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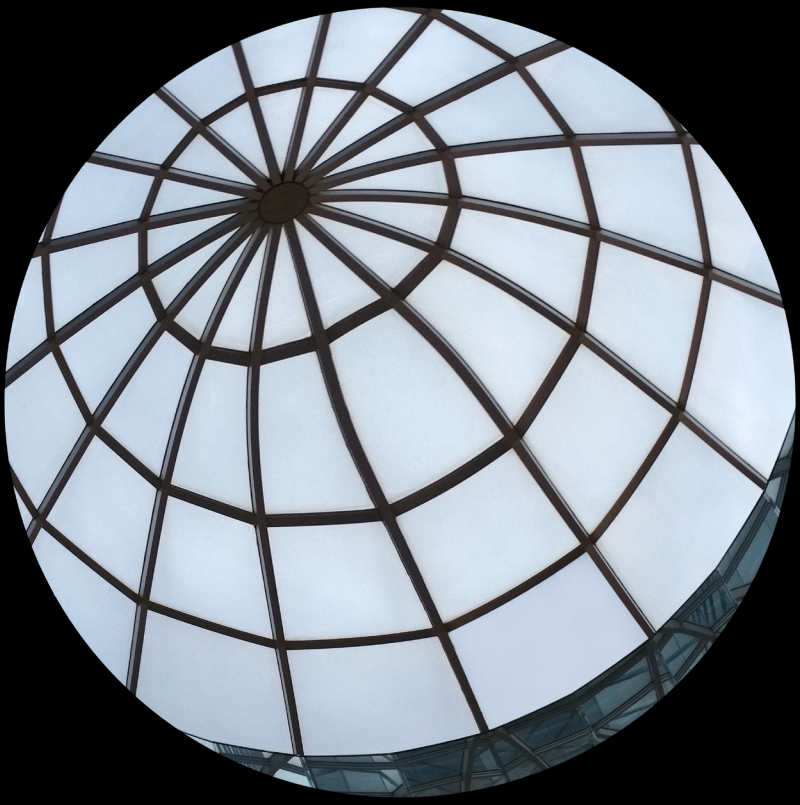


2021-2022
Investment Window into Indonesia (IWI)

English

Contents

ABBREVIATIONS	
AANZFTA	ASEAN-Australia-New Zealand FTA
AEOI	Automatic Exchange of Information
ACFTA	ASEAN-China FTA
ADB	Asian Development Bank
AHU Online	Online public services by Directorate General of General Law Administration (*Administrasi Hukum Umum Online*)
AKFTA	ASEAN-Korea FTA
AMDAL	Environmental Impact Assessment (*Analisa Mengenai Dampak Lingkungan*)
AOI	Articles of Incorporation
APA	Advance Pricing Agreements
API	Import Identity Number (*Angka Pengenal Impor*)
ATIGA	ASEAN Trade in Goods Agreement
BAL	Basic Agrarian Law
BANI	Indonesian National Arbitration Body (*Badan Arbitrase Nasional Indonesia)*
BAPPENAS	National Development Planning Agency (*Badan Perencanaan Pembangunan Nasional*)
BEPS	Base Erosion and Profit Shifting
BPJS	Social Insurance Administration Organization (*Badan Penyelenggara Jaminan Sosial*)
BKPM	Ministry of Investment (formerly Indonesia Investment Coordinating Board) (*Badan Koordinasi Penanaman Modal*)
BLU	Public Service Agency (*Badan Layanan Umum*)
BOT	Build-Operate-Transfer
BPK	State Audit Board (*Badan Pemeriksa Keuangan*)
BP MIGAS	Executive Agency for Upstream Oil and Gas Business Activities (*Badan Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi*)
BPN	National Land Agency (*Badan Pertanahan Nasional*)

ABBREVIATIONS

BPOM	National Agency of Drug and Food Control (*Badan Pengawas Obat dan Makanan*)
BPS	Central Bureau of Statistics (*Badan Pusat Statistik*)
BRT	Bus Rapid Transit
BUMN	State-Owned Enterprise (*Badan Usaha Milik Negara*)
BUMD	Local Government-Owned Company/Enterprise (*Badan Usaha Milik Daerah*)
BRI	Belt and Road Initiative
CAGR	Compound Annual Growth Rate
CFC	Controlled Foreign Companies
CIT	Corporate Income Tax
CPO	Crude Palm Oil
COVID-19	Coronavirus Disease, an infectious disease caused by the SARS-CoV-2 virus
CR	Company Regulation (*Peraturan Perusahaan*)
CRS	Common Reporting Standard
CSR	Corporate Social and Environmental Responsibility
DER	Debt-to-Equity Ratio
DKI Jakarta	Special Territory of the Capital City (*Daerah Khusus Ibukota*) Jakarta
DGT	Directorate General of Taxes
DPI	Positive Investment List (*Daftar Positif Investasi*)
DNI	Negative Investment List (*Daftar Negatif Investasi*)
DPD	Regional Representatives Council (*Dewan Perwakilan Daerah*)
DPR	People's Representative Council (*Dewan Perwakilan Rakyat*)
EFTA	European Free Trade Association
EIU	Economist Intelligence Unit
EPA	Economic Partnership Agreements
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment

ABBREVIATIONS	
FTA	Free Trade Agreements
GCA	Government Contracting Agency
GDP	Gross Domestic Product
IAI	Indonesian Institute of Accountants (*Ikatan Akuntan Indonesia*)
IBE	Implementing Business Entity
ICSID	International Centre for Settlement of Investment Disputes
IDR	Indonesian Rupiah
IDX	Indonesia Stock Exchange (*Bursa Efek Indonesia*)
IE-CEPA	Free Trade Agreement with Australia
IICP	Indonesian Institute of Certified Public Accountants
IIGF	Indonesia Infrastructure Guarantee Fund
IIF	Indonesia Infrastructure Finance (IIF)
IJEPA	Indonesia-Japan Economic Partnership Agreement
ILO	International Labor Organization
IPO	Initial Public Offering
ISIC	International Standard Industrial Classification
IUP	Mining Business License (*Izin Usaha Pertambangan*)
KBLI	Indonesian Standard Industrial Classifications (*Klasifikasi Baku Lapangan Usaha Indonesia*)
KEK	Special Economic Zone (*Kawasan Ekonomi Khusus*)
KEPMA	Supreme Court Decision (*Keputusan Ketua MA*)
KITE	Import Concession for Export Purposes (*Kemudahan Impor Tujuan Ekspor*)
KNKG	National Committee on Governance (*Komite Nasional Kebijakan Governance*)
KP	Mining Authorization (*Kuasa Pertambangan*)
KPPIP	The Committee for Acceleration of Priority Infrastructure Delivery (*Komite Percepatan Penyediaan Infrastruktur Prioritas*)
KPK	Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*)

ABBREVIATIONS	
KPPU	Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*)
KSEI	The Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia*)
LCD	Liquid Crystal Display
LGST	Luxury Goods Sales Tax
LNG	Liquefied Natural Gas
LOB	Limitation on Benefit
LRT	Light Rail Transit
MAP	Mutual Agreement Procedure
MICE	Meetings, Incentives, Conferences, and Exhibition
MINT	The economies of Mexico, Indonesia, Nigeria and Turkey
MoF	Ministry of Finance
MOLHR	Ministry of Law and Human Rights
MPR	People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*)
MRT	Mass Rapid Transit
NIB	Business Identification Number (*Nomor Induk Berusaha*)
NPPBKC	Licensing of Excisable Goods Entrepreneur Registration Number (*Nomor Pokok Pengusaha Barang Kena Cukai*)
NPWP	Individual Tax Number (*Nomor Pokok Wajib Pajak*)
NTA	Net Tangible Assets
OECD	Organization for Economic Co-operation and Development
OJK	Financial Services Authority (*Otoritas Jasa Keuangan*)
Omnibus Law	Law Number 11/2020 on Job Creation
OSS	Online Single Submission
PDAM	Regional Drinking Water Company (*Perusahaan Daerah Air Minum*)
PDKB	Bonded Zone (*Pengusaha Kawasan Berikat*)
PE	Permanent Establishment

ABBREVIATIONS	
PEN	National Economic Recovery Program (*Pemulihan Ekonomi Nasional*)
Persero	A state-owned limited liability company (*Perusahaan Perseroan*)
Perum	A public service entity wholly owned by the national government (*Perusahaan Umum*)
PGN	Indonesian state-owned gas company (*Perusahaan Gas Negara*)
PIP	Indonesia Investment Agency (*Pusat Investasi Pemerintah*)
PKB	Collective Labor Agreement (*Perjanjian Kerja Bersama*)
PKLN	Offshore Commercial Loan Team (*Pinjaman Komersial Luar Negeri*)
PLN	Indonesian state-owned electricity company (*Perusahaan Listrik Negara*)
PMA	Foreign capital investment (*Penanaman Modal Asing*)
PMDN	Domestic capital investment company (*Penanaman Modal Dalam Negeri*)
PMK	Minister of Finance Regulation (*Peraturan Menteri Keuangan*)
PP	Government Regulation (*Peraturan Pemerintah*)
PPAT	Official Certifier of Land Deeds (*Pejabat Pembuat Akta Tanah*)
PPATK	Indonesian Financial Transaction Report and Analysis Center (*Pusat Pelaporan dan Analisis Transaksi Keuangan*)
PPKM	Community Activities Restrictions Enforcement (i.e. Covid-19 related lockdown restrictions)
PPP	*Pemberlakuan Pembatasan Kegiatan Masyarakat*
PSAK	Public Private Partnership
PR	Indonesian Financial Accounting Standards (*Pernyataan Standar Akuntansi Keuangan*)
PSCs	Presidential Regulation (*Peraturan Presiden*)
R&D	Production Sharing Contracts
RKL	Research and Development
RPJMN	Environmental Management Plan (*Rencana Pengelolaan Lingkungan Hidup*)
RPL	National Medium-term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional*)

ABBREVIATIONS	
SBSN	Environmental Monitoring Plan (*Rencana Pemantauan Lingkungan Hidup*)
SEZ	Indonesian State Islamic Security (*Surat Berharga Syariah Negara*)
SEMA	Special Economic Zone
SKK Migas	Circular of the Supreme Court (*Surat Edaran Mahkamah Agung)*
SME	Special Task Force for Upstream Oil and Gas Business Activities in Indonesia (*Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi*)
SMI	PT Sarana Multi Infrastruktur (Persero) (a state-owned company engaged in infrastructure project financing)
S&P	Standard & Poor's
SPC	Special Purpose Company
SWF	Sovereign Wealth Fund
SPRINT	Financial Service Authority Licensing System (*Sistem perizinan Otoritas Jasa Keuangan*)
TDP	Company Registration Certificate (*Tanda Daftar Perusahaan*)
TIEA	Tax Information Exchange Agreement
TPB	Bonded Warehouse (*Tempat Penimbunan Berikat*)
TRIPs	Intellectual Property Rights Agreement
UMP	Provincial Minimum Wage (*Upah Minimum Provinsi*)
UNFPA	United Nations Population Fund
VAT	Value Added Tax
WHT	Withholding taxes
WIPO	World Intellectual Property Organization
Yoy	Year-on-Year

Foreword

Selamat datang di Indonesia! (Welcome to Indonesia!)

There is no doubt that COVID-19 has had an unprecedented negative impact globally to an astonishing degree which has resulted in many countries experiencing major economic downturns. However, the Government of Indonesia responded quickly to COVID-19 by launching various initiatives to attract foreign investments.

Our government is committed to recovering from COVID-19 by providing 9 action plans and incentives. On 31 July 2020, the Government released Government Regulation 29, or PP-29, on Income Tax Facilities in Handling COVID-19. To continue the economic recovery, PP-29 has been extended until the end of 2021 and the details of the incentives are regulated in PMK 83/2021.

On 25 November 2021, the Constitutional Court ruled that Law Number 11/2020 on Job Creation (commonly referred as the "Omnibus Law") is conditionally unconstitutional. However, the Law currently remains effective. The Government is required to revise the procedure of passing the Law within 2 years. During this period, the Government may not issue any additional implementing regulations deriving from the Law. Shortly after the Constitutional Court issued its ruling, Joko Widodo ("Jokowi"), emphasized that the law and its implementing regulations that have been enacted to date all remain in effect. Jokowi assured investors that their investments will remain secure and that the Government will work to maintain these investments safe and secure.

Building infrastructure connectivity remains the focus of the country's National Medium Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN). Earlier this year, the Government introduced its "Industry 4.0" initiative which seeks to accelerate the use of advanced technologies to broaden and grow 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 its efforts to attract foreign companies to relocate their operations to Indonesia.

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

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

Claudia Lauw Lie Hoeng
Deloitte Indonesia Country Leader

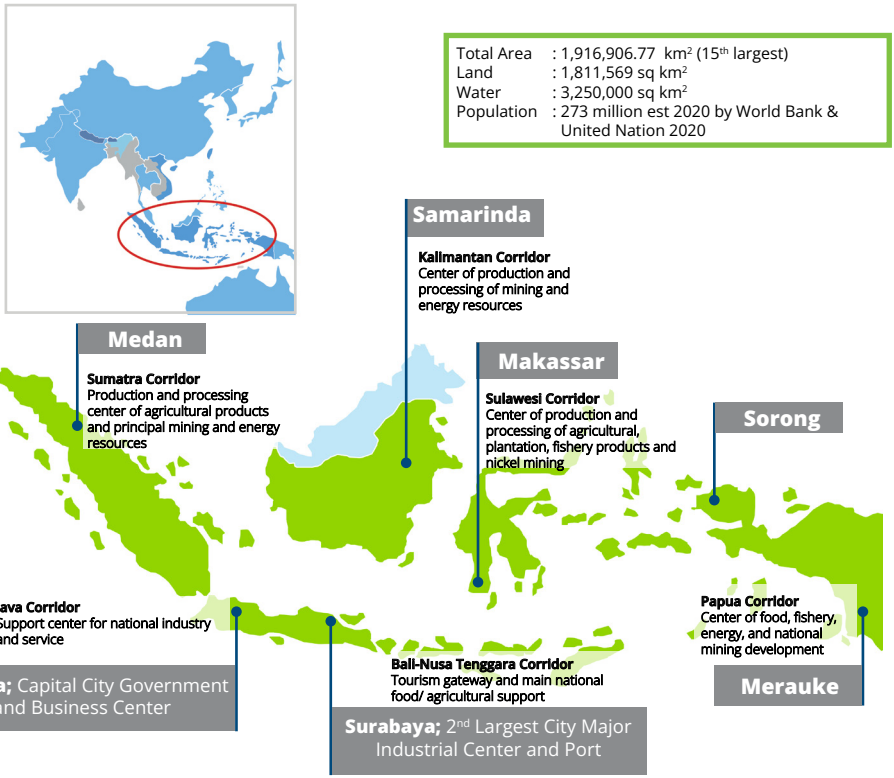
A. Introduction to Indonesia

Republic of Indonesia
(constitutional democracy with an executive presidency)

Nationality: Indonesian (40.5% Javanese, 14.5% 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)



Major Islands: Sumatra, Java, Kalimantan (Borneo), Sulawesi (Celebes), and Papua
Minor Islands: Maluku, Lesser Sunda Islands (Nusa Tenggara)

1. General overview

The allure of Indonesia from an investment standpoint is a combination of Indonesia's favorable endowments of natural resources and geographically strategic location combined with its large number of human resources who have received a high rating on the Human Development Index (HDI). In December 2020, UNDP reported that Indonesia attained a Human Development Index (HDI) of 0.718, which represented a modest increase from the previous year's HDI rating (0.707 in 2019). Hence, with the ease of doing business improving and an investment-friendly climate and governance reforms being reaffirmed by the Government of Indonesia, this sends positive signals for investors to consider opportunities to invest in Indonesia. The country's vibrant e-commerce economic activity is also indicative of the more entrepreneurial disposition of the millennial generation in Indonesia and is a basis to build readiness for Industry 4.0 challenges.

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 10th largest economy in terms of purchasing power parity and is a member of the G20 group of nations. Indonesia was the second fastest growing economy in the G20 from 2012 until the COVID-19 outbreak in 2020. The global health and economic crises remain major challenges to Indonesia as it strives to achieve its development goals of improving its human capital and competitiveness in the global market, as captured in the current medium-term development plan (RPJMN) 2020-2024.

After experiencing economic resilience in 2019 with a GDP of 5.0% yoy, Indonesia experienced the negative impact of the COVID-19 pandemic during 2020 when GDP contracted by 2.07%. This was the first contraction experienced by the Indonesian economy since the 1997-1998 Asian Financial Crisis. Based on the 20-year long-term national development plan (RPJPN) for the period 2005 - 2025, Indonesia had targeted achieving a per capita income equivalent to that of middle-income countries by 2025. However, given the ongoing setbacks arising from the COVID-19 outbreak, Indonesia was unable to achieve its target in 2020, as well as the initial target for 2021.

