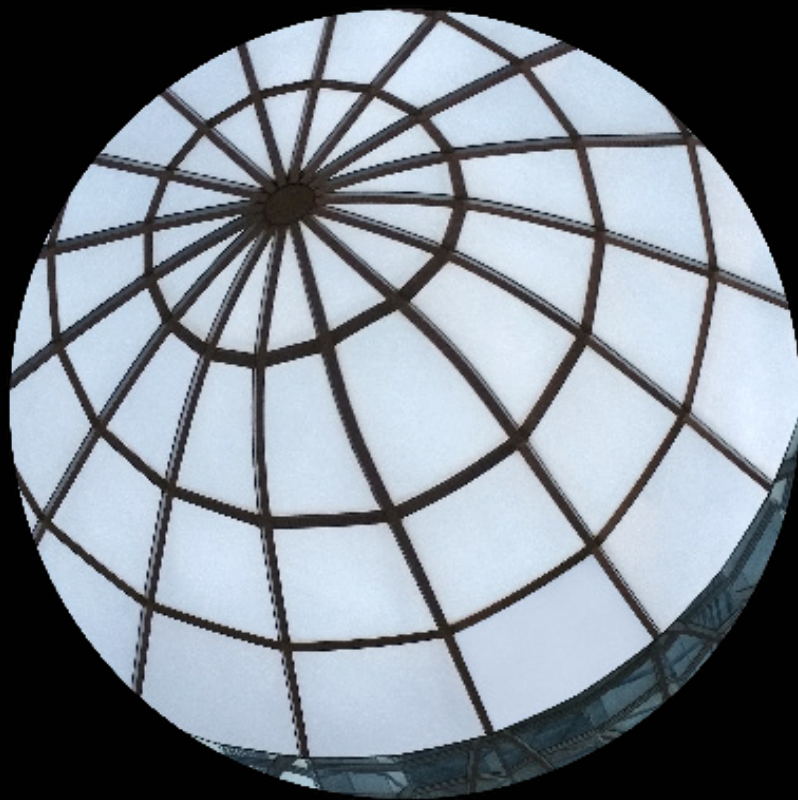


Deloitte.



**2019-2020
Investment Window into Indonesia
(IWI)**

English

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Contents

Abbreviations	5
Foreword	11
A. Introduction to Indonesia	13
1. General overview	
2. Demography	
3. Investment climate	
4. Industry overview and opportunities	
5. Regional snapshot	
6. Legal and Political System	
B. Identifying Your Investment Stage	27
Five stages to organisation evolution	
C. Legal and Regulatory Overview for Doing Business in Indonesia	28
1. Getting the Business Started (Joint Venture)	
2. Mergers and Acquisitions	
3. Infrastructure	
4. Capital Market	
5. Banking and Lending	
6. Oil and Gas & Coal and Mineral Mining	
A. Oil and Gas	
B. Coal and Mineral Mining	
7. Intellectual Property Rights	
8. Dispute Resolution	
9. Land environment and related matters	
10. Other business-related laws	
D. Taxation in Indonesia	76
1. Tax incentives	
2. Tax administration	
3. Business taxation	
4. Taxes on individuals	
5. Indirect taxes	
6. Withholding taxes	
E. Audit and Compliance	103
1. Accounting period	
2. Currency	
3. Language, Accounting Basis and Standards	
4. Audit requirements	
5. Independence	
F. Labor Environment	105
1. Employee rights and remuneration	
2. Wages and benefits	
3. Termination of employment	
4. Labor-management relations	
5. Employment of foreigners	
About Deloitte	108
Contacts	110

ABBREVIATIONS

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

ABBREVIATIONS

BUMN	State-Owned Enterprise (<i>Badan Usaha Milik Negara</i>)
BUMD	Local Government-Owned Company/Enterprise (<i>Badan Usaha Milik Daerah</i>)
BRI	Belt and Road Initiatives
CAGR	Compound Annual Growth Rate
CFC	Controlled Foreign Companies
CIT	Corporate Income Tax
CPO	Crude Palm Oil
CRS	Common Reporting Standard
CSR	Corporate Social and Environmental Responsibility
DER	Debt-to-Equity Ratio
DKI Jakarta	Special Territory of the Capital City (<i>Daerah Khusus Ibukota</i>) Jakarta
DGT	Directorate General of Taxes
DNI	Negative Investment List (<i>Daftar Negatif Investasi</i>)
DPD	Regional Representatives Council (<i>Dewan Perwakilan Daerah</i>)
DPR	People's Representative Council (<i>Dewan Perwakilan Rakyat</i>)
EFTA	European Free Trade Association
EIU	Economist Intelligence Unit
EPA	Economic Partnership Agreements
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
FTA	Free Trade Agreements
GCA	Government Contracting Agency
GDP	Gross Domestic Product
IAI	Indonesian Institute of Accountants (<i>Ikatan Akuntan Indonesia</i>)
IBE	Implementing Business Entity

ABBREVIATIONS

ICSID	International Centre for Settlement of Investment Disputes
IDX	Indonesia Stock Exchange (<i>Bursa Efek Indonesia</i>)
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
IMF	International Monetary Fund
IPO	Initial Public Offering
ISIC	International Standard Industrial Classification
IUP	Mining Business License (<i>Izin Usaha Pertambangan</i>)
KBLI	Indonesian Standard Industrial Classifications (<i>Klasifikasi Baku Lapangan Usaha Indonesia</i>)
KEK	Special Economic Zone (<i>Kawasan Ekonomi Khusus</i>)
KEPMA	Supreme Court Decision (<i>Keputusan Ketua MA</i>)
KITE	Import Concession for Export Purposes (<i>Kemudahan Impor Tujuan Ekspor</i>)
KP	Mining Authorization (<i>Kuasa Pertambangan</i>)
KPPIP	The Committee for Acceleration of Priority Infrastructure Delivery (<i>Komite Percepatan Penyediaan Infrastruktur Prioritas</i>)
KPK	Corruption Eradication Commission (<i>Komisi Pemberantasan Korupsi</i>)
KPPU	Business Competition Supervisory Commission (<i>Komisi Pengawas Persaingan Usaha</i>)
KSEI	The Indonesian Central Securities Depository (<i>Kustodian Sentral Efek Indonesia</i>)
LCD	Liquid Crystal Display
LGST	Luxury Goods Sales Tax
LNG	Liquefied Natural Gas

ABBREVIATIONS

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 (<i>Majelis Permusyawaratan Rakyat</i>)
MRT	Mass Rapid Transit
NIB	Business Identification Number (<i>Nomor Induk Berusaha</i>)
NPPBKC	Licensing of Excisable Goods Entrepreneur Registration Number (<i>Nomor Pokok Pengusaha Barang Kena Cukai</i>)
NTA	Net Tangible Assets
OECD	Organization for Economic Co-operation and Development
OJK	Financial Services Authority (<i>Otoritas Jasa Keuangan</i>)
OSS	Online Single Submission
PE	Permanent Establishment
PDAM	Regional Drinking Water Company (<i>Perusahaan Daerah Air Minum</i>)
PDKB	Bonded Zone (<i>Pengusaha di Kawasan Berikat</i>)
Persero	A state owned limited liability company (<i>Perusahaan Perseroan</i>)
Perum	A public service entity wholly-owned by the national government (<i>Perusahaan Umum</i>)
PGN	Indonesian state-owned gas company (<i>Perusahaan Gas Negara</i>)
PIP	Indonesia Investment Agency (<i>Pusat Investasi Pemerintah</i>)

ABBREVIATIONS

PKLN	Offshore Commercial Loan Team (<i>Pinjaman Komersial Luar Negeri</i>)
PLN	Indonesian state-owned electricity company (<i>Perusahaan Listrik Negara</i>)
PMA	Foreign capital investment (<i>Penanaman Modal Asing</i>)
PMDN	Domestic capital investment company (<i>Penanaman Modal Dalam Negeri</i>)
PPAT	Official Certifier of Land Deeds (<i>Pejabat Pembuat Akta Tanah</i>)
PPATK	Indonesian Financial Transaction Report and Analysis Centre (<i>Pusat Pelaporan dan Analisis Transaksi Keuangan</i>)
PPP	Public Private Partnership
PSAK	Indonesian Financial Accounting Standards (<i>Pernyataan Standar Akuntansi Keuangan</i>)
PR	Presidential Regulation (<i>Peraturan Presiden</i>)
PSCs	Production Sharing Contracts
R&D	Research and Development
RKL	Environmental Management Plan (<i>Rencana Pengelolaan Lingkungan Hidup</i>)
RPJMN	National Mid-term Development Plan (<i>Rencana Pembangunan Jangka Menengah Nasional</i>)
RPL	Environmental Monitoring Plan (<i>Rencana Pemantauan Lingkungan Hidup</i>)
SBSN	Indonesian State Islamic Security (<i>Surat Berharga Syariah Negara</i>)
SEZ	Special Economic Zone
SEMA	Circular of the Supreme Court (<i>Surat Edaran Mahkamah Agung</i>)
SKK Migas	Special Task Force for Upstream Oil and Gas Business Activities in Indonesia (<i>Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi</i>)
SME	Small and Medium-Sized Enterprises

ABBREVIATIONS

SMI	PT Sarana Multi Infrastruktur (<i>Persero</i> - a state owned company engaged in infrastructure project financing)
S&P	Standard & Poor's
SPC	Special Purpose Company
SPRINT	Financial Service Authority Licensing System (<i>Sistem perizinan Otoritas Jasa Keuangan</i>)
TDP	Company Registration Certificate (<i>Tanda Daftar Perusahaan</i>)
TIEA	Tax Information Exchange Agreement
TPB	Bonded Warehouse (<i>Tempat Penimbunan Berikat</i>)
TRIPs	Intellectual Property Rights Agreement
UMP	Provincial Minimum Wage (<i>Upah Minimum Provinsi</i>)
VAT	Value Added Tax
WHT	Withholding taxes
WIPO	World Intellectual Property Organization

Foreword



Selamat datang di Indonesia! (Welcome to Indonesia!)

