. 2/2012 on Land Acquisition for the Public Interest (as amended by the Omnibus Law), that is intended to reduce uncertainty in land acquisition for infrastructure development. Government Regulation No. 19/2021 on Implementation of Land Acquisition for the Public Interest (which revokes the previous regulation, i.e., Perpres No. 71/2012) is the implementing regulation.

In late 2009, the Ministry of Finance established PT Penjaminan Infrastruktur Indonesia (Persero), or PII, which has become known as the Indonesia

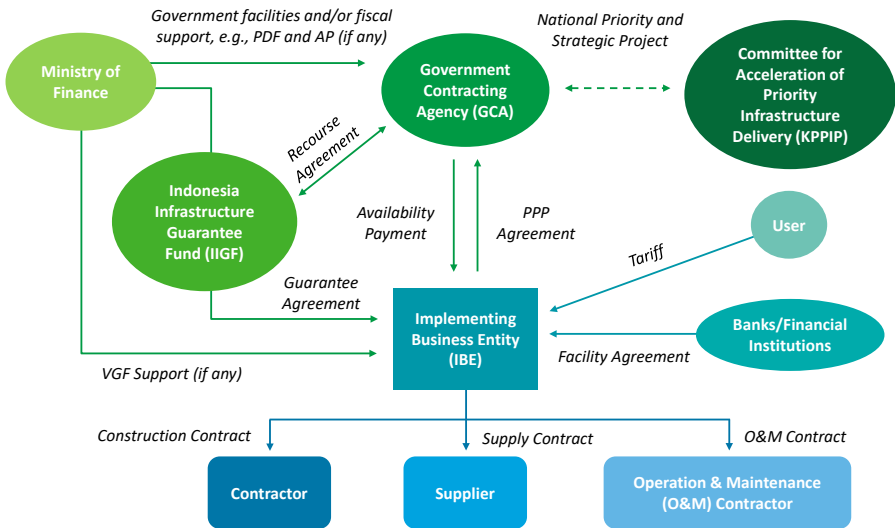
Infrastructure Guarantee Fund (IIGF) pursuant to the PPP Regulations and Government Regulation No. 35/2009 on State Participation for Establishment of a Limited Liability Company for Infrastructure Guarantees as lastly amended by Government Regulation No. 55/2020 on Second Amendment of Government Regulation No. 35/2009 on State Participation for Establishment of a Limited Liability Company for Infrastructure Guarantees. IIGF has been mandated by the Ministry of Finance to provide a “single window” for providing government guarantees for infrastructure PPP projects in order to mitigate any project risks of the private sector, thus improving the creditworthiness, bankability and quality of infrastructure projects in the country (such as, in respect of the financial obligations of GCAs under the applicable Cooperation Agreement). The IIGF was established with support from the World Bank to provide such guarantees.

Government guarantees provided by IIGF are entered into between IIGF, as guarantor, and the private company appointed to carry out the project (the project company), as beneficiary. Under the terms of the Guarantee Agreement, the project company is permitted to assign the benefit of the guarantee to its lenders, and IIGF will enter into a form of direct agreement (a consent letter) with the project company and its lenders to enable this. If the guarantee is called, IIGF will become entitled to compensation for the amount disbursed under the terms of a recourse agreement entered between the GCA and IIGF. The recourse agreement is intended, among other things, to encourage a thorough evaluation by the GCA of the risk allocation under the Cooperation Agreement and the GCA's performance of the terms of the Cooperation Agreement after it is signed.

The Indonesian government also established the state-owned enterprise, PT Sarana Multi Infrastruktur (Persero) or PT SMI, which is a non-banking financial institution focusing on infrastructure financing. Both IIGF and PT SMI have provided inputs and advice to potential GCAs in connection with project preparation and structuring, for example, in providing project implementation advice to the relevant GCA, preparation of pre-feasibility studies of the project, conducting of market sounding exercises and supporting the GCA in the tender process for its PPP project. For example, PT SMI has been appointed by the Ministry of Finance to spearhead the progress of some of the noteworthy PPP projects in Indonesia – namely, the Umbulan Water Supply PPP Project and the Soekarno-Hatta International Airport Railway PPP Project.

Another institution within the PPP framework, PT Indonesia Infrastructure Finance (IIF) was established to provide alternative financial assistance to finance PPP projects. Since IIF's establishment, it has received a significant equity investment from Sumitomo Mitsui Banking Corporation. The synergy of the current institutional support framework is illustrated in **Figure 21**.

Figure 21. The Synergy of Institutional Support Framework



Concession Scheme (Assets Recycling)

Asset recycling is a measure that enables the Government or State-owned Enterprises to fund necessary infrastructure investments through proceeds derived from sale or lease of their assets to the private sector. In the Indonesian regulatory framework, Perpres No. 32/2020 has introduced a concept of Limited Concession Scheme (LCS) as one of the asset recycling schemes that can be implemented by Government and State-owned Enterprises.

Perpres No. 32/2020 is an enabling regulation which allows private sector investment in operations of existing assets owned by the State or state-owned enterprises. For example, the government can grant private sector investors a 'limited concession' for the operation of a brownfield toll road. The granting of such operational right is dubbed as LCS. Aside from benefitting from the operation of a commercial asset, private sector investors participating in LCS will also partake in the financing of new infrastructure. Private sector investors will be required to pay a premium to compensate the State or state-owned enterprises for the granting of the 'limited concession'. In this way, the government or state-owned enterprises will be able to deploy funding for development of new infrastructure assets.

In order to provide clarity on LCS, Perpres No. 32/2020 elaborates the categories of infrastructure assets that can be offered to the private sector through LCS, namely:

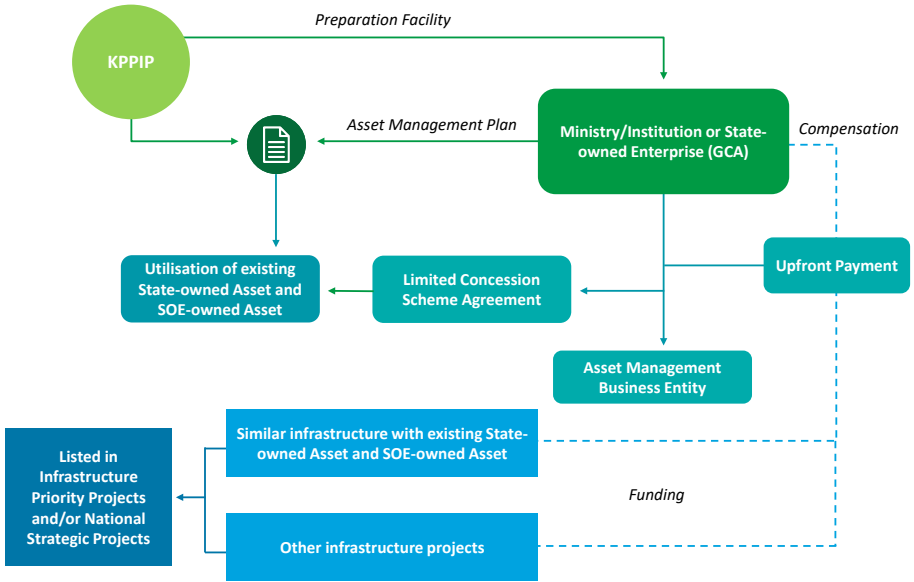
- a. Transportation (seaport, railway, airport, and bus terminal).
- b. Toll road.
- c. Water resources.
- d. Drinking water supply system.
- e. Wastewater treatment system.
- f. Waste management system.
- g. Telecommunications and information system.
- h. Electricity; and
- i. Oil, gas, and renewable energy.

Further, Perpres No. 32/2020 sets out the minimum criteria for public assets to be privately operated through LCS, where such asset:

- a. Must be commercially operated for a duration of at least 2 (two) years.
- b. Requires an increased efficiency of operation pursuant to applicable international standards.
- c. Indicative lifecycle of assets for at least 10 (ten) years going forward.
- d. If the asset is recorded as owned by the State, then there needs to be an audited financial report of ministries/agencies in accordance with the Government Accounting Standard for the prior period; and
- e. If the asset is recorded as owned by State-owned Enterprise, it must record a positive cash flow for at least 2 (two) consecutive years and have been audited for at least 3 (three) consecutive years in accordance with the applicable accounting standards in Indonesia.

The minister/head of agency acting as the user of the relevant State asset, or the president director of the State-owned Enterprise, will be assisted by KPPIP in carrying out the planning process. The output of this planning process is an Asset Management Plan which acts as a pipeline of assets that are available to be offered for LCS. In the case of assets recorded as owned by the State, there shall be a competitive tender process to be carried out in offering LCS assets to pre-qualified investors. At this stage, the minister/head of agency as the asset owner will carry out the transaction process. Once the transaction process has been concluded, the government, through a BLU under the Ministry of Finance will take over the assets and enter into an agreement with the winning bidder. In the case of assets recorded as owned by State-owned Enterprise, the president director will carry out the transaction in accordance with selection procedures applicable for such state-owned enterprise. After conclusion of the selection process, the state-owned enterprise will enter into an agreement with the winning bidder. Specific for this type of transaction, the state-owned enterprise and winning bidder may establish a special purpose company. The project structure of LCS is illustrated in **Figure 22**.

Figure 22. LCS Project Structure



Under Government Regulation No. 32/2020, LCS is beneficial for the asset owner as the scheme will reduce the risk which may be incurred when the government or State-owned Enterprises utilises the respective asset by themselves. On the one hand, as an alternative to conventional funding, the implementation of LCS is a way for the government to build much-needed infrastructure without incurring additional debt, while maintaining or potentially improving existing infrastructure service delivery.

On the other hand, it is highly likely that maturation of Government Regulation No. 32/2020 will depend on several factors, including overarching regulations and investment restrictions. Prior to Government Regulation No. 32/2020, the government established a regulatory framework for the utilisation of State/Region-owned Assets and PPPs. This creates overlap in regulation of similar matters which could potentially be a stumbling block in its implementation.

For State-owned Enterprises, asset recycling can also be implemented through a strategic partnership cooperation scheme. Under Minister of State-owned Enterprises Regulation No. 7/2021, strategic partnership cooperation scheme is conducted between State-owned Enterprises and its partner to achieve mutual objectives where such cooperation will be conducted pursuant to the most optimal benefits for the State-owned Enterprises. Strategic partnership cooperation schemes can be conducted either by the State-owned Enterprises as partners or

the State-owned Enterprises as parties who seek partners. As governed in Minister of State-owned Enterprises Regulation No. 7/2021, Internal Standard Operational Procedure of the State-owned Enterprises will be used as the basis for conducting a strategic partnership cooperation scheme, where the State-owned Enterprises act as a party which seeks a partner.

5. Good Corporate Governance Implementation

Implementation of Good Corporate Governance (GCG) principles is governed through Article 4 of Law No. 40/2007 and its elucidation on Limited Liability Companies and Article 15 of Law No. 25/2007 on Investment which emphasises the responsibilities of GCG from both Limited Liability Companies and investors' perspectives. GCG principles include transparency, accountability, responsibility, independency, and fairness. Complementary to these regulations, the Coordinating Ministry for Economic Affairs has stated that GCG is an important pillar of the market economy, as it relates to investors' confidence both in the companies as well as in the overall business environment. Its implementation leads to sustainable economic growth and stability, and it is also expected that it will support the efforts of the government in establishing a clean and credible government.

In implementing GCG, companies in Indonesia can refer to the Code of Corporate Governance and Manuals from the National Committee on Governance and International Finance Corporation (IFC). The National Committee on Governance has established the Corporate Governance Sub-Committee which reviews and revises the existing national code of corporate governance to be applicable to current circumstances. The IFC, which is a member of the World Bank Group, assists to address various challenges companies face in emerging markets by strengthening their governance practices. These manuals are not legally binding on companies but provide fundamental guidance and reference to implement good corporate governance.

There are three important topics mentioned in these manuals: (i) Risk Management, (ii) Internal Control, and (iii) Internal Audit. Risk Management and Internal Control become two of the main areas that need to be covered in the duties of the BoD, while Internal Audit functions as an assurance provider to the BoC and BoD.

Risk Management

According to the Indonesia Corporate Governance Manual prepared by the IFC, successful risk management is the key to the success of all companies. In Risk Management, both BoC and BoD are responsible for:⁷⁰

- a. Determining the nature and level of risks that a company is willing to take in order to achieve the company's strategic goals.
- b. Ensuring that risks are assessed and mitigated properly.

⁷⁰"Indonesia Corporate Governance Manual 2nd Ed". International Finance Corporation. 2018.

BoD is responsible for implementing Risk Management systems, while BoC is responsible for monitoring and reviewing implementation. Based on The Code of Good Corporate Governance Indonesia 2006 published by the National Committee on Governance (KNKG), it is recommended that:⁷¹

- a. The BOD shall establish and implement sound risk management practices within the company, covering all aspects of the company's activities.
- b. Each strategic decision taken, including the creation of new products or services, shall carefully consider risk exposures, ensuring appropriate balance between the benefits and risks.
- c. To ensure proper implementation of risk management, the company shall have a work unit or a person in charge of such function.

To assist BoC in monitoring and reviewing the implementation of Risk Management systems, the BoC should establish a Risk Policy Committee, which is recommended for all companies (OJK CG Guidelines). The Risk Policy Committee has responsibility for assisting the BoC in setting the risk governance structure, determining and evaluating levels of the company's risk tolerance, and monitoring key risk indicators & results regularly as well as reviewing the adequacy and effectiveness of Risk Management and Internal Control systems.

In implementing Risk Management, most companies in Indonesia refer to guiding framework of COSO Enterprise Risk Management 2017 and/or ISO 31000:2018 Risk Management. Nationally, Indonesia National Standardisation Body (Badan Standarisasi Nasional or BSN) launched the Indonesia National Standard (Standar Nasional Indonesia or SNI) 8615:2018 ISO 31000:2018 Risk Management Guide.

Internal Control

Referring to the Internal Control – Integrated Framework (Committee of Sponsoring Organisations of the Treadway Commission 2013), Internal Control is a process, effected by an entity's BoD, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.⁷² The establishment and maintenance of an effective Internal Control system is required in Risk Management.

Based on The Code of Good Corporate Governance Indonesia 2006 issued by the National Committee on Governance:⁷³

- a. The BoD should establish and maintain a sound Internal Control system to safeguard the company's assets, its performance, and its compliance with laws and regulations.
- b. Issuers and public companies are required to have an Internal Control function or unit.
- c. The Internal Control unit should assist the BoD in achieving the company's

⁷¹ "Indonesia's Code of Good Corporate Governance". National Committee on Governance. 2006.

⁷² "Internal Control—Integrated Framework". Committee of Sponsoring Organizations of the Treadway Commission. 2013.

⁷³ "Indonesia's Code of Good Corporate Governance". National Committee on Governance. 2006.

- objectives and business sustainability by evaluating the implementation of the company's program, providing recommendations to improve the effectiveness of the Risk Management process, evaluating the company's compliance with laws and regulations, and facilitating coordination with the external auditor.
- d. The Internal Control unit is responsible to the president director or the director in charge of this function.
 - e. The Internal Control unit has a functional relationship with the BoC through the audit committee.

Internal Audit

Internal Audit is responsible for ensuring the adequacy and effectiveness of Internal Control that is implemented within the company to protect the company from losses. This function evaluates the control environment, assesses risks and aspects in Risk Management, communicates findings to the BoC (through the Audit Committee) and BoD, and provides recommendations to improve the company.

According to the Indonesia Corporate Governance Manual prepared by the IFC, Internal Audit provides assurance to the BoC, and BoD as follows:⁷⁴

- a. The efficiency and effectiveness of operations for the overall entity, divisions, subsidiaries, operating units, and business functions.
- b. The risk management framework (including risk identification, risk assessment, response, and monitoring).
- c. The internal control environment, including the safeguarding of assets and soundness and integrity of reporting processes.
- d. Compliance with regulations, policies, and procedures.

As mentioned previously, findings are communicated by Internal Audit to the BoC through the Audit Committee. The Audit Committee is one of the BoC Committees which is mandatory for issuers and public companies (OJK) and recommended for other companies (OJK CG Guidelines). It has responsibility for assisting the BoC in ensuring the appropriateness of financial reports that are presented, adequacy and effectiveness of Internal Control structure, internal and external audits in accordance with applicable audit standards, and audit findings are followed up by management.

Internal Audit practice, both globally and in Indonesia specifically, rely on Institute of Internal Auditor's (IIA) Standard for Professional Practice on Internal Auditing (SPPIA) which is universally accepted as the leading standard in ensuring the responsibilities of internal auditors and the Internal Audit activity. IIA also recognises COSO Internal Control — Integrated Framework (2013) as the leading standard for determining what constitutes effective internal control.

⁷⁴"Indonesia Corporate Governance Manual 2nd Ed". International Finance Corporation. 2018.



6. Capital market

Indonesia Stock Exchange (IDX)

IDX organises and provides the system and the facilities to connect the seller and the buyer of shares for trading purposes. IDX determines the regulations concerning the members, listings, trading, clearing, settlement, and other matters related to stock exchange activities. A proposed IDX regulation must be approved by OJK before becoming effective. IDX is also required to maintain an inspection unit assigned to periodically investigate members and their activities on the IDX.

The prospective listed company may list its shares on the Main Trading Board, the Development Trading Board, or the Acceleration Trading Board. The following table summarises the differences in the requirements for listing on the three boards:

No	Matters	Main Trading Board	Development Trading Board	Acceleration Trading Board
1.	Type of Entity	Limited Liability Company	Limited Liability Company	Limited Liability Company
2.	Operational Period	36 months (affirmed that the operational period refers to commercial operations confirmed by the company receiving business income)	12 months (affirmed that the operational period refers to commercial operations proven by the existence of business income)	Having commercially performed operational activities as proven by having booked business income during the past fiscal year
3.	Financial statements	a. Have been audited for at least 3 years b. Audited Financial Statements for the last 2 years and the latest interim Audited Financial Statements (if any) which have obtained an Unqualified Opinion (<i>opini tanpa modifikasi</i>)	Have been audited for at least 12 months and the latest interim Audited Financial Statements (if any) which have obtained an Unqualified Opinion (<i>opini tanpa modifikasi</i>)	Have been audited for at least the last 12 months or since the establishment for the company, which has been established for less than 1 year shall require an Unqualified Opinion (<i>opini tanpa modifikasi</i>)

No	Matters	Main Trading Board	Development Trading Board	Acceleration Trading Board
4.	Capital	<ul style="list-style-type: none"> a. Net Tangible Assets (NTA) min. IDR250 billion; or b. Cumulative Profit Before Tax for the last 2 years min. IDR100 billion & Market Capitalisation min. IDR1 trillion; or c. Revenue min. IDR800 billion & Market Capitalisation min. IDR8 trillion; or d. Total Assets min. IDR2 trillion & Market Capitalisation min. IDR4 trillion; or e. Cash Flow from Operating Activities 2 years min. IDR200 billion & min. Market Capitalisation IDR4 trillion 	<ul style="list-style-type: none"> a. NTA min. IDR50 billion; or b. Cumulative Profit Before Tax for the last 2 years min. IDR10 billion & Market Capitalisation min. IDR100 billion; or c. Revenue min. IDR40 billion & Market Capitalisation min. IDR400 billion; or d. Total Assets min. IDR250 billion & Market Capitalisation min. IDR500 billion; or e. Cash Flow from Operating Activities 2 years min. IDR20 billion & min. Market Capitalisation IDR400 billion 	N/A
5.	Total number of shareholders	> 1,000	> 500	> 300
6.	Minimum number of shares owned by minority shareholders	<p>300 million shares and meet the requirements:</p> <ul style="list-style-type: none"> a. At least 20% of total issued shares which have equity value before initial public offering of less than IDR500 billion b. At least 15% of total issued shares which have equity value before initial public offering from IDR500 billion up to IDR2 trillion, or c. At least 10% from issued shares which has equity value before initial public offering of more than IDR2 trillion 	<p>150 million shares and meet the requirements:</p> <ul style="list-style-type: none"> a. At least 20% of total issued shares which have equity value before initial public offering of less than IDR500 billion b. At least 15% of total issued shares which have equity value before initial public offering from IDR500 billion up to IDR2 trillion, or c. At least 10% from issued shares which have equity value before initial public offering of more than IDR2 trillion 	At least 20% of total issued shares
7.	Share Price	IDR100	IDR100	IDR50

No	Matters	Main Trading Board	Development Trading Board	Acceleration Trading Board
8.	Independent Commissioner	At least 30% of the BoC	At least 30% of the BoC	a. 6 (six) months transition for issuers having medium-scale assets b. 1 (one) year transition for issuers having small-scale assets
9.	Corporate Secretary	✓	✓	a. 6 (six) months transition for issuers having medium-scale assets b. 1 (one) year transition for issuers having small-scale assets
10.	Audit Committee and Internal Audit Unit	✓	✓	a. 6 (six) months transition for issuers having medium-scale assets b. 1 (one) year transition for issuers having small-scale assets
11.	Remuneration and Nomination Committee	✓	✓	a. 6 (six) months transition for issuers having medium-scale assets b. 1 (one) year transition for issuers having small-scale assets

In addition to the three trading boards referred to above, in early December 2022 IDX also introduced a new trading board – the **New Economy Trading Board** (NETB). Prospective and existing listed companies may be listed on the NETB if they possess the following characteristics:

- a. Achieving strong revenue growth.
- b. Utilising technologies to create product and/or service innovations that aim to improve economic productivity and growth, as well as offering social benefits; and
- c. Engaging in certain business sectors as determined by the IDX.

IDX expects that with the establishment of NETB, investors would experience safer and protected investment activities and promote disclosure on shares classification. Furthermore, the implementation of NETB is expected to facilitate investors in making investment decisions according to the type and strategy of investor transactions.

Initially several e-commerce companies have been listed in the NETB, and in the future it is expected that other technology focused companies will be added to this new board. To make it easier to identify public companies listed on the NETB, the

IDX provides a special notation. Two special notations have been issued, namely “K” and “I”. “K” means the company applies Multiple Voting Shares (MVS) and is listed on the NETB. “I” means the company does not apply MVS but is listed on the NETB.⁷⁵

The IDX special notation should not be regarded negatively. IDX has added these only for the purposes of explaining the status of a company listed on the NETB.

PT Kustodian Sentral Efek Indonesia (KSEI)

KSEI, which is domiciled in Jakarta, based on an agreement with IDX, provides central custodian services and settlement of IDX transactions. It serves custodian banks, securities companies, and other related parties.

PT Kliring Penjaminan Efek (KPEI)

KPEI is one of the Self-Regulatory Organisations (SRO) engaging in Clearing and Underwriting under the supervision of OJK. As a Clearing and Underwriting Institution, KPEI guarantees clearing and underwriting services for regular, fair, and efficient exchange transaction settlements as well as other services based on the provisions stipulated by OJK. KPEI is owned by IDX.

Financial Services Authority (Otoritas Jasa Keuangan or OJK)

As of 1 January 2013, OJK began regulating the capital markets, insurance companies, securities companies, and multi-finance companies. In addition, OJK began monitoring banks on 1 January 2014.

OJK was established to serve as a “one-stop” regulatory body for both bank and non-bank financial institutions, covering banking, capital markets, insurance, and other financial services sectors, where OJK’s authority is intended to be broader than its predecessors. OJK is authorised to investigate corruption in the financial services sector, administer penalties, conduct investigations, and initiate prosecutions and has the power to revoke licenses. OJK is also intended to play a central role in consumer protection in the financial services industry, address consumer service complaints, and make legal claims on behalf of consumers.

OJK is expected to cooperate with other government agencies, such as the Ministry of Finance and Bank Indonesia. Following the transfer of Bank Indonesia’s authority to supervise commercial and Sharia banks to OJK at the end of 2013, Bank Indonesia’s main task is to supervise the stability of the monetary and payment systems.

Considering COVID-19, the Indonesian government enacted Government Regulation in Lieu of Law No. 1/2020 regarding State Financial Policy and Financial System Stability for Managing the Corona Virus Disease-2019 (COVID-19) Pandemic and/or in Dealing with Threats that Harm the National Economy and/or Financial System Stability, which focused on allocating state budget expenditures to respond to COVID-19 and threats that endanger the national economy and financial system stability.

⁷⁵ Multiple Voting Shares (MVS) refers to as a type of share where one share gives more than one voting right to shareholders.

To support the national economy and financial system stability during COVID-19, OJK issued several regulations, among others, related to counter-cyclical regulations, the general meeting of shareholders mechanism for public companies, the electronic general meeting of shareholders (e-GMS), material transaction and alteration of business activities, and written order from OJK to the banking institution for handling financing problems due to COVID-19.

Bond Market

The Indonesian bond market consists primarily of government bonds and corporate bonds. Domestic issuances of asset-backed securities are permitted under a specific regulatory regime. Additionally, the government has issued regulations to allow the issuance of municipal bonds.

The national government has issued various bonds with short, medium, and long-term maturities in both Rupiah and foreign currencies. National government bonds consist of Indonesian Sovereign Bonds (Surat Utang Negara) and State Sharia Securities (Surat Berharga Syariah Negara, commonly known as SBSN) as bonds issued under Sharia principles in either Rupiah or a foreign currency. Issues of SBSN have utilised a sukuk ijarah sale and leaseback structure.