The 2021 economic growth target was revised from 4.3%-5.3% to 3.7%-4.5% due to the implementation of a semi-lockdown policy referred to locally by its acronym, PPKM (*Pemberlakuan Pembatasan Kegiatan Masyarakat*) during July and August 2021[1]. However, the government is still expected to focus its efforts during the remainder of 2021 to catch up with the existing targets in the National Mid-term Development Plan (RPJMN). Currently, the Government is prioritizing government spending in several sectors, including health, education, information, communications technology, and welfare distribution to achieve the government's programs to advance Indonesia.

[1] "Sri Mulyani Revisi Target Pertumbuhan Ekonomi 2021 Jadi 3,7-4,5 Persen," www. kompas.com 7 Juli 2021

Without increasing government spending, investment and consumption drivers alone will not be sufficient to ensure the economy recovers. During the 5-year period 2018-2022, the contribution from private investment (in infrastructure and manufacturing) will take time to have a significant impact on the economy. The economy will continue to be supported by private consumption, which is forecasted 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 FY 2022 to deliver a sustainable economic recovery.

Figure 1: Indonesia's Key Economic Outlook Indicators

Indicator	2018[a]	2019[a]	2020[a]	2021[f]	2022[f]	2023[f]	2024[f]
GDP Growth (%, y-o-y)	5.2[a]	5.1[f]	-2.0[a]	5.2[f]	5.2[f]	5.1[f]	5.5[f]
Private Consumption (%, y-o-y)	5.1[a]	5.3[f]	-3.5[a]	5.5[f]	5.2[f]	5.4[f]	5.4[f]
Government Consumption (%, y-o-y)	4.6[a]	4.5[f]	4.5[a]	4.2[f]	4.5[f]	5.0[f]	4.5[f]
Gross Fixed Investment (%, y-o-y)	6.7[a]	5.5[f]	-5.2[a]	6.5[f]	6.2[f]	6.3[f]	6.2[f]
Exports of goods & services (%, y-o-y)	6.5[a]	2.3[f]	-5.7[a]	5.7[f]	5.9[f]	5.9[f]	5.8[f]
Imports of goods & services (%, y-o-y)	12.1[a]	3.8[f]	-18.2[a]	6.5[f]	6.9[f]	8.0[f]	5.1[f]
Inflation (end period) (%, y-o-y)	3.2[a]	3.4[f]	2.01[a]	3.9[f]	3.3[f]	4.7[f]	2.9[f]
US$ exchange rate (end period)	14,482[a]	14,249[f]	14,582[a]	13,922[f]	13,641[f]	13,441[f]	13,566[f]

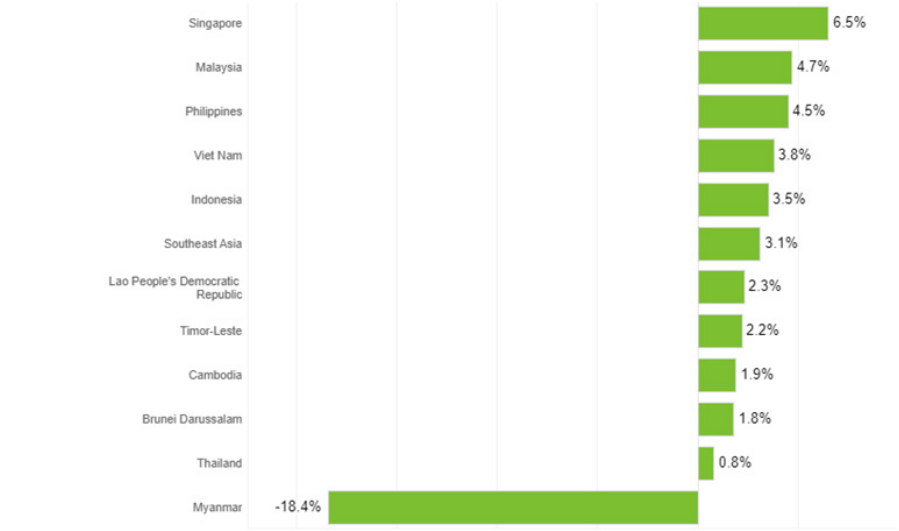
[a]*Actual* [f]*Forecast*
Source: EIU, September 2020

Key drivers for Indonesian economic recovery

The World Bank estimates that global economic growth will expand 5.6%, which is the strongest post-recession pace in 80 years. Unfortunately, in many emerging market and developing economies (EMDEs), there are still obstacles to vaccination that continue to weigh on economic recovery. Indonesia, due to sound fiscal and monetary measures supported by relatively stable domestic private consumption, is expected to outperform emerging economies on average. Similar to many other

countries suffering from the first year of COVID-19 outbreak, Indonesia's GDP growth in 2020 was negative 2.07%, which according to the Minister of Finance, Sri Mulyani, was better than neighboring countries, such as Singapore (-6%), the Philippines (-9.6%), and Malaysia (-5.8%), although other countries such as China and Vietnam experienced positive growth in the last year[2]. Meanwhile, in 2021 the ADB predicts that Indonesia's GDP growth will reach 3.5%, which is fifth after Singapore (6.5 %), Malaysia (4.7%), the Philippines (4.5%), and Vietnam (3.8%) among other Southeast Asian countries.

Figure 2: GDP Growth Rate 2021



Source: ADB. September 2021.

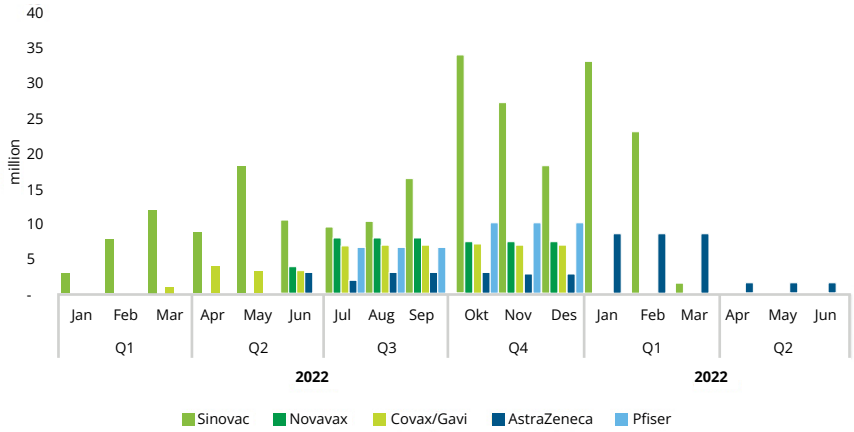
At the beginning of 2021, President Jokowi said with optimism that 2021 would be a year of opportunity for national and global economic recovery. Indonesia's economic recovery started in the first quarter of this year with several indicators showing improvement, such as economic growth and balance of trade (BoT). The sectors that were expected to recover first were those related to basic needs, such as food and beverages. Secondary needs such as property would recover at a later stage.

However, during 2021, Indonesia experienced a "second wave" of COVID-19 largely due to the "Delta variant" entering the country. This resulted in a ten-fold increase in reported daily numbers of new infections. This second wave appeared to peak in July 2021 when reported cases of new infections were almost 57,000 per day. Hospital bed capacity, including ICU beds, was almost at 100% in several major cities on Java, with major shortages of medical staff, ventilators and supplies of oxygen being reported in many locations. The government, therefore, had to adjust its policy responses to address the parallel objectives of reducing the COVID-19

[2] "Meski Resesi, Menkeu Klaim Ekonomi RI Lebih Baik dari Negara G20 Lain," www. kompas.com, 7 April 2021

outbreak down to a manageable level while at the same time maintaining some level of economic activity.

Indonesia Vaccine Supply Plan (by dose)



Source: Ministry of Health, 29 April 2021.

The vaccine program in Indonesia was targeted to reach 181.5 million Indonesians. Around 400 million doses of vaccines have been ordered by the Government of Indonesia. The first batch of vaccine arrived in Indonesia in December 2020 and consisted of 1.2 million doses of Sinovac from China's Sinovac Biotech Inc. This was first administered in January 2021. It was followed by a batch of AstraZeneca vaccine which was approved by the National Agency of Drug and Food Control (BPOM) in February 2021, followed by other brands of vaccines. First doses were generally administered from January to June 2021. The second batch of first doses as well as second and booster doses are targeted to be administered during the period from June 2021 to March 2022. [3]The Government of Indonesia's lockdown policy which involved the application of different levels of restrictions (.e.g. Level 3 and Level 4) has appeared to work well in combination with increased testing, the provision of temporary additional health care facilities and the success of the vaccination program which reduced cases currently to less than 3,000 per day leading to the country's health and economic recovery. In September 2021, Nikkei Asia reported that Indonesia was ranked first among other ASEAN countries in terms of COVID-19 recovery and was in 54th position worldwide.

In line with improving conditions in the health care sector, economic activity has experienced some recovery with several indicators, such as increased people mobility, the spending index, vehicle sales, cement sales, as well as electricity consumption in the business and industrial sectors recording expansion, while the Inflation rate was under control at 1.6% yoy.

[3] "Pemulihan Ekonomi dan Reformasi Struktural, Kerangka Ekonomi Makro dan Pokok-Pokok Kebijakan Fiskal Tahun 2022," Badan Kebijakan Fiskal KEM & PPKF, www. kemenkeu.go.id, 2021

A key element which played an important role during the pandemic was the National Economy Recovery Program (PEN or *Pemulihan Ekonomi Nasional*), a program that started in 2020. In mid-August 2021, program implementation had reached IDR326.74 trillion or 43% of the budgeted program. In the health care sector, which was a key sector during the pandemic, the realization was 35.9% or IDR77.18 trillion of the total budget of IDR214.96 trillion. This covered the use of emergency hospitals, medicine, vaccine procurement and national insurance contributions. The Indonesian economy in Q2 had experienced a rebound with growth of 7.07% after contracting in the previous four quarters.

Indonesia's relatively healthy financial condition during the pandemic has benefitted from the role of the Financial System Stability Committee or Komite *Stabilitas Sistem Keuangan* (KSSK). KKSK was formed during a financial crisis situation in order to ensure financial system stability by maintaining and monitoring the system. The Committee managed the collaboration between the Ministry of Finance, Bank Indonesia, the Financial Services Authority (OJK), and the Deposit Insurance Agency or LPS (*Lembaga Penjamin Simpanan*) to formulate and implement policy responses based on their frameworks. Their work is expected to maintain the stability of the economy and the financial system during the pandemic and to accelerate the National Economic Program (PEN). During Q3, the financial system functioned normally whilst the country saw a significant decrease of COVID-19 cases.

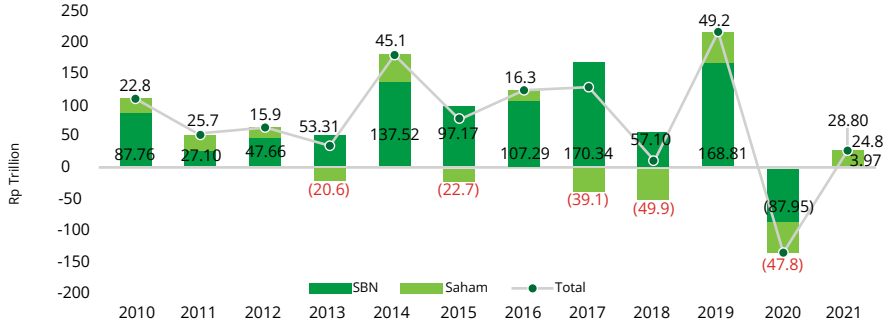
In the trading sector, there was a continuity of trade balance surpluses that had reached US$4.37 billion by September 2021 or US$25.07 billion for the period January – September 2021.

On the government side, with the national budget (APBN), the government made serious efforts to minimize the impact of the pandemic and provide support for the people, ensuring the acceleration of economic recovery. In terms of financial system stability, Indonesia's year to date state revenue was about IDR1,354.8 trillion by September 2021, or 77% of the national budget, which represented growth of 16.8% yoy along with the optimization of state spending and the ability to ensure a smaller state deficit than last year.

Economic recovery resulted in optimism in the financial sector. Based on data from the Ministry of Finance, as of 20 September 2021, foreign investors had invested up to IDR28.8 trillion in all markets year to date. In addition to that, the composite stock price index increased slightly to 1.63% year to date. Demand for Indonesian Government Bonds experienced growth influenced by investor's increasing trust. This indicated a recovery in foreign investor confidence after foreign investment capital outflows of IDR135.76 trillion year to date in the previous year, along with the significant strengthening of global stock markets during 2021 which was influenced by optimism for global economic recovery and the acceleration of vaccination programs around the world. Until mid-September 2021, the US stock market showed positive performance in response to general economic recovery and the easing of the pandemic. The strengthening stock markets in the US and

Europe also boosted stock markets in Asia. Thailand's SET stock exchange rose by 10.61% and Singapore's STI grew by 6.96% (year-to-date), while Indonesia's composite stock price index also rose by 1.63% (year-to-date) with the best performances in 2021 in the technology (426.2%), logistics transportation (26.8%), and infrastructure sectors (8.5%) year-to-date.

Flow of foreign funds into the capital market 2010 – 2021 (ytd)



Source: Bloomberg and Ministry of Finance publication 2021 in the Fiscal Policy Agency (Kemenkeu.go.id)

Indonesia's trade balance also recorded an excellent performance with strong export growth followed by a recovery in imports. This resulted in a trade surplus. In August 2021 the trade surplus was US$4.74 billion. The trade balance had been in surplus since May 2020 and recorded a surplus of US$19.17 billion for the period January-August 2021. This is higher than the same period in the previous year.

Similar to last year, in 2021 the Ministry of Finance released its scenario for the economic and fiscal policy direction in 2022, which focuses both on socio-economic recovery from the pandemic as well as implementing reforms to strengthen the foundations to avoid the middle-income trap.

The Ministry of Finance has acknowledged that the pandemic has jeopardized the momentum towards the 2045 long-term economic transformation target of breaking through the middle-income trap. The targets of economic transformation 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 deindustrialization. Furthermore, closing the infrastructure gap is also an important enabling factor, particularly in terms of logistics efficiency and integration into global value chains. 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 (United Nations Population Fund or UNFPA, 2020). The UNFPA estimates that this window of opportunity is only available in the 2020-

2030 period. Development programs to support these longer-term priorities have been largely refocused in favor of concentrated efforts to recover from the global economic and public health crises caused by the pandemic. When these programs are restarted post-COVID-19, Indonesia's fiscal resources will be under pressure. Therefore, private sector investments will be a national priority not only for economic recovery, but also for breaking the middle-income trap in the long run.

The Government's strategy to achieve economic recovery during the COVID-19 period (FY 2020 and FY 2021) included diversifying sources of revenue to fund major economic stimulus required as part of the National Economic Recovery Program (PEN). PEN was delivered at a time when tax revenues were slowing as part of extraordinary measures that were only expected to occur during the pandemic. Indonesia was careful not to borrow more than it can afford and has plans to transition back to its "normal" pre-COVID-19 fiscal position in terms of its public debt-to-GDP ratio. The intensive borrowing in Q3 2020 to Q2 2021 to fund the PEN stimulus was an emergency measure required by the widespread decline in consumption and subsequent bankruptcies of business establishments globally due to COVID-19 and related social distancing measures.

The national economic recovery program (PEN) continued in FY 2021 as Indonesia's economic recovery is expected to fully occur in FY 2022, assuming success with bringing COVID-19 under control, a key part of which will be the successful execution of the vaccination program in FY 2021.

To date, the focus of PEN has been in Q3 2020 to Q2 2021 as this was a critical period when the balance sheets of companies in certain affected industries needed the most liquidity to ensure that their businesses would continue to survive the rest of FY 2021 and into FY 2022 when the market is expected to fully rebound. The Ministry of Finance allocated funds totaling IDR699.43 trillion, an increase of 20.63% compared to the 2020 PEN budget. The increase was expected to maintain economic recovery efforts, particularly in the first quarter of the year. Observing that the successful handling of COVID-19 was a key factor for the economic recovery, the government consolidated its efforts on public health as a top priority which was coordinated together with the PEN program with a budget of IDR176.3 trillion, followed by social protection with a budget of IDR157.4 trillion, SoE support and corporate funding of IDR186.8 trillion, business incentives and taxes of IDR53.9 trillion, and priority programs of IDR125.1 trillion[4].

The role of Bank Indonesia to conduct monetary policy independently to support economic recovery starting in 2020 was in the form of quantitative easing (QE). As of August 2021, the Bank had injected liquidity of IDR844.9 trillion (via QE) into the banking sector[5].