Since the Silk Road era, Indonesia has thrived, among others, by trade. Indonesia is strategically situated between two oceans (the Pacific and Indian Oceans) and two continents (Asia and Australia). With its position on both sides of the Equator, Indonesia is blessed with abundant mineral resources both on land and offshore within its territorial waters.

The current Indonesian government recognizes that it is essential to efficiently utilize our natural resources to generate new investments to continue to develop the economy. Several measures have been taken to ensure investment continues to aid Indonesia's development. For example, business licensing applications between ministries are being expedited, synchronized, and integrated into an Electronic Single Submission System (OSS). The latest instalment of OSS 1.1 came online on 4 November 2019. Moreover, in the last four years the Indonesian government released sixteen Economic Reform Packages (referred to locally as Paket Kebijakan Ekonomi), which are intended to stimulate investment, including foreign investment. The government has also prioritized the accelerated development of needed infrastructure.

One example of a recently completed infrastructure development was the successful launch of the first phase of Jakarta's Mass Rapid Transit system (which commenced operations in March 2019). Another high profile project under construction is the Jakarta-Bandung High Speed Railway (which is expected to commence operating in 2021).

In a broader sense Indonesia's ongoing development was aided by the recent swearing-in of the new Indonesian government following the successful staging for the first time of simultaneous national and regional elections which took place in April 2019. The new government has stated that its priorities for the 2019-2024 period include substantially upgrading manpower education and skills, including technology-based skills, continuation of infrastructure development, simplification of the Indonesian regulatory regime and reform and simplification of government bureaucracy.

Our role in strengthening multilateral relationships was evident when Indonesia successfully staged the 2018 Asian Games. As the host country, we demonstrated

Indonesia's capabilities with respect to staging world-class large-scale sporting events and thereby indirectly promoted the merits of considering Indonesia as a center for productive investment growth. In addition, the government is actively involved in ongoing international trade development and has signed several agreements, including EFTA (European Free Trade Association), the 10th ASEAN Framework Agreement on Services, the First Protocol to Amend ATIGA, and a Free Trade Agreement with Australia (IE-CEPA or Indonesia Australia Comprehensive Economic Partnership Agreement).

In support of the government's efforts, and to offer quick and clear answers to anyone 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 that it will become an essential tool to assist you to explore the numerous opportunities that await you the moment you start doing business in Indonesia. This publication is also 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)

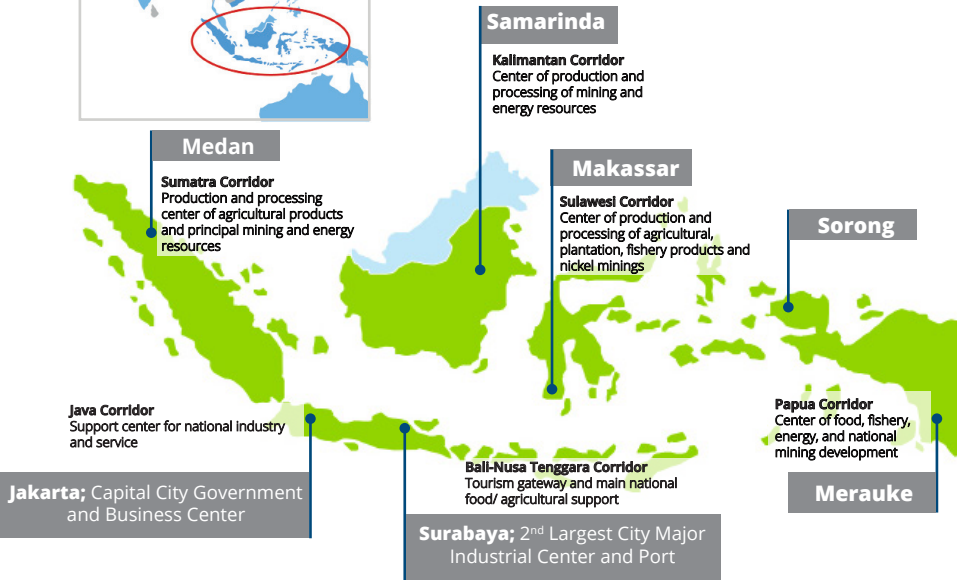
Nationality: Indonesian (40.2% Javanese, 15.5% Sundanese, 3.58% Batak, 3.22% Sulawesi ethnic groups, 3.03% Madurese, 2.88% Betawi and 31.59% other ethnic groups)

Language: Indonesian, English (business, professional), and local dialects

Currency: Indonesian rupiah (IDR)



Total Area	: 1,904,569 sq km (15 th largest)
Land	: 1,811,569 sq km
Water	: 93,000 sq km
Population	: 265 Million est. 2019 by BPS, 2019



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

1. General overview

A diverse archipelago nation of more than 300 ethnic groups, Indonesia continues to be the largest economy in Southeast Asia. Indonesia ranks the fourth most populous country in the world, the world's 7th largest economy in terms of purchasing power parity, and is a member of the G20 group of nations.

Real GDP growth was 5.2% in 2018 as a whole. In the last quarter of 2018 it was steady at 5.2%, which was the same rate achieved in the third quarter. However according to Indonesia GDP Growth, EIU 2019, it edged down to 5.1% in the first quarter of 2019 and continue to edge down to 5,0% in both the second and third quarter of 2019. During the 5 year period 2018-2022, the contribution from private investment (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 forecast to increase by 5% on average per annum over the next five years.

With Indonesia average inflation reached 3.1% in 2019, down from 3.2% in 2018 and is expected to be maintained at an annual average of 3.6% in 2020-2023. Due to trade tensions between nations, in particular between the US and China, the Rupiah may remain volatile against the US dollar. However, it is expected to strengthen modestly in 2020-2022 while global economic is in a synchronized slowdown according from the latest IMF statement. Bank Indonesia estimates that the Indonesian economy will remain stable and be able to withstand the global economic slowdown, given that the domestic economy is still the main driver. Besides, Indonesia's foreign exchange reserves tend to increase along with increased investment in both portfolios and foreign direct investment.

Indicator	2018 ^a	2019 ^f	2020 ^f	2021 ^f	2022 ^f	2023 ^f
GDP Growth (% , y-o-y)	5.2 ^a	5.1 ^f	5.0 ^f	5.2 ^f	5.2 ^f	5.1 ^f
Private Consumption (% , y-o-y)	5.1 ^a	5.3 ^f	5.0 ^f	5.5 ^f	5.2 ^f	5.4 ^f
Government Consumption (% , y-o-y)	4.6 ^a	4.5 ^f	4.0 ^f	4.2 ^f	4.5 ^f	5.0 ^f
Gross Fixed Investment (% , y-o-y)	6.7 ^a	5.5 ^f	6.0 ^f	6.5 ^f	6.2 ^f	6.3 ^f
Exports of goods & services (% , y-o-y)	6.5 ^a	2.3 ^f	3.3 ^f	5.7 ^f	5.9 ^f	5.9 ^f
Imports of goods & services (% , y-o-y)	12.1 ^a	3.8 ^f	3.8 ^f	6.5 ^f	6.9 ^f	8.0 ^f
Inflation (end period) (% , y-o-y)	3.2 ^a	3.4 ^f	2.9 ^f	3.9 ^f	3.3 ^f	4.7 ^f
US\$ exchange rate (end period)	14,482 ^a	14,249 ^f	14,382 ^f	13,922 ^f	13,641 ^f	13,441 ^f

^aActual ^fForecast

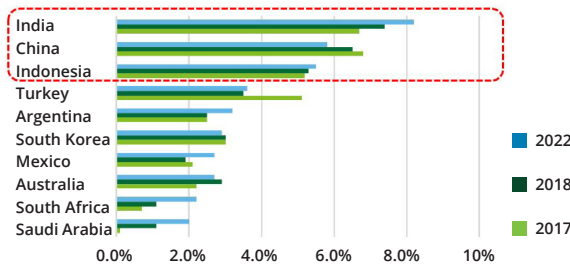
Source: EIU, 2019

To improve the country's investment climate and strengthen economic growth, the government continues to announce policy reforms, additional incentives, and deregulation measures intended to attract both domestic and foreign investment. During the first term of President Joko Widodo's (Jokowi's) government the most notable economic reforms were the 16 Economic Policy Packages. For example two packages released in 2017 focused on reducing dwelling times at major ports from an average of 2.9 days to 2 days and simplifying the issuing of business licenses and permits into a single submission system. There are also significant structural economic policy reforms, such as increasing labor-market flexibility and the removal of long-standing protectionist rules governing trade and foreign investment. Indonesia has a chance to boost manufacturing exports if it can attract more substantial amounts of foreign direct investment and provide supporting infrastructure. In June 2019, Indonesia announced tax breaks (under Government Regulation No. 45/2019) for qualified activities in research and development (R&D), as well as for companies that establish skills training centers (including for vocational training) or expand or launch new investments in labor-intensive industries.