Corporate bonds primarily consist of conventional corporate bonds, Medium Term Notes (commonly known as MTN), corporate Sukuk, and convertible bonds. Corporate issuers also regularly tap the international capital markets through offshore bond issuances via offshore special purpose entities.

Municipal bonds (bonds issued by the local governments) are intended to be implemented in accordance with regional autonomy principles and to facilitate the funding of regional infrastructure projects. Municipal bonds are intended to have a maturity of one-year or more, to be denominated in Rupiah and be offered to the Indonesian public through the domestic capital markets. The bonds may be secured by collateral consisting of the regional project to be funded by the bond issuance. No guarantee is available from the national government for these bonds.

Capital market regulation allows for the issuance of debt securities without public offerings under certain circumstances. The enactment of OJK Regulation No. 30/2018 in connection with the issuance of debt securities without public offerings will regulate the legal framework that addresses these matters.

Information Disclosure

Public companies that intend to issue securities and/or are considering listing on the IDX are required to submit financial statements and other disclosure documents to OJK and make them available to the public. OJK, as the capital markets' regulator, sets out the minimum standards for a public company's financial statements, which include annual and mid-year financial statements and quarterly reports on the use of funds.

Financial Statements shall be prepared in accordance with Indonesian Financial

Accounting Standards (Pernyataan Standar Akuntansi Keuangan or PSAK) established by the Indonesian Institute of Accountants (Ikatan Akuntan Indonesia or IAI), and other generally accepted accounting practices in the Indonesian capital markets, including Balance Sheet, Income Statement, Statement of Changes in Stockholders Equity, Cash Flow Statement, and Notes to Financial Statements.

Consolidated financial statements are to include all subsidiary companies controlled by the parent company. Control is deemed to exist when the parent company directly owns, or indirectly owns through subsidiaries, more than 50% of the voting shares of a company, or if the parent company meets one of the following conditions:

- a. The company holds more than 50% of voting rights by virtue of an agreement with other investors.
- b. The company has the power to direct and determine financial and operational policies based on the articles of association or an agreement.
- c. The company has the power to appoint or dismiss a majority of the members of company management; or
- d. The company has the power to direct the majority of voting rights in a management meeting.

Subsidiaries should, however, be excluded from consolidation if:

- a. Control is intended to be temporary because the subsidiary's shares are acquired and held with a view to their subsequent disposal in the near future; or
- b. The subsidiary company is under severe long-term restrictions which significantly impairs its ability to transfer funds to the holding company.

Each Indonesian public company is also required to disclose any occurrence that may affect the value of the company's stock, by providing public notice and notice to OJK, within two working days of the occurrence. Occurrences requiring disclosure include, but are not limited to:

- a. Merger, share purchase, consolidation, or establishment of a joint venture company.
- b. Stock split or dividend.
- c. Income from the extraordinary dividend.
- d. Acquisition or loss of an important contract.
- e. Significant new product or innovation.
- f. Change in control or significant change in management.
- g. Call for the purchase or redemption of debt securities.
- h. Sale of a material number of securities to the public or in a private placement.
- i. Purchase, or loss from the sale of, a material asset.
- j. Relatively important labour disputes.
- k. Important litigation against the company and/or the company's BoD or BoC.
- l. An offer to purchase securities of another company.

- m. Replacement of the company's auditor.
- n. Replacement of a trustee of the company's debt obligations.
- o. A change in the company's financial year; and
- p. Other information or material facts.

Private placement

In Indonesia, selling of securities in a private placement may be carried out by way of direct negotiation between the company and certain investors. A domestic capital markets transaction may constitute a private placement if: (i) the transaction is not offered to Indonesian citizens through the mass media; (ii) is offered to 100 parties or less; and (iii) sold to 50 parties or less.

Private placement of equity of a public company could be conducted through a capital increase without pre-emptive rights of existing shareholders, with the approval of the general meeting of shareholders, if the following conditions are fulfilled:

- a. Such capital increase will not exceed 10% of the company's paid-up capital within 2 (two) years (for other than stock ownership plan) and within 5 (five) years (for stock ownership plan); or
- b. The primary purpose of the capital increase is to improve the financial position of a company that is experiencing one of the following conditions:
 - 1. A bank that has received a loan from Bank Indonesia or another government institution in the amount equal to more than 100% of the company's paid in capital or another condition that may result in the restructuring of the bank by the government institution.
 - 2. A non-bank company that has negative net working capital and has obligations greater than 80% of the company's assets at the time the general meeting of shareholders approves the capital increase; or
 - 3. The company is in default or is unable to avoid default on its obligations to a non-affiliated lender, and such lender has agreed to accept shares or convertible bonds of the company in settlement of the loan.

The company is required to notify OJK of the proposed private placement at least five working days prior to the execution of the capital increase without pre-emptive rights and must also issue an announcement to the public. Within two working days of the completion, the company must notify OJK and the public of the results, including information about quantity and stock price.

Initial Public Offering (IPO) Process

A company that intends to carry out an Initial Public Offering (IPO) in Indonesia must submit a registration statement and supporting documents to OJK. The issuer is responsible for the completion and correctness of the information that is disclosed in the said documents (except for specific information such as the offering price and the registration's effectiveness date, which may not be determined at the time of submission). After submitting the registration statement, the issuer may be requested to submit additional information and/or amend the registration statement.

The issuer is required to announce a summary of the prospectus for the IPO in at least 1 (one) Indonesian nationally circulated daily newspaper within 2 (two) working days from the receipt of permission to do so from OJK and is required to provide OJK with the relevant announcement evidence within 2 (two) working days of the same. An issuer may also conduct an offer by using a preliminary prospectus (for purposes of book building), with written authorisation from OJK.

Effectiveness of Registration Statement

The registration statement from the issuer will become effective as follows:

- a. Based on the passage of time:
 1. 45 (forty-five) days since the complete registration statement is received by OJK, where all criteria relating to a registration statement for a public offering have been fulfilled; or
 2. 45 (forty-five) days since the date of the last amendments were delivered to OJK or the last date of any requirements from OJK having been fulfilled.
- b. Based on a statement from OJK that there is no further change and no additional information needed.

After the registration statement is effective, the issuer is under the obligation to:

- a. Provide the required prospectus as a part of a registration statement to the public or prospective buyers.
- b. Submit the prospectus and supporting documents through SPRINT (“Sistem Perizinan Otoritas Jasa Keuangan”); and
- c. Announce if there is any change and/or addition to the summary prospectus in at least 1 (one) nationally circulated newspaper within 1 (one) working day of the effectiveness of the registration statement and submit such evidence to OJK within 2 (two) working days after its announcement.

Period of Public Offering, Allotment, and Public Offering Report

The issuer must conduct the IPO at the latest 2 (two) working days following from when the registration statement is effective; the public offering period is to be within 1 (one) to 5 (five) working days and the allotment of shares must be accomplished within 2 (two) working days after the end of the period of the public offering. Thereafter, the distribution of such shares must be conducted within 1 (one) working day after the date of allotment.

The underwriter or the issuer must submit a report regarding the public offering to OJK within 5 (five) working days from the share allotment date. Thereafter, the underwriter or the issuer (if the issuer is not using an underwriter) is required to appoint a public accountant to conduct a specific examination of the public offering, which must be received by OJK within 30 (thirty) days from the end of the public offering period.

If the offered shares will be listed on the IDX, the listing must be conducted within 1 (one) working day after the share allotment date.

Rights issue

If an Indonesian public company intends to increase its capital, the existing shareholders of the said public company have a pre-emptive right to acquire a portion of the newly issued securities in proportion to the percentage of their respective current shareholdings.

If the public company issues warrants, the total number of warrants and circulated warrants cannot exceed 35% of the total paid-up capital at the date the registration statement is submitted.

Rights issues include a stand-by buyer which has the obligation to purchase any remaining shares that are not purchased by the existing shareholders or the public, at the same price and on the same terms. The party which acts as a stand-by buyer must provide financial statements (for a company) or checking account statement (for an individual) that shows positive earnings and its capability to act as a stand-by buyer.

7. Banking and lending

Bank Indonesia is the central bank of Indonesia. Under Law No. 23/1999 regarding Bank Indonesia last amended by Law No.3/2004 regarding Amendment of Law No. 23/1999 on Bank Indonesia (Bank Indonesia Law), Bank Indonesia is an independent state agency free from interference from the government and/or other parties unless expressly provided otherwise by law. Bank Indonesia's primary objective is to achieve and maintain stability of the value of the Rupiah. The Bank Indonesia Law further regulates that in order to achieve the aforementioned objective, Bank Indonesia has the following tasks:

A. Determining and implementing monetary policy.

In the context of determining and implementing monetary policy, Bank Indonesia is authorized to:

1. Set monetary targets by taking into account its inflation target.
2. Conduct monetary control by using methods including but not limited to the following:
 - a. Open market operations in the money market both in Rupiah and foreign currencies.
 - b. Setting the discount rate.
 - c. Determining minimum mandatory reserves; and
 - d. Credit or financing arrangements.

B. Regulating and maintaining smooth payment system.

Bank Indonesia has the authority to:

1. Implement and provide approval and licenses for the implementation of payment system services.
2. Require payment system service providers to submit reports on their activities.
3. Determine the use of payment instruments.

C. Regulate and supervise banks

In order to conduct this objective, Bank Indonesia shall determine and regulate, grant and revoke licenses for certain institutions and business activities of banks, conduct bank supervision and impose sanctions on banks in accordance with the laws and regulations.

However, since 1 January 2014, Bank Indonesia's role as the primary regulator of the banking industry has been assumed by OJK. Notwithstanding the above and as indicated in the above, the Indonesian government is currently considering amending certain laws and regulations governing Bank Indonesia with a view to streamlining its respective roles and functions to better cater to and respond to the adverse impacts caused by COVID-19.

In relation to that, the Omnibus Law transfers certain authorities in banking affairs from Bank Indonesia to OJK and the central government. Under the Omnibus Law, the authorities to set the requirement to establish a bank, which were previously held by Bank Indonesia, are now assumed by OJK. Further, based on the previous regulatory regime, the provisions dealing with the maximum foreign ownership of Islamic banks are regulated under Bank Indonesia Regulations as a non-government independent institution. The Omnibus Law, however, shifts this mandate to the government (i.e., the government shall govern the maximum foreign ownership of Islamic Bank through laws and regulations regarding investment prepared by the government). Therefore, other than re-aligning the regulatory framework, the Omnibus Law will also centralise the authorities to set foreign ownership conditions of Islamic banks to the central government.

It would be interesting to see the outcome of this proposed regulatory roll-out in light of the Omnibus Law and its impacts on the current Indonesian financial institutions landscape.

Bank categorisation based on its core capital

Initially, OJK prescribed the categorisation of banks under OJK Regulation Number 6/2016 on Business Activities and Office Network Based on Core Capital of Banks (**OJK Regulation 6/2016**) into 4 (four) categories (previously referred to as Bank Umum berdasarkan Kegiatan Usaha or BUKU), ranging from BUKU 1 (the smallest category) to BUKU 4 (the largest category). Such categorisation determines the

business activities that the bank under each category is allowed to engage in (e.g., foreign-exchange-related activities, treasury-related activities, region/worldwide scope of activities, etc). However, OJK Regulation Number 12/2021 on Commercial Banks (**OJK Regulation 12/2021**) replaced the BUKU categorisation and provides a new set of categorisations in the form of Kelompok Bank berdasarkan Modal Inti (KBMI) as follows:

1. KBMI 1: banks with core capital amounting to IDR6 trillion (six trillion Indonesian Rupiah).
2. KBMI 2: banks with core capital of more than IDR6 trillion (six trillion Indonesian Rupiah) up to IDR14 trillion (fourteen trillion Indonesian Rupiah).
3. KBMI 3: banks with core capital more than IDR14 trillion (fourteen trillion Indonesian Rupiah) up to IDR70 trillion (seventy trillion Indonesian Rupiah); and
4. KBMI 4: banks with core capital more than IDR70 trillion (seventy trillion Indonesian Rupiah).

Single presence policy and shareholding restrictions

Based on OJK Regulation No. 39/POJK.03/2017 regarding Single Ownership in Indonesian Banking (POJK 39/2017), single ownership is a condition whereby a party can only be a controlling shareholder of one bank. A controlling shareholder under POJK 39/2017 is a legal entity, individuals, and/or a business group that:

- a. Owns 25% or more of the total shares issued of a company or bank and has voting rights; or
- b. Owns less than 25% of the total number of shares issued in a company or bank and has voting rights, but the individual/entity concerned can be proven to have exercised control of the company or bank, either directly or indirectly.

As noted above based on Article 2 Paragraph 1 POJK 39/2017, each party can only be a controlling shareholder in one bank. However, the above provisions on the controlling shareholder in one bank do not apply to the following:

- a. Controlling shareholder of two respective banks that conduct business activities with different principles, namely conventional and sharia principles; and
- b. Controlling shareholder of two banks, one of which is a joint venture bank.

If the said party purchases shares of other banks so that they become a controlling shareholder in more than one bank, the said parties must fulfil the provisions under Article 2 Paragraph 1 of POJK 39/2017. This can be achieved by way of:

- a. Merger or consolidation: the controlled bank shall be merged or consolidated with the controlling bank.
- b. Establishing a holding company in the banking sector; or
- c. Establishing a holding function, which aims and is intended to directly control and consolidate all activities of its (bank) subsidiaries.

Based on OJK Regulation No. 56/POJK.03/2016 (POJK 56/2016) regarding Commercial Bank Ownership, the maximum amount of bank share ownership for each category of shareholder is as follows:

- a. 40% of a bank's capital, for the category of the shareholders in the form of a legal entity and non-banking financial institution(s).
- b. 30% of a bank's capital, for the category of shareholders in the form of a legal entity non-financial institution(s); and
- c. For individual shareholders 20%.

The above maximum amount of share ownership does not apply to the central government and any institution that has been established to manage and/or rescue a bank.

Prospective controlling shareholders who are foreign citizens and/or legal entities domiciled abroad must meet the following additional requirements:

- a. Have a commitment to support the development of the Indonesian economy by owning shares in the bank.
- b. Obtain recommendations from the supervisory authority of the country of origin for legal entities of financial institutions; and
- c. Has ranked at least: (i) one level above the lowest investment grade for a financial institution legal entity; (ii) two levels above the lowest investment rating for a non-bank financial institution legal entity; and (iii) three levels above the lowest investment rating for a non-financial institution legal entity.

Offshore Financial Obligations

Indonesia regulates several reporting and filing obligations for Indonesian companies which obtain debt financing from sources outside Indonesia. The scope of these obligations varies from regulation to regulation, but generally loans, notes, bonds, and finance leases would be reportable obligations, as would guarantees in some cases.

The said requirements include reporting obligations to Bank Indonesia regarding the company's annual offshore borrowing plan, along with transaction-specific reporting requirements to Bank Indonesia and the Ministry of Finance. With respect to transaction-specific reports, the Indonesian obligor is required to include copies of the underlying transaction documents and thereafter to provide periodic reports on the realisation of the loan (i.e., drawings and repayment) in the first report.

These reporting requirements are administrative in nature and are imposed on the borrower. There are penalties that may be imposed on a borrower that fails to comply.

In addition, there have been several court cases where a borrower's failure to comply has resulted in a court invalidating the underlying loan agreement. Even

though these decisions have been criticised as incorrect applications of the regulations, lenders are well advised to verify submission of the requisite reports as conditions precedent to the first drawdown and to require completion of all periodic reports (as either conditions subsequent or pursuant to the general undertakings).

Regarding offshore borrowings for public infrastructure projects (including those being implemented as a Build-Operate-Transfer (BOT) or Public-Private Partnership (PPP)), aside from typical reporting obligations, such offshore loan shall have been approved by the Ministry of Finance (which has been assuming the role of the previous offshore commercial loan (PKLN or Pinjaman Komersial Luar Negeri). In principle, this approval is requested for project borrowings that could affect the state budget. The approval process can be time consuming and may require a presentation regarding the proposed project structure and coordination with other government stakeholders (including any State-owned Enterprises involved).

Foreign exchange-drawdown via onshore account

Bank Indonesia Regulation No. 16/10/PBI/2014, dated 14 May 2014, on the Receipt of Foreign Exchange from Export Proceeds and Withdrawal of Foreign Exchange from Foreign Debt (as amended by Bank Indonesia Regulation 17/23/PBI/2015 and Bank Indonesia Regulation 21/14/PBI/2019), as well as Bank Indonesia Circular Letter No. 18/5/DSTA/2016 (in each case, as amended from time to time) provides that (among other things) debtors are required to have their offshore loans disbursed via foreign exchange onshore banks and require information and to provide reports (along with supporting documents (i.e. a copy of incoming transfer and/or SWIFT message) evidencing that the loan withdrawal has been completed through a foreign exchange onshore bank) on offshore loans to Bank Indonesia.

Each disbursement of an offshore loan in cash shall be made through a foreign exchange onshore bank and reported to Bank Indonesia at the latest on the 15th day of the following month after the disbursement of the loan is made. Offshore loans subject to this requirement are those arising from non-revolving loan agreements which are not for the purpose of refinancing or related to debt securities. Any discrepancy between the loans disbursed and the total loan commitments shall be explained by the borrower in writing to Bank Indonesia.

Failure of Indonesian borrowers to withdraw offshore loans via foreign exchange onshore banks as governed under these regulations is sanctioned with a penalty amounting to 0.25% of the nominal value of each loan withdrawal not made through a foreign exchange onshore bank, up to a maximum amount of IDR50 million. If the borrower is not able to submit supporting documents evidencing the loan withdrawal through a foreign exchange bank by the end of the relevant reporting month, then it will be considered not withdrawing through a foreign exchange bank (and hence the above sanction may be applied).

Limitations on Rupiah transactions

Pursuant to Bank Indonesia Regulation No. 24/7/PBI/2022, dated 4 July 2022, concerning Transaction in Foreign Exchange Market (Bank Indonesia Regulation 24/7/2022), Indonesian banks are prohibited from conducting certain Rupiah transactions with foreign parties.

Rupiah transactions restricted under this regulation include provision of Rupiah transfer abroad, non-deliverable forward foreign exchange transactions against Rupiah abroad, purchase of bonds issued by foreign parties in Rupiah, etc. However, there are several exclusions to this prohibition which permits banks to conduct transactions with foreign parties using Rupiah (e.g., in the case of credit/facility provision, it shall be syndicated, and the primer bank (as the lead bank) shall comply with several requirements, such as minimum investment rating, minimum total assets, etc.).

Purchase of foreign currency

Bank Indonesia Regulation 24/7/2022 requires that, for purchases of foreign currency, the foreign currency buyer will need to provide the bank with which it is transacting a copy of:

- a. The underlying transaction document (as applicable).
- b. A document evidencing the identity of the foreign currency buyer and its tax registration number; and
- c. Certification stating: (1) the underlying transaction documents are true and correct; and (2) the amount of foreign currency purchased with Rupiah based on such underlying documents does not exceed the amount of the relevant obligations under such underlying documents.

The requirement pertaining to the purchase of foreign currency requirement would apply when the borrower is making repayments of any foreign currency loan.

Borrower's hedging ratio, liquidity ratio, and credit rating requirement

Bank Indonesia Regulation No. 16/21/PBI/2014 on Application of Prudent Principles in Managing Foreign Debt of Non-Bank Corporation, dated 29 December 2014, as last amended by Bank Indonesia Regulation No. 18/4/PBI/2016 on Amendment of Bank Indonesia Regulation No. 16/21/PBI/2014 on Application of Prudent Principles in Managing Foreign Debt of Non-Bank Corporation, sets out the requirements for a non-bank corporation having offshore loans to apply prudent principles by applying hedging ratio, liquidity ratio, and credit rating requirements.

This regulation took effect on 1 January 2015, and generally provides that a non-bank corporation intending to receive an offshore loan must have:

- a. Hedging ratio of at least 20% (applicable between 1 January 2015 – 31 December 2015), and 25% (applicable after 1 January 2016).

- b. Liquidity ratio of at least 50% (applicable between 1 January 2015 – 31 December 2015), and 70% (applicable after 1 January 2016); and
- c. Credit rating of at least “BB” (applicable for loans signed after 1 January 2016).

The above requirements do not apply to trade credit. Further, the credit rating requirement does not apply to: (i) refinancing; or (ii) offshore loan from bilateral or multilateral financing entity in relation to infrastructure project financing. The borrower will need to submit a report and supporting documents in relation to the fulfilment of hedging ratio, liquidity ratio, and credit rating.

8. Oil and gas & coal and mineral mining

A. Oil and gas

Indonesia became a net importer of oil in late 2004, voluntarily suspended its OPEC membership in January 2009 but reactivated it again in January 2016. However, Indonesia decided to suspend its membership once more in November 2016, reflecting the fact that oil production had been declining since the 1990s.

In recent years, the Indonesian government has attempted to encourage further investment in the oil and gas sector, including for development of deep water and non-conventional oil and gas resources, and downstream infrastructure (refineries, petrochemical plants, and pipelines), through various incentives and most recently, through the relaxation of the mandatory use of gross-split production sharing contracts. Investors also have the option to choose cost-recovery production sharing contracts in the development of upstream oil and gas concessions as contemplated in Minister of Energy and Mineral Resources Regulation No. 8/2017, as last amended by Minister of Energy and Mineral Resources Regulation No. 12/2020 on Gross-Split Production Sharing Contracts.

Under Indonesian law, oil and gas activities are separated into downstream and upstream sectors. The law stipulates that upstream activities consist of exploration and exploitation, comprising drilling and completion of wells, construction of transporting, storing, and processing facilities in order to separate as well as refining oil and gas in the field. On the other hand, downstream activities cover processing, transporting, storing, and trading. The Minister of Energy and Mineral Resources has general authority over Indonesia’s energy sector. Specifically, in the oil and gas sector, the Special Task Force for Upstream Oil and Gas Activities (Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi or SKK Migas) is the regulatory body overseeing upstream activities and the executor, on behalf of the Indonesian government, over Production Sharing Contracts (PSCs) under cost recovery or gross split basis and other types of Cooperation Contracts (i.e. service contract, technical assistance contract and enhanced oil recovery contract), wherein the Contractor of upstream activities will be granted with the right to utilize the granted working area or other rights according to the type of contract. For the downstream sector, Down Stream Oil and Gas Regulatory Body (Badan Pengatur Hilir Minyak dan Gas Bumi or BPH Migas) is the regulatory body.

With the enactment of the Omnibus Law, business licensing requirements for the oil and gas sector have now been revised. However, the Omnibus Law specifies the same scope of activities, but requires both upstream and downstream oil and gas business activities to be implemented based on business licensing organised by the central government. The Omnibus Law also allows businesses to engage in downstream oil and gas business activities upon the fulfilment of business licensing requirements set by the central government and accordingly, the businesses that have fulfilled such business licensing requirements may be able to engage in processing, transportation, storage, and/or commercial activities, such as buying, selling, exporting, and importing (depending on the activities that are being targeted). Nevertheless, the shift towards a licensing-based regime aims to streamline the bureaucracy and expedite the overall licensing process within this sector as the relevant licensing processes will be integrated electronically (i.e. Online Single Submission system) as further implemented under Ministry of Energy and Mineral Resources (MEMR) Regulation Number 5/2021 on Standards for Business Activities and Products During the Implementation of Risk-Based Business Licensing Within the Energy and Mineral Resources Sector (**MEMR Regulation 5/2021**) which sets out various standards that apply to business activities and products during the implementation of risk-based business licensing within the energy and mineral resources sector (including the oil and gas sector).

Acquiring an oil and gas company

Acquisition or transfer of shares of an oil and gas company in Indonesia shall be conducted by obtaining prior approval or submitting written notification to the relevant institution (herein, Minister of Energy and Mineral Resources), considering whether the business conducts upstream or downstream activity. For instance, Minister of Energy and Mineral Resources Regulation No. 48/2017 on the Monitoring of the Mineral and Energy Resources Activities stipulates that share acquisition in the upstream activities requires prior approval from the relevant Minister, whereas share acquisition related to downstream activities only requires written notification by attaching the Articles of Association (including its updated notification receipt/approval from the Ministry of Law and Human Rights) of the relevant company to the Minister Energy and Mineral Resources by way of the Directorate General of Oil and Gas.

B. Coal and mineral mining

Indonesia has experienced the development of large-scale mining projects by companies such as BHP Billiton, Freeport-McMoRan and Vale, among others. More recently, Adaro Energy and Bumi Resources as prominent local coal players have featured increasingly, as well as a multitude of small and medium-sized local companies.

There was a high level of regulatory uncertainty following the promulgation of Law No. 4/2009 on Mineral and Coal Mining (the 2009 Mining Law). Nevertheless, in the period immediately after the Law's issuance, the industry was driven by strong demand for thermal coal for domestic and regional power generation, as well as for coking coal and various other commodities feeding the development of Asia's

industrial capacity and public infrastructure. In 2012, the situation changed, with the overall demand for commodities dampening. Significantly lower coal prices resulted in many Indonesian miners lowering production targets and focusing on increasing efficiency.

The Indonesian government most recently passed Law No. 3/2020 on Amendment of Law No. 4/2009 on Mineral and Coal Mining (the 2020 Mining Law) which introduced several changes, including but not limited to mining areas determination, centralisation of authority for mineral and coal management, re-arrangement of licensing matters, investments and divestment obligations, and continuation of operations of Contracts of Work and Coal Contracts of Work holders.