Currently, the government needs to temporarily increase the proportion of public debt to GDP by 38% by 2023. This represents a higher, yet still sustainable rate compared to other G20 economies to fund government stimulus in the form of

[4] "Fokus PEN 2021: Menanggulangi Pandemi dan Membangkitkan Ekonomi Nasional," www.covid19.go.id, 24 Februari 2021
[5] "Total Quantitative Easing BI Capai Rp 845 Triliun," www.cnbcindonesia.com, 14 September 2021

COVID-19 mitigation programs and productive public investments for economic recovery. Fiscal sustainability in 2021 and beyond is also a key concern to ensure that the economy recovers throughout FY 2021-2022.

The successful handling of COVID-19 and economic recovery was accompanied by increased spending and investment performance along with more optimal tax and non-tax revenues and financing support. Until July 2021, state revenues grew 11.8% yoy or IDR1.032 trillion. This included improvements in taxation, customs and excise, and non-tax state revenues. Tax revenue grew to IDR647.7 trillion or 7.6% yoy. The realization of customs and excise revenue was about IDR141.21 trillion or which represented an increase of 29.5% yoy, and non-tax state revenue reached IDR242.1 trillion which was an increase of 15.8% until July 2021[6].

Furthermore, Indonesia also faces five major challenges during the pandemic, which include uneven economic recovery, scaring effect on financial system stability, acceleration of economic and digital finance, the need for inclusive economy and finance, and the push for economic implementation and green finance. [7]To address these issues, collaborative work between stakeholders such as those in the KKSK is necessary during the economic recovery.

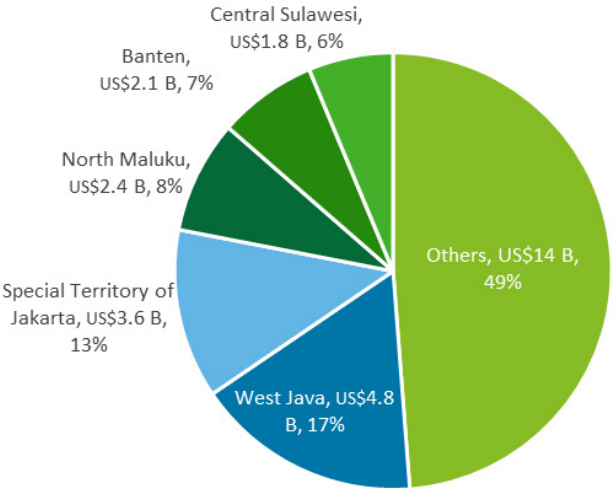
To deal with the impact of financial system stability, the strategy adopted has been to encourage digital payments to accelerate economic recovery, which is carried out through QRIS, electronification, BI Fast (Bank Indonesia – Fast Payment or retail payment system), and regulatory reforms. Structural reforms are also very important for accelerating the transition in emerging countries in terms of human resources, productivity, and infrastructure.

The implementation of economic inclusivity among small and medium enterprises has also been started. The last strategy is a green economy policy to mitigate risks due to climate change.

As a developing country, Foreign Direct Investment ("FDI") is an important source of capital and contributes to national development through the transfer of assets, management, and technology to stimulate the country's economy. At the beginning of the pandemic in 2020, FDI in West Java led with US$4.8 billion or 17% of the FDI realization by province, followed by DKI Jakarta with US$3.6 billion or 13%. For FDI realization in Q1 and Q2 2021, West Java still led, followed by DKI Jakarta, as shown in Figures 3 and 4 below. Furthermore, in terms of FDI realization based on country of origin, in 2020 and 2021 Singapore was the largest investor in the country which was followed by China. However, in Q2 2021 Hong Kong became the second largest investor in Indonesia, as shown in Figures 5 and 6. The largest investments in 2020 were in Basic Metal, Metal Goods, Non-Machinery and Equipment with a value of US$6.0 billion or 21% of total direct investment. This condition did not change much until Q2 2021 as shown in figure 8.

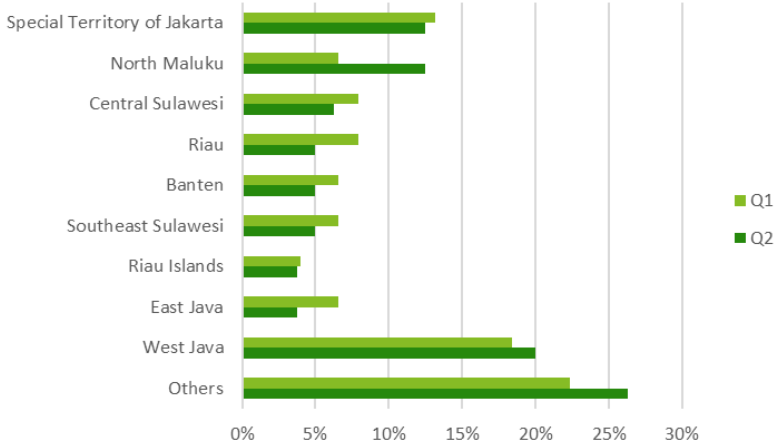
[6] "Sri Mulyani: Perkuat Stimulus APBN, Jaga Sentimen Pemulihan, Dorong Pertumbuhan Ekonomi Fakultas Ekonomi dan Bisnis Universitas Indonesia," www.feb.ui.ac.id, 25 Agustus 2021
[7] "Ini 5 Tantangan Ekonomi Indonesia Pasca Pandemi Menurut Gubernur BI," www.msn.com, 29 Oktober 2021

Figure 3: FDI Realization 2020 by Province



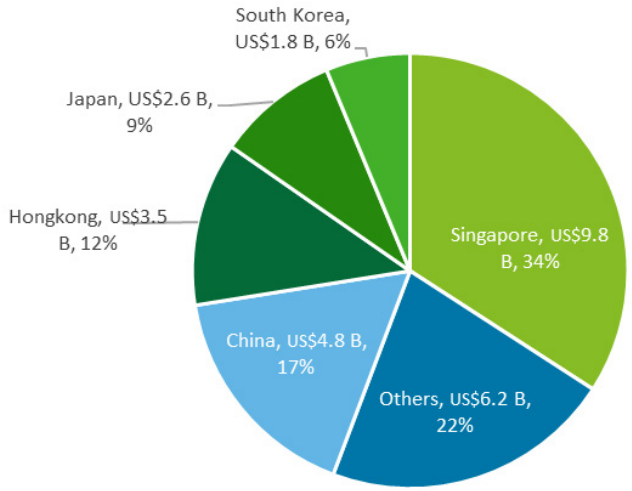
Source: BKPM, 2020.

Figure 4: FDI Realization 2021 by Province



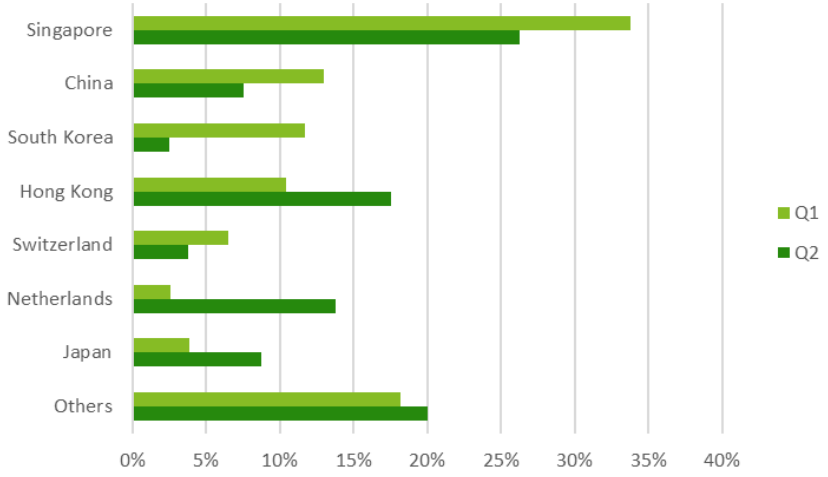
Source: BKPM, 2021.

Figure 5: FDI Realization 2020 by Country of Origin



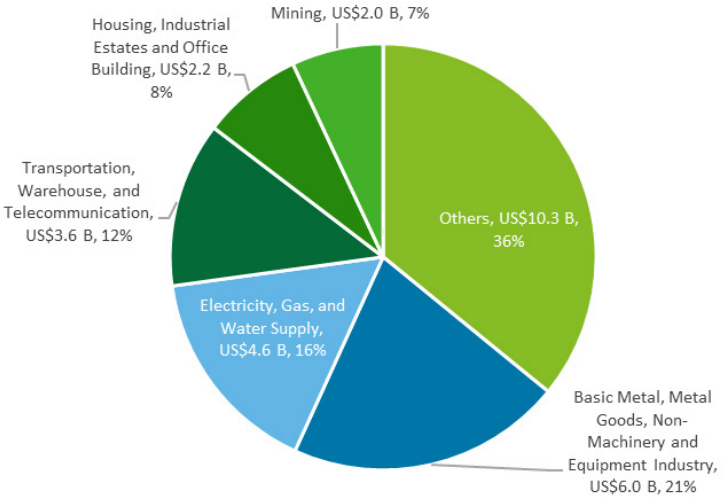
Source: BKPM, 2019.

Figure 6: FDI Realization 2021 by Country of Origin



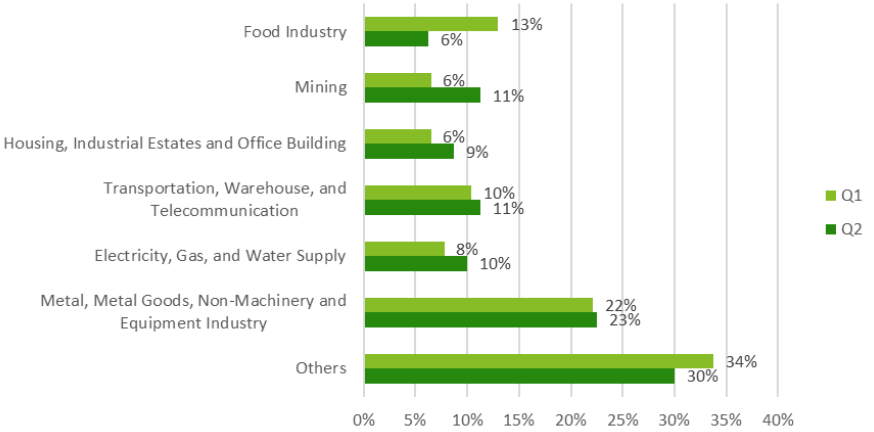
Source: BKPM, 2021.

Figure 7: FDI Realization 2020 by Sector



Source: BKPM, 2020.

Figure 8: FDI Realization 2021 by Sector



Source: BKPM, 2021.

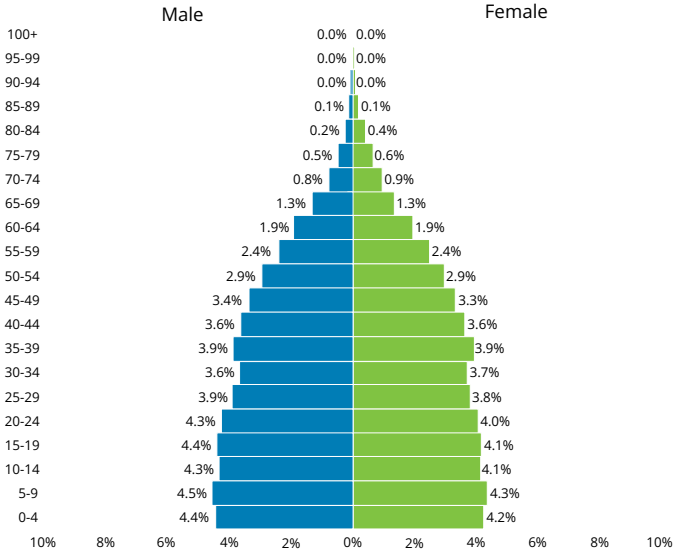
2. Demography

Indonesia consists of 34 provinces, 16,056 islands, with approximately 273 million people, making Indonesia the fourth largest country in the world in terms of population. The demographic advantages of a population of 273 million people are:

- Over 68% 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 comprises more than 39% of the total population of the 10 Southeast Asian (ASEAN) countries

According to Trading Economics, Indonesia's labor force participation rate, which was recorded at 69.2% in 2018, reached its all-time highest rate of 69.32% in 2019. 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. Indonesia recorded growth in consumer expenditure of 5.05% and 5.04% in 2018 and 2019, respectively. However, due to the COVID-19 pandemic, consumer expenditure only grew by 2.84% (yoy) in the first quarter of 2020, compared to 5.02% (yoy) in the first quarter of the previous year.

Figure 9: The Population of Indonesia by Age and Gender (2020)



Indonesia - 2020
Population: **273,523,620**

Source: Populationpyramid.net

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 statista.com, Indonesia's debt-to-GDP ratio increased to 36.62% in 2020 from 30.50% in 2019 which was considered the lowest among several ASEAN countries, including Myanmar (39.3%), Laos

(67.98%), Malaysia (67.5%), the Philippines (47.07%), Thailand (46.62%), and Singapore (128.37%). Indonesia had received favorable reviews since 2001 and for the first time since the global financial crisis, Indonesia's sovereign bonds were rated investment grade by all three major credit ratings agencies after Standard & Poor's (S&P) lifted its rating on the country's debt to BBB-/stable in May 2017. It maintained its stable outlook until 2018, before lifting its rating again in May 2019 to BBB/stable. However, it revised its outlook to negative in April 2020 amid the COVID-19 pandemic. As of April 2021, S&P set Indonesia sovereign credit ranking to remain BBB with a stable outlook. These ratings, as summarized below, reflect Indonesia's resilience to the global financial crisis, improving government and external credit-metrics, and an ability to manage domestic political challenges to the reform agenda.

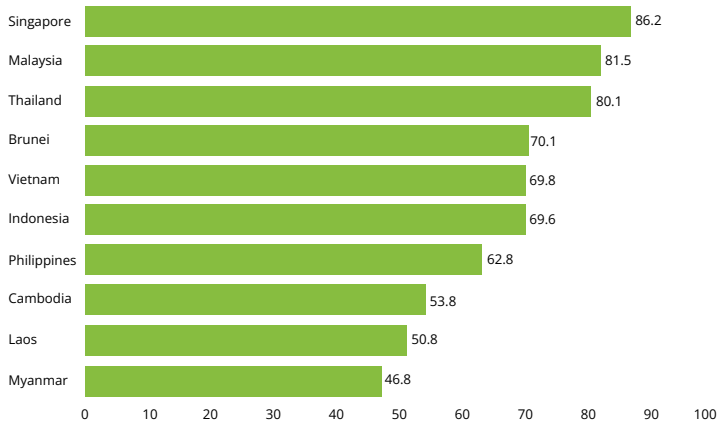
Figure 10: Indonesia Sovereign Credit Ranking

Rating Agency	Rate	Outlook	Date
Fitch Rating	**BBB**	**Stable**	**March 2021**
Moody's	**Baa2**	**Stable**	**January 2021**
Standard and Poor's	**BBB**	**Negative**	**April 2021**

Source: Ministry of Finance, 2021 & [Bank Indonesia Press Release] 2021, Reuters.com[8]

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 ranking for all Southeast Asia countries based on their respective index scores[9].

Figure 11: Southeast Asia Ease of Doing Business (EODB) in 2020, by index score



Source: Statista 2021

[8] "Update 1-Moody's warns Indonesia COVID-19 surge threatens fiscal plans, rating," www.reuters.com, 19 July 2021
[9] "Ease of doing business (EODB) in ASEAN countries in 2020, by index score", www. statista.com, 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. Palm oil is the country's largest export category, followed by coal (and other mining products), gas, agricultural products, electrical machinery and equipment and fishery products. Indonesia's government plans to increase production of core commodities as seen below. However, due to the recent drop in commodities prices, Indonesia has to realign its trade strategy, focusing more on value-added industries (manufacturing and smelting) and infrastructure development. In addition, Indonesia's government plans to increase the production of core commodities for domestic consumption and to reduce its heavy reliance on imports.