In terms of automotive industry, President Jokowi has issued a Presidential Regulation that establishes the road map for electric vehicles in Indonesia concerning the Battery-Based Electric Motor Vehicle Acceleration Program for Road Vehicles (Perpres No. 55/2019). This regulation deals with several issues such as the classification of types of electric vehicles, the level of domestic content required to build batteries for electric vehicles and rules for the industrial companies that produce electric vehicles.

Indonesia's nominal GDP rose by 5.2% from US\$1,015.4 billion in 2017 to US\$1,042.1 billion in 2018, while GDP (PPP) per capita rose by 6.1%. Based on the 20-years long-term national development plan (RPJPN) for the period from 2005 to 2025, Indonesia plans to achieve per capita income equivalent to a middle income country by 2025. The highest contributor to GDP is the services sector, which represents an estimated 45.4% of total GDP.

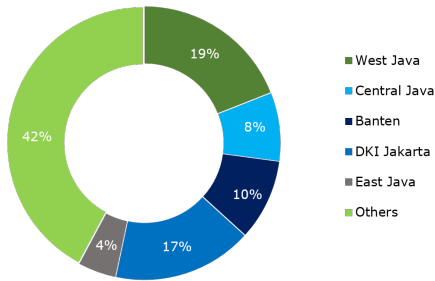
Top 10 Real GDP Growth Among G-20 Countries Projected by IMF



The IMF projects Indonesia's GDP growth in 2019 will be around 5.2%, which is the third after India (7.3%) and China (6.3%) among G-20 countries.

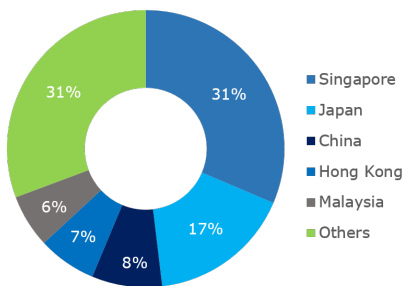
Source: International Monetary Fund; G-20 Surveillance Note, June 2019

FDI Realization 2018 by Province



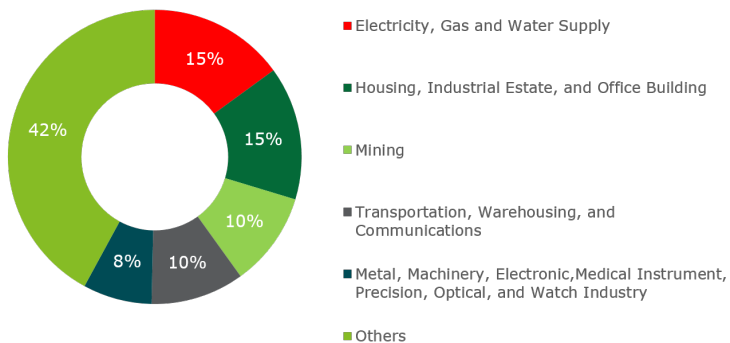
Source: BKPM, 2019

FDI Realization 2018 by Country of Origin



Source: BKPM, 2019

FDI Realization 2018 by Sector



Source: BKPM, 2019

2. Demography

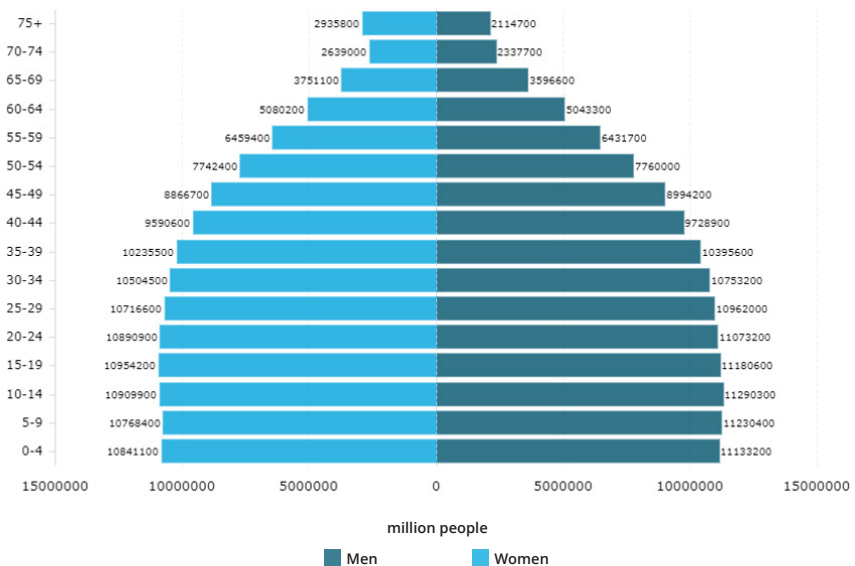
Indonesia consists of 34 provinces; 16,056 islands, with more than 265 million people, making Indonesia the fourth largest country in the world in terms of population. The demographic advantages of the 265 million people are:

- Over 60% of the population is between 20 and 65, with a low dependency ratio and a dynamic workforce with high literacy rate
- Around 52% of the population lives in urban areas
- Indonesia's population comprises more than 39% of the total population of 10 Southeast Asian countries

According to Trading Economics, Indonesia's labor force participation rate grew from 69.02% in 2017 to 69.2 % in 2018. However, in July 2019, Indonesia's labor force participation rate decreased two points to 67,5%. 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. In the previous year, there is an increase of the consumer expenditure growth from the third quarter to the fourth quarter of 2018 (from 8.27% to 8.37%), and in 2019 it started with 7.89% in the first quarter, increased to 8.63% and there is another increase to 8.74% in the third quarter of the year.

The Population of Indonesia based on age and gender (2019)

Source: Ministry of National Planning Agency (Bappenas), 2018



Source: 2018 © Datebooks, Katadata Indonesia

3. Investment climate

A large part of Indonesia's economic success is a result of the growing middle class and stable economic growth. Indonesia is one of the MINT economies (Mexico, Indonesia, Nigeria and Turkey), namely those that are the most attractive to long-term investors due to their favourable demographic profiles.

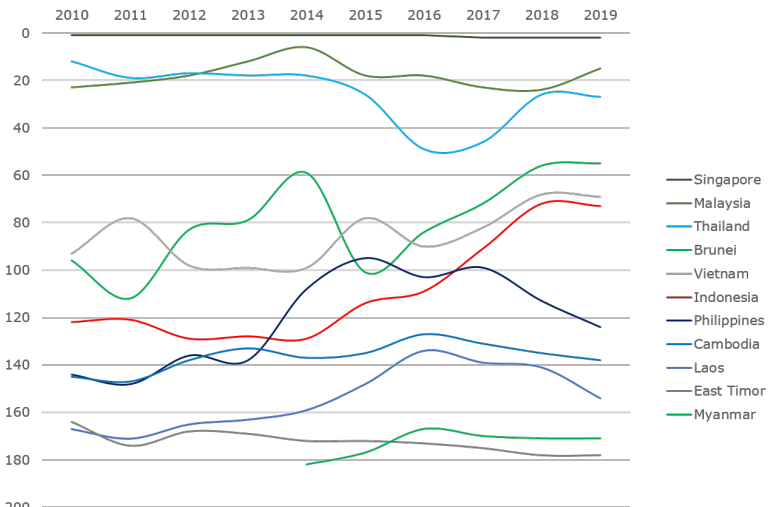
According to www.tradingeconomics.com Indonesia's debt to GDP ratio in 2019 by end of July (29.8) considered as the lowest among several Asian countries, including India (68.3), Malaysia (51.8), China (50.5), the Philippines (41.9), and Thailand (41.8). Since 2001 Indonesia has received good reviews 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) has lifted their rating on the country's debt on May 2017 to BBB-/stable, it kept stable until 2018, and the rating lifted again on May 2019 to BBB/stable. These ratings 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.

Rating Agency	Rate	Outlook
Fitch Rating	BBB	Stable
Moody's	Baa2	Stable
Standard and Poor's	BBB	Stable

Source: Ministry of Finance, 2019

However, recently, the 2019 Ease of Doing Business index assessed by World Bank for 190 countries positioned Indonesia at 73; down one level from 72 in 2018.