To encourage downstream activities, the Omnibus Law offers a new incentive in the form of a 0% royalty for miners who increase the value of coal by establishing downstream processing. Currently, most coal mining business activities in Indonesia are carried out merely by **'digging, transporting, and selling'** raw coal. As such, this new incentive is expected to incentivise miners to process coal through downstream activities before selling it to end-user customers. Following the enactment of the Omnibus Law, the Indonesian government has also enacted Government Regulation Number 25/2021 on the Organization of the Energy and Mineral Resources Sector (GR 25/2021), which stipulates that such 0% royalty will be granted under the following conditions:

- a. Through a consideration of energy independence (kemandirian energi) and the fulfilment of various requirements relating to industrial raw materials; and
- b. Through a consideration of volumes of coal utilised during the activities that increase the added value of domestic coal.

As a side note, such activities, amounts, requirements, and procedures that relate to the granting of a 0% royalty rate shall first require approvals from the Minister of Finance.

Contracts of work

Before 2009, mining agreements known as Contracts of Work (Kontrak Karya), or Coal Contracts of Work (Perjanjian Karya Pengusahaan Pertambangan Batubara) were primarily made by international investors with the Indonesian government. These agreements were generally intended to provide an overall regulatory framework and fiscal regime for the particular mining activities of the investor, based on Indonesia's then-prevailing 1967 Basic Mining Law. The "Contract of Work" system, which retained some characteristics of traditional mining concession agreements found in other developing countries, is now being phased out. New mining projects shall be conducted under a licensing system, which applies both to mining projects developed by domestic investors and those developed by foreign investors. Prior to 2009, a separate licensing system (the issuance of mining authorisations (Kuasa Pertambangan or KP)) was available but restricted to domestic mining companies. KPs were required to be converted to mining business licenses.

The 2009 Mining Law provided that existing Contracts of Work were to remain effective until their expiry but their terms (other than those relating to state revenues) had to be amended by January 2010 to become in line with the 2009 Mining Law. As of to date, many Contracts of Work have been converted into mining business licenses.

Controversial differences between the terms of Contracts of Work and the 2009 Mining Law regime include a significant reduction in the maximum size of the mining area and potentially more stringent share divestment requirements and restrictions on the retention of contractors, among other issues.

However, the 2020 Mining Law guarantees that Contracts of Work and Coal Contracts of Work can be extended upon meeting certain statutory requirements (specifically as to an increase in tax and non-tax state revenues). In connection with the extension period itself, if the Contract of Work/Coal Contract of Work has not been previously extended, the extension can be made 2 (two) times each for a maximum period of 10 (ten) years. If the Contract of Work/Coal Contract of Work has previously received its first extension, then such Contract of Work/Coal Contract of Work can receive its second extension for a maximum period of 10 (ten) years. The abovementioned extensions are made in the form of Special Mining Business License (Izin Usaha Pertambangan Khusus or IUPK) for the Continuation of Operations of Contracts of Work/Coal Contracts of Work.

Applications for extension of the Contract of Work/Coal Contract of Work (together with all the necessary administrative requirements and documentation), will have to be submitted to the Minister of Energy and Mineral Resources (MEMR) at the earliest 5 (five) years and the latest 1 (one) year prior to the expiration date of the respective Contract of Work/Coal Contract of Work.

Mining Business Licenses

Commercial mining in areas that are not in state reservation areas is authorised by a Mining Business License (Izin Usaha Pertambangan or IUP) while mining in state reservation areas is authorised by a Special Mining Business License (IUP Khusus or IUPK). Based on the 2020 Mining Law, the authority to issue mining-related licenses is centralised with the national government. However, Perpres No. 55/2022 on Delegation of the Granting of Business Licenses in the Field of Mining and Coal Mining jo. Government Regulation No. 96/2021 on the Implementation of Business Licenses in the Field of Mining and Coal Mining, provides that the central government has the right to delegate its authority to provincial governments, for example, in the case of delegation to provincial governments for issuing Community Mining License (Izin Pertambangan Rakyat or IPR) and Authorisation Letter for Rock Mining (Surat Izin Penambangan Batuan or SIPB).

IUPs with respect to non-metal minerals or rock are obtained by means of an application, and IUPs with respect to metal minerals or coal are obtained by means of a tender and competitive bidding process.

All IUPK licenses issued to private enterprises are also obtained by means of a tender and competitive bidding process. Nevertheless, State-owned Enterprises and Regional-owned Enterprises are given priority for such licenses.

By law, the holder of an exploration license is guaranteed an upgrade to a production license as a continuation of the mining business activity, so long as certain conditions are met. Licenses are issued either for exploration (IUP Eksplorasi) or production (IUP Produksi Operasi).

The use of domestic manpower, goods, and services are required to be prioritised by license holders. There are also specific restrictions on the retention of mining service providers (i.e., contractors). They must also develop a corporate social responsibility (CSR) program, including a program to develop and empower the local community, which is to be established in consultation with the national government, the local government, and the local community.

Under the 2020 Mining Law, an IUP for “integrated” metal mineral mining and coal mining shall be valid for 30 (thirty) years and guaranteed with an extension for a period of 10 (ten) years, after fulfilling the requirements in accordance with applicable laws and regulations, among others, based on the criteria as stated in Government Regulation No. 96/2021.

Previously, the 2009 Mining Law required IUP and/or IUPK for exploration holders to report any minerals and coal which were accidentally mined while such IUP and/or IUPK for exploration holders were engaging in any exploration and feasibility studies. Such reports were required to be submitted to the relevant license issuers prior to the imposition of production royalties. Such provisions have no longer been incorporated under the 2020 Mining Law.

Further, holders of IUP and IUPK are required to utilise dedicated mining roads during their mining activities. These roads may either be constructed by themselves or in cooperation with other IUP or IUPK holders which have already constructed mining roads or other parties that are in possession of mining roads. This provision reflects current practice.

However, similar to the oil and gas sector, business licensing of the mining sector has also been changed into a risk-based business licensing regime due to the enactment of MEMR 5/2021. It should be noted that risk-based business licensing for any business activities that are categorised under the energy and mineral resources sector (including the mining sector) should be processed through the Online Single Submission system commencing 2 July 2021.

Acquiring a Mining Company

Mining business licenses cannot be directly transferred to another party unless that party is an affiliate (meaning at least 51% of its shares are owned by the transferor). In addition, subject to government approval, a state-owned enterprise may transfer a portion of a mining area for production to an affiliate (again being

where at least 51% of its shares are owned by the transferor). Nevertheless, indirect acquisitions of mining business licenses through the acquisition of a license holder have become the practice. Such indirect transfers may be permitted after completion of exploration, with notification to the appropriate regulators under the 2009 Mining Law.

Uncertainty regarding the process for completing such indirect acquisitions remains, although past experience indicates that the following will be required:

- a. Recommendation letter for approval of the investment from the governmental authority that issued the IUP held by the mining company in question; and
- b. Authorisation letter from the Minister of Energy and Mineral Resources (or a director general on the Minister's behalf) in respect of the investment.

Moreover, if the target company is a PMDN company, and the acquirer is a foreign company, the parties must complete the requirements for conversion to a PMA company.

Contrary to the 2009 Mining Law, the 2020 Mining Law allows the transfer of IUP/IUPK, subject to MEMR approval. The minimum requirements to obtain such approval include: (i) IUP/IUPK holders must have completed their exploration activities, which can be evidenced by the availability of resources and reserves data; and (ii) IUP/IUPK holders must fulfil the administrative, technical, and financial requirements.

Under the 2020 Mining Law, similar provisions apply to the transfer of IUP/IUPK. IUP/IUPK holders are prohibited from transferring share ownership without approval from the Ministry of Energy and Mineral Resources. The minimum requirements to obtain such approval include: (i) IUP/IUPK holders must have completed their exploration activities, which can be evidenced by the availability of resources and reserves data; and (ii) IUP/IUPK holders must fulfil the administrative, technical, environmental, and financial requirements.

IUP/IUPK companies and their stakeholders would need to consider the requirements which need to be met in connection with a transfer of IUP/IUPK, but at least there is currently no explicit reference in the 2020 Mining Law about the IUP/IUPK transferor having to own 51% (fifty-one percent) of the IUP/IUPK transferee. The detailed requirements related to IUP/IUPK transfers are expected to be included in the upcoming 2020 Mining Law implementing regulations. Accordingly, it will be prudent for mining companies and investors to wait to consider how this IUP/IUPK transfer regulatory framework would be outlined (including, if the abovementioned requirement for an IUP/IUPK transferor to own at least 51% (fifty-one percent) of the IUP/IUPK transferee is re-introduced).

Assuming that the 51% (fifty-one percent) ownership requirement of the IUP/IUPK transferor in the IUP/IUPK transferee is no longer required, an IUP/IUPK transfer may provide convenience when conducting restructuration in the

secondary market for mining concession sales/M&A activities (e.g. avoid assuming unnecessary risks when the transaction is a share-based transaction where the buyer needs to buy the target company's shares in order to obtain control/ ownership/holding of the target concession IUP) and depending on the stage and scale of such target mining companies (e.g. green-field, or brown-field).

Mining Processing/Refining Business Licenses

The 2020 Mining Law has given clarity to the dualism of the licensing regime for stand-alone/non-integrated mining smelters/processing/refining companies by regulating that licences for this type of company will only be issued by the Ministry of Industry.

Having stand-alone/non-integrated smelters provides structuring flexibilities between the mining asset and the smelting asset given that those two assets can be held by different stakeholders/project sponsors and with a different set of capital and financing structures (including security package) and, indirectly, avoid “divesting” the smelting asset when a mining company requires to meet its mandatory divestment obligations.

Divestment requirements

The 2020 Mining Law stipulates that a foreign-owned IUP holder company is required to gradually divest 51% (fifty-one percent) of its shares to the central government, regional government, State-owned Enterprise, Regional-owned Enterprise, and national private entity. If direct divestment cannot be implemented after the gradual divestment procedures, such divestment can be carried out through an Initial Public Offering (IPO) of the mining company on the Indonesian Stock Exchange (IDX).

The 2020 Mining Law does not specifically provide detailed timing requirements for such divestment. However, its implementing regulation under Minister of Energy and Mineral Resources Regulation No. 9/2017 as last amended by Minister of Energy and Mineral Resources Regulation No. 43/2018 on Procedures for Divestment and Mechanism for the Determination of Divested Share Prices for Minerals and Coal-Mining Business Activity regulates that after 5 (five) years from the start of the production the company must gradually divest the shares. Therefore, in the tenth year, the shares are at least 51% (fifty-one percent) owned by the local shareholder under the following scheme:

- a. Sixth year of production: 20%
- b. Seventh year of production: 30%
- c. Eighth year of production: 37%
- d. Ninth year of production: 44%
- e. Tenth year of production: 51%

The shares to be divested are required to be offered to the national government, provincial government, regency/municipal government, or State-owned and Region-owned Enterprises. If these bodies are not willing to acquire such shares,

then they may be offered to Indonesian private business entities by means of tender. Contracts of Work may also include divestment requirements.

Construction

Construction business regime following the issuance of the Omnibus Law and its implementing regulations

In an effort to reduce longstanding impediments and improve the ease of doing business in Indonesia, on 2 February 2021 the Indonesian government issued a series of implementing regulations following the enactment of the Omnibus Law. The Omnibus Law amends 76 laws across a wide range of business sectors, including construction, and the implementing regulations consist of 45 Government Regulations (Peraturan Pemerintah or PP) and 4 Perpres.

With respect to the construction sector, Government Regulation No. 14/2021 (**GR 14/2021**) regarding the amendment of Government Regulation No. 22/2020 (**GR 22/2020**) on implementing regulations of Law Number 2/2017 on Construction Services (the 12 January 2017 **Construction Services Law**) shall be the implementing regulation that serves the objective of the Omnibus Law, which is intended to amend matters set forth under the Construction Services Law, namely amongst others, capital requirements, licensing, and sustainable construction.

We also note that on 23 April 2020, six months prior to the enforcement of the Omnibus Law, the Indonesian government passed a long-awaited implementing Construction Services regulation, the GR 20/2020.

GR 22/2020 introduced significant changes to the implementation of the Construction Services Law. The following regulations have been revoked and are no longer applicable:

- a. Government Regulation No. 28/2000 regarding the Business and Role of the Construction Services Community (30 May 2000), as lastly amended by Government Regulation No. 92/ 2010 (29 December 2010).
- b. Government Regulation No. 29/2000 regarding the Implementation of Construction Services (30 May 2000), as lastly amended by Government Regulation No. 54/2016 (22 November 2016); and
- c. Government Regulation No. 30/2000 regarding the Implementation of Construction Services Supervision (30 May 2000).

Construction Services Classification

Under the Construction Services Law, Construction Services are defined as construction consultation services and/or construction work services, which include the following activities:

- a. Construction consultancy services**, which means the whole or part of activities that includes assessment, planning, design, supervision, and construction management.

Construction consultancy services is divided into two classifications, namely:

1. General construction consultancy services that cover architecture, engineering, integrated engineering, landscape architecture and urban planning; and
2. Special construction consultancy services that cover scientific and technical consultancy, and technical testing and analysis..

b. Construction work services, which means the whole or part of activities that includes construction, operation, maintenance, demolition, and building re-construction.

Construction work services is divided into two classifications, namely:

1. General construction work services that cover building construction and civil construction.
2. Special construction work services that cover installation, special construction, prefabricated construction, construction finishing, equipment rental and preparation.

c. Integrated construction work services mean the combination of construction consultation and construction work. These cover building construction and civil construction.

It should, however, be noted that a provider of construction consultancy services is not permitted to carry out another category of construction services. With this in mind, we were made to understand that a provider of construction services company shall engage in only one type of construction service business and cannot carry out other work outside of the type of construction service business in which it engages, except for a provider of integrated construction work services, which may also perform construction services.

In terms of business size, GR 22/2020 also defines the type of work to which a construction services company may provide to clients. A small-sized construction services company may only provide low-risk, simple technology and low-cost construction services, while the mid-sized ones may only provide medium-risk, medium technology and/or medium-cost construction services. Similarly, the large construction services company may only provide high-risk, high technology and high-cost construction services. These sizes of construction services companies correspond to the capital requirements they are required to comply with.

Capital Requirements

Under Government Regulation No. 5/2021 on Implementation of Risk-Based Business Licensing (GR 5/2021), the mandatory required capital for construction services companies has been amended subject to the types of business activities. Note that GR 5/2021 is also an implementing regulation of the Omnibus Law that serves the purposes of the Omnibus Law in the construction sector. Under GR 5/2021, minimum capital requirements comprise of:

- a. A small-sized construction services company carrying out general construction consultancy services shall be at least IDR100 million, and for companies carrying out general construction work shall be at least IDR300 million.
- b. A medium-sized construction services company carrying out general construction consultancy services shall be at least IDR250 million, and for companies carrying out general construction work shall be IDR2 billion.
- c. A large construction services company carrying out general construction consultancy services shall be at least IDR500 million, and for the ones carrying out general construction work shall be at least IDR25 billion, while for companies carrying out integrated construction work shall be IDR25 billion.

Furthermore, GR 5/2021 sets out capital requirements for foreign construction service representative offices (RO), under which the minimum capital requirement for a RO carrying out general construction consultancy services shall be IDR2 billion, and for RO carrying out general construction work shall be at least IDR35 billion.⁷⁶

Representative Office of Foreign Construction Services Business Entity (BUJKA RO)

Instead of having a direct business presence in Indonesia, alternatively the foreign construction company may establish a construction representative office to bid for potential projects and develop construction projects in Indonesia. Unlike a foreign company representative office (Kantor Perwakilan Perusahaan Asing or KPPA) or a foreign trade company representative office (Kantor Perwakilan Perusahaan Perdagangan Asing or KP3A), such representative office of foreign construction company in Indonesia (referred to as Kantor Perwakilan Badan Usaha Jasa Konstruksi Asing or BUJKA RO) may generate profit. Consequently, the regulatory requirements for establishing such BUJKA RO are comparable to the establishment of a licensed Indonesian construction services company (i.e., BUJK PMA), although there are some differences.

It is noteworthy that BUJKA RO may only perform construction services in the high-risk, high-tech, and/or high-cost market segments. In addition, BUJKA RO must also enter into a joint operation with a local construction company (Badan Usaha Jasa Konstruksi Nasional or BUJKN) for carrying out any construction services in Indonesia.

Under the Construction Services Law, BUJKN that can be the local partner in a joint operation is required to fulfil the following criteria: (i) Having large-scale qualifications; and (ii) Holds construction business license (Izin Usaha Jasa Konstruksi or IUJK).

⁷⁶ In order to carry out construction business activities in Indonesia, a foreign construction services company (Badan Usaha Jasa Konstruksi Asing – BUJKA) is required to establish a local presence, either by means of setting up a foreign capital investment company (Penanaman Modal Asing – PMA) or a Representative Office (RO).

In essence, based on the relevant laws and regulations, BUJKA RO is required to fulfil the following:

- a. Be in the form of a business entity having a qualification equivalent to high qualification.
- b. Obtain a license for foreign construction service business entity representative.
- c. Form joint operation with a national large qualification construction service business entity which has a business license in every construction service business activity in Indonesia.
- d. Employ more Indonesian employees than foreign employees.
- e. Assign an Indonesian citizen as the head of the BUJKA RO.
- f. Prioritise the use of domestic material and construction technology.
- g. Use advanced, sophisticated, efficient, and environmentally sound technology, as well as taking local wisdom (kearifan lokal) into consideration.
- h. Undertake technology transfer; and
- i. Perform other obligations in accordance with the prevailing laws and regulations.

In addition, it is noteworthy that Minister of Public Works and Public Housing (MoPWPH) Regulation No.9/2019 (**MoPWPH Reg. 9/2019**) provided additional criteria, namely as follows:⁷⁷

- a. Is a limited liability company (established in Indonesia); and
- b. Is a State-owned Enterprise (Badan Usaha Milik Negara or BUMN), Regional-owned Enterprise (Badan Usaha Milik Daerah or BUMD), or privately-owned enterprise (Badan Usaha Milik Swasta or BUMS) which is 100% owned by an Indonesian citizen and/or national business entity.

Work sharing requirements

There is no clear guideline on work sharing requirements under the Construction Services Law and its implementing regulations related to construction. However, Article 33 of MoPWPH Reg. 9/2019 previously provided the portion of construction works that must be performed by the BUJKN as a joint operation partner, namely as follows:

- a. In terms of construction work services and integrated construction work services, a minimum of 30% of the work value must be carried out by the BUJKN, and 50% of the work must be performed in Indonesia; and
- b. In terms of Construction Consultation, a minimum of 50% of the work value must be carried out by the BUJKN, and all works must be performed in Indonesia.

⁷⁷MoPWPH Reg. 9/19, which provides a general regime for licensing procedures and general obligations of BUJKA with respect to its business operations and construction services that are carried out in Indonesia, has been revoked by MoPWPH Regulation No.17/2019. In order to avoid the absence of law, the MoPWPH issued Circular Letter No.22/ 2019 (CL 22/19). CL 22/2019, however, does not provide a clear guideline for the implementation of construction activities in Indonesia. It only provides guidelines for the application of new, extension, or revocation (as applicable) of existing construction service business license (izin Usaha Jasa Konstruksi or IUJK) or foreign construction service business entity representative business license (izin Usaha Perwakilan Badan Usaha Jasa Konstruksi Asing or IPBUJKA).

However, as previously mentioned, it should be noted that MoPWP Reg. 9/2019 has been revoked and can only be used as a reference until the new regulation is issued.

9. Intellectual Property Rights (IPR)

Indonesia has undertaken substantial legislative reforms in order to improve the legal framework protecting intellectual property rights since the late 1980's. This process of reform accelerated when Indonesia ratified the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs), as stipulated under Law No. 7/1994, which established Indonesia's membership in the World Trade Organization.

Laws and regulations have been promulgated to implement the various conventions and treaties to which Indonesia is a party and to establish international standards of intellectual property protection. However, despite such legislative developments, infringement of intellectual property rights is still common, particularly in the terms of piracy and trademark counterfeiting, and Indonesia **remains** on the US Trade Representative's "Watch List".

International Treaties

Since 1979, Indonesia has been a party to the Paris Convention for the Protection of Intellectual Property and the Convention establishing the World Intellectual Property Organization (WIPO). In 1997, Indonesia became a party to the Patent Cooperation Treaty, the Berne Convention for the Protection of Literary and Artistic Works, the Trademark Law Treaty, and the WIPO Copyright Treaty, as well as to the WIPO Performances and Phonograms Treaty in 2005. The Indonesian government has also entered into various bilateral agreements with countries for the protection of copyright.

Trademarks

Pursuant to Law No.20/2016 regarding Trademark and Geographic Indication as amended by the Omnibus Law (**Trademark Law**), a trademark is a distinguishable sign and is used in the trading of goods and services. Trademarks in Indonesia shall be protected on a first-to-file basis. Meaning, that an applicant who is the first to register a trademark in Indonesia shall have priority and protection to use the said trademark, regardless of who first used or owns the trademark.

Indonesian trademark applications shall be submitted to the Minister of Law and Human Rights electronically or non-electronically in the Indonesian language for approval. Foreign applicants may also register trademarks by appointing a local intellectual property consultant as a proxy. The approved application shall be published in the Official Trademarks Report (or a proper substitute) which shall be valid for 10 (ten) years. Such registration may also be renewed for consecutive 10 (ten) year periods. It is noteworthy to add that renewal of the trademark must be filed within 6 (six) months before the expiry of the trademark.

To eliminate the time constraints that are often problematic for businesses when

registering their trademarks, the Omnibus Law now shortens the designated time period for the Directorate General of Intellectual Property (**DGIP**) to perform substantive examination. Previously, the DGIP takes up to 150 (one hundred and fifty) days to perform substantive examination. This is now reduced to a maximum period of 30 (thirty) days – provided that there is no opposition by a third party. If a registration is opposed, the DGIP is required to complete the substantive examination within 90 days, which is almost twice as fast as the current regime.

Under the Omnibus Law, there is no deadline for collecting a trademark certificate that has been issued. Currently, the applicant must collect the issued trademark certificate no later than 18 (eighteen) months from its issuance, or otherwise the registered trademark will be withdrawn and annulled.

The Omnibus Law, however, also adds new criteria in respect of trademarks that are ineligible for registration. Whereby, a trademark cannot be registered if it contains a functional form. There is no clear definition provided in the Omnibus Law on what will constitute a functional form. Our initial understanding suggests that functional form means a type of 'shape' or 'form' that is commonly used to make any visuals (for instance, a simple straight black line).

Copyright

Pursuant to Law No.28/2014 regarding Copyright (**Copyright Law**), an author's work must show originality in the field of science, arts, or literature to obtain the protection of copyright. Once copyright has been obtained, the author, copyright holder, or other beneficiaries of copyright have the exclusive rights to publish or reproduce a work or allow a third party to do the same. The Copyright Law also recognises "moral rights" and "related rights". Moral rights consist of the exclusive right of the author to make changes or amendments to the work, and to alter the name associated with the work and the titles of the work. The rights associated with a third party to reproduce or broadcast the copyrighted material are known as related rights.

The Ministry of Law and Human Rights oversees the registration of copyright through the General Register of Works and provides for the official announcement of such registrations. Even though the registration is not required for the creation of copyright, the name that is registered in the General Register of Works and named officially by the Ministry of Law and Human Rights is deemed to be the author of the work.

The length of protection of copyright varies, for:

- a. Copyright on books and other written works: the copyright is valid for the lifetime of the author and a period of 70 (seventy) years after their death.
- b. Copyright on computer programs, cinematographic works, photographic works, databases and the related rights of a licensed agent, and a sound recording producer: the copyright is valid for 50 (fifty) years, the related rights of the broadcasting institution are valid for twenty-five years, and moral rights are protected indefinitely.

Patents

Law No.13/ 2016 regarding Patents as amended by the Omnibus Law (**Patents Law**) provides protection for regular patents and simple patents. A patent shall be granted for a novel invention, which has an inventive aspect and is capable of industrial application. Similar to a patent, a simple patent is given for a novel invention, which is a development of a product or a process that may already exist.

Patents can be obtained for equipment or products (including chemical compounds and micro-organisms) and processes (where a product is manufactured, including non-biological and microbiological processes), and a simple patent can be obtained for certain tangible inventions. Patents cannot be obtained for:

- a. Inventions that are deemed contrary to public order, morality, and the existing laws and regulations.
- b. Surgical methods.
- c. Scientific and mathematical methods.
- d. Plants and animals (other than micro-organisms); or
- e. Essential biological processes to produce plants and animals (other than non-biological and micro-biological processes).

Patent applications shall be submitted to the Patent Office. If the patent is granted by the Patent Office, it is recorded in the General Register of Patents and announced in the Official Patent Gazette. A patent is valid for 20 (twenty) years from the date of the filing of the application and a simple patent is valid for ten years. Neither of these terms can be extended.

Patent Holders are permitted to grant licenses to other parties based on a license agreement. The license agreements must be registered and announced in the Official Gazette of Patents.

With regards to a simple patent, the Omnibus Law extends the criteria that must be fulfilled to grant a simple patent. A current simple patent must have 'practical use' in order to be registered with the DGIP and will only be granted for one invention.