According to the government's Strategic Investment Planning for the period of 2014-2019 and the Ministry of National Development Planning of the Republic Indonesia (Bappenas)'s Strategic Investment Planning draft for 2020 -2024, the government has placed a new focus on several business sectors as follows:

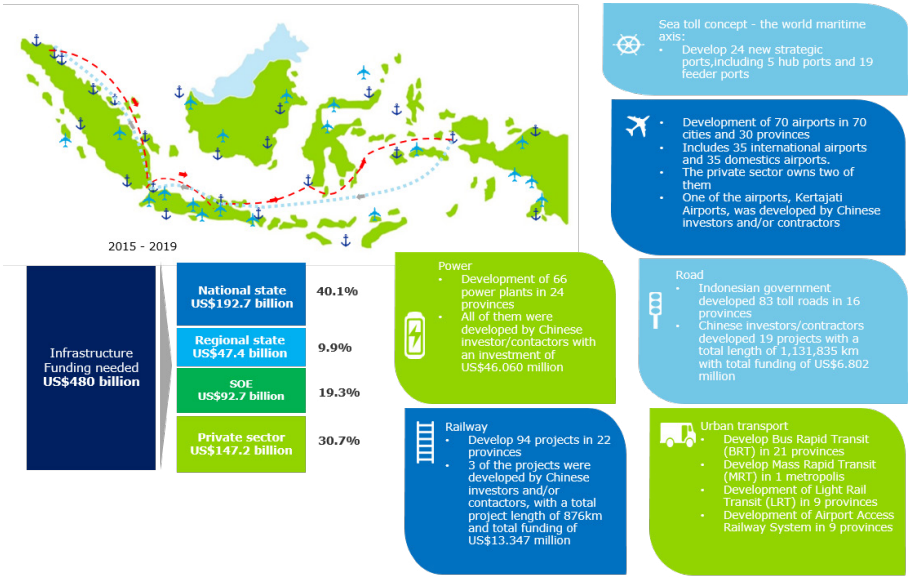
Infrastructure		35 GW power generation	24 Seaports	Trans Sumatra highway and Trans Papua road	High-Speed Train
Agriculture		Food estate	Corn plantation	Cattle	Rice
Industry	Labor-intensive	Textile	Food and beverages	Furniture	Toys
	Import-substitution	Chemical and pharmaceutical	Iron and steel	Component	Oil and renewable energy
	Export-oriented	Electronics	CPO and derivative products	Wood products, pulp and paper	Automotive
		Machinery	Rubber products	Fish and derivative products	Shrimp
	Downstream industry of natural resources	Cacao	Sugar	Smelter	Mining
Maritime		Ship building	Fishery industry	Cold storage	Maritime technology
Tourism, SEZ and Industrial Park		8 Priority Tourism Destinations	Meetings, incentives, conferences, and exhibitions (MICE)	13 +4 new SEZs	9 + 10 new industrial parks

Infrastructure sector

The Jokowi government plans 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 plans to build more public roads, toll roads, airports and railways, not only focusing on Java but also on Sumatra, Kalimantan, Sulawesi and Papua.

Additional infrastructure development has also been influenced by China's new round of reform and overseas expansion. The centrepiece is the Belt and Road initiatives (BRI) which include both foreign policy and domestic economic strategies. Originally billed as a network of regional infrastructure projects, the scope has continued to expand and will now include enhanced policy coordination across the Asian continent, which path crosses Indonesia. The Jakarta-Bandung high-speed railway marks China's first milestone project in Indonesia and is expected to expand to more lines as it gains permits from the Transportation Ministry. As of October 2021, the Jakarta-Bandung high-speed railway had achieved 79 percent completion and is expected to be fully completed and operational by the end of 2022.

Infrastructure Funding needed



Source: Ministry of Transportation RI, May 2016

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 presented 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:

Figure 12: Top 10 Regional Demographics

Province	Provincial Capital	Area (sq km)	No. of Islands	No. of Regencies	No. of Cities	Population (in thousands) (2020)
DKI Jakarta	Jakarta	664.0	110	1	5	10,576.4
West Java	Bandung	35,377.8	30	18	9	49,565.2
Central Java	Semarang	32,800.7	72	29	6	34,738.2
East Java	Surabaya	47,799.7	431	29	9	39,955.9
Banten	Serang	9,662.7	81	4	4	12,895.3
Riau	Pekanbaru	87,023.7	161	10	2	6,951.2
North Sumatra	Medan	72,981.2	232	25	8	14,798.4
South Sumatra	Palembang	91,592.4	23	13	4	8,600.8
East Kalimantan	Samarinda	129,066.6	419	7	3	3,664.7
South Sulawesi	Makassar	46,717.5	314	21	3	8,888.8

Source: BPS, 2021

Figure 13: Top 10 Gross Regional Domestic Product US$ mn

Province	2018	2019	2020	% Total 2020
DKI Jakarta	2,592,607	2,816,760	2,772,381	18%
East Java	2,188,766	2,345,791	2,299,465	15%
West Java	1,960,628	2,124,044	2,088,039	13%
Central Java	1,268,261	1,361,567	1,348,600	9%
Riau	741,347	799,609	811,283	5%
North Sumatera	752,263	760,568	729,167	5%
East Kalimantan	613,804	661,652	626,437	4%
Banten	635,499	652,158	607,321	4%
South Sulawesi	461,775	504,322	504,479	3%
South Sumatera	419,392	453,640	458,430	3%
Total	**11,634,342**	**12,480,111**	**12,245,602**	**78.00%**

Source: BPS, 2021

Figure 14: Top 10 Regional FDI by Value US$ mn

Province	2017	2018	2019	2020
West Java	5,143	5,573	5,881	4,794
DKI Jakarta	4,595	4,857	4,123	3,613
North Maluku			1,009	2,409
Banten	3,048	2,828	1,868	2,144
Central Sulawesi	1,546		1,805	1,779
Riau Islands			1,363	1,649
East Java	1,567	1,333		1,575
South Sumatra	1,183	1,079	737	1,544
Central Java	2,373	2,373	2,723	1,364
Southeast Sulawesi			988	1,269
East Kalimantan	1,285			
North Sumatra	1,515	1,228		
Riau		1,033		
Papua	1,924	1,132	941	
Bali		1,002		
Total Top 10	**24,179**	**22,438**	**21,438**	**22,140**
Total FDI by value	**32,240**	**29,307**	**28,208**	**28,666**

Source: BPS, 2021

Figure 15: Top 10 Regional FDI by No. of Projects

Province	2017	2018	2019	2020
DKI Jakarta	8,083	6,499	8,092	16,787
West Java	5,309	4,713	5,526	11,031
Banten	2,479	1,895	2,559	4,288
Bali	1,429	1,490	2,443	3,967
East Java	1,750	1,441	2,142	4,059
Riau Islands	812	804	1,279	2,143
Central Java	955	801	1,249	2,795
West Nusa Tenggara	604	651	1,223	1,776
North Sumatra	564	491	805	1,465
West Kalimantan		305		805
East Kalimantan	340		524	
Total Top 10	**22,325**	**19,090**	**25,842**	**49,116**
Total FDI Projects	**26,257**	**21,972**	**30,354**	**56,726**

Source: BPS, 2021

Figure 16: Top 10 Provincial Minimum Wage (UMP) per Month US$1 = IDR14,784.96

Province	2018	2019	2020	2021
DKI Jakarta	266.6	288.6	298	312
Papua	219.2	237.9	249	249
North Sulawesi	206.4	223.9	235	234
Bangka Belitung	201.3	218.5	229	228
Aceh	197.3	214.1	224	224
West Papua	198.5	212.0	222	225
South Sulawesi	193.5	209.9	220	224
South Sumatra	189.7	205.8	216	215
Riau Islands	187.3	203.3	213	212
North Kalimantan	187.0	203.0	213	212

Source: ASEAN Briefing, 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 characterized by policy reforms, a transition from parliamentary democracy to a more centralized system of "guided democracy" (known as "*demokrasi terpimpin*"), nationalization 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 to be 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 in 2024.

Despite these 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.

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 recognizes 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:

- 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.
- 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 and the regions.

- 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 courts (*Pengadilan Niaga*), which hear bankruptcy and insolvency cases, as well as intellectual property cases; the state administrative courts (*Pengadilan Tata Usaha Negara*), which hear administrative law cases against the government; the Constitutional Court (*Mahkamah Konstitusi*), which hears disputes concerning the legality of laws, dissolution of political parties, general elections, and the scope of authority of a state institution; and religious courts which hear specific religious cases.
- 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, and governor of the Bank Indonesia). Both the state ministers and the departmental ministers head ministries with particular regulatory authority over assigned areas.
- National Ministries, Departments and Bodies: Implementation of Indonesia's laws and regulations is 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 (*badan, instansi or lembaga*) 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.

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 provinces (*provinsi*). 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, 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 laws passed in 1999 and later amended in 2014. Under such laws, the national government and the local governments share regulatory authority over all matters except for policies of foreign affairs, defense, justice, religion and fiscal and monetary which are reserved to the national government.

In addition, some laws and regulations provide that authority over certain sectors or affairs are 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 regencies and municipalities is primarily to formulate local policies and planning. The role of the provinces is primarily to coordinate internal matters among the regencies and municipalities and act as regional policy maker. Regional administration is frequently implemented through regional service agencies known as "*dinas*".

B. Legal and Regulatory Overview of Doing Business in Indonesia

1. Getting the Business Started

Indonesia has become a favored 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 spirit to boost foreign investment, the regulation of foreign direct investment includes several protections for local businesses, manpower, goods and services, and also requirements for minimum local ownership.

Under the applicable laws, a foreigner or foreign company may set up a presence in Indonesian by means of setting-up a Representative Office (Rep-Office) (note that type of the Rep-Office would be heavily depended on the proposed scope of the activities the principal intends to carry out), or a limited liability company (known as a foreign investment company – 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 to 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 agreement/sale and purchase transaction 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 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 to 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) for implementing any construction services in Indonesia. The portions of construction works that must be performed by the BUJKN as a joint operation partner are as follows:

a. in terms of Construction Work and Integrated Construction Work, a minimum 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 Consultancy, a minimum 50% of the work value must be carried out by the BUJKN, and all works must be performed 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 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 project value of IDR10 billion.

Limited Liability Companies

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

a. Foreign capital investment company (PMA company): having any amount of foreign investment, 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 (PMDN company): having only domestic shareholding, 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 limited areas, 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* is 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
- a *Perum* is an entity wholly owned by the national government (without share capital), for the purpose of providing public services.

However, in practice, the line between the two types of state-owned enterprises may be blurred.

Regional-owned Enterprises

Local governments are authorized 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, utilize 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 Presidential Regulation No. 10/2021 as most recently amended by Presidential Regulation 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 summarized 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:

- Business activities that are reserved for domestic investors (cooperatives and small-medium enterprises).
- Business activities that are open to foreign ownership with limitations; and
- Business activities that are subject to special licensing requirements.

The conditions for foreign investment imposed by the Positive Investment List include 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: (a) cultivating and producing class 1 narcotics; (b) gambling / casinos; (c) fishing certain types of fish species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (d) making use of and collecting any living/recently-dead coral (including natural coral) for building materials / lime / calcium / aquariums / souvenirs / jewelry; (e) manufacturing chemical weapons; and (f) 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 implementing regulations required to give effect to the foregoing are expected to be issued during 2021.

The Positive Investment List acknowledges business sectors which 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 issued in 2020.

BKPM makes determinations of 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 (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 245 “Priority Sectors” consisting of several line of businesses focusing on research and development, and involve 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, labor 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 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.

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 threshold under the Indonesia Positive Investment List with reference to the *Klasifikasi Baku Lapangan Usaha* (KBLI).

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

- Execute the deed of establishment and the articles of association of the PMA company before a public notary.
- 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*).
- Open an Indonesian bank account and deposit share capital in said account; and
- Obtain a certificate of domicile (not applicable in DKI Jakarta).

Subsequent to 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), Import Identify Number (API) and Customs Figure (*Akses Kepabean*). This is aligned with the provision of the Omnibus Law that has ended the previous requirement for companies to obtain a separate Company Registry Certificate (TDP) by revoking Law No. 3/1982 on Company Registration Obligation.

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 up the opportunity to conduct a share buyback, subject to MOLHR approval and complying with prevailing laws and regulations.

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

1. 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
2. If the PMA company is a 100% foreign-owned company, the shareholders should state that they do not have any commitments/agreement to sell the shares to any Indonesian third party.

Figure 17: Timeline for Establishment and Basic Licensing of a PMA Company

Timeline for Establishment and Basic Licensing of a PMA Company													
No	Work Description	1st Month				2nd Month				3rd Month			
		1	2	3	4	1	2	3	4	1	2	3	4
1.	Company name reservation												
2.	Drafting and preparing the draft of Deed of Establishment (DOE) of the PMA Company												
3.	Finalizing and executing the DOE of the PMA Company												
4.	Obtaining the ratification of in-corporation of the PMA Company issued by MOLHR and arranging announcement of PMA Company's legal entity in the State Gazette												

Timeline for Establishment and Basic Licensing of a PMA Company													
5.	Investment database registration on the OSS system												
6.	Obtaining Business Identification Number (NIB) (including the obtainment of Company Registration Certificate (*Tanda Daftar Perusahaan*), 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 on Job Creation - 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 a number of existing regulatory frameworks that hinder investment. The Omnibus Law seeks to amend, delete, and/or add many 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:

1. Investment ecosystem and businesses improvement.
2. Employment.
3. Facilities, protection, and empowerment of cooperatives as well as micro, small and medium enterprises.
4. Ease of doing business.
5. Research and innovation support.
6. Land acquisition.
7. Economic zone.
8. Central government investment and acceleration of national strategic projects.
9. Government administration implementation to support job creation; and
10. 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 fulfillment 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 an approval from 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 a number of 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 abovementioned sectors cover the following:

1. Marine affairs and fisheries.
2. Agriculture.
3. Forestry.
4. Energy and mineral resources.
5. Nuclear.
6. Industry.
7. Trade, legal metrology (the application of legal requirements to measurements and measuring instruments), halal product guarantee and standardization of suitability assessment.
8. Public works and public housing.
9. Transportation.
10. Health, medicine and food.
11. Education and culture.
12. Tourism.
13. Religious affairs.

14. Postal, telecommunications and broadcasting; and
15. Defense and security.

Other than business licensing streamlining, the Omnibus Law also presents investment-related breakthroughs that will 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. The Indonesian government has been working with various stakeholders to roll out approximately 44 (forty-four) required implementing regulations, which are being expected to be issued within 3 (three) months. Whilst a number of parties are of the view that a 3-month period is optimistic, it will be interesting to see how the roll-out will eventuate and the actual impacts which may be created. But the messages from the Indonesian government are clear that the law is intended to accelerate and provide a more friendly investment and business climate to support further growth of the Indonesian economy.

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 has now 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 Indonesia[9].

Indonesian Company Law

An Indonesian limited liability company (*Perseroan Terbatas*) 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

[10] "Presiden Jokowi: Undang-undang Cipta Kerja tetap berlaku," Antara News, 29 November 2021

obtained and ratify such assumption of obligations in the first general meeting of shareholders of the newly established company.

The Company Law recognizes 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; a shareholder directly or indirectly, with bad intention, utilizes 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 company that are exempted from the minimum of 2 (two) founders' requirement. Regional-owned enterprises, village-owned enterprises, and companies that meet criteria of micro-small enterprises may be formed by a single individual. As such, it is now allowable 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 to MOLHR. The criteria of micro and small enterprises will be based on the net worth and annual sales revenue of the business. It is noteworthy, however, that when such a company is no longer classified as a micro and small enterprise, it shall be reclassified as an ordinary type of limited liability company. Further provisions on this will be included in the new implementing regulations, which are expected to be issued during 2021.

Corporate Governance

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

Board of Directors

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

Members of a Board of Directors shall be appointed for a certain period and may be re-appointed. If there is a change in the composition of Board of Directors

(either by way of new appointment, replacement or dismissal), the Board of Directors 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.

In addition, specific industry and sectoral regulations may also require a minimum number of members of the Board of Directors in a particular company, for example, an insurance company would need to have at least 3 (three) directors and one of whom shall be a director specifically in charge of compliance matters.

Board of Commissioners

The Board of Commissioners shall be responsible for the supervision of the company. The Board of Commissioners shall consist of at least 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, Board of Directors and other members of the Board of Commissioners.

Members of the Board of Commissioners shall be appointed for a certain period and may be re-appointed. If there is a change in the composition of Board of Commissioners (either by way of new appointment, replacement or dismissal), the Board of Directors 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.

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 Board of Commissioners (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

The Company Law and other relevant regulations require companies which 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.

Capitalization and Shareholding Structure of a Private Company

The Company Law initially provides that the minimum Authorized capital of an Indonesian company is IDR50 million (approximately US$3,565) and at least 25% of such authorized 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 Authorized Capital and Registration for Establishment, Change, and Dissolution of Companies Classified As Micro and Small-Scale Enterprise, which sets out that the authorized 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 authorized 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 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 (preemptive 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 Board of Directors 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 reflects the portion of the company's ownership.

The value of shares must be stated in Rupiah 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 Board of Directors and such relevant shareholders shall be given an evidence of share ownership (a share certificate). In addition,

the Board of Directors shall also make and keep a special register which contains information regarding shares in the company or in other companies owned by the members of the Board of Directors and Board of Commissioners 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 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 particular 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 Bahasa Indonesia) 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 Presidential Regulation 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

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 juncto 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:

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

The business entity has an obligation 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 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 threshold as mentioned above. The notification must be submitted at the latest 30 (thirty) days after the merger or acquisition is effective. KPPU has the authority to impose monetary fines from IDR1 billion to IDR25 billion on a business entity that does not fulfill 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 (a) company's name, (b) its shareholders, (c) 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 with the exception of 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 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.