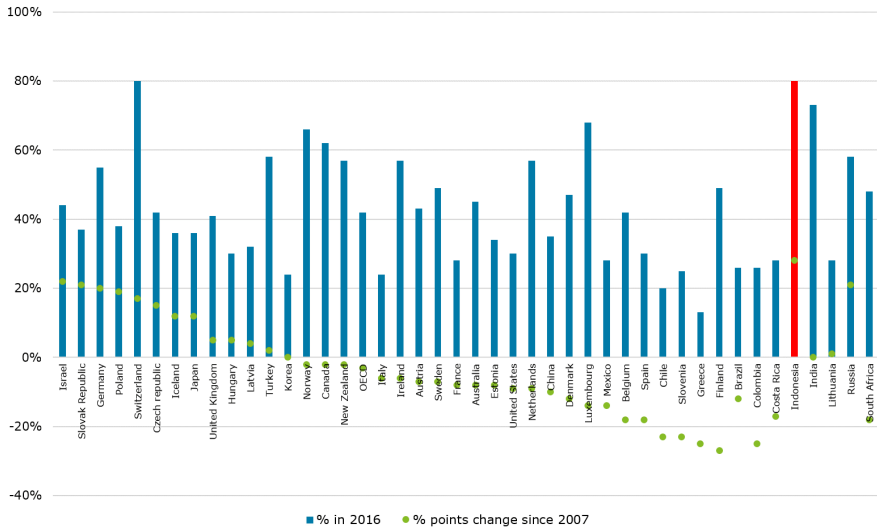
Southeast Asia Ease of Doing Business Rankings 2010-2019



Source: World Bank Doing Business 2019

In 2017 OECD report, the confidence in national government was the highest in Indonesia compared with the 42% on average in OECD countries.

Confidence in National Government in 2016 and Its Change Since 2007



Source: OECD Government at a Glance 2017






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. Oil and gas is the country’s largest export category, followed by coal (and other mining products), palm oil, 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 heavy reliance on imports.

The Government sees large potential in e-commerce industry to connect multi industries with local and international market. Jokowi also appointed Alibaba Group as an adviser to develop the digital economy market which create an open access to micro, small and medium-sized enterprises (SME) to enter global value chain.

According to the government's Strategic Investment Planning for the period of 2014-2019 and the 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 SEZs + 4 new projects	9 industrial parks + 10 new projects

Infrastructure Sector

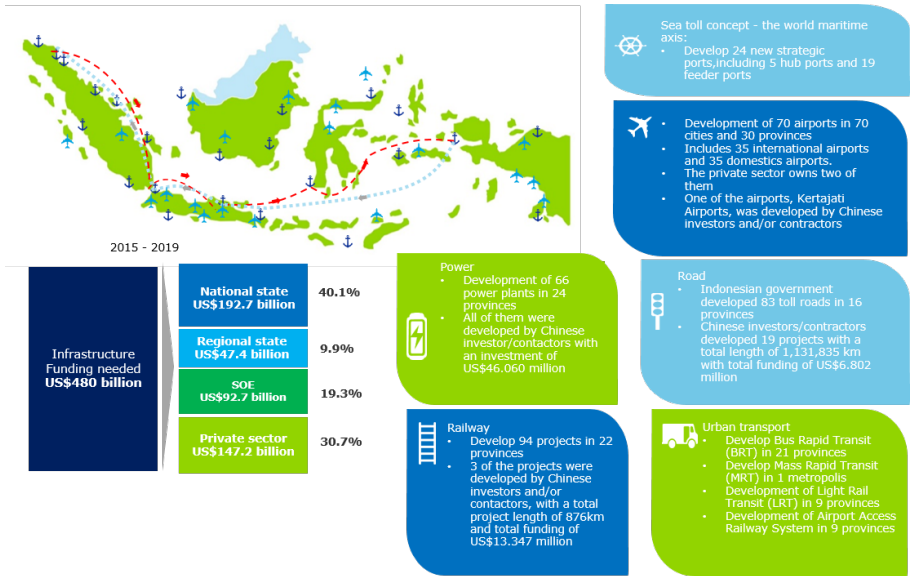
The Jokowi government plans to improve connectivity across the archipelago and promote balanced growth between the western and eastern parts of Indonesia. The government has introduced a “sea toll road” concept to connect Indonesia’s archipelago through seaports in the main corridor between western and 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 in 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 high-speed railway from Jakarta-Bandung marks China’s first milestone project in Indonesia and is expected to expand more lanes as it gains permits from the Transportation Ministry.

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, with regional GDP on an annual basis and several indicators relevant to foreign investment.



Source: Ministry of Transportation RI, May 2016

Top 10 Regional Demographics

Province	Provincial Capital	Area (sq km)	No. of Islands	No. of Regencies	No. of Cities	Population (in thousands) (2018)
DKI Jakarta	Jakarta	664.0	110	1	5	10,467.8
West Java	Bandung	35,377.8	30	18	9	48,683.8
Central Java	Semarang	32,800.7	72	29	6	34,490.8
East Java	Surabaya	47,799.7	431	29	9	39,500.9
Banten	Serang	9,662.7	81	4	4	12,689.7
Riau	Pekanbaru	87,023.7	161	10	2	6,814.9
North Sumatera	Medan	72,981.2	232	25	8	14,415.4
South Sumatera	Palembang	91,592.4	23	13	4	8,370.3
East Kalimantan	Samarinda	129,066.6	419	7	3	3,648.8
South Sulawesi	Makassar	46,717.5	314	21	3	8,772.0

Source: BPS, 2019

Top 10 Gross Regional Domestic Product

USD mn

Province	2015	2016	2017	2018	% Total 2018
DKI Jakarta	143,778	162,036	177,806	179,546	17.4%
East Java	122,500	138,065	148,950	151,923	14.7%
West Java	110,558	122,997	131,755	138,112	13.1%
Central Java	73,510	81,276	87,565	89,773	8.5%
Riau	47,292	50,785	52,056	52,156	5.0%
North Sumatera	41,444	46,769	50,462	51,184	4.9%
East Kalimantan	36,380	37,740	43,707	44,066	4.2%
Banten	34,646	38,429	41,636	42,463	4.0%
South Sulawesi	24,773	28,223	30,903	31,927	3.0%
South Sumatera	24,119	26,453	28,309	28,984	2.8%
Total	659,000	732,774	793,148	810,134	77.0%

Source: BPS, 2019

Top 10 Regional FDI by Value

USD mn

Province	2016	2017	2018
DKI Jakarta	3,398	4,595	4,857
East Java	1,941	1,567	1,333
West Java	5,471	5,143	5,573
Central Java	1,031	2,373	2,372
Riau	869	1,061	1,032
North Sumatera	1,015	1,515	1,227
East Kalimantan	1,140	1,285	587
Banten	2,912	3,048	2,827
South Sulawesi	373	712.8	617
South Sumatera	2,794	1,183	1,078
Total Top 10	20,942	22,482	21,503
Total FDI by value	28,964	32,240	29,307

Source: BPS, 2019

Top 10 Regional FDI by No. of Projects

Province	2016	2017	2018
DKI Jakarta	6,751	8,803	6,499
East Java	1,473	1,750	1,441
West Java	5,369	5,309	4,713
Central Java	1,054	955	801
Riau	394	285	252
North Sumatera	688	564	491
East Kalimantan	466	340	275
Banten	2,161	2,479	1,895
South Sulawesi	309	196	191
South Sumatera	251	261	239
Total Top 10	18,916	20,942	16,797
Total FDI projects	25,321	26,257	21,972

Source: BPS, 2019

Top 10 Provincial Minimum Wage (UMP) per Month 1 US\$ = Rp14,481

Province	2016	2017	2018
DKI Jakarta	230.7	247.5	256.4
East Java	N/A	102.4	104.2
West Java	167.5	104.8	106.6
Central Java	81.9	100.8	102.6
Riau	155.9	167.2	170.2
North Sumatera	134.9	144.7	147.2
East Kalimantan	160.9	172.6	175.6
Banten	132.8	142.5	144.9
South Sulawesi	167.5	179.7	182.9
South Sumatera	164.2	176.2	179.3

Source: BPS, 2019

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 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-years 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 legislations are 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 of the 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; a state administrative courts (*Pengadilan Tata Usaha Negara*), which hear administrative law cases against the government; a 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 to 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 is independent from the national government.

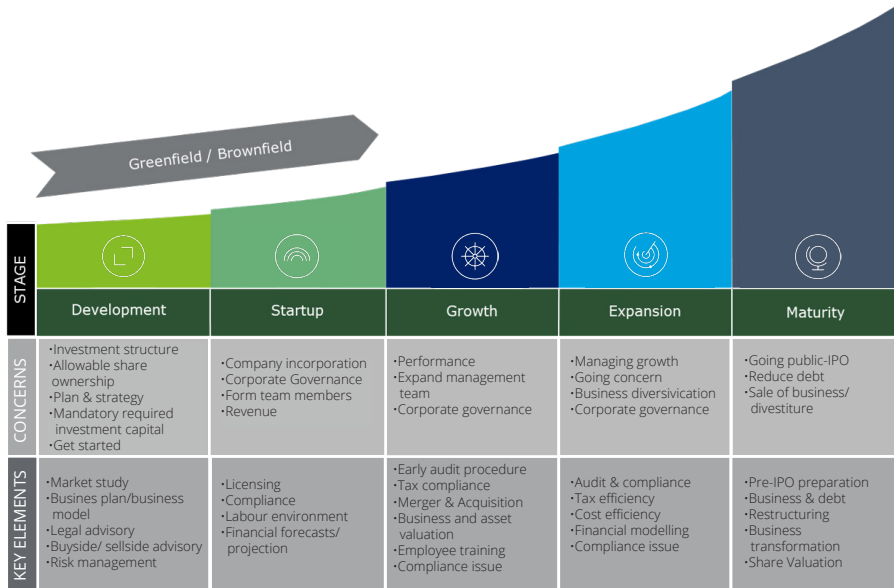
Indonesia established regional autonomy based on laws passed in 1999 and later amended in 2014. Under such laws, the national government and the local governments share regulatory authority over all matters except for policies of foreign, defense, justice, religion, and fiscal and monetary which are reserved with 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 are 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. Identifying Your Investment Stage

Five stages of organization evolution



C. Legal and Regulatory Overview for Doing Business in Indonesia

1. Getting the Business Started (Joint Venture)

Indonesia has become a favored investment destination since the country has young workforce, abundant natural resources and growing local market. Knowing the mutual opportunities for the foreign investment, Indonesian government, has been working to attract more investment by expanding the 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 of minimum local ownership.