The Omnibus Law also streamlines the statutory time period prior to evaluating and determining whether a simple patent registration application is accepted or not. Previously, it took at least 157 (one-hundred and fifty-seven) days from application submission before the Patent Office may evaluate the application. But now, it may only take as little as 28 (twenty-eight) days from application submission before the Patent Office may evaluate such application. Further, the Omnibus Law requires the Patent Office to decide whether a simple patent registration application is acceptable no later than 6 (six) months from the application date, which is twice as fast from the previous 12 (twelve) months period in the previous law.

Trade secrets

Pursuant to Law No. 30/2000 regarding Trade Secrets (**Trade Secrets Law**), trade secret means information that is not publicly known about technology and/or business that has an economic value that can be exploited in business activities, and that is kept secret by the owner. Trade secrets may include production methods, processing methods, sales methods, and other pieces of information that meet the statutory criteria. A trade secret is protected for an indefinite period so long as the information/trade secret has not become publicly known.

Holders of a trade secret have the sole right to use their respective trade secrets and to prohibit or permit third parties from using their trade secrets. The trade secret and any transfer of the same shall be registered with the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights; the registration is with respect to administrative data only and does not include the substance of the trade secret. As stipulated under the Trade Secrets Law, a change in ownership of a trade secret shall also be announced in the Gazette of Trade Secrets. Rights to a trade secret may be transferred by way of inheritance, grant, will or testament, written agreement, or any other process acceptable by law.

Industrial designs

Pursuant to Law No. 31/2000 regarding Industrial Design (**Industrial Design Law**) an industrial design refers to the creation of forms concerning shape, configuration or composition of lines, colours, or mixtures of both to create a two or three-dimensional form used as a product, consumer good, or industrial commodity.

Industrial design rights are to be registered and announced in the Official Gazette of Industrial Designs. Any third party wishing to use the industrial design must obtain approval from the industrial design rights holder. The term of protection is 10 (ten) years from the date of filing.

Enforcement of Intellectual Property Rights

The owner of intellectual property rights can seek relief through civil and/or criminal proceedings in the case of counterfeiting or other infringements. Civil remedies include injunctive relief, damages, and possibly a court order to hand over goods to the legitimate intellectual property owner. Criminal sanctions of imprisonment and/or fines are also imposed for the infringement of intellectual property rights.

Intellectual Property (IP)-based financing scheme

The government has enacted Government Regulation No. 24/2022 on the Implementing Regulation of Law No. 24/2019 on Creative Economy (**GR 24/2022**). GR 24/2022 provides an IP-based financing scheme through bank financial institutions and non-bank financial institutions (**Lenders**), of which creative economy entrepreneurs shall propose the financing scheme by fulfilling the requirements for the submission of the IP-based financing scheme, which consist of: (i) financing proposal; (ii) own a creative economy business; (iii) have a contract relating to the intellectual property of creative economy products that

will be pledged as the security; and (iv) have an intellectual property certificate (recordation or registration letter).

Upon receiving the aforementioned requirements from the creative economy entrepreneurs, the Lenders will undertake several measures, such as: (i) verification of the creative economy business; (ii) verification of the relevant intellectual property certificate (or registration letter) that will be used as security; (iii) assessment of the intellectual property assets that will be used as collaterals; (iv) disbursement of the funds to the relevant creative economy entrepreneurs; and (v) receipt of financing refunds from creative economy entrepreneurs in accordance with the relevant agreements.

For the implementation of such IP-based financing, the relevant intellectual property assets shall be utilised as collaterals. On this, such object shall be implemented in the form of: (i) fiduciary security over intellectual property; (ii) contracts/agreements in creative economy businesses; and/or (iii) collection rights in creative economy businesses. Intellectual property assets that can be used as collaterals are those that have been commercialised and registered with the Directorate General of Intellectual Property.

In taking security over intellectual property assets, the Lenders will have the right to conduct an assessment over the intellectual property assets through cost approach, market approach, revenue approach, and/or other assessment approaches in accordance with the applicable assessment standards. Such assessment shall be conducted by the intellectual property appraiser which is licensed and competent in the field of intellectual property valuation. GR 24/2022 also provides dispute resolution options. If a dispute of such IP-based financing arises, it may be resolved through the court or by way of an out-of-court settlement, which must be approved by OJK.

10. Personal Data Protection (PDP)

Introduction

Buoyed by a market of nearly 211 million internet users, Indonesia possesses the largest and fastest-growing digital economy in Southeast Asia. According to recent estimates, the economic potential of its digital economy has been forecasted to reach US\$146 billion by 2025, and thereafter more than double to a very large US\$330 billion in the next five-year period to 2030.

Over the years, the growth of the digital economy across the world opens up the possibility of personal data breaches. Across the globe, we have witnessed numerous high-profile breaches that have brought to light the devastating implications of data misuse – which can manifest in the form of accidental or unlawful destruction, loss, alteration, or disclosure of personal data – and the significant impacts of such actions on individuals. Closer to home in Indonesia, we have similarly observed several personal data breaches that have made headlines in recent years. Broadly, these breaches can be classified into three main categories:

- a. Confidentiality breach: Unauthorised disclosure or accidental access of personal data.
- b. Availability breach: Loss of access or destruction of personal data, often as a result of cyber-attacks that destroy or prevent access to data records.
- c. Integrity breach: Unauthorised alteration of personal data.

In recent years, personal data breaches have become a regular occurrence in the news, with the result that many Indonesian consumers are becoming increasingly wary of sharing their personal data. To foster consumer trust – and thereby encourage greater investment and innovation in the digital economy – Indonesia urgently needs to fortify its personal data protection (PDP) framework, as in the previous regime, Indonesia’s personal data protection regulations were somewhat fragmented.

Recognising the need for a unified and singular approach to personal data protection (**PDP**) due to Indonesia’s fragmented PDP regulatory landscape, the government passed the PDP Bill on 20 September 2022 and enacted it on 17 October 2022 as **Law No. 27/2022 on Personal Data Protection** (the **PDP Law**).

Overview of Indonesia’s PDP landscape

The concept of PDP refers to an individual’s right to claim, preserve, and control their personal or private information – including but not limited to general personal identification information, IP addresses, as well as biometrics and health records – and for this information to be protected by a set of regulations. Specifically, the individual should be given control over the flow of their data – for example, whom they want to share their information with, for how long, for what purpose, and the extent to which they or other parties are allowed to modify the data.

Prior to the PDP Law being enacted, in addition to the cases that occurred throughout 2020–2022 as described above, in fact there have been gaps and issues relating to data protection, since it was difficult for people to hold companies accountable for misusing their personal data due to the lack of a specific comprehensive law regulating personal data protection (as the previous regulations were scattered). Companies which utilise data (including personal data) in conducting their business activities are designated companies for the purposes of the PDP Law and are subject to mandatory requirements under the PDP Law, including Personal Data Inventory/Record of Processing Activities (ROPA) and Personal Data Risk Assessment and Mapping (DPIA), appointing Data Protection Officers (DPO) as well as cyber security which will be fulfilled within 2 years after the enactment of the PDP Law.

For ease of reference, there are 6 (six) impacted industries due to the enactment of the PDP Law, i.e. (i) trading and online retail (e-commerce); (ii) transportation; (iii) manufacturing; (iv) healthcare; (v) financial services companies; and (vi) cloud computing cyber security.

Compliance and governance issues

Upon enactment of the PDP Law, organisations will be given **a two-year period to comply** with all relevant personal data processing provisions. During this period, they will need to carry out the following set of key actions:

- a. Prepare a personal data processing framework to serve as a guideline for compliance with the provisions of the PDP Law.
- b. Conduct a review of all activities carried out within the organisation in relation to personal data processing.
- c. Conduct a review of existing personal data processing and protection policies to ensure compliance with the provisions of the PDP Law.
- d. Conduct a review of all existing contracts and obtain consents in relation to personal data processing.
- e. Assess and review the gaps between existing personal data processing and protection policies, and the provisions of the PDP Law; and
- f. Develop a data retention strategy.

In addition, organisations should also consider appointing a data protection officer (**DPO**) – either on fixed short-term contracts, or in the form of DPO-as-a-Service (**DPOaaS**) – and implementing a privacy management technology platform.⁷⁸

The PDP Law mandates the following responsibilities for the DPO regarding data protection:

- a. Inform and advise the data controller or processor on specific provisions under previous PDP laws and regulations.
- b. Supervise and ensure compliance with PDP laws and regulations, as well as data controller or processor policies, including assignment, responsibility, awareness, and training activities for parties involved in personal data processing and the relevant audits.
- c. Advise on PDP-related impacts, and supervise the performance of the data controller and processor; and
- d. Coordinate issues relating to personal data processing, including consultations regarding risk mitigation and/or other matters.

Sanctions

Administrative sanctions

Any breach of certain provisions under the PDP Law will subject to the imposition of administrative sanction(s), as follows:

- a. Written warning
- b. Temporary cessation of personal data processing activities.
- c. Deletion or destruction of personal data.
- d. Compensation; and/or
- e. Administrative fine.

⁷⁸ For more information, kindly see “Reforming Indonesia’s Personal Data Protection Landscape”. Deloitte Indonesia. October 2022.

Administrative fines will be imposed to on any parties that breaches the provision(s) of the PDP Law with a maximum fine of 2% of annual income or for the violation variable. Further procedures for imposing administrative sanctions will be regulated in a government regulation.

Criminal Sanctions

There are several prohibitions that are stipulated under the PDP Law in personal data processing activities which will subject to the imposition of criminal sanctions, which consist of:

- a. Any person who intentionally and unlawfully obtains or collects personal data that does not belong to him with the intention of benefiting himself or another person which may result in loss of the data subject shall be sentenced to a maximum term of imprisonment of 5 years and/or a maximum fine of IDR5 billion.
- b. Any person who intentionally and unlawfully discloses personal data that does not belong to him shall be punished with imprisonment for a maximum of 4 years and/or a fine of a maximum of IDR4 billion.
- c. Any person who intentionally and unlawfully uses personal data that does not belong to him shall be punished with imprisonment for a maximum of 5 years and/or a fine of a maximum of IDR5 billion
- d. Any person who intentionally creates false personal data or falsifies personal data with the intention of benefiting himself or another person which may result in harm to others shall be punished with imprisonment for a maximum of 6 years and/or a fine of a maximum of IDR6 billion.

In addition to abovementioned imprisonment and fines, they may also be subject to additional penalties in the form of confiscation of profits and/or assets obtained or proceeds from criminal acts and payment of compensation.



11. Dispute resolution

Civil court proceedings

Indonesian judiciary

<p style="text-align: center;">General Court (Pengadilan Umum)</p> <p>The General Court has authority over criminal and civil matters.</p> <p>Under the General Court, specialised courts have been established as follows:</p> <ol style="list-style-type: none"> 1. Juvenile Court; 2. Corruption Court; 3. Fisheries Court; 4. Human Rights Court; 5. Commercial Court, having authority over bankruptcy, suspension of debt payment obligations (Penundaan Kewajiban Pembayaran Utang or PKPU), objection to Commission for the Supervision of Business Competition (Komisi Pengawas Persaingan Usaha or KPPU) rulings, and Intellectual Property disputes; and 6. Industrial Relations Court. 	<p style="text-align: center;">Religious Court (Pengadilan Agama)</p> <p>The Religious Court has authority in marriage, inheritance, wills, grants, <i>waqf</i>, <i>zakat</i>, <i>infaq</i>, <i>shadaqah</i>, and sharia economics disputes between:</p> <ol style="list-style-type: none"> 1. Financial institutions and sharia financing institutions and their customers; 2. Financial institutions and sharia financing institutions; 3. Muslim people in which it is stated explicitly that the actions/business activities carried out are based on sharia principles 	
	<p style="text-align: center;">State Administrative Court (Pengadilan Tata Usaha Negara)</p> <p>The State Administrative Court has authority over State Administrative Decisions (Keputusan Tata Usaha Negara) and has established the Tax Court.</p>	<p style="text-align: center;">Military Court (Pengadilan Militer)</p> <p>The Military Court has authority over criminal cases committed by active Indonesian National Military (Tentara Nasional Indonesia or TNI) personnel.</p>

To initiate civil court proceedings in Indonesia, a claimant shall file a claim with the relevant district court. Under Indonesian law, the disputing parties must attempt to settle the dispute via mediation first. Litigation can begin if mediation fails, then the judge will set a date for the hearing. There is no discovery of documentation in Indonesia. For admission in an Indonesian court, any documents not drawn up in Bahasa Indonesia (Indonesian language) shall be accompanied by a translation into Bahasa Indonesia prepared by a sworn translator licensed in Indonesia. Additionally, representation of parties in court can only be undertaken by an Indonesian advocate holding a license issued by the Indonesian Bar Association.

On 13 March 2014, the Chief Justice of the Supreme Court of the Republic of Indonesia issued Supreme Court Circular Letter Number 2/2014 on Case Settlement in the Court of First Instance and Appeals in 4 (Four) Judicial Spheres that refer to general, religious, state administration, and military judicatures (Surat Edaran Mahkamah Agung or SEMA No. 2/2014) setting out a new benchmark for adjudicating a dispute in a time-efficient manner – in 5 (five) months for the first level and 3 (three) months for appeal. SEMA No. 2/2014 thereby overrides the previous provision on maximum court proceeding period set forth in the Head of the Supreme Court Decision No: 026/KMA/SK/II/2012 on Judicial Service Standards (Keputusan Ketua Mahkamah Agung or KMA No. 26/2012).

Notwithstanding the above matters, in principle this SEMA No. 2/2014 is one of the Supreme Court's innovations to provide better service in the judicial sphere by way of urging judges to settle cases more quickly than was possible under KMA No. 26/2012. It is important to note, however, that SEMA No. 2/2014 does not apply to the following types of proceedings whose maximum court proceeding periods have been separately regulated:

- a. Industrial relations (labour-related) dispute: 50 (fifty) days as of the first hearing, excluding the cassation stage, which require 30 (thirty) days from receipt of the petition.
- b. Bankruptcy proceedings: 60 (sixty) days from registration of the bankruptcy petition, excluding the cassation which requires 60 (sixty) days from receipt of the petition.
- c. Tax dispute proceedings: 6 (six) months from receipt of the lawsuit, excluding the appeal and case review stages which require 12 (twelve) months or a maximum of 6 (six) months from the receipt of the petition, respectively.
- d. Gross human rights violation proceedings: 180 (one-hundred and eighty) days from the handover of the case from the Attorney General's Office.
- e. Maritime crime proceedings: 30 (thirty) days from the handover of the case from the public prosecutor; and
- f. Criminal corruption proceedings: 120 (one-hundred and twenty) days from the handover of the case from the public prosecutor, excluding the appeal and cassation stage which require 60 (sixty) days and 120 (one-hundred and twenty) days from receipt of the case by the High Court and the Supreme Court, respectively.

Furthermore, it is noteworthy that foreign court judgments will not be enforced in Indonesia, which is one reason why a party may choose to include an arbitration clause in their contracts relating to Indonesia. New court proceedings must be commenced and the whole matter must be re-litigated under Indonesian law. However, a foreign judgment may serve as supporting evidence when the matter is re-litigated in Indonesia.

New dispute management system

Chief Justice of the Supreme Court also issued Supreme Court Regulation No. 3/2022 regarding the Mediation in Court by Electronic Means (Peraturan Mahkamah Agung or **PERMA No. 3/2022**) issued on 17 May 2022, introducing electronic mediation. Mediation by electronic means can be utilised in the event all the parties agree. Mediation could be implemented using any application that provides online meeting services to organise mediation electronically. The mediator could give suggestions to the parties to determine applications that can be used to conduct online meetings and send electronic documents. The applications determined by the parties will be stated in the written agreement.

In addition, Supreme Court Regulation No. 1/2019 regarding the Administration of Lawsuits and Court Proceedings by Electronic Means (PERMA No. 1/2019) was issued previously on 19 August 2019 introducing the electronic court (e-Court)

and electronic litigation (e-Litigation) to be implemented in every proceeding in Indonesia.

In principle, the e-Court system shall electronically administer the registration of lawsuits, court fee payments, summons letter to all disputing parties, and court schedule information. However, e-Court only covers civil, religious, military, and state administrative court matters.

Further, the e-Litigation system strengthens the electronic utilisation of court information to prosecutors and advocates, who can directly obtain such information. The e-Court framework can also be utilised for the submission of documents from lawsuits until the conclusion, evidence, and examination of witnesses and/or experts. Be that as it may, the e-Litigation system can be utilised in case all the parties agree to continue electronically except in state administrative court where the defendant's approval is not required.

Arbitration

Since there remain significant concerns regarding the reliability, efficiency, and transparency of the court system, foreign investors, in particular, have found it difficult to secure meaningful and satisfactory decisions, and effective enforcement, from the court. As a result of these concerns, parties often elect for disputes to be resolved through international arbitration (with a seat in Indonesia or overseas) or other types of alternative dispute resolution.

Foreign investors may choose to settle a commercial and trade dispute through an out-of-court settlement that can be in the form of arbitration proceedings or any form of alternative dispute resolution proceeding. Arbitration in Indonesia has undergone significant development since the 1999 Law on Arbitration (Law No. 30/1999) was introduced. In 2000 there was a complete review of the rules of the Indonesian National Arbitration Body (Badan Arbitrase Nasional Indonesia or BANI). This revised system draws from many of the principles of the UNCITRAL Model. Under the new BANI rules, the District Courts have no jurisdiction over disputes where there is a valid arbitration clause in place.

Consequently, foreign companies will often contract that disputes are to be heard by an international arbitral tribunal as there is concern over corruption in Indonesia and relative inexperience of the Indonesian courts and domestic arbitration bodies. However, although this practice has largely been accepted by the Indonesian government, foreign companies may still find themselves involved in Indonesian litigation proceedings if, for example, they end up in a dispute with an employee or become subject to administrative penalties.

Indonesia is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the International Centre for Settlement of Investment Disputes (ICSID) Convention. However, in the past, there has been some inconsistency on how Indonesian courts have in practice enforced foreign arbitration awards. In principle, foreign

arbitration awards should be able to be enforced against assets in Indonesia if the following conditions are complied with:

- a. The international arbitral award is issued by a country to which Indonesia is bound by a treaty concerning recognition and enforcement of international arbitration awards (such as the New York Convention).
- b. The award is not contrary to public order in Indonesia.
- c. The matter being arbitrated is within the scope of 'commercial law' or concerns 'rights' which according to the law are fully controlled by the parties to the dispute; and
- d. An enforcement order (exequatur) has been obtained from the District Court of Central Jakarta.

12. Land environment and related matters

Indonesia's Basic Agrarian Law (Law No.5/1960) or BAL sets out the framework of land law in Indonesia. The BAL implements the principle under Indonesia's 1945 Constitution that all land and resources are collectively owned by the Indonesian people and the elected officials of Indonesia are charged with the responsibility of utilising the land for the benefit of the people. However, there are types of land titles that are attached to the land, which can be privately owned, and which permit holders of such titles to utilise land in various ways.

The BAL and related legislation cover land that is registered and provide that land and rights in relation to land shall be registered. This system of registration is a work in progress and much of the land in Indonesia remains unregistered. Unregistered land is often subject to customary land rights and other unregistered rights and restrictions.

Type of land titles

Under Indonesian law, the state, as the sovereign of all land in the Republic of Indonesia territory, has the authority to grant as well as revoke land rights that have been given to the citizens. There are several recognised rights over land (land title) important to an investor:

- a. Right of Ownership (Hak Milik – **HM**): similar to freehold ownership; only available to Indonesian citizens; no time limitation.
- b. Right to Build (Hak Guna Bangunan – **HGB**): an interest allowing the holder to build and/or possess a building on the land; available only to Indonesian citizens and Indonesian companies (including PMA companies); 30-year term, but can be extended for 20 years, renewal for 30-year term (for HGB on State Land and Right to Manage (Hak Pengelolaan – **HPL**); or 30-year term and can be extended by deed on grant of HGB on HM (for HGB on HM).
- c. Right to Cultivate (Hak Guna Usaha – **HGU**): issued on land owned by the state; right allows plantation activities; available to Indonesian citizens and Indonesian companies (including PMA companies); 35-year term but can be extended for a further 25 years and renewal for 35 years.
- d. Right to Use (Hak Pakai – **HP**): right to use land owned by a third party; available

to Indonesian citizens, Indonesian companies, and foreign entities; 30-year term but can be extended for a further 20 years and renewal for 30 years (for HP on State Land and HPL); 30-year term and can be extended by deed on grant of HP on HM (for HP on HM).

e. Right of Ownership over Condominium Units (Hak Milik Atas Satuan Rumah Susun – **HMSRS**)

HMSRS adheres to the horizontal separation principle, which means that HMSRS is an ownership over the condominium unit of a personal nature that is separated from the common right over the common sections, common objects, and common land. The common right over the common sections, common objects, and common land will be calculated based on the proportional value (*nilai perbandingan proporsional*) and will be attached to the HMSRS Certificate. HMSRS can be obtained by Indonesian citizens, legal entities established under Indonesian Law, foreigners domiciled in Indonesia, foreign legal entities and/or representatives of a foreign country and/or international agencies that have representatives in Indonesia.

Other than the above, unregistered land usually can be found in Indonesia and is called “*tanah adat*” or “*customary land*”. In order to evaluate the title of any unregistered land, there must be a physical inspection of the land as well as meetings with the head of the village, district, regent and mayor in order to discern the unregistered land rights applicable to such piece of land. Typically, this involves reviewing any documentary evidence of land rights such as evidence of payment of land tax (*girik*) and village records. Villages may be subject to collective rights over the land (known as *tanah bengkok* or *tanah wakaf*).

In order to solve the issues of unused, unutilised, and uncultivated land and areas, the Omnibus Law has stipulated that any rights or concession on any land/area that are not utilised within two years since its issuance would be revoked by the government. Furthermore, Government Regulation No. 20/2021 on Control of Derelict Area and Land (**GR 20/2021**) was enacted to serve as the implementation of the Omnibus Law, which carries the goal of increasing the land usage effectivity to enhance Indonesia's national economy.⁷⁹

Land acquisition

It is noteworthy that although previously Indonesian law through the Indonesia Civil Code (ICC) acknowledges the vertical boundary principle (*verticale accessie beginsel*), which means the land and all objects attached to it are an inseparable unit (this law always attaches the building to the land where the building stands), Law 5/1960 acknowledges the horizontal separation principle (*horizontale scheiding beginsel*), which separates the land and the buildings or structures or crops on an area of land. Therefore, it is possible to found two land titles over a land, e.g. Right to Build over Right of Ownership.

Prior to acquiring a certain piece of land, a company must investigate the title of

⁷⁹ For more information, see “Client Alert - Government Regulation No. 20 of 2021”. Deloitte Indonesia. April 2022.

the land, the willingness of the relevant land right holder(s) to sell the proposed land, and the feasibility of obtaining the necessary licenses related to the target land.

Approval of spatial utilisation conformity

In relation to business spatial utilisation, under the Omnibus Law jo. Government Regulation No. 21/2021 on Spatial Planning Implementation (**GR 21/2021**), in order for a PMA company to acquire its target land, it needs to secure approval on the conformity of the business location with the relevant Detailed Spatial Plan (Rencana Detail Tata Ruang – RDTR) through the Online Single Submission (OSS) Institution and is required to fulfill the suitability of spatial utilisation activities (*kesesuaian kegiatan pemanfaatan ruang*) requirements as below:

- a. Location coordinates.
- b. The need for land area for space utilisation activities.
- c. Land tenure information.
- d. Business type information.
- e. Plan on the amount of floor in the building; and
- f. Plan on the area size of the building floor.

Title evaluation for registered land

The National Land Agency (Badan Pertanahan Nasional or BPN) is the national agency that is responsible for maintaining land registration records in Indonesia. BPN consists of a central land agency and regional land agencies. In order to check the title of the land, the applicant is required to visit the relevant local BPN office and bring the original title certificate. Each regional land agency has records of all registered land listed in its archives. This BPN office will verify the original title certificate against the information in the archives. The BPN office will also provide further details on the piece of registered land in question, including the boundaries, whether there are any encumbrances or and dispute over the land, and the measurements of the area.

Digital transformation in land administration has shone a bright light on the transparency of the land ownership system. In this respect, as part of its efforts to eliminate issues of overlapping land ownership claims and eradicate land mafias-related problems, the Minister of Agrarian Affairs and Spatial Planning/ National Land Agency has just issued guidelines on electronic certificate checking and issuance services of land registration certificates, which specifically address services for certificate checking and the issuance of electronic certificates.

The guidelines sets out technical guidelines for all land and spatial planning information services provided by the Ministry. The guidelines have changed the landscape of the land management system in Indonesia. The public is expected to benefit from the improvements in quality of the land and spatial planning management services that are available across Indonesia via the digitalisation of all land and spatial planning-related matters. The public is now able to secure land and spatial planning information through an electronic information service.