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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).

In the event that 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 “public companies” or perusahaan terbuka, which have the “Tbk.” suffix following their corporate name) are subject to regulations promulgated by the Indonesian Financial Services Authority (commonly known as the OJK, which serves as Indonesia’s capital markets regulator) and, for listed companies, the rules of the IDX. 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 party that owns more than 50% of a company's shares; or
- A party that has the ability to 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:

- An agreement with other shareholders that shows a possession of more than 50% of the voting rights.
- A document/information providing evidence of the authority of a shareholder to control financial and operations policy of the publicly listed company based on the articles of association/agreement.
- A document/information providing evidence of the authority to appoint or dismiss most members of the BOD and BOC.
- A document/information providing evidence of the power to control the majority voting rights in the BOD and BOC meetings; and/or
- 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 effected 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 convey such announcement directly to the target company and OJK.

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

- The name of the target company.
- An estimate of the number of shares that is proposed to be acquired.
- 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.
- The amount of any securities in the target which are already owned by the prospective acquirer (if any).
- The purpose of control.
- Any plan, agreement or determination among parties to cooperate in an organized group to act as the potential acquirer (e.g., acting as a consortium).
- The proposed method and procedure for the negotiation; and
- 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 to 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:

- An amendment to the articles of association of a public company, or an increase in authorized capital, requires the approval of 2/3 of the shareholders with valid voting rights in attendance at the shareholders meeting; and

- 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 preemptive 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 preemptive rights, or to transfer their right to acquire the newly issued shares, to an extent that allows the acquisition of a controlling interest in 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:

- 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.
- 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.
- The acquirer's reason for pursuing the acquisition.
- If applicable, a statement that the new controlling party is an organized group.
- The beneficiary of the acquirer.
- The nature of the affiliate relationship; and
- Description of the approval from the authorized 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:

- Any shares owned by the shareholder from whom the new controlling party acquired the shares to effect the acquisition.
- 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.
- 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).
- Shares owned by any shareholder who owns at least 20% of shares of the public company; and
- 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, authorizing 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 sellers' 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

In the event that 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:

- OJK issuing a written approval of the voluntary tender offer.
- 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 the voluntary tender offer statement is received by OJK; or
- 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 liberalization) 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. Further, on 18 February 2020, the Indonesian government enacted Presidential Regulation No. 32/2020 on Infrastructure Financing through Limited Concession Rights, which introduces an alternative scheme for financing public infrastructure through utilization 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 categorized 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. 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. That being said, 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 – 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 National Medium Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or 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 on 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 is in contrast to the various Build-Own-Transfer, Build-Own-Operate and other privatization schemes conducted by Indonesia in the 1980s and 1990s, where many projects were initiated through direct negotiation with the government.

In this regard, Presidential Regulation No. 38/2015 and the Ministry of National Development Planning Agency Regulation No. 4/2015 as amended by Ministry of National Development Planning Agency Regulation No. 2/2020 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:

- Transportation infrastructure.
- Road infrastructure.
- Water resources and irrigation infrastructure.
- Drinking water infrastructure.
- Centralized wastewater management infrastructure system.
- Local wastewater management infrastructure system.
- Waste and/or hazardous and toxic wastewater management infrastructure system.
- Telecommunications and informatics infrastructure.
- Electric power infrastructure.
- Oil & gas and renewable energy infrastructure, including bio-energy.
- Energy conservation infrastructure.
- Urban facilities economy infrastructure.
- Education, research, and development facilities infrastructure.
- Sports, art, and cultural facilities infrastructure.
- Infrastructure zone.
- Tourism infrastructure.
- Health care infrastructure.
- Prison infrastructure.
- Public housing infrastructure; and
- 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:

- Law No. 17/2019 regarding Water Resources (as amended by the Omnibus Law).
- Law No. 38/2004 regarding Roads (as amended by the Omnibus Law).
- Law No. 23/2007 regarding Railways (as amended by the Omnibus Law).
- Law No. 17/2008 regarding Maritime Transportation (as amended by the Omnibus Law).
- Law No. 18/2008 regarding Waste Management.
- Law No. 1/2009 regarding Aviation (as amended by the Omnibus Law); and
- 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 Indonesia 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 PDAMs. 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, service performance standards, sanctions, dispute resolution mechanisms, force majeure conditions 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 Presidential Regulation 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 through the use of 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. Presidential Regulation 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. IIGF has been mandated

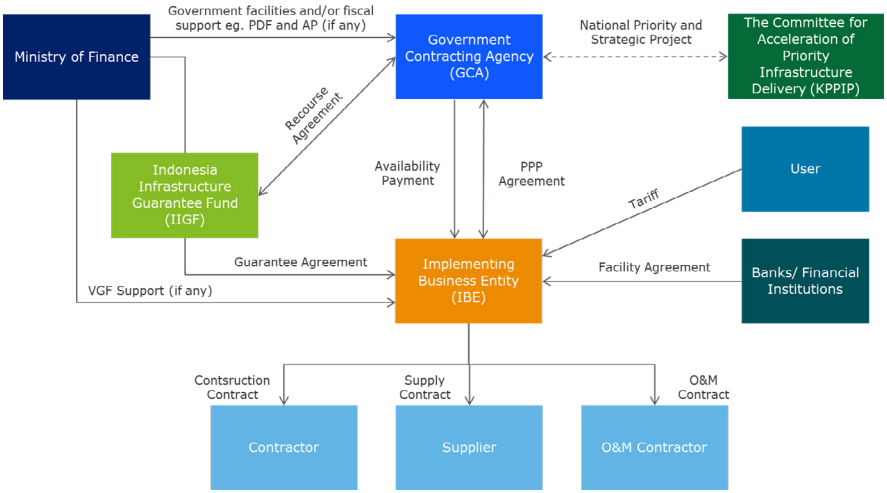
by the Ministry of Finance to provide a "single window" for providing government guarantees for infrastructure PPP projects in order to mitigate any project risks of the private sector, thus improving the creditworthiness, bankability and quality of infrastructure projects in the country (such as, in 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 into 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 current 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 the following diagram:



Concession Scheme (Assets Recycling)

Presidential Regulation 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 the Limited Concession Scheme ("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.

The asset utilization in LCS may reduce the risk that may be incurred when the government or state-owned enterprises utilize the respective asset by itself. In most cases, the government or state-owned enterprises may not have sufficient capacity to manage the assets. Therefore, it is hoped that a private sector investor will be able to manage the asset as well as bring innovation to the project. On the other side, as an alternative to conventional funding, the implementation of LCS is similar to asset recycling which is seen as a way for government to build much-needed infrastructure without incurring more debt, while maintaining or potentially improving existing infrastructure service delivery.

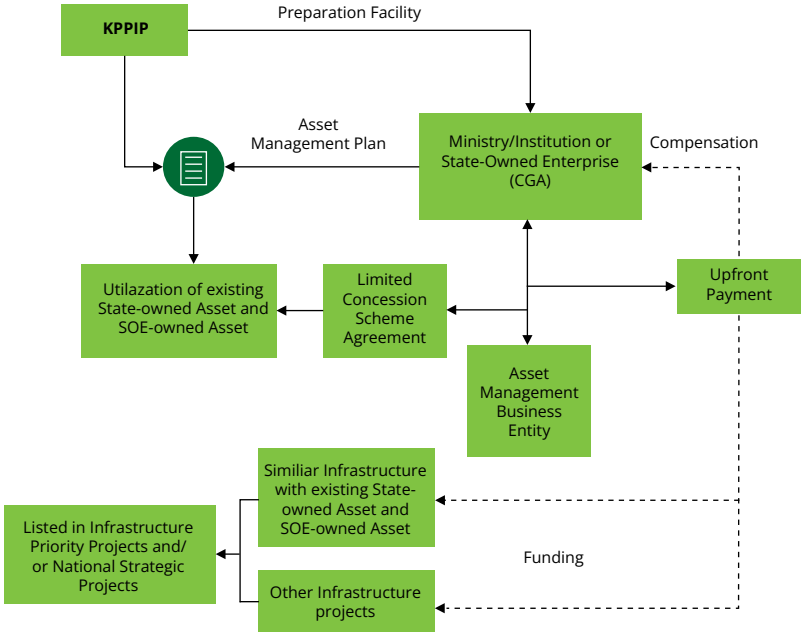
In order to provide clarity on LCS, Presidential Regulation No. 32/2020 elaborates the categories of infrastructure assets that can be offered to the private sector through LCS, namely:

- Transportation.
- Toll road.
- Water resources.
- Drinking water supply system.
- Wastewater treatment system.
- Waste management system.
- Telecommunications and information system.
- Electricity; and
- Oil, gas, and renewable energy.

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

- Must be commercially operated for a duration of at least 2 (two) years.
- Requires an increased efficiency of operation pursuant to applicable international standards.
- Indicative lifecycle of assets for at least 10 (ten) years going forward.
- If the asset is recorded as State owned, there needs to be an audited financial report of ministries/agencies in accordance with the Government Accounting Standard for the prior period; and
- If the asset is recorded as state-owned enterprise owned, 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 user of the relevant State asset or the president director of the state-owned enterprise will be assisted by the Committee for Acceleration of Priority Infrastructure Delivery (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 State owned, 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 Public Service Agency (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 state-owned enterprise owned, 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 the following diagram:



5. Good Corporate Governance Implementation

Implementation of Good Corporate Governance 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 emphasizes the responsibilities of good corporate governance from both Limited Liability Companies' and investors' perspectives. Good corporate governance principles include transparency, accountability, responsibility, independency, and fairness. Complementary to these regulations, the Coordinating Minister for Economic Affairs, has stated that good corporate governance 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 government in establishing clean and credible government.

In implementing Good Corporate Governance, 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 for 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 Board of Directors (BoD) while Internal Audit functions as an assurance provider to the Board of Commissioners (BoC) and BoD.

Risk Management

According to the Indonesia Corporate Governance Manual prepared by the IFC, successful risk management is central to the success of all companies. In risk management, both BoC and BoD are responsible for[11]:

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

BoD is in charge of 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[12]:

- The BoD shall establish and implement sound risk management practices within the company, covering all aspects of the company's activities.
- 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.
- To ensure proper implementation of risk management, the company shall have a work unit or a person in charge for 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 Standardization Body (BSN) launched Indonesia National Standard (SNI) 8615:2018 ISO 31000:2018 Risk Management Guide.

[11] Indonesia Corporate Governance Manual 2nd Ed. (International Finance Corporation, 2018)
[12] Indonesia's Code of Good Corporate Governance (National Committee on Governance, 2006)

Internal Control

Referring to the Internal Control – Integrated Framework (Committee of Sponsoring Organizations of the Treadway Commission 2013), internal control is a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance. [13]The establishment and maintenance of an effective internal control system are required in risk management.

Based on The Code of Good Corporate Governance Indonesia 2006 issued by the National Committee on Governance[14]:

- 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.
- Issuers and public companies are required to have an internal control function or unit.
- The internal control unit should assist the BoD in achieving the company's 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.
- The internal control unit is responsible to the president director or the director in charge of this function. 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[15]:

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

[13] Internal Control—Integrated Framework (Committee of Sponsoring Organizations of the Treadway Commission, 2013)
[14] Indonesia's Code of Good Corporate Governance (National Committee on Governance, 2006)
[15] Indonesia Corporate Governance Manual 2nd Ed. (International Finance Corporation, 2018)

As mentioned previously, findings are communicated by Internal Audit to 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 IIA's 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 recognizes COSO Internal Control — Integrated Framework (2013) as the leading standard for determining what constitutes effective internal control.

6. Capital Market

IDX

IDX organizes 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 summarizes 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

No	Matters	Main Trading Board	Development Trading Board	Acceleration Trading Board
3.	Financial statements	- Have been audited for at least 3 years - Audited Financial Statements for the last 2 years and the latest interim Audited Financial Statements (if any) which have obtained an Unqualified Opinion (*opini tanpa modifikasi*)	Have been audited for at least 12 months and the latest interim Audited Financial Statements (if any) which have obtained an Unqualified Opinion (*opini tanpa modifikasi*)	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 acquire the Unqualified Opinion (*opini tanpa modifikasi*)
4.	Capital	Net Tangible Assets ("NTA") min. IDR100 billion	- NTA min. IDR5 billion; or - Business profit (the last financial year) min. IDR1 billion & Market Capitalization Min. IDR100 billion; or - Revenue (the last financial year) min. IDR40 billion & Market Capitalization min. IDR200 billion	N/A
5.	Total number of shareholders	> 1,000	> 500	> 300
6.	Minimum number of shares owned by minority shareholders	300 million shares and meet the requirements: - At least 20% of total issued shares which have equity value before initial public offering of less than IDR500 billion - At least 15% of total issued shares which have equity value before initial public offering from IDR500 billion up to IDR2 trillion, or - At least 10% from issued shares which has equity value before initial public offering of more than IDR2 trillion	150 million shares and meet the requirements: - At least 20% of total issued shares which have equity value before initial public offering of less than IDR500 billion - At least 15% of total issued shares which have equity value before initial public offering from IDR500 billion up to IDR2 trillion, or - 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 Board of Commissioners	At least 30% of the Board of Commissioners	- 6 (six) months transition for issuers having medium-scale assets - 1 (one) year transition for issuers having small-scale assets
9.	Corporate Secretary	✓	✓	- 6 (six) months transition for issuers having medium-scale assets - 1 (one) year transition for issuers having small-scale assets
10.	Audit Committee and Internal Audit Unit	✓	✓	- 6 (six) months transition for issuers having medium-scale assets - 1 (one) year transition for issuers having small-scale assets
11.	Remuneration and Nomination Committee	✓	✓	- 6 (six) months transition for issuers having medium-scale assets - 1 (one) year transition for issuers having small-scale assets

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.

Financial Services Authority (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 and its authority is intended to be broader than its predecessors. OJK is authorized 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, to address consumer service complaints and to 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.

In light of the COVID-19 pandemic situation, the Indonesian government is also considering amending certain laws and regulations governing OJK with a view to streamlining respective roles and functions to better cater to and respond to adverse impacts caused by the COVID-19 pandemic. It would be interesting to see the outcome of this proposed regulatory roll-out and its impact on the current Indonesian financial institutions landscape.

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 utilized 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 through 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. Municipals bonds are intended to have a maturity of one-year or more, to be denominated in Rupiah and to 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 new regulation by OJK in connection with the issuance of debt securities without public offerings will regulates 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, and include 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:

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

Subsidiaries should, however, be excluded from consolidation if:

- 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
- 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:

- Merger, share purchase, consolidation or establishment of a joint venture company.
- Stock split or dividend.
- Income from extraordinary dividend.
- Acquisition or loss of an important contract.
- Significant new product or innovation.
- Change in control or significant change in management.
- Call for the purchase or redemption of debt securities.
- Sale of a material amount of securities to the public or in a private placement.
- Purchase, or loss from the sale of, a material asset.
- Relatively important labor disputes.
- Important litigation against the company and/or the company's directors or

commissioners.
- An offer to purchase securities of another company.
- Replacement of the company's auditor.
- Replacement of a trustee of the company's debt obligations.
- A change in the company's financial year; and
- 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 the transaction is not offered to Indonesian citizens through the mass media, is offered to 100 parties or less and sold to 50 parties or less.

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

- Such capital increase will not exceed 10% 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
- The primary purpose of the capital increase is to improve the financial position of a company that is experiencing one of the following conditions:
  - 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.
  - 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
  - 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 preemptive 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 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 to 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 authorization from OJK.

Effectiveness of Registration Statement

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

- Based on the passage of time:
  - 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
  - 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.

- 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:

- Provide the required prospectus as a part of a registration statement to the public or prospective buyers.
- Submit the prospectus and supporting documents through SPRINT ("Sistem Perizinan Otoritas Jasa Keuangan"); and
- 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 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

In the event that an Indonesian public company intends to increase its capital, the existing shareholders of the said public company have a preemptive right to acquire a portion of the newly issued securities in proportion to the percentage of their respective current shareholdings.

In the event that 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 ("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:

   - Open market operations in the money market both in Rupiah and foreign currencies.

- Setting the discount rate.
- Determining minimum mandatory reserves; and
- 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 pandemic.

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 centralize 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 Categorization based on its Core Capital

Initially, OJK prescribed the categorization 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) – and such categorization 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"**) has replaced the BUKU categorization and provides a new set of categorizations in the form of *Kelompok Bank berdasarkan Modal Inti* (**"KBMI"**) as follows:

- KBMI 1: banks with core capital amounting to IDR6 trillion (six trillion Indonesian Rupiah).
- KBMI 2: banks with core capital of more than IDR6 trillion (six trillion Indonesian Rupiah) up to IDR14 trillion (fourteen trillion Indonesian Rupiah).
- KBMI 3: banks with core capital more than IDR14 trillion (fourteen trillion Indonesian Rupiah) up to IDR70 trillion (seventy trillion Indonesian Rupiah); and
- 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 Presence in Indonesia Banking ("POJK 39/2017"), single presence 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:

- Owns 25% or more of the total shares issued of a company or bank and has voting rights; or
- 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:

- Controlling shareholder of two respective banks that conduct business activities with different principles, namely conventional and sharia principles; and
- Controlling shareholder of 2 banks, one of which is a joint venture bank.