Representative offices

Establishing a representative office could be a viable option for a foreign investor who wishes to have local presence in Indonesia. Generally, there are three types of representative office.

- Foreign Company Representative Office
- Foreign Trade Company Representative Office
- Construction Service Provider Representative Office

Foreign Company Representative Office and Foreign Trade Company Representative Office

An application for the establishment of a Foreign Company Representative Office shall be submitted manually (hard copy application) to the Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or "BKPM"). But an application to establish 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

Foreign construction companies (*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 and bid for potential projects and carry out construction services in Indonesia. BUJKA RO may be a profit-generating operation, which is

different than a regular foreign company representative office or a foreign trade company representative office.

Prior to performing construction services, a *BUJKA* RO is required to obtain a Construction Representative Office License (IPBUJKA) from the Minister of Public Works and Public Housing through the OSS system. The BUJKA RO may only carry out construction services in a 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 implementing any construction services in Indonesia. The portion 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, 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, minimum 50% of the work value must be carried out by the BUJKN, and all works must be performed in Indonesia.

Limited Liability Companies

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

- Foreign capital investment company (PMA company): having any amount of foreign investment, entitled to fiscal incentives and other investment incentives, registered with 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.
- 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, for the purpose of profit-oriented entity; and
- a Perum, is an entity wholly-owned by the national government (without share capital), for the purpose of people's benefit provider.

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 region-owned enterprises (*badan usaha milik daerah* or *BUMD*). In practice, there are two forms of region-owned enterprises, which are region-owned companies 'for profit' (*Perusahaan Perseroan Daerah*) and companies carrying out a public function (*Perusahaan Umum Daerah*).

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.

Negative List of Investment

On 12 May 2016, President Jokowi announced the new Presidential Regulation No. 44/2016 concerning List of Business Sectors Open and Closed for Investment with Certain Conditions (the 2016 Negative Investment List). The 2016 Negative Investment List replaced the previous Negative Investment List as regulated under Presidential Decree No. 39/2014. Business sectors that are open to foreign investment under certain conditions or closed to foreign investment completely are primarily identified by the 2016 Negative Investment List (also known as *Daftar Negatif Investasi* or *DNI*). Business sectors that are not identified in the DNI are generally considered to be open to foreign investment without restriction, unless another law and regulation provides otherwise. The conditions for foreign investment imposed by the DNI 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.

DNI 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 March 2017.

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 DNI 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 DNI, 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 DNI and applicable sectoral regulations.

Prohibition on Nominee Arrangements

Law No. 25 of 2007 on Investment (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 the PMA companies and to domestically owned companies. However, the main purpose of the restriction on nominee arrangements is considered to 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

Foreign investors need to carry out the following course of actions, 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 companies needs to obtain various licenses, permits and approvals necessary to enable them to commence commercial operation, 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*).

Prior to 2007, now-revoked BKPM principle license would include a requirement that a portion of the PMA company's shares be divested to Indonesian shareholders after a certain time period (generally 15 years after the commencement of commercial operation). 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 particular to their industry.

BKPM Regulation No. 5 of 2019 regarding Amendment to BKPM Regulation No. 6 of 2018 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 sell of shares and through Indonesian capital market. Furthermore, the regulation opens opportunity to conduct shares buyback subject to MOLHR and the 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 companies is a not 100% foreign-owned company, the Indonesian shareholder(s) is required to confirm that they are not interested in owning the shares; and
2. if the PMA companies 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.

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 incorporation of the PMA Company issued by MOLHR and arranging announcement of PMA Company's legal entity in the State Gazette												
5.	Investment database registration on the OSS system												
6.	Obtaining Business Identification Number (NIB) (including the obtainment of Company Registration Certificate (Tanda Daftar Perusahaan), General Importer Identification Number (Angka Pengenal Importir – Umum/ API-U), and customs access (akses kepabeanan).												

Timeline for Establishment and Basic Licensing of a PMA Company												
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 completion of the establishment and the obtainment of the licenses will 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.

Indonesian Company Law

An Indonesian limited liability company (*Pereroan 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 the articles of association of the company have been signed until prior to obtaining approval from the Minister of Law and Human Rights, the founders of the company are considered to be partners and may still be held liable for the obligations of the proposed company. In practice, a newly established company will adopt any obligations of the founders shortly after the minister's approval is obtained and ratify such assumption of obligations in the first general meeting of shareholders of the newly established company.

The Company Law recognizes the concept of "piercing the corporate veil", 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 act if the requirements to form the company as a statutory body are not fulfilled;

the shareholder directly or indirectly, with bad intention, utilizes the company for personal interests; the 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.

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 company whose line of business is in collection and/or management of the public's funds, company which issue acknowledgements of indebtedness to the public, or listed company shall have at least 2 (two) members of the Board of Directors).

Members of 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.

Board of Commissioners

The Boards 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 which is selected from a person who is not affiliated from any of the shareholders, Board of Directors and other member of Board of Commissioners.

Members of 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.

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 provides that the minimum Authorized capital of an Indonesian company is Rp50 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 Government Regulation no. 29 of 2016 regarding the Change of Authorized Capital of Limited Liability Company, which sets out that the authorized capital of a limited liability company shall be based on the agreement of the company's founders. Certain sectors, however, may impose higher capital requirements, and BKPM may require higher capital for PMA companies depending on their proposed investment. For a PMA company, the minimum issued and paid-up capital is Rp2.5 billion or its equivalent value in US\$, while the minimum total investment value is more than Rp10 billion or its equivalent value in US\$, including working capital for one year, machinery and others, excluding land and buildings. The funding realization consist of: (i) capital; (ii) retained earnings (applicable for business expansion); loan.

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 existing shareholders in proportion to their ownership of shares with the same classification (pre-emptive rights).

A company may also make a reduction to the capital. Reduction of capital may be made upon approval from general meeting of shareholders. Such general meeting of shareholders shall be informed to all creditors by the Board of Directors by the 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 Minister of Law and Human Rights), and the company shall make response within 30 (thirty) days period 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 ways 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 made by the Board of Directors and such relevant shareholders shall be given an evidence of shares ownership (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 of 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 to attend and cast one vote in the general meeting of shareholders (although it is possible for creation of shares that does not give the owner a voting right) and receive payment of dividends and the remainder of assets from liquidation.

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 Indonesian) due to the requirements of Law No. 24 of 2009 and for such agreements to be governed by Indonesian law (even where a choice of foreign law clause would be enforceable). 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 relying on only the articles of association.

Although the time required for establishing a PMA company has become shorter in recent years, the process still is 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.

2. 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 of 1999 regarding Restriction of Monopoly Practices and Unfair Business Competition juncto KPPU Regulation No. 3 of 2019 regarding to Assesment of Merger or Consolidation of Business Entity, or Share Acquisition (the Competition Law), a company is required to report mergers and acquisitions to the Supervision of Business Competition (*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 Rp2.5 trillion (or Rp20 trillion for banks);
- the combined value of the turnover of the relevant companies would be more than Rp5 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 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 Rp1 billion to Rp25 billion to a business entity that does not fulfill the applicable reporting obligations.

Due Diligence

Conducting due diligence on Indonesian companies has been proven to be rather difficult considering the lack of easy to access or reliable public records of constitutional corporate documentation, encumbrances on corporate assets,

share capital or land ownership and related encumbrances. Even though the 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.

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, depends 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 are eligible for foreign investment in accordance with the DNI 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 Indonesia's 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 Rp3 billion, or such other number of shareholders and issued capital that

may be stipulated under the 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 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 the control over the public company. A controlling party is defined as:

- a person that owns more than 50% of a company's shares; or
- a person that has the ability to control the company directly or indirectly (e.g., by way of appointing or dismissing the directors or commissioners of the company or amending the articles of association of the company).

Under the 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 that could be evidenced by:

- an agreement with other shareholder that shows a possession of more than 50% of the voting rights;
- a document/information proofing the authority of a shareholder to control financial and operation policy of the publicly listed company based on the articles of association/agreement;
- a document/information proofing the authority to appoint or dismiss most members of the BOD and BOC;
- a document/information proofing power to control the majority voting rights in the BOD and BOC meetings; and/or
- a document/information proofing other ability to 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 effected 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 board of directors 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 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 the OJK Regulation No. 9/2018, the announcement must include at least the following information:

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

Capital markets regulations specify the procedures for convening a meeting of the shareholders of a public company, including related formalities and notice requirements.