This service encompasses certificate checking, the issuance of land registration certificates (Surat Keterangan Pendaftaran Tanah – SKPT), and information on land-value zones, coordinate points, Data Package Information for Global Navigation Satellite Systems (GNSS)/Continuously Operating Reference Systems (CORS), land ownership histories, land histories, and spatial planning.⁸⁰

Relinquishment of title

In a case where the proposed piece of land is subject to a right that foreign companies are not eligible to own, such as *Hak Milik*, the land is passed indirectly to the proposed buyer through relinquishment of the title. If this would be the case, the owner releases his title over the land in return for a settled price. Thereafter, the buyer must apply for a new, appropriate title issued over the land.

Compulsory relinquishment of title for public infrastructure

Pursuant to Law No.2/2012 as amended by the Omnibus Law, land rights holders may be required to relinquish their land rights for the development of public infrastructure projects after receiving compensation or based on a court order. The Law provides a procedure by which a government can acquire land for an infrastructure project, beginning with the preparation of a land acquisition planning document, followed by the submission of such document to the relevant provincial governor for evaluation and consideration of any objections from impacted parties. Prior to the introduction of the new land legislation, the previous regulation only permitted involuntary relinquishment if the proposed project was not able to be relocated and the power to revoke such land title lay only with the president.

Recently, Government Regulation No. 19/2021 on Implementation of the Procurement of Land for the Public Interest Developments was also enacted in the spirit of improving the investment ecosystem and accelerating the development of National Strategic Projects. This regulation's provisions include the addition of types of development for the Public Interest; efforts to accelerate Land Procurement, such as the completion of the status of forest areas; acceleration of Land Procurement related to village treasury land (*tanah kas desa*), waqf land, asset land; involvement of the land agency to assist in the preparation of the Land Acquisition planning document; additional period of Location Determination; and deposit of Compensation.⁸¹

Environmental Law

Indonesia's environmental law requires business activities with an environmental impact to complete an environmental impact assessment, known as AMDAL (Analisa Mengenai Dampak Lingkungan). AMDAL is composed of an Environmental Impact Statement (Analisis Dampak Lingkungan or ANDAL), Environmental Management Plan, and Environmental Monitoring Plan (Rencana Pengelolaan Lingkungan Hidup dan Rencana Pemantauan Lingkungan Hidup or RKL/RPL).

⁸⁰ For more information, see "Client Alert - Electronic Regime for Indonesia Agrarian Affairs and Spatial Planning". Deloitte Indonesia. June 2022.

⁸¹ Village treasury land (*tanah kas desa*) is land occupied and/or owned by the village government as one of the village's original sources of income and/or for social purposes. Asset land is land occupied and/or owned by the central government as an economic resource for the benefit of the central government.

AMDAL may be in the following forms:

- a. Singular AMDAL (AMDAL *tunggal*): for a business activity under the jurisdiction of one regulator (e.g., a business activity that is in one sector).
- b. Integrated AMDAL (AMDAL *terpadu*): for a business activity that is under the jurisdiction of multiple regulators.
- c. Regional AMDAL (AMDAL *kawasan*): relates to a specific geographic area (such as an industrial estate).

In the AMDAL preparation, the following documents must be secured by the person-in-charge of the respective business:

- a. Terms of Reference.
- b. ANDAL.
- c. RKL-RPL.

The submitted ANDAL and RKL-RPL shall be assessed by the Environmental Feasibility Test Team in relation to the administrative and substantive matters. If these documents pass the substantive assessment phase, then the Team will conduct a feasibility assessment based on certain established feasibility criteria. Based on the feasibility assessment, the Team will issue either a recommendation of environmental feasibility or infeasibility.

Specifically, AMDALS are only required for business and/or activity plans that have a significant environmental impact (business and/or activities that are considered as large-scale businesses/activities and/or located within and/or directly adjacent to the protected areas). The criteria of significant employment impact shall refer to:

- a. Land and landscape transformation.
- b. Natural resources exploitation, both renewable and non-renewable.
- c. Processes and activities that may potentially cause environmental pollution and/or damage as well as waste and degradation of natural resources in their utilisation.
- d. Processes and activities whose results may affect the natural environment, the artificial environment, as well as the social and cultural environment.
- e. Processes and activities whose results will affect the preservation of natural resource conservation areas and/or protection of cultural heritage.
- f. Introduction of types of plants, animals, and microorganisms.
- g. Manufacture and use of biological and non-biological materials.
- h. Activities that have a high risk and/or affect national defence; and/or
- i. Application of technology that is estimated to have significant potential to influence the environment.

The Minister of Environment and Forestry has established categories of business activities that require an AMDAL. Business activities that do not require an AMDAL may require either documentation of Environmental Management Efforts and Environmental Monitoring Efforts, known as UKL/UPL (Upaya Pengelolaan

Lingkungan dan Upaya Pemantauan Lingkungan), or delivery of a Letter of Undertaking of Environmental Management and Monitoring, known as SPPL (Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup).

Law No. 32/2009 on Environmental Protection and Management (as amended by the Omnibus Law) provides that as a prerequisite for the issuance of a business and/ or activity permit, an AMDAL or UKL/UPL shall be completed by the applicant. Furthermore, the applicant must obtain all related environmental licenses required and identified under the respective AMDAL or UKL/UPL. If necessary, separate permits for the handling, storage and/or transportation of hazardous waste may be included in the relevant environmental licenses. These licenses are collectively to be integrated into an environmental permit (*Izin Lingkungan*). Businesses that are not required to prepare an AMDAL or an UKL/UPL are not required to obtain an environmental permit.

Under the Omnibus Law, however, businesses are no longer required to obtain an environmental permit as it has been replaced by environmental approval (*persetujuan lingkungan*). Depending on the types of business activities, the environmental approval serves as an environmental feasibility decision (if granted based on AMDAL) or a statement of environmental management capability (if granted based on UKL-UPL). Although the Omnibus Law still requires that pre-requisite assessment documents such as AMDAL or UKL-UPL are made available, it should be relatively easier for businesses that are only required to prepare UKL-UPL to obtain environmental approval as it functions as a 'statement' rather than a 'license'.

The Omnibus Law also removes the requirement for businesses to obtain a "nuisance permit" (referred to as *Hinder Ordonnantie* or *Izin Gangguan*). As such, businesses are no longer required to obtain a nuisance permit, under which periodic charges must be paid to the local government.

The Indonesian government is committed to managing the climate change crisis as reflected in Perpres No. 98/2021 on the Implementation of Economic Carbon Value to Achieve National Contribution Target and Greenhouse Gas Emission Control in the National Development and commits to lowering greenhouse gas emissions by as much as 29% by 2030. In certain regions, a permit to dump liquid waste into certain water resources is subject to a user fee collected by the local government. Furthermore, through Governor Regulation No. 93/2021 on Groundwater Exclusion Zone, DKI Jakarta prohibits the use of fresh groundwater in certain areas starting from 01 August 2023.

13. Other business-related laws

Currency Law

The obligation to use Rupiah in almost every financial transaction conducted in Indonesia in order to increase confidence in the Rupiah and reduce the use of foreign currency in Indonesia has long been practiced since the enactment of Indonesia's Law No. 7/2011 on the Currency (**Currency Law**). The Currency Law

provides that, subject to certain exceptions, the Rupiah shall be used in payment transactions, settlement of other monetary obligations and any other financial transactions conducted within the territory of the Republic of Indonesia. The Currency Law also prohibits a party from refusing Rupiah in these cases, unless there is doubt as to the authenticity of the Rupiah or the concerned parties have agreed in writing to make such payment or settle the liabilities using foreign currency.

The following types of transactions are exempt from the requirements:

- a. Certain transactions for the purpose of state budget implementation.
- b. Receiving or accepting grants from overseas or grants are given overseas.
- c. International trade transactions.
- d. Bank deposits denominated in foreign currencies; and
- e. International financing transactions.

Failure to comply with the Currency Law may result in monetary penalties (up to the amount of IDR200 million) and/or imprisonment of up to 1 (one) year.

Anti-corruption laws

Entities and individuals doing business in Indonesia that are subject to anti-corruption legislation in other jurisdictions should ensure that their actions in Indonesia do not violate the laws of those other jurisdictions. The Foreign Corrupt Practices Act of 1997 (FCPA), the principal anti-corruption legislation in the United States (US), applies to US citizens, nationals, and residents as well as corporations that are required to report to the US Securities Exchange Commission, have a class of securities registered under the Securities and Exchange Act, are incorporated under US laws, or have their principal place of business in the US.

The FCPA prohibits bribes to foreign government officials to obtain or retain business. Besides the FCPA, companies need to be mindful of the Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Convention, the UK Anti-Bribery Act, and similar national laws to the extent they may be subject to them.

To combat corruption, Indonesia has instituted numerous legal and institutional reforms. Government bodies that are involved in combating corruption include:

- a. Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK): an anti-corruption supervisory institution that was established in 2002. KPK has the authority to initiate investigations but has limited capacity to act on the numerous reports that it receives. Among the tasks of the KPK is the annual collection of asset declarations from government officials.
- b. National Ombudsman Commission (Komisi Ombudsman Nasional): established in 2000, Ombudsman receives reports and has the authority to initiate investigations of irregularities in the public sector.
- c. State Audit Board (Badan Pemeriksa Keuangan or BPK): a high state institution in Indonesia with the authority to examine the management and liabilities

of various governmental institutions. Based on the 1945 Constitution, BPK is an independent body, and its members are appointed by the House of Representatives with input from the Regional House of Representatives and legalised by the president. Findings from BPK investigations are reported to the legislature.

- d. Indonesian Financial Transaction Report and Analysis Centre (Pusat Pelaporan dan Analisis Transaksi Keuangan or PPATK): PPATK was established in 2003 to prevent money laundering in Indonesia. PPATK receives and analyses suspicious transaction reports, cash transaction reports, and other information as well as distributing its findings to law enforcement agencies.

Repatriation of capital

Pursuant to Indonesia's Investment Law, an investor is permitted to transfer foreign currency from Indonesia, including for repatriation of the following:

- a. Capital.
- b. Profit, bank interest, dividends, and any other revenue.
- c. Funds required for purchasing raw materials and support materials, intermediate products or final products and reimbursement of capital goods in order to secure the investment.
- d. Additional funds required for investment financing.
- e. Funds for loan repayment.
- f. Payments of royalties or interest.
- g. Income of any foreign individuals working in any investment companies.
- h. The proceeds of any sale or liquidation of an investment.
- i. Compensation for any loss.
- j. Compensation for any takeover.
- k. Payment made for technical assistance, payable costs for technical service and management, payment made under project contracts, and payment for intellectual property rights; and
- l. Proceeds of an asset sale.

Governmental authorities, such as Bank Indonesia, may impose certain reporting obligations on the repatriation of capital.

Contract formation under the Civil Code

Under the Indonesian Civil Code, a valid contract requires consensus between the parties, legal capacity to enter into an agreement, a certain object, and a lawful cause. The first two conditions are considered to be subjective conditions and the other two are considered to be objective conditions.

If the objective conditions (certain subject and lawful purpose) are not fulfilled by the parties, then the agreement is **null and void**. This means the contract was never formed. If a subjective condition (consent and competence) is not fulfilled, the agreement is **voidable**. This means the affected party has the right to cancel the agreement.

Notarial deeds

Indonesian law requires certain documents to take the form of a notarial deed or a land deed to be effective. A notarial deed is a document prepared and executed by a licensed Indonesian notary based on the authorisation of the parties to the agreement. The notarial deed is distinct from other forms of document attestation that shall be provided by a notary, such as legalisation of signatures, documentation registrations, or 'true-copy' certifications.

The parties (or their authorised representatives) must physically appear before the notary in Indonesia, and the notary must be provided with documentation that the notary deems appropriate to verify authorisation to complete the transactions intended by the deed in order to complete a notarial deed.

Such documentation may include powers of attorney authorising the parties' representatives, identification documentation of the representatives (passport or national identification card), articles of association or constituent documentation of the parties (if they are companies or other entities), and any governmental approvals required for the transaction. There is a presumption in favour of the truth of the content of a notarial deed in Indonesian court proceedings.

A land deed is conceptually the same as a notarial deed, except that a land deed must be prepared and executed by a PPAT (Pejabat Pembuat Akta Tanah or Land Deed Official).

Competition Law

Business competition in Indonesia (antitrust law) is primarily regulated by the Competition Law, as administered by KPPU. The Competition Law prohibits certain types of agreements and activities (e.g., formation of a cartel and price-fixing etc.) and the abuse of a dominant position (e.g. monopoly power). KPPU is vested with the authority to supervise and enforce the Competition Law, including through investigation of potential illegal activities, the commencement of administrative enforcement actions and administration of a reporting regime for mergers and acquisitions. Prior to the promulgation of the Omnibus Law, KPPU had the authority to impose monetary fines from IDR1 billion to IDR25 billion and/or administrative sanctions, such as business license revocation.

However, the Omnibus Law reduces and eliminates certain criminal sanctions for unfair business practices. Under the Omnibus Law, criminal penalties in the form of fines and imprisonment can no longer be imposed on oligopoly, monopoly, unfair business competition, boycotts, cartels, trusts, vertical integration practices, use of dominant position irresponsibly, holding majority shares in several similar companies, price fixing agreements, zoning, conspiracy, and concurrent positions. However, although the Omnibus Law does not impose any penalties for the actions mentioned above, the Omnibus Law still provides penalties for actions that obstruct the investigation process of violations against the Competition Law in the form of a maximum fine of IDR5 billion and a maximum term of imprisonment of 1 (one) year.

On another note, the Omnibus Law also shifts the authority to handle objections against decisions made by the KPPU from the District Court to the Commercial Court. As such, when the Omnibus Law became effective on 2 November 2020, any objections against KPPU decisions shall be submitted to the Commercial Court.

Language

Indonesian (Bahasa Indonesia) is the national language of the Republic of Indonesia, based on the 1945 Constitution. The use of Bahasa Indonesia is regulated in Law No. 24/2009 Regarding National Flag, Language, State Symbols, and National Anthem.

Under Law No. 24/2009, the use of Indonesian is required for, among other things, memoranda of understanding or contracts involving a state institution or government agencies of the Republic of Indonesia, Indonesia private entities, or individual Indonesian citizens.

On 30 September 2019, the Indonesian government finally issued Perpres No. 63/2019 on the Use of Indonesian Language (**PR 63/2019**). PR 63/2019 serves as the implementing regulation of Law No. 24/2009 on the National Flag, Language, State Symbols, and National Anthem. Article 26 of PR 63/2019 stipulates that Bahasa Indonesia is required in any Memorandum of Understanding and agreement involving state institutions, Indonesian government, Indonesian private entities, or Indonesian citizens (**Agreements**). Any agreements involving foreign parties may be written in English or any other foreign language as the national language of such foreign party (**Foreign Language**). This foreign language shall be used as an equivalent or translation of the Indonesian version for ease of understanding of foreign parties.

The regulation, however, does not provide the explicit requirements for the parties to execute both Indonesian language and foreign language versions of the agreement simultaneously, and whether failure to do so would affect the legality of the agreement. If the parties have executed the foreign language version of the agreement first, they may agree to execute the Indonesian language version of the agreement later within an agreed certain period of time, to the extent that such agreement is expressly stated in the foreign language version of the agreement. This is of course unless specifically required otherwise by the relevant sectoral regulations.

In light of the previous discussion, if the parties choose not to execute the foreign and Indonesian language versions simultaneously, it is advisable for parties to include the following language clause in the agreement:

“In compliance with Law No. 24/2009 on National Flag, Language, State Symbol, and National Anthem and its implementing regulation (i.e., Perpres No. 63/2019 on Use of Indonesia Language), the Parties agree to enter into this Agreement in [foreign language] version, and after the execution of the [foreign language] version, the Parties will enter into the Indonesian language version of this Agreement within [thirty (30) calendar days]

as of the date this Agreement. Such Indonesian language version shall form an integral and inseparable part of this [foreign language] version. In the event of inconsistency or different interpretation between the [foreign language] and Indonesian language texts, to the extent permitted by law, the [foreign language] version shall prevail, and the relevant Indonesian language version shall be amended to conform with and to make the relevant Indonesian language text consistent with the relevant [foreign language] text.”

Despite the mandatory requirement referred to in PR 63/2019, certain sectoral regulations may require otherwise. For example, in the construction sector, Article 50 of Law No. 2/2017 regarding Construction Services requires construction contracts to be made in Indonesian and it may be written in bilingual format if it involves a foreign party. However, the Construction Law specifically requires Indonesian to become the prevailing language in the event of inconsistency.

Furthermore, Article 28 of PR 63/2019 provides that Indonesian shall be used as a communication language (both verbal and writing) within the government and private working environment. This official communication includes verifications, consultations, negotiations, correspondence, meetings, discussions, and/or other official communications.

Unless regulated otherwise in sectoral regulations, PR 63/2019 is silent on the applicable sanctions that might be imposed in case of failure to meet the requirement to use Indonesian. However, it should be noted that there was at least one case in the past where the Indonesian court considered an agreement null and void due to the absence of Indonesian in the said agreement.

Governing Law

If the parties to a dispute have contracted under the law of a foreign jurisdiction, an Indonesian court should adopt the laws of the country in question as the governing law, provided that there is a connection between the parties or the transaction and the chosen law, and so long as the choice of law is not contrary to public policy. However, in practice, courts have chosen not to apply foreign law often without providing any justification for the refusal. The unfamiliarity of the Indonesian court system with adjudicating disputes governed by foreign law is a possible explanation for this refusal.

C. Taxation in Indonesia

1. Tax administration

Tax authorities

Most taxes are administered centrally by the Directorate General of Taxes (DGT), except regional taxes that are administered and collected by regional governments.

The DGT is a department under the Ministry of Finance (MoF) that formulates technical guidelines and procedures for fiscal policy. The DGT has various units that administer taxpayer obligations (e.g., monitoring tax compliance, collecting tax, counselling, and conducting tax audits). These offices are classified as small, medium, and large tax offices. An account representative from the tax office is assigned to serve each taxpayer.

Tax year

The standard tax year is the calendar year. Approval from the DGT must be obtained to use a different tax year.

Administration, bookkeeping, and records

A taxpayer is required to maintain proper bookkeeping in Indonesia for at least 10 years, including all supporting documents that form the basis for accounting records. All books and records must be prepared in the Indonesian language and denominated in Indonesian Rupiah (IDR) currency and must be conducted in accordance with the Indonesian Financial Accounting Standards (*Standar Akuntansi Keuangan* or SAK), unless otherwise specified in tax regulations. These documents are usually required to be provided to the DGT during a tax audit.

There is a statutory requirement for a taxpayer's accounting records to be audited by a public accountant if certain circumstances are met. If the books and records are audited, the DGT requires the audited financial statements to be attached along with the filing of the annual Corporate Income Tax (CIT) return.

PMA companies, permanent establishments (*Bentuk Usaha Tetap*), taxpayers listed on offshore stock exchanges, subsidiaries of offshore companies, certain collective investment contracts (*Kontrak Investasi Kolektif*), or taxpayers that prepare their financial statements in US Dollar as their functional currency in accordance with the SAK, may maintain their bookkeeping in English and US Dollar denomination (US\$ bookkeeping). Approval from the DGT is required prior to commencement of the US\$ bookkeeping. Contractors of oil and gas Production Sharing Contracts (PSCs) and companies operating under mining Contracts of Work (CoWs) may decide to maintain US\$ bookkeeping by notifying the DGT.

Payment and filing

All taxpayers carrying out business or independent professions must maintain regular and proper accounting records, on which periodic tax payments and reporting are based. Tax returns need to be filed based on the type of taxpayer, business, or transactions. The DGT has enforced the use of the online electronic billing (e-billing) system for tax payment replacing the previous manual process. Taxpayers will have to generate an e-billing code through the DGT system in order to facilitate their tax payments. The billing code is valid for a certain period and will need to be provided to the bank for tax payment execution. In general, a corporate taxpayer has the obligation to submit its tax returns (monthly and annual) in the form of electronic documents through the electronic filing (e-filing) system.

Consolidated returns

There is no provision for the filing of consolidated returns or group relief. Each company must file a separate tax return.

Statute of limitations

The statute of limitation for the DGT to issue an Underpaid Tax Assessment Letter and Additional Underpaid Tax Assessment Letter is five years. Under certain circumstances, the statute of limitation can be extended to 10 years.

Rulings

A taxpayer may request for a confirmation from the DGT if the application of the tax laws and procedures is unclear. There is no timeframe for the DGT to respond to such a request. A tax ruling applies only to the taxpayer that files the request, and generally can be used only to support that taxpayer's position in the event of a tax audit or tax objection.

2. Business taxation

Overview

The principal taxes applicable to companies doing business in Indonesia are CIT, branch profit tax (BPT), withholding tax (WHT), value added tax (VAT), and luxury-goods sales tax (LST), and various other indirect levies, such as tax on land and buildings, regional taxes and retributions, and stamp duty. There is no excess profit tax or alternative minimum tax.

Tax exemptions and various tax incentives are available to qualified entities. The main tax laws are the Law on General Provisions and Procedures for Taxation, the Income Tax Law, VAT and LST Law, the Land and Building Tax Law, and the Regional Taxes and Retributions Law.

Indonesia Quick Tax Facts for Companies

CIT rate	22%
Branch profit tax (BPT) rate	20%
Capital gains tax rate	0.1% - 22%

Basis	Worldwide, with certain exemptions for dividends and business profits
Participation exemption	Yes
Loss relief	
- Carryforward	5 years
- Carryback	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	Yes
CFC rules	Yes
Tax year	Calendar year or accounting/financial year
Advance payment of tax	Yes
Income Tax Return due date	The end of the fourth month after the tax year ends, can be extended for a maximum two months from the original deadline by submitting a notification to the DGT
Withholding tax	
- Dividends	20% (non-resident); exempt (resident)
- Interest	10%/20% (non-resident); 15%/20% (resident)
- Royalties	20% (non-resident); 15% (resident)
- Technical Service fee	20% (non-resident); 2% (resident)
- Branch profit tax	20%
Capital tax	No
Social security contributions (employer contribution)	0.24%-4%
Land and building tax	maximum 0.5%
Land and building acquisition duty	5%
Transfer tax	0.1% (transfer of shares listed on Indonesian stock exchange); 5% (transfer of shares in non-listed resident company by a nonresident); 0%/0.5%/1.0%/2.5% of gross proceeds (transfer of land and/or buildings)
Tax on founder shares at initial public offering	0.5%
Stamp duty	IDR10,000
Value added tax	<ul style="list-style-type: none"> • Until 31 March 2022: 10% • As from 1 April 2022: 11% • As from 1 January 2025 (at the latest): 12%

Residence

A corporate shall be regarded as an Indonesian tax resident if it is established or domiciled, or its place of management or control is in Indonesia.

Taxable income and rates

Resident companies are taxed on worldwide income, with tax exemptions available on dividends and business income sourced from overseas if certain criteria are met. Non-resident companies are taxed only on Indonesia-sourced income, including income attributable to a Permanent Establishment (PE) in Indonesia.

The current applicable standard CIT rate is 22%. Certain corporate taxpayers (other than PEs of foreign companies) that earn or receive gross income not exceeding IDR4.8 billion in a tax year (i.e., Small and Medium Enterprises or SMEs) are subject to a final income tax rate of 0.5% on gross income for a certain period of time. However, these taxpayers may opt to apply the standard CIT rate after notifying the DGT. Corporate taxpayers with gross income up to IDR50 billion shall receive a 50% reduction of the CIT for initial gross income of IDR4.8 billion. For publicly listed corporate taxpayers with a minimum of 40% of the shares held by public investors that meet certain criteria, the applicable CIT rate is lower than the regular rate, i.e., 19%.

Certain types of income earned by resident taxpayers or PEs of foreign companies are subject to a final income tax. Such tax withheld by third parties is deemed to be the final settlement of the income tax for the particular type of income.

Dividend income earned or received from domestic listed and non-listed companies is exempted from tax if the recipient is a domestic corporate recipient. Dividends from offshore-listed companies and income from foreign active business without a PE that are reinvested into Indonesia within a certain period of time may be tax exempted. The portion of dividends and income that are not reinvested into Indonesia within a certain period of time are subject to income tax. Dividends from offshore non-listed companies and PE's profit after tax (PAT) may be tax exempted if the reinvested dividend or PAT is at least 30% of the total PAT, proportionated in accordance with the shareholding percentage. The difference between the reinvested amount and the 30% threshold of the total PAT is subject to income tax.

Taxpayers engaging in certain business sectors, such as foreign oil and gas drilling service operations, shipping and airline operations, and trade representative offices, are subject to deemed profit margin. The tax provisions for minerals and coal mining, upstream oil and gas, geothermal, and sharia-based industries are regulated separately through government and Ministry of Finance regulations. Taxation of general mining and coal mining under the CoW framework follows the tax provisions in the respective CoW. Non-CoW mineral mining business is subject to a specific government regulation.

An upstream oil and gas company typically has to calculate its CIT in accordance with its PSC. Several regulations have been issued to provide more guidance on

the cost recovery items, other incomes, and the tax reporting. A regulation on taxation of gross-split arrangements has also been issued, which offers more flexibility for business planning for contractors engaging in upstream oil and gas activities. **To date, regulations for geothermal have not yet been issued.**

Branch Profit Tax

In addition to CIT, a PE is also subject to BPT at a rate of 20%, applicable to the PE's PAT. This rate may be lowered subject to the accessibility of tax treaty benefits. For a PE that is subject to final income tax, the BPT should be calculated from the accounting profits that have been adjusted for fiscal correction, minus the final income tax.