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

- Merger or consolidation - the controlled bank shall be merged or consolidated with the controlling bank; establishing a holding company in the banking sector; or

- 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:

- 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).
- 30% of a bank's capital, for the category of shareholders in the form of a legal entity non-financial institution(s); and
- 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:

- Have a commitment to support the development of the Indonesian economy by owning shares in the bank.
- Obtain recommendations from the supervisory authority of the country of origin for legal entities of financial institutions; and
- 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 realization 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 criticized 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).

Offshore borrowings for public infrastructure projects (including those being implemented as a BOT or PPP) have required the approval from the Ministry of Finance (which has been assuming the role of the previous offshore commercial loan/PKLN team). 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 IDR 50,000,000. 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. 18/19/PBI/2016, dated 7 September 2016, concerning Transaction of Foreign Exchange Against Rupiah between Banks and Foreign Parties, Indonesian banks are prohibited from conducting certain Rupiah transactions with foreign parties.

Rupiah transactions restricted under this regulation include provision of credit/facility in Rupiah and/or foreign currency, purchase of bonds issued by foreign parties in Rupiah, etc. However, there are several exclusions to this prohibition which permits banks to conduct transaction 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 asset, etc.).

Purchase of Foreign Currency

Referring to Bank Indonesia Regulation No. 18/18/PBI/2016, dated 5 September 2016, concerning Foreign Exchange Transactions against Rupiah with Domestic Parties requires that, for purchases of foreign currency of at least US$100,000 or its equivalent per month (either for the purpose of making certain payments or otherwise), 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 on the basis of 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, 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 (1) refinancing or (2) 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 fulfillment 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 and 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 also 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 Ministry of Energy and Mineral Resources Decree No. 12/2020.

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 and downstream activities cover processing, transporting, storing and trading. The Minister of Energy and Mineral Resources has general authority over Indonesia's energy sector (MIGAS). Under MIGAS, 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, of Production Sharing Contracts (PSCs) and other types of Cooperation Contracts. For the downstream sector, Down Stream Oil and Gas Regulatory Body (*Badan Pengatur Hilir Minyak dan Gas Bumi* -BPHMIGAS) 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 organized by the central government. The Omnibus Law also allows businesses to engage in downstream oil and gas business activities upon the fulfillment of business licensing requirements set by the central government and accordingly, the businesses that have fulfilled the 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 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).

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 had been 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 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 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, centralization of authority for mineral and coal management, re-arrangement of licensing matters, investments and divestment obligations, continuation of operations of Contracts of Work and Coal Contracts of Work holders, etc.

To encourage downstream activities, the Omnibus Law offers a new incentive in the form of 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 incentivize 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:

- Through a consideration of energy independence (kemandirian energi) and the fulfillment of various requirements relating to industrial raw materials; and
- Through a consideration of volumes of coal utilized 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. Before 2009, a separate licensing system (the issuance of mining authorizations (*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 of 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 for 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 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 & 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 authorized by a Mining Business License (*Izin Usaha Pertambangan* or IUP) while mining in state reservation areas is authorized by a Special Mining Business License (IUP *Khusus* or IUPK). Based on the 2020 Mining Law, the authority to issue mining-related licenses is centralized with the national government. However, 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 Authorization 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 prioritized 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 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. However, the drafting of Mining Law 3/2020 is not clear for integrated IUP metal/coal mining companies on whether the 10 (ten) year extension period is applicable until the life of the mine expires or it is for the usual 2 x 10 (ten) years extension period. We expect that this matter will be clarified in the upcoming implementing government regulations.

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 utilize 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 categorized 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:

- Recommendation letter for approval of the investment from the governmental authority that issued the IUP held by the mining company in question; and
- Authorization 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 (local owned) company, and the acquirer is foreign, the parties must complete the requirements for conversion to a PMA (foreign capital investment) 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 fulfill 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 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 fulfill the administrative, technical, 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 restructuring 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 licenses 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. In the event that direct divestment cannot

be implemented after the gradual divestment procedures, such divestment can be carried out through an initial public offering of the mining company on the Indonesian Stock Exchange.

However, the 2020 Mining Law does not specifically provide detailed timing requirements for such divestment. Previously, divestment was regulated to be started after five years of production as follows:

- sixth year of production: 20%
- seventh year of production: 30%
- eighth year of production: 37%
- ninth year of production: 44%
- 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, they may be offered to Indonesian private business entities by means of tender. Contracts of Work also may 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 business, and the implementing regulations thereof consist of 45 Government regulations and 4 Presidential regulations.

With respect to the construction sector, Government Regulation No. 14/2021 **("GR 14/21")** regarding the amendment of Government regulation No. 22/2020 (**"GR 22/20"**) on implementing regulations of Law Number 2/2017 on Construction Services (12 January 2017) (the **"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 has passed a long-awaited implementing Construction Services regulation, which was GR 20/20.

GR 22/20 introduced significant changes to the implementation of the Construction Services Law. The following regulations have been revoked and are no longer applicable:

1. 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).
2. 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
3. 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 includes the following activities:

1. **Construction consultancy services**, 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:
   a. General construction consultancy services that cover architecture, engineering, integrated engineering, landscape architecture and urban planning; and
   b. Special construction consultancy services that cover scientific and technical consultancy, and technical testing and analysis.

2. **Construction work services**, 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:
   a. General construction work services that cover building construction and civil construction.
   b. Special construction work services that cover installation, special construction, prefabricated construction, construction finishing, equipment rental and preparation.

3. **Integrated construction work services** means combination of construction consultation and construction work. These covers 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 22/20 also defines type of works to which a construction services company may provide client with the services. 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 5/21"**), the mandatory required capital for construction services companies has been amended subject to the types of business activities. Note that GR 5/21 is also an implementing regulation of the Omnibus Law that serves the purposes of the Omnibus Law in the construction sector. Under GR 5/21, minimum capital requirements comprise:

1. 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.
2. 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.
3. 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 5/21 sets out capital requirements for foreign construction service representative offices (**"Representative Office"**)[16] , under which the minimum capital requirement for a Representative Office carrying out general construction consultancy services shall be IDR2 billion, and for Rep Offices carrying out general construction work shall be at least IDR35 billion.

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

A foreign construction services company (BUJKA) may establish a Representative Office ("BUJKA RO") in order to bid for potential projects and develop construction projects in Indonesia. Unlike a foreign company representative office (*Kantor Perwakilan Perusahaan Asing* – "KPPA") or a foreign trade company representative office (*Kantor Perwakilan Perusahaan Perdagangan Asing* – KP3A), a 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.

[16] 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 investment company (*penanaman modal asing* – **"PMA"**) or a Representative Office (**"RO"**).

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 ("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:

1. Having large-scale qualification; and
2. Holds construction business license (IUJK).

In addition, it is noteworthy that Minister of Public Works and Public Housing (**"MoPWPH"**) Regulation No.9/2019 (**"MoPWPH Reg 9/19"**)[17] provided additional criteria, namely as follows:

1. Is a limited liability company (established in Indonesia); and
2. Is a state-owned enterprise (BUMN), regional-owned enterprise (BUMD), or privately-owned enterprise (BUMS) which is 100% owned by an Indonesian citizen and/or national business entity.

Work Share Requirements

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

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

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

9. Intellectual Property Rights

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.

[17] MoPWPH 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 IUJK or IPBUJKA.

Laws and regulations have been promulgated to implement the various conventions and treaties to which Indonesia is party and to establish international standards of intellectual property protection. However, despite such legislative developments, infringement of intellectual property rights is still common, in particular in terms of piracy and trademark counterfeiting, and Indonesia still 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. 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 signing up 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 as amended by the Omnibus Law (**"Trademark Law"**) a trademark is a distinguishable sign and is used in the trading of goods and services. Trademark in Indonesia shall be protected on a first-to-file basis. Meaning, 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 Indonesian language for approval. Foreign applicants may also register trademark by appointing a local Intellectual Property consultant as proxy. The approved application shall be published in the Official Trademarks Report (or a proper substitute) which shall be valid for ten years. Such registration may also be renewed for consecutive ten-year periods. It is noteworthy to add that renewal of trademark must be filed within 6 (six) months before the expiry of 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 to be reduced to a maximum period of 30 (thirty) days - provided that there is no opposition by a third party. In the event where 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 (**"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 a copyright have the exclusive right to publish or reproduce a work or allow a third party to do the same. The Copyright Law also recognizes "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 MOLHR 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 MOLHR is deemed to be the author of the work.

The length of protection of copyright varies, for:

- Copyright on books and other written works: the copyright is valid for the lifetime of the author and a period of seventy years after their death.
- 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 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 as amended by the Omnibus Law ("Patents Law") provides protection for regular patent and simple patent. A patent shall be granted for a novel invention, which has inventive aspect and capable of industrial application. Similar to 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 micro-biological processes), and a

simple patent can be obtained for certain tangible inventions. Patents cannot be obtained for:

- Inventions that are deemed contrary to public order, morality and the existing laws and regulations.
- Surgical methods.
- Scientific and mathematical methods.
- Plants and animals (other than micro-organisms); or
- Essential biological processes for production of 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 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 simple patent now has to have 'a practical use' to be registerable in the DGIP and shall 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 acceptable or not. Currently, it takes 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 faster as the 12-month period in the current regime.

Trade secrets

Pursuant to Law No. 30/2000 (Trade Secrets Law), trade secret means any information that is not publicly known about a technology and/or business that has economic value which 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 MOLHR; 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 (Industrial Designs Law) an industrial design refers to the creation of forms concerning shape, configuration or composition of lines, colors or a mixture of both to create a two or three dimensional form used as a product, consumer good or industrial commodity.

Industrial designs 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.

10. Dispute resolution

Although numerous legal reforms have been instituted since independence, the fundamentals of Indonesia's judicial system are still based on Dutch colonial laws and codes.

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. Mainly 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.

Civil proceedings

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 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.

Foreign court judgments will not be enforced in Indonesia (this is one of the reasons why a party may choose to include an arbitration clause in their contracts relating to Indonesia). New court proceedings have to be commenced and the whole matter has to be re-litigated under Indonesian law. However, a foreign judgment may serve as supporting evidence when the matter is re-litigated in Indonesia.

The Head of the Supreme Court of the Republic Indonesia on 13 March 2014, 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 public, religious, state administration, and military judicatures ("SEMA No. 2/2014") setting out a new benchmark for adjudicating a dispute in a time-efficient manner and thereby overriding 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 ("KEPMA No. 26/2012").

The Supreme Court Decision (KEPMA) constitutes a positive law which sets out an array of court service standards, such as, among others, maximum court proceedings period, court costs, remedies, complaint, class action and execution services, all of which must abide by the entire judiciary in Indonesia as referred to in Law No.48/2009 on Judicial Power. The Supreme Court Circular Letter, besides that, is a directive that deals with a specific subject matter that had been previously governed by the KEPMA, which in this context is the maximum court proceedings period.

It is important to note that in general the disputing parties cannot always expect the judges to comply with KEPMA requirements, given that the proceedings period may also be affected by unpredictable circumstances that might occur during the proceedings, ranging from the addition of evidence and/or the number of disputing parties or witness(es) to be called at the hearing up to the change of the adjudicating judges due to their promotion.

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 the judges to settle the cases more quickly than was possible under KEPMA 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:

1. Industrial relations (manpower-related) dispute - 50 days as of the first hearing, excluding the cassation stage, which require 30 days from receipt of the petition.
2. Bankruptcy proceedings - 60 days from registration of the bankruptcy petition, excluding the cassation which requires 60 days from receipt of the petition.
3. Tax dispute proceedings - 6 months from receipt of the lawsuit, excluding the

appeal and case review stages which require 12 months or maximum of 6 months from the receipt of the petition, respectively.
4. Gross human rights violation proceedings - 180 days from the handover of the case from the Attorney General's Office.
5. Maritime crime proceedings - 30 days from the handover of the case from the public prosecutor; and
6. Criminal corruption proceedings - 120 days from the handover of the case from the public prosecutor, excluding the appeal and cassation stage which require 60 days and 120 days from receipt of the case by the High Court and the Supreme Court, respectively.

New dispute management system

Under KEPMA No. 26/2012, a new electronic-based dispute registration had been introduced to replace the previous manual one via postal service or direct registration for the sake of effective supervision and in compliance with this new directive. This new system is in line with the principle of simple, swift, and low-cost justice being adopted in the Indonesian judicial system.

Arbitration

Foreign investors may choose to settle a commercial and trade dispute through 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, there has in the past been some inconsistency in how Indonesian courts have in practice enforced foreign arbitration awards. In principle, the foreign arbitration awards should be able to be enforced against assets in Indonesia if the following conditions are complied with:

- 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).
- The award is not contrary to public order in Indonesia.
- The matter being arbitrated is within the scope of 'commercial law' or concerns 'rights which according to law are fully controlled by the parties to the dispute'; and
- An enforcement order (exequatur) has been obtained from the District Court of Central Jakarta.

11. 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 utilizing the land for the benefit of the people. However, there are types of land title which are attached to the land, which can be privately owned, and which permit holders of such titles to utilize 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 the BAL the following types of land rights are of importance to an investor:

- Right of Ownership (*Hak Milik* – **"HM"**): similar to freehold ownership; only available to Indonesian citizens; no time limitation.
- 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).
- 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.
- Right to Use (*Hak Pakai* – **"HP"**): right to use land owned by a third party; available to Indonesian citizens, Indonesian companies, 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).

Land acquisition

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

In relation to business spatial utilization, 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 OSS Institution. The authority to implement spatial planning lies with the Minister of Agrarian Affairs and Spatial Planning. The Omnibus Law no longer requires stakeholders (government & businesses) to fulfill the conditions set out under a spatial utilization license. Instead, the stakeholders are now only required to fulfill the suitability of spatial utilization activities (*kesesuaian kegiatan pemanfaatan ruang*) requirements as set out in GR 21/2021. It is noteworthy that the Omnibus Law also maintains the effectiveness of pre-existing location permits (a similar kind of licensing issued under the previous regulatory regime) until their expiry dates. The requirements to register the confirmation on the suitability of spatial utilization activities as stipulated in the GR 21/2021are set out below:

a. Location coordinates.
b. The need for land area for space utilization activities.
c. Land tenure information.
d. Business type information.
e. Building floor plan; and
f. Floor plan of the building.

Title evaluation for registered land

The National Land Agency (*Badan Pertanahan Nasional* or "BPN") is the national agency that is responsible to maintain 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 on and dispute over the land, and the measurements of the area.

Relinquishment of title

In a case where the proposed piece of land is subject to a right which 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 right holders may be required to relinquish their land rights for the development of public infrastructure project 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 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 to increase in the investment ecosystem, and the acceleration of National Strategic Projects, and the addition of several provisions, which 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, 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.

Title evaluation for unregistered 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 the piece of land in question. Typically, this involves review of 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*).

Environmental Law

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

- Singular AMDAL (AMDAL *tunggal*): for a business activity under the jurisdiction of one regulator (e.g. a business activity that is in one sector).

- Integrated AMDAL (AMDAL *terpadu*): for a business activity that is under the jurisdiction of multiple regulators.
- 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:

- Terms of Reference.
- Environmental Impact Statement (*Analisis Dampak Lingkungan* – **"Andal"**).
- Environmental Management and Monitoring Plan (*Rencana Pengelolaan Lingkungan Hidup dan Rencana Pemantauan Lingkungan Hidup* – **"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 curtain 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 the protected areas). The criteria of significant employment impact shall refer to:

- Land and landscape transformation.
- Natural resources exploitation, both renewable and non-renewable.
- Processes and activities that may potentially cause environmental pollution and/or damage as well as waste and degradation of natural resources in their utilization.
- Processes and activities whose results may affect the natural environment, the artificial environment, as well as the social and cultural environment.
- Processes and activities whose results will affect the preservation of natural resource conservation areas and/or protection of cultural heritage.
- Introduction of types of plants, animals and microorganisms.
- Manufacture and use of biological and non-biological materials.
- Activities that have a high risk and/or affect national defense; and/or
- Application of technology that is estimated to have great 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, or delivery of a Letter of Undertaking of Environmental Management and Monitoring, known as SPPL.

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 must 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.

12. 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 (the Currency Law). The Currency Law provides that, subject to certain exceptions, 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:

- Certain transactions for the purpose of state budget implementation.
- Receiving or accepting grants from overseas or grants given overseas.
- International trade transactions.
- Bank deposits denominated in foreign currencies; and
- 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 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 OECD Anti-Bribery Convention, the UK Anti-Bribery Act and similar national laws to the extent they may be subject to them.