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 amount of shares which were acquired, name of the shareholder whose shares is acquired by the acquirer, acquisition price per shares, 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 on 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 the mandatory tender offer in a nationally circulated Indonesian language newspaper within two working days after receiving written confirmation from OJK, authorising the new controlling shareholder to disclose the information.

Following the publication of the notice of the mandatory tender offer, the shareholders of the target company have 30 days to accept or reject the offer at the price stipulated. The process of acceptance by the shareholders is proscribed by regulation, with all share transfers and payments being effected through the buyer's and 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 or the acceptance will lapse.

Free Float Requirement

In the event that the acquisition results in a controlling party owning more than 80% 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, television, radio, or other electronic media, letters, brochures, etc. 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 earlier:

- OJK will 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.

A voluntary tender offer is completed in the same manner as a mandatory tender offer.

3. Infrastructure

Indonesia has substantial infrastructure needs and has therefore instituted legal large-scale and institutional reforms (including unbundling and liberalization) to encourage private investment and increase transparency in the infrastructure procurement process. Among the various initiatives, the Indonesian government has established a public private partnership ("PPP") program, with numerous projects now in various stages of development.

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 the 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 the 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 region-owned enterprises, that financed, wholly or partially, from state or regional budgets. Fundamentally, since this scope of applicability, it is possible for the Indonesian public procurement regulations to apply 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 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 had 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 company. 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 amongst 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 of 2015 as the basis 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 (airport services, seaport provision and/or services, and railway infrastructure);
- road infrastructure (toll roads and toll road bridges);
- water resources and irrigation infrastructure;
- drinking water infrastructure;
- centralized wastewater management infrastructure system;
- Local wastewater management infrastructure system;

- Waste management infrastructure system;
- Telecommunications and informatics infrastructure;
- Electric power infrastructure;
- Oil and gas and renewable energy infrastructure;
- Energy conservation infrastructure;
- Urban facilities infrastructure;
- Education facilities infrastructure;
- Facilities and infrastructure for sports and art;
- Infrastructure Zone;
- Tourism infrastructure;
- Health care infrastructure;
- Penitentiary infrastructure; and
- Public housing infrastructure

The Indonesian Parliament has passed new laws for specific sectoral infrastructure at streamlining and providing clarity on the procurement and private sector development and participation for projects in these sectors, including:

- Law No. 17/2019 regarding Water Resources;
- Law No. 38/2004 regarding Roads;
- Law No. 23/2007 regarding Railways;
- Law No. 17/2008 regarding Maritime Transportation;
- Law No. 18/2008 regarding Waste Management;
- Law No. 1/2009 regarding Aviation; and
- Law No. 30/2009 regarding Electricity.

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. For examples, Indonesia's state-owned electricity company, PT PLN (*Persero*), and the region-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 government contracting agency 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 as follows power purchase agreement, water purchase agreement, 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 of 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.

Institution framework to Support PPP

In relation to promote and support the PPP transactions in the country, the Indonesian 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 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, that is intended to reduce uncertainty in land acquisition for infrastructure development.

Presidential Regulation No. 71/2012 on Implementation of Land Acquisition for the Public Interest was the follow up implementing regulation . This was later amended by Presidential Regulation No. 40/ 2014, Presidential Regulation No. 99/2014, Presidential Regulation No. 30/2015 and Presidential Regulation No. 148/20

In late 2009, the Ministry of Finance established the PT Penjaminan Infrastruktur Indonesia (Persero) or PII well known as the Indonesia Infrastructure Guarantee Fund (IIGF) pursuant to the PPP Regulations and Government Regulation No. 35 of 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 government contracting agencies under the applicable Cooperation Agreement). The IIGF established with support from the World Bank to provide such guarantees.

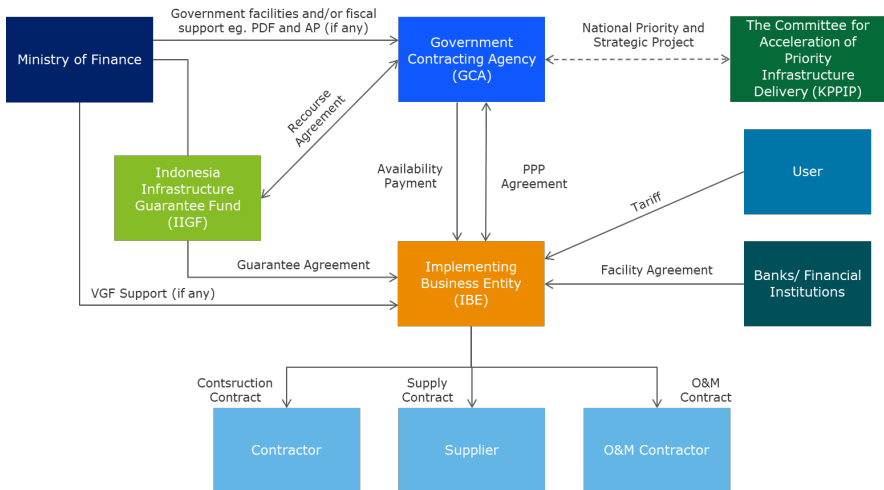
Government guarantee by the IIGF is entered into between the IIGF, as guarantor, and the private company appointed to carry out the project (the project company), as beneficiary. Under the terms of the guarantee agreement, the project company is permitted to assign the benefit of the guarantee to its 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 government contracting agreement and IIGF. The recourse agreement is intended, among other things, to encourage through evaluation by the government contracting agency of the risk allocation under the

Cooperation Agreement and the government contracting agency'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 in the country. Both IIGF and PT SMI have provided input and advise to potential government contracting agencies in connection with project preparation and structuring, for example, in providing project implementation advice to the relevant government contracting agency, preparation of pre-feasibility studies of the project, conducting of market sounding exercises and supporting the government contracting agency 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 exemplified in the following diagram:



4. Capital Market IDX

IDX organizes and provides the system and the facility to connect the seller and the buyer of shares for trading purpose. 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.
Listing Requirements

Prospective listed companies shall meet the following requirements to be listed on the IDX:

- the legal entity is a limited liability company;
- a registration statement has been submitted to OJK and is in effect;
- the company has an Independent Commissioner or Commissioners (constitutively at least 30% of the Board of Commissioners);
- the company has at least one unaffiliated Director;
- the company has an Audit Committee;
- the company has an Internal Audit unit;
- the company has a Corporate Secretary;
- the nominal value of prospective listed company's listed shares must be at least Rp100; and
- the proposed directors and commissioners of the company have a good reputation.
- the prospective listed company that seeks to conduct an initial public offering is obliged to make an underwriter agreement regarding the initial public offering in the form of full commitment.

Further, the prospective listed company is also obliged to have a committee of nomination and remuneration. The prospective listed company may list its shares on the Main Trading Board or the Development Trading Board.

Below are the differences in the requirements for listing on the two boards:

No	Matters	Main Trading Board	Development Trading Board
1.	Type of Entity	Limited Liability Company	Limited Liability Company
2.	Operational Period	36 months (affirmed that the operational period is a commercial operation proven by the existence of business income)	12 months (affirmed that the operational period is a commercial operation proven by the existence of business income)

No	Matters	Main Trading Board	Development Trading Board
3.	Financial statements	<ul style="list-style-type: none"> -Have been audited at least 3 years -Audited Financial Statement for the last 2 years and the latest interim Audited Financial Statement (if any) which has obtained an Unqualified Opinion 	Have been audited at least 12 months and the latest interim Audited Financial Statement (if any) which has obtained an Unqualified Opinion
4.	Capital	Net Tangible Assets ("NTA") min. Rp 100 billion	<ul style="list-style-type: none"> -NTA min. Rp5 billion; or -Business profit (the last financial year) min. Rp1 billion & Market Capitalization Min. Rp100 billion; or -Revenue (the last financial year) min. Rp40 billion & Market Capitalization min. Rp200 billion
5.	Total number of shareholders	> 1,000	> 500

No	Matters	Main Trading Board	Development Trading Board
6.	Minimum number of shares owned by minority shareholders	300 million shares and meet the requirements: <ul style="list-style-type: none"> - At least 20% of total issued shares which has equity value before initial public offering less than Rp500 billion - At least 15% of total issued shares which has equity value before initial public offering start from Rp500 billion through Rp2 trillion,- or - At least 10% from issued shares which has equity value before initial public offering more than Rp2 trillion 	150 million shares and meet the requirements: <ul style="list-style-type: none"> - At least 20% of total issued shares which has equity value before initial public offering less than Rp500 billion - At least 15% of total issued shares which has equity value before initial public offering start from Rp500 billion through Rp2 trillion,- or - At least 10% from issued shares which has equity value before initial public offering more than Rp2 trillion

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 parties, KSEI.

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 authorised to investigate corruption in the financial services sector, administer penalties, conduct investigations and initiate prosecutions and has the power to revoke licenses. OJK is also intended to play a central role in consumer protection in the financial services industry, 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.

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. The national government bonds consists of State Debt Instruments (*Surat Utang Negara*) and State Sharia Securities (*Surat Berharga Syariah Negara*, commonly known as SBSN), as bonds issued under the 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 have also previously tapped 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 available from the national government over these bonds.