An exemption from BPT applies if the net PAT of the PE is reinvested in Indonesia in the form of:

- a. A capital contribution in a newly established company domiciled in Indonesia as a founder or a member of the founders.
- b. A capital contribution in an existing company established and domiciled in Indonesia.
- c. Fixed assets to be used by the PE to do business or conduct activities of the PE in Indonesia; or
- d. Investment in intangible goods by the PE to do business or conduct activities of the PE in Indonesia.

Borrowing costs

The Ministry of Finance is authorised to specify the limitation on deductible borrowing costs based on internationally accepted methods, such as debt-to-equity ratio (DER), borrowing costs compared to earnings before interest, taxes, depreciation, and amortisation, or other methods. So far, the Ministry of Finance introduces DER of 4:1. If the DER exceeds 4:1, the borrowing costs must be proportionated and the borrowing costs exceeding the DER of 4:1 are not tax deductible. For a taxpayer with zero or deficit amount in its equity balance, the entire borrowing costs are not tax deductible. Exemption from the DER requirement may apply to certain taxpayers.

In the case where the loan is procured from a related party, the taxpayer must ensure that the interest charged is on an arm's-length basis, or else the interest can be deemed as dividend distribution. A taxpayer that obtains a loan and would like to utilise the relevant interest as a deduction is required to submit the DER calculation report. If the loan is from overseas, the taxpayer must attach a report on the foreign loan along with the CIT return submission.

Capital gains taxation

Capital gains earned by a resident company generally are taxed as ordinary income at the normal CIT rate. Gains on shares listed on the Indonesian Stock Exchange are subject to a final tax of 0.1% of the transaction value. An additional tax rate of 0.5% applies to founder shares on the share value at the time of an initial public

offering (IPO), regardless of whether the shares are held or sold following the IPO. In general, transfer of land and/or building is subject to a final tax at the rate of 2.5% of the transaction value.

Different rates apply to certain transactions (e.g., the sale or transfer of low-cost houses/apartments (1%), and transfers to the government for the public interest (0%)). Capital gains derived from the sale of Indonesian assets held by non-residents are taxable at a rate of 5% of the gross proceeds, subject to relief under an applicable tax treaty.

Controlled Foreign Companies (CFC) rules

Under Controlled Foreign Company (CFC) rules, the Ministry of Finance is authorised to determine when a dividend is deemed to be earned from a non-listed company established in another country, where an Indonesian resident taxpayer (alone or collectively with other Indonesian resident taxpayers) holds, directly or indirectly, at least 50% of the total paid-in-capital or voting rights of a non-listed foreign company, with the 50% threshold criteria applied at each level.

If no dividends are declared or earned from the foreign company, the Indonesian resident taxpayer must calculate and report a deemed dividend in its annual CIT return. The dividend will be deemed to be received either:

- a. In the fourth month following the deadline for filing of the tax return in the foreign country; or
- b. Seven months after the foreign company's tax year ends if the country does not have a specific tax filing deadline.

The amount of the deemed dividend is the total amount of dividend to which the Indonesian resident taxpayer is entitled. This must be determined in proportion to its capital participation in the foreign company from the net passive income of the foreign company. The net passive income includes:

- a. Dividend, with certain exception.
- b. Interest, with certain exceptions.
- c. Rent of land and/or buildings.
- d. Rent of other assets to related parties.
- e. Royalty; and
- f. Gain on sale or transfer of assets.

The deemed dividend can be offset against the actual dividend received from the direct CFC within the past five consecutive years. In the case that the actual dividend received is higher than the deemed dividend, the excess is subject to income tax. The income tax paid or withheld for dividends received from a direct CFC is creditable.

Indirect purchase of Indonesian shares or assets involving a special purpose company

An Indonesian taxpayer that purchases the shares or assets of an Indonesian corporate through a special purpose company (SPC) may be deemed as the party doing the actual purchase, as long as the purchaser has a special relationship with the SPC and the purchase is not carried out on an arm's-length basis. The following points define the criteria of special relationship for fiscal purposes:

- a. Share ownership of the other party is 25% at the minimum, either directly or indirectly.
- b. There is relationship through direct or indirect management or technology control of the other party; or
- c. There is family relationship either through blood or through marriage within one degree of direct or indirect lineage.

Indirect sale of Indonesian shares involving SPC

Sales of shares in an SPC that is established or domiciled in a 'tax haven' country and has a special relationship with an Indonesian taxpayer or a PE in Indonesia may be deemed as a sale of shares in the Indonesian company or the PE. 'Tax haven' country is viewed by the DGT as a country that has a corporate tax rate 50% lower than that of Indonesia, or a country that has bank secrecy law and does not have a provision for exchange of information with Indonesia.

Compliance

A foreign company carrying out business activities through a PE in Indonesia generally has the same compliance obligations as a resident taxpayer. A foreign company that does not have a PE settles its Indonesian tax obligations on Indonesian-sourced income when an Indonesian taxpayer withholds income tax. Tax collection operates under a self-assessment system. For taxpayers that are subject to the ordinary tax regime, monthly tax instalments are due on the 15th of the following month. The annual CIT return must be filed within four months of the end of the book year but could be extended for 2 months with notification to the tax office. Annual CIT liability (income tax liability fewer monthly instalments and/or other prepaid taxes) shall be settled prior to submission of the annual CIT return. Overpayments of tax may be recovered, but only after a tax audit has been carried out.

3. Taxes on individuals

Indonesia Quick Tax Facts for Individuals	
Income tax rates	5%-35%
Capital gains tax rates	0.1% - 35%
Basis	Worldwide income, with certain exceptions for dividends and business profits

Double taxation relief	Yes
Tax year	Calendar year
Return due date	31 March or 3 months after end of tax residency (whichever is earlier)
Withholding tax (applicable for Indonesian sourced income)	
- Dividends	10% or exempted (for resident); 20% (for non-resident)
- Interest	10%/20% (for resident); 20% (for non-resident)
- Royalties	15% (for resident); 20% (for non-resident)
Net wealth tax	Generally No
Social security	1% - 4%
Inheritance tax	No
Land and building tax	maximum 0.5%
Land and building acquisition duty	5%
Transfer tax	<ul style="list-style-type: none"> • 0.1% (transfer of shares listed on Indonesia Stock Exchange) • 5% (transfer of shares in non-listed resident company by a non-resident) • 0%/1%/2.5% of gross proceeds (transfer of land and/or buildings)
Tax on founder shares at initial public offering	0.5%
Value added tax (VAT)	<ul style="list-style-type: none"> • Until 31 March 2022: 10% • As from 1 April 2022: 11% • As from 1 January 2025 (at the latest): 12%

Residence

Residents are defined as individuals who are domiciled in Indonesia, present in Indonesia for 183 days or more in any 12-month period, or present in Indonesia at any time of the year with the intention to reside in Indonesia. Non-resident taxpayers are individuals present in Indonesia for fewer than 183 days in any 12-month period, without intention to reside in Indonesia. They are not required to register for tax purposes.

Taxable income and rates

Resident individual taxpayers are taxed on their worldwide gross income, less allowable deductions, and non-taxable income. Tax exemption is available on certain income if the associated requirements are met. Non-resident individuals are taxed only on Indonesian-sourced income.

Taxable income

Personal income taxes in Indonesia are levied only at the national level. Taxable income includes employment income, income from the exercise of a business or profession and other income, such as passive income (dividends, interest, and royalties) and capital gains.

Employment income includes salaries and wages, bonuses, commissions, overseas allowances, and fixed allowances for education, housing allowance, and medical care allowance given in the form of cash. Employment income in Indonesia is subject to tax, regardless of where the income is paid.

Starting from 1 January 2022, Benefits-in-kind (BIKs) received by employees are, in most cases, taxable to the employees (and deductible to the employers if the expenses fulfil the tax deductibility criteria). There are certain types of BIKs which are not taxable to the employees but are still deductible to the employers. The Indonesian government is due to issue an implementing regulation regarding the tax treatment of BIKs.

Dividend income earned/received from domestic companies, dividend income from offshore listed companies, and income from foreign active business without a PE that are reinvested into Indonesia within a certain period of time are not subject to income tax. The portion of dividend or income that is not reinvested into Indonesia for a certain period of time is subject to income tax.

Dividends from offshore non-listed companies and PE's PAT may be tax exempted if the reinvested dividend or PAT is at least 30% of the total PAT, proportionated in accordance with the shareholding percentage. The difference between the reinvested amount and the 30% threshold of the total PAT is subject to income tax.

Deductions and reliefs

Deductions are generally available for expenses incurred in generating income.

Basis of deduction	Deductible amount (per year)
Taxpayer	IDR54 million
Spouse	IDR4.5 million (additional IDR54 million for a wife whose income is combined with the husband's)
Dependents	IDR4.5 million each (up to a maximum of three individuals related by blood or marriage)
Occupational support	5% of gross income, up to a maximum of IDR6 million
Pension cost (available to pensioners)	5% of gross income, up to a maximum of IDR2.4 million
Contribution to an approved pension fund, e.g., BPJS Employment	Amount of personal contribution

Basis of deduction	Deductible amount (per year)
Compulsory tithe (zakat) or religious contributions	Actual amount – if valid supporting evidence is available and all requirements are met

The Ministry of Finance is authorised to re-determine the amounts of the personal deductions.

Resident individual taxpayer doing business as a Small-medium Enterprise (SME) – with annual turnover of a maximum of IDR4.8 billion – is subject to 0.5% final income tax of gross income. Starting in FY2022, resident individual taxpayers doing business as an SME may enjoy a tax relief, in which the initial IDR500 million of the gross revenue is not subject to income tax.

The social security contributions payable by employed resident individuals are 2% of monthly compensation to the old age savings plan, 1% to the pension plan, and a 1% health care contribution (subject to a monthly compensation cap). An employee may add other family members, but he/she will be liable to make an additional 1% contribution per family member per month. The contribution to the pension plan is not mandatory for expatriates.

Rates

Taxable Income	Rate
Up to IDR60 million	5%
More than IDR60 million but not exceeding IDR250 million	15%
More than IDR250 million but not exceeding IDR500 million	25%
More than IDR500 million but not exceeding IDR5 billion	30%
More than IDR5 billion	35%

Inheritance and gift tax

Indonesia does not levy inheritance or gift tax.

Net wealth tax

Indonesia does not generally levy a net wealth tax. However, Indonesia requires its tax residents to disclose their worldwide assets and liabilities in their individual tax return. If the Tax Authorities find any undisclosed assets, they might assess income tax and impose penalty on the undisclosed assets.

To encourage taxpayers in disclosing all of their assets properly in the tax return, the Indonesian government has issued a PAS FINAL program in year 2017, which is still in effect up to now. The program is intended for taxpayers who would like to self-voluntarily disclose their assets that have not been declared in their 2015 tax return and/or the prior Tax Amnesty (TA) declaration. A rate of 12.5 % or 30% is payable on the undisclosed assets. However, the taxpayers are exempt from the

penalties due on the undisclosed assets.

From 1 January 2022 to 30 June 2022, the government rolled out a Voluntary Disclosure Program (VDP) for individual taxpayers. There are two VDP schemes available:

Scheme 1: for TA program participants (individual and corporate taxpayers) that have not fully disclosed their assets acquired between 1 January 1985 and 31 December 2015 in the Asset Declaration Letter for TA (Surat Pengungkapan Harta or SPH). The final tax rates are between 6% and 11%.

Scheme 2: for certain individual taxpayers with net assets acquired between 1 January 2016 and 31 December 2020 that have not yet been reported in the 2020 annual income tax return. The final tax rates are between 12% and 18%.

Compliance

Indonesia operates a self-assessment system, under which all individual tax resident taxpayers (including expatriates) are obliged to register with the tax office and obtain a tax identification number (Nomor Pokok Wajib Pajak or NPWP).

A NPWP is a 15-digit identification number for taxpayers that is administered by the Directorate General of Taxes (Direktorat Jenderal Pajak or DGT), whereas a national identification number (Nomor Induk Kependudukan or NIK) is a 16-digit identification number for Indonesian residents that is administered by the Directorate General of Population and Civil Registration (Direktorat Jenderal Kependudukan dan Pencatatan Sipil (DGPCR)). In order to integrate data between the DGT and the DGPCR, the government introduces the use of single identification number, i.e., using NIK as NPWP. For individuals who are non-Indonesian citizens, the taxpayers should add '0' in their existing NPWP to create a 16-digit NPWP. The 15-digit NPWP can still be used until 31 December 2023. Starting from 1 January 2024, the 15-digits NPWP will cease to be used.

An exemption from registration is available for those whose earnings are less than the non-taxable income threshold, those who do not qualify as individual tax residents, and married women who will fulfil their individual tax obligations jointly with their husbands.

Individual taxpayers are required to file annual individual income tax returns, declaring their worldwide income and assets and liabilities. However, some foreign nationals with certain expertise who are regarded as Indonesian tax residents, may apply to the DGT for territorial taxation in the first 4 years of them being tax resident. If the conditions are met and the application is approved by the DGT, these foreign nationals will be taxed on Indonesian sourced income only during the first four years.

The annual tax return must be filed no later than 31 March of the year following the income year, or 3 months following the individual's end of tax residency status in Indonesia (whichever is earlier). Any annual tax due should be settled before

submission. Individual taxpayers are encouraged to file their individual tax returns electronically through the e-Filing system. They need to separately obtain an e-Filing Number (e-FIN) from the Tax Office in order to access the system.

Penalties are imposed for late payment of tax, late filing of returns, and underpayment of tax and voluntary amendment of returns. The penalty varies depending on the situation and the penalty on tax underpaid is imposed monthly, based on the rates determined by the Ministry of Finance.

4. Withholding taxes (WHTs)

Dividends

Dividends paid to a non-resident are subject to a 20% WHT, unless the rate is reduced under a tax treaty. Dividends paid by a domestic corporate taxpayer to a resident company or cooperative are income tax exempt. Dividends paid by a domestic corporate taxpayer to resident individuals are income tax exempt if they fulfil certain criteria. Otherwise, the resident individual must self-assess the 10% final income tax.

Interest

Interest paid to a non-resident is subject to WHT with a rate of 20% (or 10% for interest income from bonds paid to or earned by a non-resident), unless the rate is reduced by a tax treaty.

Interest paid by a domestic taxpayer to a resident generally is subject to 15% WHT, which represents an advance payment of the tax liability. Interest paid to a resident bank or financial institution is exempt from WHT. Interest paid by Indonesian banks and Indonesian branches of foreign banks to a tax resident is subject to 20% final income tax for both corporates and individuals.

Royalties

A 20% WHT is imposed on royalties remitted abroad, unless the rate is reduced under a tax treaty. For tax purposes, royalties include any charge for the use of property or know-how in Indonesia and the transfer of a right to use property or know-how in Indonesia.

Royalties paid by a domestic taxpayer to a resident are subject to a 15% WHT, which represents an advance payment of the tax liability.

Wage tax/social security contributions

The employer is responsible for calculating, deducting, and remitting tax payable on employees' salaries and other remuneration. The employer must file an employment WHT return on a monthly basis. The employers and employees are required to contribute to the general social security schemes (please refer to "**Labour Environment**" section for more details).

Other transactions

Fees for technical services remitted abroad are subject to a 20% WHT, unless the

rate is reduced under a tax treaty.

A 2% WHT applies on domestic payments made for technical, management, consulting, and certain services, as well as rentals (except for land and building rentals, which are subject to a 10% final income tax). The rates are doubled for taxpayers who do not have a NPWP.

Compliance

To facilitate DGT's efforts in collecting taxes, taxpayers are subject to several obligations to WHT on various payments made for residents and non-residents. The collection of tax on dividends, interest, royalties, rentals, professional service fees, technical and management service fees, and construction service fees, etc. is via withholding at source. Tax withheld may represent either a final income tax for the payment recipient or (advance) prepaid tax that is either creditable or refundable by the payment recipient that is a domestic taxpayer against its tax liability. Where a payment is subject to WHT, the responsibility to withhold and settle the tax to State Treasury rests with the payer.

In general, tax withheld from dividend, interest, royalty, and other payments must be paid on the 10th day of the calendar month following the tax assessment month. Payment of income tax that has been deducted from employees' wages and vendors' income must be paid by the 10th of the following calendar month. Reporting is due by the 20th of the following month.

5. Double taxation relief

Unilateral relief

Resident companies deriving income from foreign sources are entitled to a unilateral tax credit for foreign tax paid on the income. The credit is limited to the amount of Indonesian tax otherwise payable on the relevant foreign income. A country-by-country limitation applies, i.e., the credit for foreign tax paid on income from one country is limited to the amount of Indonesian tax otherwise payable on the income from the same country. Indonesia does not grant credit for underlying tax.

Tax treaties

Indonesia has a reasonably broad tax treaty network, with the treaties generally following the Organization for Economic Co-operation and Development (OECD) model treaty and containing OECD-compliant exchange of information provisions. Treaties generally provide the relief from double taxation on all types of income, limit the taxation by one country on companies resident in the other, and protect companies resident in one country from discriminatory taxation in the other.

To apply a lower WHT rate, the foreign income recipient must meet the substance and administrative requirements. The substance requirements entail general conditions to be met, and if the foreign taxpayer receives income, for which the article in the relevant tax treaty stipulates a beneficial owner requirement (i.e., interest, dividend, royalty), additional conditions must also be satisfied (please refer to the "Anti-avoidance rule" section).

A non-Indonesian tax resident who wishes to access tax treaty benefits must provide a Certificate of Domicile (CoD) in a prescribed format, known as DGT Form (Surat Keterangan Domisili Wajib Pajak Luar Negeri or SKD WPLN). The CoD must be endorsed by the competent/tax authority of the foreign income recipient's jurisdiction. In the case that the foreign income recipient is unable to obtain the endorsement, a Certificate of Residence (CoR) commonly verified or issued by the competent/tax authority of its jurisdiction can be attached to the CoD to substitute the endorsement.

Indonesia Tax Treaty Network			
Algeria	Germany	New Zealand	Suriname
Armenia	Hong Kong	Norway	Sweden
Australia	Hungary	Pakistan	Switzerland
Austria	India	Papua New Guinea	Syria
Bangladesh	Iran	Philippines	Taiwan
Belarus	Italy	Poland	Tajikistan
Belgium	Japan	Portugal	Thailand
Brunei Darussalam	Jordan	Qatar	Tunisia
Bulgaria	Korea (North)	Romania	Turkey
Cambodia	Korea (South)	Russia	Ukraine
Canada	Kuwait	Serbia	United Arab Emirates
China	Laos	Seychelles	United Kingdom
Croatia	Luxembourg	Singapore	United States of America
Czech Republic	Malaysia	Slovakia	Uzbekistan
Denmark	Mexico	South Africa	Venezuela
Egypt	Mongolia	Spain	Vietnam
Finland	Morocco	Sri Lanka	Zimbabwe
France	Netherlands	Sudan	

Anti-avoidance rules

To apply a lower WHT rate, the foreign income recipient must meet the existing substance and administrative requirements. The foreign income recipient is considered meeting the substance requirements if:

- The entity has relevant economic substance either in the entity's establishment or the execution of its transaction.
- The legal form is not different from its economic substance, either in the entity's establishment or the execution of its transaction.
- The entity has its own management in conducting the business, and such management has an independent discretion.

- d. The entity has sufficient assets to conduct business other than the assets intended to generate income from Indonesia.
- e. The entity has sufficient employees with certain expertise and skill in accordance with the business it carries out.
- f. The entity has business activities other than receiving dividends, interest, and royalties sourced from Indonesia, and such activities are in accordance with the actual conditions as shown by the existence of costs incurred, efforts undertaken, or sacrifices made, which are directly related to business or activities for the purpose of earning, collecting, and maintaining income, including significant activities conducted to maintain survival of the entity.

In addition, the purpose/arrangement of the transaction is not to directly or indirectly obtain the benefit under the tax treaty (among others, reduction of tax burden or double non-taxation) that is not in accordance or conflicts with the object and purpose of the tax treaty establishment. This is similar to the Principle Purpose Test adopted by Indonesia through Multilateral Instrument on Tax Treaty.

To apply a lower WHT rate on passive income, in addition to the substance requirements, the foreign income recipient also must meet the following beneficial ownership requirements:

- a. The entity is not acting as an agent, nominee, or conduit.
- b. The entity has controlling rights or disposal rights on the income or the assets or rights that generate the income.
- c. No more than 50% of the entity's income is used to satisfy claims by other persons.
- d. The entity bears the risk on its own asset, capital, or liability.
- e. The entity has no contract(s) which obliges the entity to transfer the income received to a resident of third country.

Failure to satisfy even one of the conditions may jeopardise the eligibility to enjoy treaty benefits.

6. Transfer pricing and international tax

Transfer pricing

Since 2010, the DGT has issued guidelines and regulations to provide greater certainty to businesses on transfer pricing rules. The DGT is authorised to adjust taxpayers' incomes or expenses, where transactions with related parties (special relationship) are not in accordance with "fair and common business practices".

Corporate taxpayers are required to disclose their related party transactions in a separate attachment to the CIT. The disclosure includes various information, such as the type of transactions, the nature of relationships, questionnaire on documentation prepared to support the arm's-length principal implementation, as well as transactions with parties from 'tax haven' countries.

The DGT adopted a three-tiered approach to transfer pricing documentation, which are: (i) Local File; (ii) Master File; and (iii) Country-by-Country Report (CbCR). Master File and Local File must be available within four (4) months after the end of the tax year and must be accompanied by a statement letter concerning the time of the availability of such documents.

There is no statutory deadline for submission of the transfer pricing documentation, but the documentation must be provided when requested by DGT. Generally, DGT provides 7 days upon request in case of regular compliance checks, whereas in the case of tax audits, the timeline to submit the documentation is 30 days upon request. Failure to furnish documentation within the stipulated time may prompt a detailed transfer pricing audit. It also allows DGT to disregard any subsequent documentation and determine tax liability based on the data available to DGT.

Taxpayers having related party transactions and meeting any one of the following thresholds are required to prepare both a Master File and a Local File in Indonesian language:

Item	Threshold
Gross revenue in the preceding year	Exceeds IDR 50 billion
- Related party transactions of tangible goods in the preceding fiscal year; or - Related party transactions of services, royalties, interests or other transactions in the preceding fiscal year	Exceeding IDR 20 billion Exceeding IDR 5 billion
Related party transactions with affiliated party located in a jurisdiction with tax rate lower than Indonesia (currently 22%).	Any value

Other than Master File and Local File, a taxpayer that qualifies as the Parent Entity of a business group having consolidated gross revenue of IDR11 trillion is also required to prepare and submit a CbCR. Parent Entity is defined as an entity that directly or indirectly controls a group of businesses, which is required to prepare consolidated financial statements under SAK. In the event the Parent Entity (or a Surrogate Parent Entity appointed by the Parent Entity) is located in a foreign jurisdiction, the resident taxpayer is required to submit the CbCR when the country of the Parent Entity (or the Surrogate Parent Entity):

- a. Does not require submission of CbCR;
- b. Does not have an agreement with the Indonesian government on exchange of information; or
- c. Has an agreement but the CbCR cannot be obtained by the Indonesian government.

In other cases, the resident taxpayer is required to submit a notification to the DGT specifying the Parent Entity (or Surrogate Parent Entity) and the country where the CbCR is filed.

Automatic exchange of information regulation

The OECD has developed a Common Reporting Standard (CRS) for the automatic exchange of tax and financial information on a global level with the intention to reduce the possibility of tax evasion. This provides an exchange of information about non-resident financial account with the tax authorities in the account holders’ country of residence. Participating jurisdictions that implement Automatic Exchange of Information (AEOI) send and receive pre-agreed information each year without having to send a specific request. Indonesia has initiated the exchange of information since September 2018. Currently, the number of reporting countries receiving information from Indonesia is 95 countries.

To support the implementation of CRS, the Ministry of Finance, Directorate General of Taxes (DGT), and OJK have together issued several regulations, in which the reporting financial institutions (such as banks and insurance companies) must submit the CRS reports to the OJK (which will be passed to the DGT to be exchanged with tax authorities of the reporting countries). The CRS reports will be used by DGT to monitor the tax compliance of Indonesian resident taxpayers. DGT is authorised to audit the CRS reports and impose sanctions on the reporting financial institutions for noncompliance with CRS.

Indonesia’s participation in the Base Erosion and Profit Shifting (BEPS) projects

Although Indonesia is not a member of the OECD, Indonesia is a member of the G20; therefore, Indonesia has fully participated in BEPS projects both as an observer and as a contributor. The following table summarises the steps Indonesia has taken to date to implement the BEPS recommendations:

Action	Implementation
VAT on business to customers digital services (Action 1)	Tax treatment of transactions through electronic system (<i>Perdagangan Melalui Sistem Elektronik</i> or PMSE) whereby value added tax (VAT) on PMSE is to be collected, paid, and reported by the foreign traders, foreign service providers, foreign PMSE providers (PPMSE), and/or domestic PPMSEs.
Hybrids (Action 2)	Not yet known.
CFCs (Action 3)	Indonesia already has CFC rules, but these are limited only to passive income.