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

- Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* or "KPK"): an anti-corruption supervisory institution which 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.
- National Ombudsman Commission (*Komisi Ombudsman Nasional*): established in 2000, receives reports and has the authority to initiate investigations of irregularities in the public sector.
- State Audit Board (*Badan Pemeriksa Keuangan* or "BPK"): a high state institution in Indonesia with 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 legalized by the President. Findings from BPK investigations are reported to the legislature.
- 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. The 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:

- Capital.
- Profit, bank interest, dividends and any other revenue.
- 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.
- Additional funds required for investment financing.
- Funds for loan repayment.
- Payments of royalties or interest.
- Income of any foreign individuals working in any investment companies.
- The proceeds of any sale or liquidation of an investment.
- Compensation for any loss.
- Compensation for any takeover.
- Payment made for technical assistance, payable costs for technical service and management, payment made under project contracts and payment for intellectual property rights; and
- 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 to be objective conditions.

In the event 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. In the event 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 be in 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 authorization 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 legalization of signatures, documentation registrations or 'true-copy' certifications.

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

Such documentation may include powers of attorney authorizing 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 favor 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 Official Certifier of Land Deeds).

Competition Law

Business competition in Indonesia (antitrust law) is primarily regulated by the Competition Law, as administered by the KPPU. The Competition Law prohibits certain types of agreements and activities (e.g., formation of a cartel, price fixing etc.) and the abuse of a dominant position (e.g. monopoly power). The KPPU is vested with the authority to supervise and enforce the Competition Law, including through investigation of potential illegal activities, 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 Commercial Court. As such, when the Omnibus Law becomes effective, any objections against KPPU decisions shall be submitted to the Commercial Court.

Further details with respect to changes to the Competition Law made by the Omnibus Law will be outlined in separate implementing regulations. It would be interesting to see the outcome of these proposed separate implementing regulations and how they would affect current practice related to Indonesian competition/ antitrust cases and matters, including those which are currently being processed.

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, and Language, State Symbols and the 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 Presidential Regulation No. 63/2019 on the Use of Indonesian ("PR 63/2019"). PR 63/2019 serves as the implementing regulation of Law No. 24/2009 on the National Flag, Language, Emblem and 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 express requirement for the parties to execute both Indonesia language and foreign language versions of the agreement simultaneously, and whether failure to do so would affect the legality of the agreement. In the event that 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 above, 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 the Law No. 24 of 2009 on National Flag, Language, Emblem, and Song and its implementing regulation (i.e. Presidential Regulation No. 63 of 2019 on Use of Indonesia language), the Parties agree to enter into this Agreement in [foreign language] version and subsequent to 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 English version. In the event of inconsistency or different interpretation between the English 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 among others, 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 with 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 as 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 IDR currency. 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.

Foreign investment companies (*Penanaman Modal Asing* (PMA)), permanent establishments (*Bentuk Usaha Tetap* (PEs)), 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 Indonesian Financial Accounting Standards (*Standar Akuntansi Keuangan* (SAK)), may maintain their bookkeeping in English language and US Dollar (USD bookkeeping). Approval from the DGT is required prior to commencement of the USD bookkeeping. Contractors of oil and gas Production Sharing Contracts (PSCs) and companies operating under mining Contracts of Work (CoWs) may decide to maintain USD 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 certain periods 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 ten 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 time frame 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, 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 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 General Tax Provisions and Procedures Law, the Income Tax Law, VAT and LST Law, the Land and Building Tax Law, and the Regional Tax and Retribution 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 - Carryback	5 years 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	
- Dividens - Interest - Royalties - Technical Service fee - Branch profit tax	20% (nonresident); exempt (resident) 10%/20% (nonresident); 15%/20% (resident) 20% (nonresident); 15% (resident) 20% (nonresident); 2% (resident) 20%
Capital tax	No
Social security contributions (employer contri-bution)	0.24%-4%
Land and building tax	0.3%-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
VAT	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. Nonresident companies are taxed only on Indonesia-sourced income, including income attributable to a 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 (SMEs)) are subject to a final income tax rate of 0.5% 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.

Dividend 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 dividend and income that are not reinvested into Indonesia within a certain period of time are subject to income tax.

Dividend 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.

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 MoF 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 income, 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, specific regulations for geothermal and coal mining sectors not under the framework of CoWs have not been issued as yet.

Branch Profit Tax

In addition to CIT, a PE is also subject to BPT at a rate of 20%, applicable to the PE's net profit after tax. 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 profit after tax of the PE is reinvested in Indonesia in the form of:

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

Debt-to-Equity Ratio

Taxpayer with loan is subject to maximum allowable Debt-to-Equity Ratio (DER) of 4:1. In the case the DER exceeds 4:1, the borrowing costs have to be proportioned 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 also has

to 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 utilize the relevant interest as a deduction is required to submit the DER calculation report. If the loan is from overseas, the taxpayer has to attach a report on the foreign loan along with the CIT return submission.

Starting in 2022, the MoF would be authorized to specify the limitation on deductible borrowing costs based on internationally accepted methods, such as DER, borrowing costs compared to EBITDA (Earnings Before Interest, Tax, Depreciation, and Amortization), or other methods.

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. Gains on the disposal of land and/or buildings are subject to income tax at 2.5% of the sale proceeds.

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 shares in a non-listed company in Indonesia held by nonresidents are taxable at a rate of 5% of the gross proceeds, subject to relief under an applicable tax treaty.

Controlled Foreign Companies rules

Under Controlled Foreign Company (CFC) rules, the MoF is authorized 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:

- In the fourth month following the deadline for filing of the tax return in the foreign country; or
- 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:

- Dividend.
- Interest, with certain exceptions.
- Rent of land and/or buildings.
- Rent of other assets to related parties.
- Royalty; and
- 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 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 purpose:

- Share ownership of the other party is 25% at the minimum, either directly or indirectly.
- Relationship through direct or indirect management or technology control of the other party; or
- 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 established or domiciled in a tax haven country and has a special relationship with the Indonesian taxpayer or a PE in Indonesia may be deemed as a sale of shares in the Indonesian company or the PE.

A 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 less 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	FY2021: 5%-30% FY2022 and thereafter: 5%-35%
Capital gains tax rates	0.1% - 35%
Basis	Worldwide income
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 - Interest - Royalties	10% or exempted (for resident); 20% (for non-resident) 10%/20% (for resident); 20% (for non-resident) 15% (for resident); 20% (for non-resident)
Net wealth tax	Generally No
Social security	1% - 4%
Inheritance tax	No
Land and building tax	0.3%
Land and building acquisition duty	5%
Transfer tax	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%
VAT	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. Non-residents 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 sourced from overseas if the associated requirements are met. Non-resident individuals are taxed only on Indonesian-source 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, etc.

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.

Benefits-in-kind (BIK) received by employees are not, in most cases, taxable to the employee (or deductible for the employer). However, starting FY2022, the BIK received by employees will, in most cases, be 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 deductible to the employers.

Dividend income earned/received from domestic companies, dividend income from offshore listed companies, and income from foreign active business without a Permanent Establishment (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 are not reinvested into Indonesia for a certain period of time is subject to income tax.

Dividend from offshore non-listed companies and PE's PAT may be tax exempted if the reinvested dividend or profit after tax (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	IDR54,000,000
Spouse	IDR4,500,000 (additional IDR54,000,000 for a wife whose income is combined with the husband's)
Dependents	IDR4,500,000 each (up to a maximum of three individuals related by blood or marriage)
Occupational support	5% of gross income, up to a maximum of IDR6,000,000
Pension cost (available to pensioners)	5% of gross income, up to a maximum of IDR2,400,000
Contribution to approved pension fund, e.g. BPJS Manpower	Actual amount
Compulsory tithe ("zakat") or religious contributions	Actual amount, if valid supporting evidence is available and all requirements are met

The MoF is authorized to re-determine the amounts of the personal deductions.

Resident individual taxpayer doing business as an SME (with annual turnover of a maximum of IDR4.8 billion) is subject to 0.5% final income tax for a certain period of time. Starting in FY2022, resident individual taxpayers doing business as an SME subject to final income tax may enjoy a tax relief in which the initial IDR500 million of the gross revenue would not be subject to 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 (for FY2021)	Rate
Up to IDR50,000,000	5%

Taxable Income (for FY2021)	Rate
Over IDR50,000,000 but not exceeding IDR250,000,000	15%
Over IDR250,000,000 but not exceeding IDR500,000,000	25%
Over IDR500,000,000	30%

Taxable Income (for FY2022 and thereafter)	Rate
Up to IDR60,000,000	5%
More than IDR60,000,000 but not exceeding IDR250,000,000	15%
More than IDR250,000,000 but not exceeding IDR500,000,000	25%
More than IDR500,000,000 but not exceeding IDR5,000,000,000	30%
More than IDR5,000,000,000	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 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 will roll out a Voluntary Disclosure Program (VDP), in which there would be two VDP schemes available:
Scheme 1: Tax Amnesty program participants (individuals and corporates) that have not fully disclosed their assets acquired between 1 January 1985 and 31 December 2015 in the Asset Declaration Letters (*Surat Pengungkapan Harta* (SPH)). The final tax rates are between 6% and 11%.
Scheme 2: 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* (NPWP)) (Under Law Number 7 of 2021, the National Identification Numbers (*Nomor Induk Kependudukan*) will be used as NPWP for Indonesian citizens). 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 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.

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

Dividends

Dividends paid to a nonresident 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 fulfill certain criteria, or else, the resident individual must self-assess the 10% final income tax.

Interest

Interest paid to a nonresident is subject to WHT with a rate of 20% (or 10% for interest income from bonds paid to or earned by a nonresident), 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 "Labor 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 an NPWP.

Compliance

To facilitate DGT's efforts to collect taxes, taxpayers are subject to a number of obligations to WHT on various payments made to residents and nonresidents. 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.

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 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 has to 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* (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 has to meet the substance and administrative requirements.

The foreign income recipient is considered meeting the substance requirements if:

a. The entity has relevant economic substance either in the entity's establishment or the execution of its transaction.
b. The legal form is not different to its economic substance either in the entity's establishment or the execution of its transaction.
c. The entity has its own management to conduct the business and such management has an independent discretion.
d. The entity has sufficient and adequate assets to conduct business other than the assets generating income from Indonesia.
e. The entity has sufficient employees with certain expertise and skill in accordance with the business carried out by the entity.
f. The entity has business activities other than receiving dividends, interest, and royalties sourced from Indonesia, and in accordance with the actual conditions as shown by the existence of costs that are expended, efforts that are undertaken, or sacrifices that are 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 establishment of the tax treaty. This is similar to

the Principle Purpose Test, which is adopted by Indonesia through Multilateral Instrument on Tax Treaty.

To apply a lower WHT rate on passive income, in addition to substance requirements above, the foreign income recipient also has to 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 the liability; and
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 jeopardize 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 authorized 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 type of transactions, nature of relationship, questionnaire on documentation prepared to support the arm's-length principle implementation, as well as transactions with parties from tax haven countries.

The DGT adopted a three-tiered approach to transfer pricing documentation, which are:
- Local File;
- Master File; and
- Country-by-Country Report (CbCR).

Master File and Local File must be available within four months after the end of the fiscal year and must be accompanied by a statement letter concerning the time of the availability of such documents. Such statement letter needs to be signed by the party providing the transfer pricing documentation.

There is no statutory deadline for submission of the transfer pricing documentation, but the documentation must be provided when requested by the DGT. Generally, the DGT provides 14 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 the DGT to disregard any subsequent documentation and determine tax liability based on the data available to the 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 million
Related party transactions with affiliated party located in a jurisdiction with tax rate lower than Indonesia (i.e., 22% for FY 2020 onwards).	Any value

On top of 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):

- Does not require submission of CbCR; or
- Does not have an agreement with the Indonesian government on exchange of information; or
- 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 Organization for Economic Co-operation and Development (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

nonresident 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 started the exchange of information from September 2018. Currently, the number of reporting countries receiving information from Indonesia is 85 countries.

To support the implementation of CRS, the MoF, DGT, and OJK together have issued several regulations, in which the reporting financial institutions (such as banks and insurance companies) have to submit 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 the DGT to monitor the tax compliance of Indonesian resident taxpayers. The DGT is authorized to audit the CRS reports and impose sanctions on the reporting financial institutions for noncompliance with CRS.

Indonesia's Participation in Base Erosion and Profit Shifting Projects

Although Indonesia is not a member of the OECD countries, Indonesia is a member of the G-20 and therefore, Indonesia has fully participated in BEPS projects both as an observer and as a contributor. The following table summarizes the steps Indonesia has taken to date to implement the BEPS recommendations:

Action	Implementation
VAT on business to customers digital services (Action 1)	A new tax treatment of transactions through electronic system (*Perdagangan Melalui Sistem Elektronik* (PMSE)) has been introduced through regulations stipulating that 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.
Interest deductions (Action 4)	The MoF is authorized to specify the limitation on deductible borrowing costs based on internationally accepted methods, such as DER (debt-to-equity ratio), borrowing cost compared to EBITDA (earnings before interest, takes, depreciation, and amortization) 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.

Action	Implementation
PE status (Action 7)	The MoF 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. Additional measures in line with actions 8-10 are expected to be implemented shortly in the local regulation. In any case, 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)	The MoF has introduced the three-tiered level of documentation requirement for tax years ending on or after 30 December 2016. 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 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.

Action	Implementation
CbC reporting (Action 13)	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. Where the parent entity is located in a foreign jurisdiction, the resident taxpayer must submit the CbCR when the country of the parent entity: • Does not require the submission of a CbCR; or • Does not have an exchange of information agreement with the Indonesian government; or • Has an agreement but the CbCR cannot be obtained by the Indonesian government. Indonesia is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbCR.
Dispute resolution (Action 14)	The MoF issued Regulation No 49/PK.03/2019 (PMK-49) concerning "The Implementation Guidelines of 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. PMK-49 broadly aligns Indonesia's position with the recommendations under Action 14. PMK-49 is issued as part of the DGT's Key Reform Agenda of 2019 and is expected to provide more certainty in MAP process, especially in terms of procedures, timeline, and follow-up actions of the MAP application. Indonesia allows taxpayers to pursue MAP and domestic dispute resolution process simultaneously. Additionally, the MoF issued Regulation Number 22/PMK.03/2020 (PMK-22) on 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 time frame, and the follow-up actions. Among other updates, the coverage of the bilateral and unilateral APA has been extended to 5 years and a roll back period has been reintroduced which can be availed subject to meeting certain conditions.

Action	Implementation
Multilateral instrument (Action 15)	Indonesia ratified Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (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. On 18 February 2021, the DGT issued 21 circular letters providing synthesized texts of 21 of the Covered Tax Agreements. The synthesized 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 digitalization 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 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.

The standard VAT rate is 10% (11% as from 1 April 2022; 12% as from 1 January 2025 (at the latest)).

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. Export of services are subject to VAT at a rate of 10% (11% as from 1 April 2022; 12% as from 1 January 2025 (at the latest)). However, exports of services below are subject to 0% VAT and the VAT entrepreneur must issue Export Declaration of Services (*Pemberitahuan Ekspor Jasa*) for such delivery:

a. Services related to movable goods that are to be utilized outside of Indonesian customs territory, covering:
   - Toll manufacturing services (*jasa maklon*);
   - Repair and maintenance services; and
   - 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 utilized outside Indonesian customs territory as requested by customers, such as:
   - Technology and information services.
   - Research and development services.
   - Charters of airplanes and/or sea vessels, for international flights or shipping activities.
   - 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, financial statements audit services, and tax services.
   - Trading services, i.e., services to search for sellers within Indonesian customs territory for export purposes; and
   - Interconnection, provision of satellite and/or data communication/connectivity services.

To apply 0% VAT on such export services, several requirements must be satisfied.

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 is creditable in its VAT return at a maximum three months from the month when the relevant VAT becomes payable.

Where the amount of output VAT exceeds the amount of input VAT, the difference constitutes a VAT underpayment that has to 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 VAT entrepreneur can carry the excess amount to the following period or request for a refund. 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 (PPN *tidak dipungut*). The facilities are applicable to the imports or deliveries of the following (but not limited to):

- Strategic goods, such as machinery, factory equipment, animal husbandry products, seeds and seedlings, liquefied natural gas, and others.

- Goods aimed to support certain national objectives, such as weaponry, general educational and religious books, polio vaccines, and others.
- Import of certain goods, for which the import duty is exempted.
- Import and/or delivery of taxable goods into a Free Trade Zone or bonded zones.
- Import or delivery of certain transportation equipment and spare parts as well as the related services; and
- Certain imports or purchase of taxable goods and/or taxable services by PSC contractors during the exploration and exploitation stages until the start of commercial production.