Information Disclosure

Public companies that have intention 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 made in accordance with the Indonesian Financial Accounting Standards (*Pernyataan Standar Akuntansi Keuangan or PSAK*) established by the Indonesian Institute of Accountants (*Ikatan Akuntan Indonesia or IAI*), and other 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 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 its 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. The following occurrences require disclosure:

- 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 labour dispute;
- 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; and
- a change in the company's financial year.

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 pre-emptive rights of existing shareholders, with the approval of the general meeting of shareholders, if the following conditions are fulfilled:

- within two years such capital increase will not exceed 10% the company's paid up capital; 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 pre-emptive rights and must also issue an announcement to the public. Within two working days of the completion, the company must notify OJK and the public of the results, including information about quantity and stock price.

Initial public offering (IPO) process

A company that intends to carry out an initial public offering in Indonesia must submit a registration statement and supporting document 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 has 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;
- submitting 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 from 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 shares 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 shares 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 pre-emptive right to acquire a portion of the newly-issued securities in proportion to the percentage of their respective current shareholding.

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 that has the obligation to purchase any remaining shares that are not purchased by the existing shareholders or the public, under the same price and same terms. The party who 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.

5. 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 to the context of determining and implementing monetary policy, Bank Indonesia is authorized to:
 1. set monetary targets by taking into account the inflation target set by them;
 2. conduct monetary control by using methods including but not limited to the following:
 - open market operations on 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 a 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. Regulating and supervising 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.

Single Presence Policy and Shareholding Restrictions

Based on OJK Regulation No. 39/POJK.03/2017 regarding the Single Presence in Indonesia Banking ("POJK 39/2017"), single presence is a condition where a party can only be a controlling shareholder in 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 person 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 does 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 of the controlled bank shall be merged or consolidated to 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 every 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, the Ministry of Finance and the Offshore Commercial Loan Team (*Tim Pinjaman Komersial Luar Negeri* or *PKLN* Team). 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 *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 and Bank Indonesia Circular Letter No. 16/10/DStA dated 26 May 2014 (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 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 Rp50,000,000. For late submission of supporting documents, the borrower will be imposed a penalty of Rp500,000 per day of delay. 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. 7/14/PBI/2005, dated 14 June 2005, concerning Limitation of Rupiah Transactions and Provision of Foreign Exchange Credit by Banks (as amended), Indonesian banks are prohibited from conducting certain Rupiah transactions with foreign parties.

Rupiah transactions restricted under this regulation include transfer of Rupiah to onshore bank accounts owned by a foreign party or jointly owned by foreign party and a non-foreign party. This requirement would not be of concern if the loans are provided and will be repayable in foreign currency.

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 requirement.

This regulation took effect on 1 January 2015, and generally provides a non-bank corporation intending to receive 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.

6. 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, reactivated it again in January 2016. However, Indonesia has decided to suspend its membership once more on 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.

Under Indonesian law, oil and gas activities are separated into downstream and upstream sectors. The law stipulates that upstream activities as exploration and exploitation and downstream activities as processing, transporting, storing and trading. The Minister of Energy and Mineral Resources has general authority over Indonesia's energy sector (BPMIGAS), BPMIGAS was the regulatory body overseeing upstream activities and was the executor, on behalf of the Indonesian government, of Production Sharing Contracts (PSCs) and other types of Cooperation Contracts. In November 2012, a Constitutional Court decision invalidated aspects of the 2001 Oil and Gas Law relating to establishment and authority of BPMIGAS and required BPMIGAS's dissolution. BPMIGAS authority has been transferred to the Ministry of Energy and Mineral Resources by Presidential Regulation No. 95/2012. The government also announced the transfer of BPMIGAS's operations and staff into the Special Task Force for Upstream Oil and Gas Activities (*Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi* or *SKK Migas*), under the supervision of the Minister of Energy and Mineral Resources. All the employees of BPMIGAS have been assigned to SKK Migas, to continued oil and gas operations. BPHMIGAS is the regulatory body overseeing downstream activities.

B. Coal and Mineral Mining

Indonesia has for years 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 has been 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.

Contracts of Work

Before 2009, mining agreement 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 done 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 provides that existing Contracts of Work are to remain effective until their expiry but their terms (other than those relating to state revenues) by January 2010 must be amended to become in line with the 2009 Mining Law. As of to date, many Contract of Works have been converted into mining business license. However, reportedly, there are several Contract of Works are still under negotiations between the relevant mining companies and the government.

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.

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). The issuing authority for an IUP varies depending on the source of the equity capital and the location of the mining area (as detailed in the table below). IUPKs are always issued by the Minister of Energy and Mineral Resources on behalf of the national government.

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 region-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.

Project location/ Source of capital	Licensing authority
Foreign Equity Capital*	Minister of Energy and Mineral Resources
State Reservation Area	Minister of Energy and Mineral Resources
Multiple Provinces	Minister of Energy and Mineral Resources, after obtaining recommendations from applicable governors, regents and mayors
Single Province, Multiple Regencies or Cities/ Domestic Equity Capital	Applicable governor, after obtaining recommendations from applicable regents and/or mayors
Single Regency or City/ Domestic Equity Capital	Applicable regent or mayor
Offshore Projects greater than 12 Nautical Miles from the Coastline	Minister of Energy and Mineral Resources
Offshore Projects in the Sea Territory of Multiple Regencies or Cities/ Domestic Equity Capital	Applicable governor
Offshore Projects greater than four but less than 12 Nautical Miles from the Coastline/Domestic Equity Capital	Applicable governor
Offshore Projects less than four Nautical Miles from the Coastline in the Sea Territory of Single Regency of City/ Domestic Equity Capital	Applicable regent or mayor government.

* Prior to Government Regulation Number 24/ 2012, the applicable regent or governor retained IUP licensing authority in respect of intra-regency or inter-regency/intra-provincial mining areas where the applicant has foreign equity capital.

IUP holders must provide a mine closure guarantee (in accordance with the operational age of the mine) and are obliged to pay annual dead rent and royalties as well as other tax and non-tax state revenue fees. License holders must provide various plans and periodic reports to the applicable regulators, including a plan for investment, a plan for reclamation, a plan for post-mining activities, an annual work plan and budget, and various other periodic reports.

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 practice 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.

Divestment Requirements

Wholly Indonesian party will then own at least a specified percentage of the shares of such company, when foreign capital investment company holding a mining business license that is subject to compulsory equity divestment, starting 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.

7. 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.

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 "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 has also been 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 (Trademark Law) a trademark is a distinguishable sign and is used in the trading of goods and services.

Indonesian trademark applications shall be submitted to the Minister of Law and Human Rights electronically or non-electronically in Indonesian language for approval. The approved application shall be published in the Official Trademarks Report (or a proper substitute). The approved trademark is then valid for ten years and is renewable. Trademarks may also be assigned.

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 is 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

Pursuant to Law No.13/ 2016 (Patents Law) a patent must contain an inventive aspect and be capable of industrial application.

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 cannot 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.

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 to use 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.

8. 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 Supreme Court of the Republic Indonesia on 13 March 2014, issued the 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 proceeding 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 proceeding period.

It is important to note, that in general rule of practice the disputing parties cannot always expect the judges to comply with KEPMA requirements, given that the proceeding period may also be affected by unpredictable circumstances that might occur during the proceeding, 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 judicial spheres 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 30 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.

9. 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*): similar to freehold ownership; only available to Indonesian citizens; no time limitation.
- Right to Build (*Hak Guna Bangunan*): 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 a further 20 years.
- Right to Cultivate (*Hak Guna Usaha*): 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.
- Right to Use (*Hak Pakai*): right to use land owned by a third party; available to Indonesian citizens, Indonesian companies, foreign entities; 25-year term but can be extended for a further 20 years.

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.

Location permit

In order to acquire the target land, a PMA company must obtain a location permit (Izin Lokasi) issued by the OSS institution. With some exceptions, the permit is obtained from the government of the regency or municipality where the land that is to be acquired is situated.

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, land right holders may be required to relinquish their land rights in exchange for compensation, based on a court order for the development of public infrastructure. 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 be able to be relocated and the power to revoke such land title lay only with the president.

Presidential Regulation No. 71/2012 on Implementation of the Procurement of Land for the Public Interest was enacted to implement Law No. 2/2012 on Procurement of Land for the Public Interest and was later amended by Presidential Regulation No. 148/2015 which was issued to speed up the process of land acquisition.

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).

The AMDAL shall be approved by the appropriate governmental authority. The location, type, and characteristics of the proposed business activities determines the appropriate authority. The following types of business activities are deemed to be strategic in nature and, for that reason, the AMDAL could also requires the approval of the State Minister for Environmental Affairs (rather than a local governmental body):

- nuclear power plants, hydropower plants and geothermal power plants;
- oil and gas exploitation, oil refineries, petrochemical industry activities;

- uranium mining;
- aircraft industry, ship industry, arms industry, explosives industry, steel industry, heavy equipment industry, telecommunications industry; and
- dams, airports and ports.

In certain cases, a business may be exempted from the requirement of preparing AMDAL, such as where:

- the business is located within an area that already has a Regional AMDAL;
- the business is located in a regency or city that has a detailed spatial layout plan or a strategic spatial layout plan; or
- the business will provide an emergency response to a natural disaster.