Action	Implementation
Interest deductions (Action 4)	The Ministry of Finance is authorised to specify the limitation on deductible costs based on internationally accepted methods, such as DER (debt-to-equity ratio), borrowing cost compared to EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortisation) or other methods.
Harmful tax practices (Action 5)	Not yet known.
Prevent treaty abuse (Action 6)	Indonesia already has a rule to prevent treaty abuse.
Permanent Establishment (PE) status (Action 7)	The Ministry of Finance Regulation was issued in April 2019 to provide legal certainty for a Foreign Tax Subject who conducts business or activities through a PE in Indonesia. The regulation provides explanation and interpretation on PE determination for Foreign Tax Subject as stipulated in the Income Tax Law. Whereas in the implementation of tax treaty, the PE determination still follows criteria and treatment according to the applicable tax treaty.
Transfer pricing (Actions 8-10)	Regulations issued in 2013 require taxpayers to prove the role of parties in developing intellectual property, in line with the OECD transfer pricing guidelines, to align the allocation of taxable income with value creation. Additionally, OECD Transfer Pricing Guidelines are generally relied upon in the absence of local guidance and hence the principles laid down by OECD in Actions 8-10 are relevant for Indonesian transfer pricing.
Disclosure of aggressive tax planning (Action 12)	Not yet known.
Transfer pricing documentation (Action 13)	<p>The Ministry of Finance has introduced the three-tiered level of documentation requirement for tax years ending on or after 30 December 2016.</p> <p>The requirements are broadly in line with the action 13 recommendations, with additional information requirements for both Master File and Local File. The documents must be prepared in Indonesian (Bahasa Indonesia) and made available within four months from the end of the tax year. There are also new thresholds for determining the documentation requirements and the inclusion of domestic related parties within the scope of the transfer pricing rules.</p>

Action	Implementation
CbC reporting (Action 13)	<p>CbC reporting has been introduced in line with action 13 requirements, with certain additional details and applies for tax years ending on or after 30 December 2016. The CbCR must be available within 12 months from the end of the tax year and must be filed with the annual corporate tax return for the subsequent tax year.</p> <p>Where the parent entity is located in a foreign jurisdiction, the resident taxpayer must submit the CbCR when the country of the parent entity:</p> <ul style="list-style-type: none"> • Does not require the submission of a CbCR. • Does not have an exchange of information agreement with the Indonesian government. • Has an agreement but the CbCR cannot be obtained by the Indonesian government. <p>Indonesia is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbCR.</p>
Dispute resolution (Action 14)	<p>The Ministry of Finance issued Minister of Finance Regulation (Peraturan Menteri Keuangan or PMK) No. 49/PK.03/2019 (PMK-49) concerning the Implementation Guidelines of Mutual Agreement Procedure (MAP), which is an updated version of the MAP framework in Indonesia issued with a view to meeting the minimum standards set out in Action 14.</p> <p>PMK-49 broadly aligns Indonesia's position with the recommendations under Action 14. PMK-49 provides more certainty in MAP process, especially in terms of procedures, timeline, and follow-up actions of the MAP application.</p> <p>Indonesia allows taxpayers to pursue MAP and domestic dispute resolution process simultaneously. Additionally, the Ministry of Finance issued Minister of Finance Regulation No. 22/PMK.03/2020 (PMK-22) concerning the Implementing Guidelines for Advance Pricing Agreement (APA). PMK-22 seeks to align the APA regulation with the broader objectives of Action 14 and provides detailed guidelines to ensure greater legal certainty to taxpayers involved in APA process, particularly regarding procedures and timeframe, and the follow-up actions. Among other updates, the coverage of the bilateral and unilateral APA has been extended to five (5) years and a roll back period has been reintroduced which can be availed subject to meeting certain conditions.</p>

Action	Implementation
Multilateral instrument (Action 15)	Indonesia ratified Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or MLI) in November 2019 and deposited its instrument of ratification for the MLI with the OECD on 28 April 2020. Indonesia identifies 47 tax treaties to be covered under the Convention. As of May 2022, DGT has issued 22 circular letters providing synthesised texts of 22 of the Covered Tax Agreements. The synthesised texts are intended to assist the readers in understanding the impact of the implementation of MLI on the relevant tax treaties. The circular letters also confirm the date when the MLI becomes effective for Indonesia (i.e., 1 January 2021 for withholding taxes and 1 January 2022 for other taxes).
G20/OECD Taxation of Digital Economy (Pillar One) and Global Minimum Tax (Pillar Two)	The OECD/G20 Inclusive Framework on BEPS has agreed a two-pillar solution to address the tax challenges arising from the digitalisation of economy. Indonesia, as the member of the OECD/G20 Inclusive Framework on BEPS, will follow the implementation and currently actively monitoring the discussion and development.

7. Indirect taxes

Value Added Tax (VAT)

VAT is levied at each stage of the production and distribution chain and is levied on the supply of goods and the provision of services. VAT applies to intangible goods (including royalties) and to virtually all services provided outside Indonesia to Indonesian businesses (i.e., import of services). VAT applies equally to all manufactured goods, whether produced locally or imported. Manufacturing is defined as any activity that changes the original form or nature of a good, creates a new good, or increases its productivity. This includes fabricating, cooking, assembling, packing, and bottling.

Until 31 March 2022, the standard VAT rate was 10%. Starting from 1 April 2022, the standard VAT rate has been increased to 11%. The standard VAT rate will be increased to 12% by 1 January 2025, at the latest. Moreover, starting 1 April 2022, the government introduces a final VAT mechanism, applying certain amount of percentage to collect and deposit VAT depending on the goods/services.

VAT on exports of taxable goods, intangible taxable goods, and certain taxable services is zero rated. Export of services shall be taxable on services furnished/ rendered within Indonesian customs territory for the benefit of recipients located outside Indonesian customs territory. It is noteworthy that to apply 0% VAT on such export of services, several requirements must be satisfied. Certain types of services the export of which can enjoy the 0% VAT are as follows:

- a. Services related to movable goods that are to be utilised outside Indonesian customs territory, covering:
 1. Toll manufacturing services (*jasa maklon*).
 2. Repairs and maintenance services; and
 3. Provision of freight forwarding service for export purposes.
- b. Services related to immovable goods that are located outside Indonesian customs territory, such as construction consultation services, which cover assessment, planning, and design of construction related to building or plan for building outside Indonesian customs territory.
- c. Services that are delivered to be utilised outside Indonesian customs territory as requested by customers, such as:
 1. Technology and information services.
 2. Research and development services.
 3. Charters of airplanes and/or sea vessels, for international flights or shipping activities.
 4. Business and management consultancy services, legal consultancy services, architectural and interior design consultancy services, human resource consultancy services, engineering consultancy services, marketing consultancy services, accounting or bookkeeping services, audit services for financial statements, and tax services.
 5. Trading services, i.e., services to seek sellers within Indonesian customs territory for export purposes; and
 6. Interconnection, provision of satellite, and/or data communication/ connectivity services.

From the supplier/seller's perspective, the VAT levied is considered as an output VAT. Whereas from the buyer's perspective, the VAT paid is an input VAT. The output VAT can be offset against input VAT. The input VAT invoice received by a VAT entrepreneur (*Pengusaha Kena Pajak* or PKP) is creditable in its VAT return, within a maximum three months after the end of the month when the relevant VAT invoice is issued, provided the VAT invoice has not been expensed or capitalised to the acquisition cost of taxable goods and/or taxable services.

If the amount of output VAT exceeds the amount of input VAT, the difference constitutes a VAT underpayment that must be settled to the State Treasury by the end of the following month prior to the submission of VAT return. On the other hand, if the amount of output VAT is less than the amount input of VAT, the PKP can carry the excess amount to the following period or request for a refund. The claim for VAT refund can only be made at the end of a tax year.

Certain imports or purchases of taxable goods and/or taxable services are eligible for VAT facilities, either in the form of VAT exemption (PPN *dibebaskan*) or VAT not-collected facility (PPN *tidak dipungut*). For deliveries of which the VAT is not collected, the input VAT related to such delivery is creditable. Meanwhile, for deliveries of which the VAT is exempted, the input VAT related to such delivery is not creditable.

All goods and services shall be subject to VAT, except:

- a. Items that are already subject to regional tax (i.e., food and beverages served at a restaurant or hotel, or for catering, art and entertainment services, hotel services, and parking services).
- b. Money, gold bars (representing Indonesia's state gold reserves), and securities.
- c. Religious services; and
- d. Government administrative services that cannot be provided by other parties.

Entrepreneurs who deliver taxable goods and/or taxable services exceeding IDR4.8 billion in a tax year must register for VAT purposes (i.e., registered as PKPs) and issue VAT invoices on the delivery of taxable goods and/or taxable services.

A VAT invoice is an instrument to levy VAT (for the seller) and to claim VAT credit (for the buyer). DGT has adopted electronic VAT invoice mechanism (e-Faktur), in which the issuance of VAT invoices is directly validated by DGT. The format and content of a VAT invoice must meet the guidelines set by DGT. Failure to meet the guidelines will cause the VAT invoice to be considered as an incomplete VAT Invoice. Issuance of an invalid VAT invoice is subject to penalty of 1% from VAT imposition base. Invalid VAT invoice is not creditable for the buyer.

Monthly VAT return is due by end of the following month and any VAT liability (output VAT less input VAT) should be settled before the submission. Self-assessed VAT on utilisation of intangible goods or service subject to VAT from abroad within the Indonesian customs area is due by 15th of the following month it becomes payable.

Indonesia does not have a VAT grouping concept. A PKP carrying out business activities in Indonesia through business units located in multiple jurisdictions under different tax offices must register each business unit with the respective tax office. PKP may request DGT to centralise the VAT administration under one location. For an entrepreneur registered in certain tax offices, the VAT administration is automatically centralised. Previously, the VAT centralisation statement letter from DGT was valid for five years. However, VAT centralisation statement letters issued after 1 July 2020 do not expire until the submission of a revocation request.

VAT on transactions through electronic system

Starting from July 2020, any transactions made through electronic systems are subject to VAT on PMSE (Perdagangan Melalui Sistem Elektronik). VAT on PMSE is to be collected, remitted, and reported by foreign traders, foreign service providers, foreign PMSE providers (*Penyelenggara* PMSE or PPMSE), and/or domestic PPMSEs (collectively referred to as "e-commerce parties").

The DGT can appoint an e-commerce party that meets the following criteria as a PMSE VAT collector:

- a. The e-commerce party has transactions with customers in Indonesia exceeding

- IDR600 million in a twelve-month period or IDR50 million in a month; and/or
- b. The e-commerce party has transactions exceeding 12,000 traffics or accesses in a twelve-month period or 1,000 traffics or accesses in a month.

The rate of VAT on PMSE was 10% until 31 March 2022. It was changed to 11% starting 1 April 2022 (to be increased to 12% starting 1 January 2025, at the latest). The VAT imposition base shall be the amount paid by the customers (excluding VAT). The PMSE VAT collector may use its usual billing documents as proof of PMSE VAT collection if it contains the minimum required information. PMSE VAT collected must be settled to the State Treasury on a monthly basis by the end of the following month via electronic transfer.

PMSE VAT reporting is different from the general VAT returns. There are two reports that must be submitted by a PMSE VAT collector:

- a. Quarterly PMSE VAT Return (SPT Masa PPN PMSE) – which is mandatory; and
- b. Annual PMSE VAT Report (Laporan Tahunan PPN PMSE) – only if requested by the tax office.

Luxury-goods sales tax (LST)

In addition to the general VAT rate, certain “luxury” goods are subject to LST ranging from 10% to 200%. Luxury-goods are goods that meet the following criteria:

- a. Does not constitute a basic commodity.
- b. Consumed by certain group.
- c. Generally consumed by an exclusive group of (upper income) consumers; and/or
- d. Goods consumed to show status rather than for their utility.

Export of luxury-goods is subject to 0% LST.

8. Tax incentives

Tax holiday facility

A tax holiday regime is available for new investment or business expansion in certain pioneer industries. The said pioneer industries are defined as industries possessing broad linkages, giving added value and high externality, introducing new technology, as well as possessing strategic value for the national economy. The pioneer industries are:

- a. Integrated upstream metals industry.
- b. Integrated crude oil and natural gas purification or refinery industry.
- c. Integrated crude basic organic and chemical industry sourced from crude oil/natural gas/coal.
- d. Integrated basic organic chemicals industry sourced from agriculture, plantation, or forestry industry.
- e. Integrated basic inorganic chemicals industry.

- f. Integrated pharmaceuticals main raw materials industry.
- g. Irradiation, electro medical, and electrotherapy equipment manufacturing industry.
- h. Manufacturing industry for electronics and telematics equipment main components.
- i. Machine and machinery main components manufacturing industry.
- j. Manufacturing industry for robotic components that supports the production of machinery in the manufacturing industry.
- k. Main component manufacturing industry for electricity generator machinery.
- l. Automotive and its main components manufacturing industry.
- m. Vessel main components manufacturing industry.
- n. Railway main components manufacturing industry.
- o. Aircraft main components manufacturing industry and aerospace industry auxiliary activities.
- p. Agricultural/plantation/forestry-based paper pulp industry.
- q. Economic infrastructure; or
- r. Digital economy covering data processing, hosting, and related activities.

Types of production for each industry that are eligible for the tax holiday facility above are further regulated by BKPM regulation. Tax holiday facility provides:

- a. A CIT reduction of 100% for a minimum of five years up to a maximum of twenty (20) years may be granted for projects with minimum investment of IDR500 billion, followed by a 50% reduction in CIT for the subsequent two years. The length of the tax holiday depends on the value of the investment.
- b. A CIT reduction of 50% for five years may be granted for projects with minimum investment of IDR100 billion but less than IDR500 billion, with a 25% reduction in CIT for the subsequent two years.

The tax holiday period commences from the year of commercial operations. Additionally, the prerequisites to apply for the tax holiday facility are as follows:

- a. Taxpayer in pioneer industry.
- b. An Indonesian legal entity.
- c. Minimum investment of IDR100 billion.
- d. Conducting new investment (new business or expansion), in which a decision on granting or rejection notification of CIT reduction has not been issued by the Ministry of Finance.
- e. Fulfilling provision regarding debt-equity ratio (DER); and
- f. Committed to start realising the investment plan at the latest one (1) year after the tax holiday facility is granted.

The taxpayer shall submit the tax holiday application together with the application for business identification number (*Nomor Induk Berusaha* or NIB) or at the latest one year after the issuance of business permit for new investment, with some transitional provisions exist. The application should be submitted through Online Single Submission (OSS) system. The OSS system will inform the taxpayer whether

the taxpayer meets the prerequisite criteria for tax holiday facility.

The tax holiday facility is only applicable for income generated from the business activity that has been granted with such facility. Income received/earned by the taxpayer other than the main business activity that has been granted with tax holiday will be subject to normal income tax provisions.

Tax allowance facility

Tax allowances are available to companies with a specified minimum level of capital investment in certain industry sectors, or those operating in certain geographic locations where the necessary conditions are satisfied. This facility is applicable for new investment or expansion of the corporate taxpayer's main business activities. The tax allowance facility includes:

- a. An investment allowance (a reduction in taxable income equal to 30% of the total investment amount of tangible fixed assets, including land used for primary business activities, allocated equally over six years starting from tax year when the commercial production commences).
- b. Accelerated depreciation and/or amortisation.
- c. Tax loss carry forward may be extended for up to 10 years; and
- d. A reduced withholding tax (WHT) rate to 10% on dividends paid to non-residents.

In order to apply for the tax allowance facility, certain detailed requirements must be met including qualitative criteria, such as high investment value or export-oriented, high labour absorption, and high local content.

Currently, there are 166 industry sectors and 17 industry sectors operating in certain geographic locations that are eligible for the facility. Additionally, a taxpayer can only be granted one type of tax facility (either tax holiday facility or tax allowance facility).

Super tax deduction facility

For a taxpayer that does not obtain tax holiday or tax allowance facility, a "super tax deduction facility" is available for the following business activities or expenditures:

- a. New capital investment or business expansion in labour-intensive industries
This facility is in the form of an investment allowance equal to 60% of the total investment amount of tangible fixed assets, including land used for primary business activities. The investment allowance is allocated equally over six years starting from the tax year when the commercial production commences.
- b. Apprenticeship, internship, and/or learning programs in human resources development
This facility is in the form of additional deduction of the qualifying expenses for a maximum 100%. Therefore, the total maximum deduction is 200% of the total qualifying expenses.

c. Research and development (R&D)-related activities

This facility is in the form of additional deduction of the qualifying expenses for a maximum 200%. Therefore, the total maximum deduction is 300% of the total qualifying expenses.

To be eligible for this super tax deduction facility in labour-intensive industries, taxpayers must fulfil the following cumulative criteria:

- a. They constitute domestic corporate taxpayers.
- b. Their main business activity is among the 45 eligible industrial sectors; and
- c. They employ a minimum average of 300 Indonesian employees.

Certain expenditure related to apprenticeship, internship, and/or learning programs eligible for the facility includes:

- a. Provision of physical facilities in the form of training facilities and associated operational costs.
- b. Costs of the instructor or trainer.
- c. Costs of goods and/or materials.
- d. Compensation provided to the participants; and/or
- e. Competency certification cost for the participants.

The super tax deduction facility, in relation to R&D, will be provided if the taxpayer meets certain prerequisites, such as registration of the R&D results in Indonesia and overseas, commercialisation, and/or cooperation with other parties. The R&D should have focus and theme in accordance with those listed in the implementing regulation.

Special Economic Zone

A Special Economic Zone (SEZ) is an area within Indonesian customs territory with certain restrictions that has geo-economic and geo-strategic advantages. A taxpayer in a SEZ can be classified as either:

- a. A business entity (badan usaha), i.e., a legal entity that manages an SEZ; or
- b. A business player (pelaku usaha), i.e., an enterprise that carries out business in an SEZ.

A business entity may apply for tax holiday, whereas a business player may apply for tax holiday or tax allowance.

The following land transactions carried out by a taxpayer that develops and manages an SEZ are not subject to income tax:

- a. Purchase of land for SEZ.
- b. Sale of land and/or building in SEZ; and/or
- c. Rental of land and/or building in SEZ.

In addition to the Corporate Income Tax (CIT) incentives above, there are also other tax facilities available for taxpayers in SEZ, such as:

- a. VAT not collected (*tidak dipungut*) facility.
- b. VAT exemption (*dibebaskan*) facility.
- c. Import duty exemption facility.
- d. Import tax not-collected facilities (VAT, LST, and Article 22 income tax).
- e. Certain tax and import facilities for tourism SEZ; and
- f. Reduction, relief, and exemption of regional tax.

Bonded Storage

Bonded Storage is a building, a site, or a zone that meets certain requirements and is used to store goods for certain purposes and to obtain customs facilities. Bonded Storage has several forms, among others:

a. Bonded Warehouse

Bonded Warehouse is defined as a place of bonded storage to store imported goods, which may be accompanied with one or more activities, such as packaging/repackaging, sorting, kitting, packing, adjustment, or cutting of certain goods within a certain period for later removal.

The imported goods or materials that are introduced into a Bonded Warehouse by an entrepreneur in Bonded Warehouse may be granted with facilities in the form of postponement of import duty, exemption from excise, and/or non-collection of import taxes (VAT, LST, and Article 22 WHT). These facilities shall be provided to goods or materials introduced solely with the purpose of supporting industry (manufacturing) at other Indonesian customs territory or Bonded Zone, or for re-export. The supporting industries are as follows:

1. Manufacturing (shall cover processing of raw materials to become finished product).
2. Mining (shall cover the provision of imported goods to support mining exploration and exploitation activities).
3. Heavy equipment (shall cover the provision of imported goods to support heavy equipment industry); and
4. Oil service (shall cover the provision of imported goods to support oil and gas exploration and exploitation activities).

b. Bonded Zone

Bonded Zone is defined as a place of bonded storage to store imported goods and/or local supplies for production purposes with its output primarily for export purposes. Import of goods, entry of taxable goods, delivery of products, release of goods, re-delivery of taxable goods, lease of machinery, and entry of excisable goods to and/or from the bonded zone shall be granted facilities in the form of postponement of import duty, exemption from excise, and/or non-collection of import taxes (VAT, LST, and Article 22 WHT).

These facilities shall be provided for goods/materials entered into a bonded zone to be processed or combined with the products produced in a bonded zone or capital goods, including office equipment, to be used by an entrepreneur in Bonded Zone (PDKB). Raw materials, auxiliary material, and/or packaging and packaging aids owned by foreign tax subject may be granted facilities. Consumables are not facilitated in a Bonded Zone. Application is required to obtain each license and there are requirements that must be fulfilled in obtaining the license. PDKB with low-risk profile may use corporate guarantee in applying for Bonded Zone facilities.

c. Bonded Logistics Center

Bonded Logistics Centre (Pusat Logistik Berikat or PLB) is a place for Bonded Storage, which may also conduct one or more simple activities that are not processing activities that generate new products that have a different nature, characteristics, and/or function from the original goods, within a certain period of time for later removal.

The purpose of the PLB is to provide flexibility for investors to take their supplies of raw material and/or supporting material. It is hoped that manufacturing companies can stockpile their commodities in Indonesia and, thus, they can be accessed more easily and cost-effectively. The entry of goods from other places in the Indonesian customs territory into a Bonded Logistics Centre shall be granted exemption of VAT or VAT and LST for goods that are intended for export. Goods from outside the Indonesian customs territory and brought into a Bonded Logistic Centre are also granted postponement of import duty and taxes exemption (VAT, LST, and Article 22 WHT).

Master list facility

Import of machinery, goods, and materials made by a company that conducts development or expansion of industry, in the context of industry or certain service industry, can be granted with import duty exemption or relief. The import duty exemption or relief facility for the import of machinery, goods, and materials (Master List Facility) shall be issued by BKPM. Application is required to obtain each license and there are requirements that must be fulfilled in obtaining the facilities.

9. Other taxes on corporations and individuals Customs and excise duties

Any goods coming from overseas into the Indonesian customs territory are treated as "imports" and generally are subject to import duty and import taxes. Import duties are based on the harmonisation system code classification listed in the Indonesian Tariff Customs Book Year 2022.

Regarding import activity, currently Indonesia is utilising an integrated system, namely: Sistem Indonesia National Single Window (SINSW). In terms of import requirements, the importer must obtain Import and Customs Registration Number. The process is now much faster through the online system, namely OSS. A newly established PMA company, after obtaining Articles of Incorporation

(AOI) and Ministry of Law and Human Rights approval, must submit its business identification number (NIB) application through OSS system. The application submitted should mention that the Company needs to obtain Import and Customs Registration Number. The Import License and Customs Registration Number will be issued together with the NIB.

Furthermore, licensing services can be offered via the OSS system, which include:

- a. License of Bonded Warehouse (Tempat Penimbunan Berikat or TPB).
- b. License of Ease of Import for Export (Kemudahan Impor Tujuan Eskpor or KITE);
or
- c. License of Excisable Goods Entrepreneur Registration Number (Nomor Pokok Pengusaha Barang Kena Cukai or NPPBKC).

Preferential tariff rates are extended to countries that have signed Free Trade Agreements (FTA) and Economic Partnership Agreements (EPA). This means that customs duties for selected imported goods that originate from the FTA/ EPA partner countries/regions are lower or eliminated. Currently, Indonesia has preferential tariffs in the following schemes:

- a. ASEAN Trade-in-Goods Agreement (ATIGA)
A preferential tariff based on an agreement between Indonesia and ASEAN countries. This tariff is applicable for the import of goods from ASEAN countries into Indonesia.
- b. ASEAN-China FTA (ACFTA)
An agreement between the ASEAN countries to build a free trade area with China. China refers to the Chinese Mainland and excludes the Special Administrative Regions (Hong Kong and Macau) and Taiwan.
- c. ASEAN-Korea FTA (AKFTA)
An agreement between the ASEAN countries and South Korea to build the economic partnership between the countries.
- d. Indonesia-Japan Economic Partnership Agreement (IJEPA)
An agreement between the governments of Indonesia and Japan to build economic partnership between the two countries and increase trade and investment in both countries.
- e. ASEAN-Australia-New Zealand FTA (AANZFTA)
An agreement between ASEAN countries to build a free trade area with Australia and New Zealand.
- f. ASEAN-India FTA (AIFTA)
An agreement between ASEAN countries to build a free trade area with India.
- g. Indonesia-Pakistan Preferential Trade Agreement
An agreement to accommodate trade agreement between the governments of Indonesia and the Islamic Republic of Pakistan.
- h. ASEAN-Hong Kong, China Free Trade Agreement (AHKFTA)
An agreement between ASEAN countries and Hong Kong, Special Administrative Region of the People's Republic of China (HKSAR).

- i. Indonesia-Australia Comprehensive Economic Partnership Agreement (IACEPA)
An agreement between the governments of Indonesia and Australia to build economic partnership to increase the flow of exported goods.
- j. Indonesia-Chile Comprehensive Economic Partnership Agreement (IC-CEPA)
An agreement between the governments of Indonesia and Chile to increase trade partnership between the countries.
- k. ASEAN-Japan Comprehensive Economic Partnership (AJ-CEP)
An agreement between ASEAN countries and Japan to establish a free trade area.
- l. Indonesia-Palestine Memorandum of Understanding
An agreement between Indonesia and Palestine on Trade Facilitation for Certain Products Originating from Palestinian Territories.
- m. Indonesia-EFTA Comprehensive Economic Partnership Agreement
An agreement between Indonesia and European Free Trade Association (EFTA) countries to increase economic partnership between Indonesia and EFTA countries (Iceland, Liechtenstein, Norway, and Switzerland).