Starting 1 April 2022, all goods and services would be subject to VAT with certain exceptions. Some goods and services that are not subject to VAT include: items that are already subject to regional tax, money, gold bars (representing Indonesia's state gold reserves), and securities, religious services, and government administrative services that cannot be provided by other parties. Other goods and/or services that are currently from VAT will no longer eligible for such facility. Some goods and services that are currently outside the scope of VAT, would become taxable but eligible for the VAT exemption facility; whereas the VAT not-collected facility would be more selectively applied.

Entrepreneurs who deliver taxable goods and/or taxable services exceeding IDR 4.8 billion in a tax year must register for VAT purposes (i.e., registered as VAT entrepreneurs) 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). The DGT has adopted electronic VAT invoice mechanism (e-Faktur), in which the issuance of VAT invoices is directly validated by the DGT. The format and content of a VAT invoice must meet the guidelines set by the 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 utilization 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 VAT entrepreneur carrying out business activities in Indonesia through business units located in multiple jurisdictions under different tax offices has to register each business unit with the respective tax office. The VAT entrepreneur may request the DGT to centralize the VAT administration under one location. For an entrepreneur registered in certain tax offices, the VAT administration is automatically centralized. Previously, the VAT centralization statement letter from the DGT was valid for five years. However, VAT

centralization 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, transactions through electronic systems are subject to VAT on PMSE. VAT on PMSE is to be collected, remitted, and reported by foreign traders, foreign service providers, foreign PMSE providers (*Penyelenggara* PMSE (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:

- An e-commerce party whose transactions with customers in Indonesia exceed IDR600 million in a twelve-month period or IDR50 million in a month; or
- An e-commerce party whose transactions exceed 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 is 10% (11% starting 1 April 2022; 12% starting 1 January 2025 (at the latest)), and the VAT imposition base shall be the amount paid by the customers. The PMSE VAT collector may use its usual billing documents as proof of PMSE VAT collection as long as 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:

- Quarterly PMSE VAT Return (SPT Masa PPN PMSE)–which is mandatory; and
- Annually PMSE VAT Report (Laporan Tahunan PPN PMSE)–only if requested by the tax office.

Luxury-goods sales tax

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:

- Does not constitute a basic commodity.
- Consumed by certain group.
- Generally consumed by an exclusive group of (upper income) consumers; and/or
- 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:

1. Integrated upstream metals industry.
2. Integrated crude oil and natural gas purification or refinery industry.
3. Integrated crude oil/natural gas/coal-based petrochemicals industry.
4. Integrated basic organic chemicals industry sourced from agriculture, plantation, or forestry industry.
5. Integrated basic inorganic chemicals industry.
6. Integrated pharmaceuticals main raw materials industry.
7. Irradiation, electro medical, and electrotherapy equipment manufacturing industry.
8. Manufacturing industry for electronics and telematics equipment main components.
9. Machine and machinery main components manufacturing industry.
10. Manufacturing industry for robotic components that supports the production of machinery in the manufacturing industry.
11. Main component manufacturing industry for electricity generator machinery.
12. Automotive and its main components manufacturing industry.
13. Vessel main components manufacturing industry.
14. Railway main components manufacturing industry.
15. Aircraft main components manufacturing industry and aerospace industry auxiliary activities.
16. Agricultural/plantation/forestry-based paper pulp industry.
17. Economic infrastructure; or
18. 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 CIT reduction of 100% for a minimum of five years up to a maximum of 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.
- 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.

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 MoF.
e. Fulfilling provision regarding DER; and
f. Committed to start realizing the investment plan at the latest one 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* (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:

- 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).
- Accelerated depreciation and/or amortization.
- Tax loss carryforward may be extended for up to 10 years; and
- A reduced withholding tax (WHT) rate to 10% on dividends paid to nonresidents.

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 labor 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.

A taxpayer can only be granted one type of tax facility (either tax holiday facility or

tax allowance facility).

Super tax deduction facility

For 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:

- New capital investment or business expansion in labor-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.
- 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; and
- Research and development-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 labor-intensive industries, taxpayers must fulfil the following cumulative criteria:

- They constitute domestic corporate taxpayers.
- Their main business activity is among the 45 eligible industrial sectors; and
- They employ a minimum average of 300 Indonesian employees.

Certain expenditure related to apprenticeship, internship, and/or learning programs eligible for the facility includes:

- Provision of physical facilities in the form of training facilities and associated operational costs.
- Costs of the instructor or trainer.
- Costs of goods and/or materials.
- Compensation provided to the participants; and/or
- 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, commercialization 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 taxpayer in an SEZ can be classified as either:

- Abusiness entity (*badan usaha*), i.e., a legal entity that manages an SEZ; or

- 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:

- Purchase of land for SEZ.
- Sale of land and/or building in SEZ; and/or
- Rental of land and/or building in SEZ.

In addition to the CIT incentives above, there are also other tax facilities available for taxpayers in SEZ, such as:

- VAT not-collected facility.
- VAT exemption facility.
- Import facility.
- Certain tax and import facilities for tourism SEZ; and
- 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 by 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:

   - Manufacturing (shall cover processing of raw materials to become finished product)
   - Mining (shall cover the provision of imported goods to support mining exploration and exploitation activities
   - Heavy equipment (shall cover the provision of imported goods to support heavy equipment industry

- 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 to 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 Center (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 to 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 Center 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 Center 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 the Ministry of Investment (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. Regarding import activity, currently Indonesia is utilizing 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 Online Single Submission (OSS).

Newly established PMA company, after obtaining Articles of Incorporation (AOI) and Ministry of Law and Human Rights (MOLHR) approval, must submit the 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, the licensing services can be offered via the OSS system, which include:

- License of Bonded Warehouse (TPB);
- License of Ease of Import for Export (KITE); or
- License of Excisable Goods Entrepreneur Registration Number (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 are lower or eliminated. Currently, Indonesia has preferential tariffs in the following schemes:

1. ASEAN Trade-in-Goods Agreement (ATIGA): This is 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.
2. ASEAN-China FTA (ACFTA): This is an agreement between the ASEAN countries to build a free trade area with China. China refers to the Mainland and excludes the Special Administrative Regions (Hong Kong and Macau) and Taiwan.
3. ASEAN-Korea FTA (AKFTA): This is an agreement between the ASEAN countries and South Korea to build the economic partnership between the countries.
4. Indonesia-Japan Economic Partnership Agreement (IJEPA): This is an agreement between the governments of Indonesia and Japan to build the economic partnership between the two countries and increase trade and investment in both countries.
5. ASEAN-Australia-New Zealand FTA (AANZFTA): This is an agreement between ASEAN countries to build a free trade area with Australia and New Zealand.

6. ASEAN-India FTA (AIFTA): This is an agreement between ASEAN countries to build a free trade area with India.
7. Indonesia-Government of Islamic Republic of Pakistan, stipulation of import duty tariff: This stipulation is made within the framework of the Preferential Trade Agreement between Indonesia and the Government of the Islamic Republic of Pakistan.
8. ASEAN-Hong Kong, China Free Trade Agreement (AHKFTA): This is an agreement between ASEAN Countries and Hong Kong, Special Administrative Region of the People's Republic of China (HKSAR).
9. Indonesia-Australia Comprehensive Economic Partnership Agreement (IACEPA): This is an Agreement between the governments of Indonesia and Australia to build the economic partnership to increase the flow of exported goods.
10. Indonesia-Chile Comprehensive Economic Partnership Agreement (IC-CEPA): This is an Agreement between the governments of Indonesia and Chile to increase trade partnership between the countries.
11. ASEAN-Japan Comprehensive Economic Partnership (AJ-CEP): This is an agreement between ASEAN Countries and Japan to build a free trade area.
12. Indonesia – Palestine Memorandum of Understanding: This is an Agreement between Indonesia and Palestine on Trade Facilitation for Certain Products Originating from Palestinian Territories

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 system to obtain certificate of origin by Ministry of Trade. Exporters with REX status are able to issue Certificate 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 Certificate of Origin Form for its 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 (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 perform examination regarding compliance of customs and excise sector. 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 IDR 5 million. There is no penalty imposed for incorrect tariff classification. In compliance 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 Regional Tax and Retribution Tax Law, the rate is not more than 0.3% 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, 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 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 Indonesia 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 company's shares by a nonresident is subject to a WHT equal to 5% of the transfer value, unless otherwise provided under a tax treaty. Certain disposals of land and/or buildings are subject to a final tax of 2.5% of the transaction value.

A land and building acquisition duty of a maximum of 5% of the acquisition value or the land and building tax imposition base (*Nilai Jual Objek Pajak* (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 rate of IDR10,000 applies to financial transactions, deeds, and receipts.

Environmental taxes

Starting 1 April 2022, carbon tax provision will apply to coal-fired power plants. Carbon tax may also be applied to other sectors from 2025.

In certain regions, a permit to dump liquid waste into certain water resources is subject to a user fee collected by the local government.

10. Tax facilities during coronavirus disease 2019 pandemic

COVID-19 has severely affected the global economy, including Indonesia. Since March 2020, the Indonesian government has issued various regulations to provide income tax and VAT incentives to taxpayers to support businesses and individuals.

Tax incentives under MoF Regulation Number 9/PMK.03/2021 as amended several times during the year (PMK-86)

PMK-86 provides the following tax incentives to certain sectors:

- EIT borne by the government.
- 0.5% final tax for SMEs borne by the government.
- Exemption of Article 22 income tax on imports.
- 50% reduction of monthly tax installments.
- Final income tax borne by government facility for certain construction business sectors; and
- Preliminary refund of VAT overpayment.

The incentives above are valid until December 2021.

Tax incentives under MoF Regulation Number 239/PMK.03/2020

Several VAT and WHT incentives to Certain Parties, and other third parties with whom the Certain Parties transact, which are:

- VAT not-collected facility on Import of certain taxable goods by Certain Parties.
- Government-borne VAT facility on delivery of certain taxable goods and/or services by VAT entrepreneurs to Certain Parties.
- VAT exemption facility on import of certain taxable goods.
- Article 21 employee income tax exemption on income received by domestic individuals from Certain Parties.
- Article 22 income tax exemption on import of certain goods.
- Sale of certain goods to Certain Parties may be requested for Article 22 income tax exemption; and
- Article 23 income tax exemption on certain income received by domestic corporate taxpayers or PEs from Certain Parties.

Certain Parties are defined as:

a. Appointed governmental bodies or institutions (central or local) that handle the COVID-19 pandemic.
b. Hospitals appointed as referral hospitals for COVID-19 patients; or

c. Other parties appointed by governmental bodies or institutions, or hospitals to assist in handling the COVID-19 pandemic.

The incentives above are valid until 31 December 2021.

Tax incentives under Government Regulation Number 29/2020

The tax reliefs under this regulation include:

- Additional deduction for taxpayers producing certain medical equipment and/or household healthcare supplies.
- Deductions for donations to certain organizations.
- Final 0% income tax for additional income of healthcare workers.
- Final 0% income tax on compensation on the use of assets to support healthcare services; and
- Incentive for share buy-backs of listed companies.

The incentives above are valid until 31 December 2021.

Tax incentives under MoF Regulation Number 20/PMK.010/2021

Sales of certain types of vehicle, which have met the requirement of a minimum of 60% local content (i.e., at least 60% of the components used to build the vehicle are produced domestically), are eligible for its LST to be borne by the government ranging from 12.5% to 100%. The incentive is valid until 31 December 2021.

Tax incentives under MoF Regulation Number 21/PMK.010/2021

VAT on the sales of landed houses and residential units by a VAT registered business to an individual homeowner (purchaser), taking place between 1 March 2021 and 31 December 2021, may be eligible for a government-borne VAT facility. The government will bear 100% of the VAT if the selling price of the property does not exceed IDR 2 billion, and 50% of the VAT if the selling price is between IDR 2 billion and IDR 5 billion.

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 the Statements of Financial Accounting Standards ("PSAK") published by the Financial Accounting Standards Board of the Indonesian Institute of Accountants ("DSAK-IAI").

The entity must maintain a register of shareholders, as well as a special register for members of the Boards of Directors and Commissioners 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 Board of Directors 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 recognized when they occur. In addition, an entity recognizes 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 SAK issued by DSAK-IAI. Entities that have no public accountability are allowed to adopt the SAK for Entities that Have No Public Accountability (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:

- Publicly listed companies.
- Banks, insurance, and other companies involved in accumulating funds from the public.
- Companies issuing debt instruments.
- Companies with assets of IDR 50 billion or more.
- Bank debtors whose financial statements are required by the bank to be audited.
- Certain types of foreign entities engaged in business in Indonesia that are authorized to enter into agreements.
- 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 (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 the capital market regulator, 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 every 3 years with a 2-year cooling period. This mandatory rotation only applies to the Public Accountant, and not the Public Accounting Firm.

E. Labor environment

1. Employee rights and remuneration

Law No. 13/2003 on Employment (Indonesian Employment Law – "IEL") governs the bargaining power of workers, specifies minimum standards for working conditions, and sets rules for severance and compensation payments. Although the law recognizes 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 Labor Organization (ILO), including conventions on the rights of assembly and collective negotiation; on equal wages for men and women for the same work; and on forced labor, 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 labor was ratified and incorporated into law in 2000.

The government has issued several regulations that expand or modify labor 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:

1. Wages without allowance.
2. Basic wages and fixed allowance.
3. Basic wages, fixed allowance, and non-fixed allowance; or
4. Basic wages and non-fixed allowance.

Furthermore, according to GR 36/2021, in the event that wages components consist of (i) basic wages and fixed allowance or (ii) basic wages, fixed allowance and non-fixed allowance, the amount 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 labor 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* - "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. healthcare social security and employment social security. It is noteworthy that the healthcare social security benefits are administered by BPJS Healthcare (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 6 (six) 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 *Ketenagakerjaan*)	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 Healthcare (BPJS *Kesehatan*)	Healthcare security	4%	1%
			1% for additional family member

Pursuant to Article 32 of Presidential Regulation No. 64/2020 on the Second Amendment of Presidential Regulation No. 82/2018 on Healthcare Social Security, the calculation of healthcare 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 premium.

In light of the above, it is noteworthy that the following are exempted from participating in the abovementioned social security programs:

1. Foreign employees who work less than 6 (six) months are not required to be registered in the BPJS program; and
2. 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* – "THR"). Furthermore, the employer may provide additional benefits to employees as stipulated under employment agreements, company regulation or collective labor 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 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 labor 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 labor union (where the affected employee is a member), or between the employer and the affected employee

(if the employee is not a labor union member). Should the negotiation fail, the employer may only terminate the employment after receiving a decision from the Industrial Relations Dispute Settlement Court.

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* – "PKWT").
c. Employee is detained for committing a crime.
d. Employee violation of the employment agreement, collective labor agreement (*perjanjian kerja bersama* – "PKB"), and company regulation (*peraturan perusahaan* – "CP").
e. Employee absence for 5 (five) days with 2 (two) summons.
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 termination date on 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 merger, consolidation, acquisition or spin-off 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 aforesaid

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: • Annual leave that has not been taken. • Travel expenses for employees and their families to their hometown; and • 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, as follows:

1. if the company is not willing to continue the employment relationship in the event that the company has been acquired, then minimum statutory severance pay will be 0.5 times the severance amount provision.
2. 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
3. If the company is implementing efficiencies to prevent losses, the minimum statutory severance pay will be 1 times the severance provisions. Previously, for efficiency in order 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 the purposes of explanation reasons for termination as well as the calculation formula:

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	
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	

No.	Reason Termination		Previous Formula	New Formula	
8	Employee absent for 5 (five) consecutive working days		RP + Separation Payment	RP + Separation Payment	
9	Violation of Company Regulation, Collective Labor 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		• 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	• 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	
12	Retirement		If the employee is not participated in the pension program the employee shall be entitled to receive 2 X SP + 1 X SVP + RP	1.75 X SP + 1 X SVP + RP	
13	Employee passed away		2 X SP + 1 X SVP + RP	2 X SP + 1 X SVP + RP	

ABBREVIATIONS

- *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 Labor Agreement).

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 an 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 employment agreement, it is noteworthy that the IEL previously provided that PKWT period must not exceed 2 (two) years and can be extended once for a maximum period of 1 (one) year or may be renewed once for a maximum period of 2 (two) 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 5 (five) 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 5 (five) 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 IEL 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 IEL provides that employers with at least 10 (ten) employees must establish a CR. The CR shall be established by taking into account consideration and recommendation from the management of the labor union. If there is no existing labor 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 IEL 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 PKB. In this regard, the PKB must be established based on the negotiation and the consent from the labor union.

5. Employment of Foreigners

Under the IEL, 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 director or commissioner of a company; there is no associate requirement for these expatriates.

In addition to the above, the Omnibus Law provides that in order to utilize a foreign worker, the employer is required to obtain a Foreign Manpower Utilization 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 5 (five) 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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