To pursue Indonesian Origin Declaration on the scheme of Generalized System of Preferences (GSP), the Registered Exporter (REX) and Certified Exporter (CEX) systems have been established. REX and CEX are new self-certification systems for exporters that will gradually replace the current IPSKA (Instansi Penerbit Surat Keterangan Asal or Issuing Agency for Certificate of Origin) system to obtain certificate of origin by Indonesia Ministry of Trade. Exporters with REX status are able to issue Certificates of Origin as substitute of Form A to be used for trading between Indonesia and Europe. As for CEX, exporters with this status can issue Certificates of Origin Form for their respective countries.

Excise duties are also imposed on certain goods as part of the government's efforts to curb the distribution of such goods in Indonesia. Excise duties are levied, primarily on alcohol, tobacco, and other tobacco processing (*Hasil Pengolahan Tembakau Lainnya* or HPTL) products including cigarettes, cigars, leaf cigarettes, sliced tobacco, electronic cigarettes, and other tobacco processing. Customs duty and import taxes payable should be settled before goods are released from the customs area (port). If the goods are excisable, duty payable should also be settled before the excisable goods are released from the port. After importation, the Indonesian Customs Authority (ICA) could examine goods to ensure compliance with customs and excise regulations. Failure to comply may give rise to an administrative penalty depending on the amount of underpayment. The import duty underpayment resulting from customs valuation is subject to an administrative penalty of between 100% and 1000%. If the customs duty tariff is 0% and the import duty underpayment is "nil", the penalty is IDR5 million. There is no penalty imposed for incorrect tariff classification. Noncompliance in the sector of excise is subject to penalty between 2-10 times of excise duty and there will be criminal investigations if needed.

With regards to an excise facility, the importer is able obtain excise exemption and non-collected excise duty upon excisable goods imported with certain conditions.

Real estate tax

Land and building tax is payable annually on land, buildings, and permanent structures. Under the Financial Relations between the Central and Regional Government Law, the rate is not more than 0.5% of the estimated sales value of the property in rural and urban areas, which is determined by the relevant authority. The land and building tax for certain businesses (i.e., upstream oil and gas, geothermal, mining, plantation, and forestry) is regulated under a specific regime.

The sale of land and/or building by an individual (other than the sale of a simple house and basic apartment by taxpayers whose main business is the transfer of land or buildings) is subject to a tax of 2.5% of the gross proceeds. Exemptions are granted for the transfer of land and/or buildings as part of a grant or inheritance and the sale of land valued at less than IDR60 million by an individual taxpayer whose annual income does not exceed the non-taxable income threshold.

A land and building right acquisition duty of maximum 5% is payable when a person obtains rights to land or a building with a value greater than the non-taxable threshold, which maximum is up to IDR80 million. A taxpayer who receives such rights by way of inheritance is entitled to a non-taxable threshold of a minimum of IDR350 million.

Transfer tax

The sale of shares listed on the Indonesian Stock Exchange is subject to a tax of 0.1% of the transaction value. Founder shares also are subject to a final tax of 0.5% on the share value at the time of an initial public offering, regardless of whether they are held or sold following the offering.

The transfer of a resident non-listed company's shares by a non-resident is subject to a WHT equal to 5% of the transfer value, unless otherwise provided under a tax treaty. Additionally, certain disposals of land and/or buildings are subject to a final tax of 2.5% of the transaction value.

A land and building right acquisition duty of a maximum of 5% of the acquisition value or the land and building tax imposition base (Nilai Jual Objek Pajak or NJOP), whichever is the highest, is payable when a person obtains rights to land or a building with a value greater than IDR60 million. Various exemptions apply, including on transfers in connection with a merger and transfers to relatives.

Stamp duty

A single stamp duty (*materai*) rate of IDR10,000 applies to financial transactions, deeds, and receipts.

Environmental taxes

Law on Harmonisation of Tax Regulations (Undang-Undang (UU) Harmonisasi Peraturan Perpajakan (HPP)) issued in 2021 introduces carbon tax, that will first apply to coal-fuelled electricity power plants. However, the implementation of

carbon tax is delayed, and no further regulation has been issued to date.

In certain regions, a permit to dump liquid waste into certain water resources is subject to a user fee collected by the local government.



D. Audit and Compliance

An entity that conducts business in Indonesia is required to maintain accounting records and to prepare annual financial statements in accordance with PSAK published by the Financial Accounting Standards Board of the Indonesian Institute of Accountants (Dewan Standar Akuntansi Keuangan-Ikatan Akuntan Indonesia or DSAK-IAI).

The entity must maintain a register of shareholders, as well as a special register for members of the BoD and BoC and their family members, detailing share ownership within Indonesia. Changes of share ownership must be recorded in the register of shareholders and the special register. The BoD must submit an annual report to a General Meeting of Shareholders within six months of the closing of the company's books. The report must contain at least the following: (1) financial statements; and (2) a report on the condition and performance of the company.

1. Accounting period

The accounting period for an entity is normally 12 months and it generally uses the 1 January to 31 December calendar year as the accounting year. However, an entity is allowed to choose an accounting year that does not start with 1 January. For tax purposes, the fiscal year in most cases is also the calendar year. Similar to the accounting year, an entity is also allowed to choose a fiscal year, which does not start with 1 January.

2. Currency

An entity prepares its accounting records and financial statements by using its functional currency. However, an entity may present its financial statements using a currency other than its functional currency (presentation currency). The functional currency is the currency of the primary economic environment in which the entity operates. This is often the currency in which sales prices for its goods and services are denominated and settled.

3. Language, accounting basis and standards

An entity shall prepare its financial statements, except for cash flow information, using the accrual basis of accounting. Under the accrual basis of accounting, the effects of transactions are recognised when they occur. In addition, an entity recognises items as assets, liabilities, equity, income, and expenses when their definitions and recognition criteria are satisfied.

An entity's accounting records and annual financial statements shall comply with Financial Accounting Standards (Standar Akuntansi Keuangan or SAK) issued by DSAK-IAI. Entities that have no public accountability are allowed to adopt the SAK for Entities that Have No Public Accountability (Standar Akuntansi Keuangan untuk Entitas Tanpa Akuntabilitas Publik or SAK ETAP), which are simpler than the full SAK.

4. Audit requirements

The following types of entities are required to submit annual financial statements that are audited by a qualified auditor:

- a. Publicly listed companies.
- b. Banks, insurance, and other companies involved in accumulating funds from the public.
- c. Companies issuing debt instruments.
- d. Companies with assets of IDR50 billion or more.
- e. Bank debtors whose financial statements are required by the bank to be audited.
- f. Certain types of foreign entities engaged in business in Indonesia that are authorised to enter into agreements.
- g. Certain types of State-owned Enterprises.

Audits are conducted in accordance with the Indonesian Auditing Standards promulgated by the Indonesian Institute of Certified Public Accountants (Institut Akuntan Publik Indonesia or IICPA/IAPI).

Public companies are required to submit their audited financial statements within three months after the end of the annual financial statements period to OJK.

For interim financial statements, submission to OJK should be conducted within one month after the date of interim financial statements if not audited; within two months if statements are reviewed; otherwise, within three months if the statements are audited.

5. Independence

Indonesian Auditing Standards require auditors to maintain their independence, to comply with the auditor's code of ethics, and to avoid potential conflicts of interests when conducting audits. Moreover, auditors should also observe and comply with the relevant independence rules issued by the regulator (i.e., Ministry of Finance) including independence regulations issued by OJK for auditors of entities under OJK regulations, such as listed companies, banks, insurance companies, finance companies, pension funds, and other financial services institutions.

OJK's regulation No. 13/POJK.03/2017 stipulates mandatory rotation of the Public Accountant (Akuntan Publik or AP) every 3 years with a 2-year cooling period. This mandatory rotation only applies to the Public Accountant, and not the Public Accounting Firm (Kantor Akuntan Publik or KAP).

E. Labor Environment

1. Employee rights and remuneration

Law No. 13/2003 on Employment as amended by Law No. 11/2020 on Job Creation (the Omnibus Law or **Indonesian Employment Law**) governs the bargaining power of workers, specifies minimum standards for working conditions, and sets rules for severance and compensation payments. Although Indonesian law recognises workers' right to strike, it also restricts strike action, including a requirement that strikes be legal, orderly, and peaceful.

Indonesia has ratified the main conventions of the International Labour Organization (ILO), including conventions on the rights of: (i) assembly and collective negotiation; (ii) equal wages for men and women for the same work; and (iii) forced labour, as well as conventions on freedom of association and protection of the rights of association. ILO Convention 138 on the minimum age for employment is incorporated into Indonesian law, and ILO Convention 182 on the elimination of the worst forms of child labour was ratified and incorporated into law in 2000.

Upon the enactment of the Omnibus Law, the Indonesian Employment Law provides compensation payment for an employee under a Specified Time Work Agreement (*Perjanjian Kerja Waktu Tertentu* or PKWT). This provision added a benefit that will be paid to the employee on a PKWT basis upon the completion of their working term or specific work(s) under the relevant PKWT by using the calculation in accordance with the prevailing laws and regulations.

The government has issued several regulations that expand or modify labour laws, including decrees on the employment of foreigners, occupational health and safety, work competency standards, and overtime standards and pay.

2. Wages and benefits Wages components

Government Regulation No. 36/2021 regarding Wages (**GR 36/2021**) provides that wages consist of the following components:

- a. Wages without allowance.
- b. Basic wages and fixed allowance.
- c. Basic wages, fixed allowance, and non-fixed allowance; or
- d. Basic wages and non-fixed allowance.

Furthermore, according to GR 36/2021, if wages components consist of: (i) basic wages and fixed allowance; or (ii) basic wages, fixed allowance, and non-fixed allowance, the number of basic wages shall be at least 75% of the total amount of basic wages and fixed allowance.

Minimum wages

GR 36/2021 provides that minimum wages consist of: (i) provincial; and (ii) regency/regional-based minimum wages with certain provisions. The minimum wages are set based on economic and labour conditions. The governor shall determine the provincial minimum wages, whereas the governor may also determine a regency/regional-based minimum wages with certain provisions, which are:

- a. The average economic growth of the regency/region over the last 3 (three) years is higher than the provincial average economic growth; or
- b. The result of economic growth minus inflation of the regency/region over the last 3 (three) years is always positive, and higher than the provincial score.

In light of the above, it is noteworthy that each employer is prohibited from paying wages less than the minimum wage prescribed for each province or regency/region. However, the Omnibus Law exempts the minimum wage requirement for micro and small enterprises. Wages for micro and small enterprises are determined based on agreement between the employer and the employee.

Pensions and social insurance

Law No. 24/2011 on Social Security Provider (Badan Penyelenggara Jaminan Sosial or BPJS) regulates that employers must register themselves and their employees (including any foreigner who has worked in Indonesia for at least 6 (six) months) with BPJS as participants in the social security programs, i.e., health care social security and employment social security. It is noteworthy that the health care social security benefits are administered by BPJS Health Care (BPJS Kesehatan) and employment social security benefits, which include old-age, pension, working accident, and death security benefits, are administered by BPJS Employment (BPJS Ketenagakerjaan).

Additionally, it is noteworthy that the Omnibus Law and Government Regulation No. 37/2021 on Job Loss Security Program provides a new social security program, namely job loss security (jaminan kehilangan pekerjaan) for employees that have been terminated. The job loss security program will be administered by BPJS Ketenagakerjaan and the central government. The benefits of job loss security include cash, access to job market information, and job training. The maximum amount for the benefits of job loss security is six (6) months' salary.

The premium contributions for each social security program are as follows:

Administrator	Social Security Program	As a percentage of regular wages	
		Employer Contribution	Employee Contribution
BPJS Employment (BPJS <i>Ketenagakerjaan</i>)	Working accident security	0.24-1.74% (depending on the work risk)	-
	Death security	0.30%	-
	Old-age security	3.70%	2%
	Pension security (only for Indonesian citizens)	2%	1%
	Job loss security	0.46%* (*0.22% shall be borne by the central government + recomposition of premium contributions from (i) working accident security and (ii) death security, amounting to 0.14% and 0.10% respectively)	
BPJS Health care (BPJS <i>Kesehatan</i>)	Health care security	4%	1%
			1% for additional family member

Pursuant to Article 32 of Perpres No. 64/2020 on the Second Amendment of Perpres No. 82/2018 on Health Care Social Security, the calculation of health care security contributions is subject to maximum wages of IDR12,000,000 (twelve million Indonesian Rupiah)/month. Please note that the cap may change in the future. The mandatory premium covers a husband, wife, and 3 (three) dependents. Additional family members can be covered with additional premiums.

In light of the previous discussion, it is noteworthy that the following are exempted from participating in the aforementioned social security programs:

- a. Foreign employees who work less than 6 (six) months are not required to be registered in the BPJS program; and
- b. Indonesian citizens who live in another country for at least 6 (six) months consecutively may temporarily cease their participation in BPJS Kesehatan program.

Other benefits

Other than social security benefits, there are other statutory benefits that employees are entitled to, i.e. paid leave, overtime pay, and religious festivity allowance (Tunjangan Hari Raya or THR). Furthermore, the employer may provide additional benefits to employees as stipulated under employment agreements, company regulations, or collective labour agreements. These usually include family and cost-of-living allowances, free medical care (including dental care) for the employee and his/her family, housing, transport, and work clothing. Many

companies offer additional pension schemes (outside of the pension security benefit that is administered by BPJS Ketenagakerjaan). Senior executives often receive additional benefits such as a company car and annual home leave.

3. Termination of employment

In principle, the employer, the employee, and/or the labour union, and the government must make all efforts to prevent termination of employment, and that termination may only occur after all efforts to prevent it have failed.

If all efforts to prevent termination fails, the termination of employment must be negotiated between the employer and the labour union (where the affected employee is a member), or between the employer and the affected employee (if the employee is not a labour union member). Should the negotiation fail, the employer may only terminate the employment after receiving a decision from the Industrial Relations Dispute Settlement Court.

The basis of employment termination under the Omnibus Law and its implementing regulation that came into effect on 2 February 2021, namely Government Regulation No. 35/2021 on Fixed Term Employment Agreement, Outsourcing, Working Hours and Rest Hours, and Employment Relationship Termination (GR 35/2021), is as follows:

- a. Employee's death.
- b. Expiration of Employment Contract for a Specified Period of Time (Perjanjian Kerja Waktu Tertentu or PKWT).
- c. Employee is detained for committing a crime.
- d. Employee violation of the employment agreement, collective labour agreement (Perjanjian Kerja Bersama or PKB), and company regulation (Peraturan Perusahaan or PP).
- e. Employee absence for 5 (five) days with 2 (two) summonses.
- f. Continual losses for 2 (two) consecutive years.
- g. Force majeure.
- h. Efficiency.
- i. Bankruptcy.
- j. Suspensions of debt payment obligations.
- k. Retirement.
- l. Corporate action (i.e., merger, acquisition, consolidation, or spin-off).
- m. Employee's resignation.
- n. Employee's request for termination due to employer action.
- o. Employee's lengthy illness; and
- p. Other causes as determined under an employment agreement, PKB or PP.

Furthermore, in relation to the termination of the employee, it is noteworthy that the employer shall notify the employee in writing at least 14 (fourteen) days before the termination date of the objectives and reasons for termination. If the employee refuses the termination, both the employer and the employee may carry out amicable negotiation.

In addition, only companies which carry out mergers, consolidations, acquisitions, or spin-offs may carry out termination of employment..

Severance package

The employer is obliged to pay severance pay, service pay, and compensation (as applicable) upon employment termination. According to GR 35/2021, severance pay and/or long service pay, and compensation payment with a new calculation formula (e.g., excluding health and housing allowance components which accounted for 15% of the total severance payment and service payment).

The following table will be used for the purposes of calculation of the aforementioned severance payment, service payment, and compensation payment:

Severance Payment Article 40 paragraph (2) of GR 35/2021		Service Payment Article 40 paragraph (3) of GR 35/2021	
Service Period	Payment/ monthly salary	Service Period	Payment/ monthly salary
< 1 year	1x	3 – 6 years	2x
1 – 2 years	2x	6 – 9 years	3x
2 – 3 years	3x	9 – 12 years	4x
3 – 4 years	4x	12 – 15 years	5x
4 – 5 years	5x	15 – 18 years	6x
5 – 6 years	6x	18 – 21 years	7x
6 – 7 years	7x	21 – 24 years	8x
7 – 8 years	8x	> 24 years	10x
> 8 years	9x		

**Compensation Pay
Article 40 paragraph (4) of GR 35/2021**

The entitlement to compensation payment includes the following:

- a. Annual leave that has not been taken.
- b. Travel expenses for employees and their families to their hometown; and
- c. Other compensation as determined in the employment agreement, company regulations, or collective labor agreement.

New severance package formula

These need to be highlighted under GR 35/2021, which are as follows:

- a. If the company is not willing to continue the employment relationship in the event that the company has been acquired, then the minimum statutory

severance pay will be **0.5 times the severance amount provision**.

- b. If the company is trying to increase efficiencies due to losses, the minimum statutory severance pay will be **0.5 times the severance amount provision**; and
- c. If the company is implementing efficiencies to prevent losses, the minimum statutory severance pay will be **1 time the severance provisions**. Previously, for efficiency to prevent losses, severance pay was given to workers at the rate of **2 times the severance provisions**.

Reason for termination

The following table will be used for explaining the reasons for termination, as well as the calculation formula:

Abbreviation notes:

- *Uang Pesangon* (Severance Payment – SP).
- *Uang Penghargaan Masa Kerja* (Service Payment – SVP).
- *Uang Penggantian Hak* (Recompense Payment – RP); and
- *Uang Pisah* (Separation Payment as regulated under the Employment Agreement, Company Regulation or Collective Labour Agreement).

No.	Reason Termination		Previous Formula	New Formula	
1	Mergers, consolidations, acquisitions or spin-offs and the employees are not willing to continue the relationship, or the company are not willing to accept the employees		1 X SP + 1 X SVP + RP If the Company does not want to accept the impacted employee: 2 X SP + 1 X SVP + RP	1 X SP + 1 X SVP + RP	
2	Acquisition	In the event of Acquisition	1 X SP + 1 X SVP + RP	1 X SP + 1 X SVP + RP	
		In the event changes of working provisions occur and the employee does not want to continue working relationship		0.5 X SP + 1 X SVP + RP	
3	Efficiency due to loss		2 X SP + 1 X SVP	Efficiency due to loss	0.5 X SP + 1 X SVP + RP
				Efficiency to prevent loss	1 X SP + 1 X SVP + RP
4	Company's closure (2 (two) years continual losses)	Closure due to loss	1 X SP + 1 X SVP + RP	0.5 X SP + 1 X SVP + RP	
		Closure not due to loss	2 X SP + 1 X SVP + RP	1 X SP + 1 X SVP + RP	

No.	Reason Termination		Previous Formula	New Formula		
5	The company closed due to force majeure		1 X SP + 1 X SVP + RP	Closure due to Force Majeure	0.5 X SP + 1 X SVP + RP	
				Termination due to Force Majeure which does not result in Company's closure	0.75 X SP + 1 X SVP + RP	
6	Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang – PKPU)	PKPU due to loss	N/A	0.5 X SP + 1 X SVP + RP		
		PKPU not due to loss		1 X SP + 1 X SVP + RP		
7	Resignation by the Employee		RP + Separation Payment	RP + Separation Payment		
8	Employee absent for 5 (five) consecutive working days		RP + Separation Payment	RP + Separation Payment		
9	Violation of Company Regulation, Collective Labour Agreement, or Employment Agreement	Violation	RP	0.5 X SP + 1 X SVP + RP		
		Gross Violation		RP + Separation Payment		
10	Detainment for 6 (six) months by authority		<ul style="list-style-type: none"> The employer shall provide for the employee's family relative and shall be entitled to RP and Separation Payment (as regulated under the Employment Agreement, Company Regulation, or Collective Labour Agreement. The employee shall be entitled to: 2 X SP + RP 	<ul style="list-style-type: none"> The employer shall provide for the employee's family relative for 6 (six) months; and Entitled to RP + Separation Payment 		
				If the employees cause any losses to the employer	RP + Separation Payment	
				If the employee does not cause any losses to the employer	1 X SVP + RP	
11	Lengthy illness for more than 12 (twelve) months		2 X SP + 1 X SVP + RP	2 X SP + 1 X SVP + RP		

No.	Reason Termination	Previous Formula	New Formula
12	Retirement	If the employee is not participating in the pension program, then the employee shall be entitled to receive $2 \times SP + 1 \times SVP + RP$	$1.75 \times SP + 1 \times SVP + RP$
13	Employee passed away	$2 \times SP + 1 \times SVP + RP$	$2 \times SP + 1 \times SVP + RP$

4. Employment relationship

In Indonesia, the implementation of the employment relationship, as set forth in the employment agreement, reflects the employee's status in the company. There are 2 (two) types of employee status: (i) contract employee or the employee who is employed based on a Specified Time Work Agreement (*Perjanjian Kerja Waktu Tertentu* or PKWT); and (ii) permanent employee or employee who is employed based on an employment contract for an Unspecified Period of Time (*Perjanjian Kerja Waktu Tidak Tertentu* – PKWTT).

In terms of the employment agreement, it is noteworthy that the Indonesian Employment Law previously provided that PKWT period must not exceed two (2) years and can be extended once for a maximum period of one (1) year or may be renewed once for a maximum period of two (2) years. However, these restrictions have been amended under the Omnibus Law and its implementing regulation, i.e., GR No. 35/2021.

Under the current regime, PKWT can be made for a maximum period of five (5) years. PKWT can be extended based on the agreement with the employee provided that the total initial period and any extension thereof are no longer than five (5) years. While for PKWTT, there is no expiration date.

In principle, employment agreements may be made verbally or in writing. Any verbal employment agreement must be supported by an appointment letter to the employee, which includes at least the name and address of the employee, date of employment, type of employment and salary.

Furthermore, Article 54 of the Indonesian Employment Law provides that every written employment agreement must stipulate at least the following information:

- a. Name, address, and business type of the employer.
- b. Name, gender, age, and address of the employee.
- c. Job position or type of work.
- d. Work location.
- e. Salary amount and term of payment.
- f. Job requirements, including rights and obligations of the employer and employee.
- g. Effective date and period of employment agreement.

- h. Date and place where the employment agreement is made; and
- i. Signatures of the employer and employee.

Moreover, the Law provides that employers with at least ten (10) employees must establish a Company Regulation (Peraturan Perusahaan or CR). The CR shall be established by taking into account consideration and recommendations from the management of the labour union. If there is no existing labour union, the CR shall be made with prior consideration and recommendation of an employee democratically selected by his or her peers, who shall act as the workers'/employees' representative. Furthermore, the Indonesian Employment Law provides that every company is required to register its CR to and obtain a ratification from the Minister of Manpower or other designated authority. The CR shall be valid upon the ratification from the relevant authority. It is noteworthy, however, that an employer is not required to establish a CR if the employer already has a Collective Labour Agreement (Perjanjian Kerja Bersama or PKB). In this regard, the PKB must be established based on negotiation and the consent from the labour union.

5. Employment of Foreigners

Under the Indonesian Employment Law, an employer may hire a foreign employee, provided that the foreign employee may only be hired under a PKWT. Furthermore, an employer wishing to hire a foreign employee must also hire an Indonesian employee as an "associate" for the foreign employee. The purpose of the associate requirement is to oblige the hired foreign employee to transfer his or her skills to the local associate. The ratio of foreign and Indonesian employees is not clearly regulated. In practice, it has been the general rule that a ratio of 1:1 or 1:3 is acceptable. An exception applies for expatriates who are appointed as directors or commissioners of a company; there is no associate requirement for these expatriates.

In addition to the above, the Omnibus Law provides that in order to utilise a foreign worker, the employer is required to obtain a Foreign Labour Utilisation Plan or Rencana Penggunaan Tenaga Kerja Asing (RPTKA). Such RPTKA must be ratified by the central government. This RPTKA shall serve as a work permit for the foreign employee. Moreover, the employer is required to give notification of the hiring of the foreign employee to the Ministry of Manpower after the RPTKA is granted and the employer shall also notify the Ministry of Manpower on the transfer of skill and technology from the foreign worker to the local associate.

Moreover, a foreign employee who intends to work in Indonesia must have an education background that is in line with the qualification for the position that will be held by such foreign employee, as well as a certificate of competency, or have at least five (5) years of work experience that is related to the position that will be held by such foreign employee.

Additionally, there are certain jobs/positions in Indonesia that may not be held by foreign employees, especially positions that deal with personnel, as follows:

- a. Personnel Director.
- b. Industrial Relations Manager.
- c. Human Resources Manager.
- d. Personnel Development Supervisor.
- e. Personnel Recruitment Supervisor.
- f. Personnel Placement Supervisor.
- g. Employee Career Development Supervisor.
- h. Personnel Declare Administrator.
- i. Personnel and Career Specialist.
- j. Personnel Specialist.
- k. Career Advisor.
- l. Job Advisor.
- m. Job Advisor and Counsellor.
- n. Employee Mediator.
- o. Job Training Administrator.
- p. Job Interviewer.
- q. Job Analyst; and
- r. Occupational Safety Specialist.





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