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 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).

Additionally, a business may be required to obtain a “nuisance permit” (referred to as *Hinder Ordonnantie* or *Izin Gangguan*), under which periodic charges must be paid to the local government.

10. 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 Rupiah 200,000,000) 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 independent 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 regards 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. KPPU has the authority to impose monetary fines from Rupiah 1 billion to Rupiah 25 billion and/or administrative sanctions, such as business license revocation.

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 implementation 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 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, correspondences, 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.

D. Taxation in Indonesia

1. Tax incentives

Tax Holiday Facility

Taxpayers making a new investment in a pioneer industry may obtain an exemption or a reduction of corporate income tax (CIT). 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.

1. integrated upstream metals industry;
2. integrated oil and gas purification or refinery industry;
3. integrated crude oil/natural gas/coal-based petrochemicals industry;
4. integrated basic organic chemicals sourced from agriculture, plantation, or forestry industry;
5. integrated basic inorganic chemicals industry;
6. pharmaceutical main raw materials industry;
7. irradiation, electromedical, electrotherapy equipment manufacturing industry;
8. main components of electronics and telematics equipment manufacturing industry, such as semiconductor wafer, backlight for Liquid Crystal Display (LCD), electronic driver, or display;
9. machinery and main components of machinery manufacturing industry;
10. robotic components manufacturing industry which supports manufacture machinery manufacturing industry;
11. main component of electricity generation machinery manufacturing industry;
12. automotive and its main components manufacturing industry;
13. vessel main components manufacturing industry;
14. aircraft main component manufacturing industry;
15. railway main component manufacturing industry;
16. paper pulp industry produced from agricultural, plantation, or forestry products;
17. economic infrastructure; and/or
18. digital economy covering data processing, hosting, related activities.

Types of production for each industry that are eligible for the tax holiday facility above are further regulated by BKPM regulation.

The tax holiday facility provides:

- a 5 year 50% reduction in CIT liability for a minimum investment of Rp100 billion but less than Rp500 billion. Further, an additional 25% reduction in CIT liability would also be granted for 2 years after the end of the initial tax holiday period;
- a 5 to 20 year 100% reduction in CIT liability for a minimum investment of Rp500 billion. Further, an additional 50% reduction in CIT liability would also

be granted for 2 years after the end of the initial tax holiday period.

- The tax holiday period commences from the year of the start of commercial operations.

In order to obtain the tax holiday facility, certain requirements must be satisfied. The taxpayer shall submit the application together with the application for registration of investment no later than 1 year after the issuance of registration of investment. The application should be submitted through OSS system and in case it is a new investment, OSS system will inform the taxpayer whether or not the taxpayer meets the requirement for tax holiday facility.

Upon approval, the tax holiday facility is only applicable to the income which is generated from the business eligible for the facility. Other income (such as capital gains, interest, dividends, royalty, rental, debt waiver, revaluation, etc.) remains subject to tax in accordance with the prevailing tax regulations. Taxpayers that have both types of income stream are required to maintain separate bookkeeping for each income stream.

A taxpayer is only eligible for one type of tax facility (either Tax Allowance scheme or Tax Holiday scheme).

Tax Allowance Facility

Taxpayers investing in certain industries and/or in certain less developed regions having high priority on a national scale can be granted tax facilities in the form of:

- Additional net income reduction, up to a maximum of 30% of the amount of investment in tangible fixed assets, which shall be charged at 5% per annum for 6 years;
- Accelerated depreciation and amortisation;
- The period of loss carry forward being extended up to 10 years (certain additional years can be given if the taxpayer meets the requirements); and;
- Withholding tax on dividends distributed to a non-resident shareholder at 10%, unless the relevant tax treaty stipulates a lower rate.

In order to apply for the tax allowance facility, certain detailed requirements must be met including qualitative criteria, such as high investment value or export-oriented, high labour absorption, and high local content.

The industry sectors that are eligible for the income tax allowance facility are listed in the relevant Minister of Finance Regulation and these are updated periodically to accommodate the needs to entice investments in certain types of business and selected regions.

Super Deduction

In 2019, the Government introduced income tax facility for labor-intensive industries and certain types of expenditure incurred by Indonesian taxpayers.

There are 3 business activities eligible for this new income tax facility:

1. New capital investment or business expansion in labor-intensive industry (eligible for 60% tax allowance);
2. Apprenticeship, internship, and/or learning program in human resources development (eligible for a maximum 200% deduction of total expenditures); and
3. Research and development related activities (eligible for a maximum 300% deduction of total expenditures).

Certain expenditure related to apprenticeship, internship, and/or learning program 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.

Special Economic Zone (Kawasan Ekonomi Khusus or “KEK”)

Taxpayers operating in KEK will be eligible for certain CIT, VAT, and import facilities.

A new taxpayer carrying out business in a KEK is eligible for the tax facility of 20% to 100% reduction in CIT liability for 10 to 25 years commencing from the year of the commercial operation depending on the investment value.

A taxpayer who does not obtain the CIT reduction tax facility above, may obtain the tax allowance facility (similar to that outlined above).

In addition to the CIT reduction, a taxpayer is also entitled to obtain VAT and Import Tax facilities such as:

- non-collection of VAT and LGST on the importation or domestic purchase of certain goods;
- non-collection of VAT and LGST on the delivery of certain goods between taxpayers in KEK;
- exemption of VAT on importation or delivery of certain taxable goods/services and certain strategic goods that are exempted from VAT;
- deferred Customs Duty;
- exemption of excise on certain goods used to produce final goods that are not subject to excise; and
- non-collection of Import Taxes.

Certain requirements must be satisfied in order to obtain the tax facility for taxpayers in KEK.

Bonded Storage

Bonded Storage is a building, a site or a zone that meets certain requirements which is used for storage of goods for certain purposes and obtains customs facilities. Bonded Storage takes several forms, among others, as described below:

a. Bonded Warehouse

A Bonded Warehouse is defined as a place of bonded storage to store imported goods, which may be accompanied with one or more activities such as packaging/repackaging, sorting, kitting, packing, adjustment, or cutting of certain goods within a certain period for later removal.

The imported goods or materials that are introduced into a bonded warehouse by an Entrepreneur in Bonded Warehouse may be granted facilities in the form of postponement of import duty, exemption from excise, and/or non-collection of import taxes (VAT, LGST, and Art.22). 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.

b. Bonded Zone

Bonded Zone is 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, redelivery of taxable goods, lending 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, LGST, and Art.22). 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). 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.

2. Tax administration

Tax authorities

Most taxes are administered centrally by the Directorate General of Taxes (DGT), except regional taxes which are administered and collected by local governments, such as provinces and districts.

The DGT is a department under the Ministry of Finance 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, 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 tax year for a company is the accounting/financial year and calendar year in the case of individual.

Administration, books and records

Generally, books and records, including those on computers, should be maintained in Rupiah currency and in the Indonesian language, and kept for 10 years in Indonesia. For tax purposes, foreign investment (PMA) companies, permanent establishment (PE), certain entities with foreign affiliations and companies that prepare their financial statements using the US dollar as the functional currency in accordance with Indonesia's generally accepted financial accounting standards (PSAK Number 10) may maintain English language and US dollar bookkeeping, provided approval from the Minister of Finance is obtained (contractors of oil and gas PSCs and companies operating under Mining Contracts of Work need only to provide notification). A change in the method of bookkeeping is possible, subject to pre-approval from the DGT. There is no statutory requirement for an audit of a taxpayer's accounts by a public accountant for tax purposes. However, if taxpayers do have audited accounts, the DGT requires them to be submitted upon annual tax filing.

Payment and filing

All taxpayers carrying out a business or an independent profession must maintain regular and proper accounting records, on which periodic tax payments and reporting are based. Tax returns need to be filed based on 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 hard-copy process. Taxpayers will have to generate an e-billing code through the DGT system in order to facilitate their tax payment. The billing code is valid for certain periods and will need to be given 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 electronic filling (e-filing) system.

Consolidated returns

There is no provision for the filing of consolidated returns or for group relief.

Statute of limitations

The statute of limitations for the Indonesia Tax Authority to issue an underpayment tax assessment is 5 years, except for criminal acts, for which it is 10 years.

Rulings

A taxpayer may request a confirmation from the DGT if the application of the tax law and procedure is unclear. There is no timeframe for the DGT to respond to such a request. A tax ruling applies only to the taxpayer that filed the request and generally can be used only to support that taxpayer's position in the event of a tax audit or tax objection. Such a ruling may not be used by other taxpayers.

3. Business taxation

Overview

The principal taxes applicable to companies doing business in Indonesia are corporate income tax, branch profits tax, withholding tax, value added tax (VAT) and luxury goods sales tax (LGST), and various other indirect levies, such as tax on land/buildings, regional taxes and stamp duty. There is no excess profits tax or alternative minimum tax.

Tax exemptions and various tax incentives are available to qualified entities.

The main tax laws are the Law on General Tax Provisions and Procedures, the Income Tax Law, VAT and LGST Law, the Land and Building Tax Law, and the Law on Regional Tax and Retribution.

Indonesia Quick Tax Facts for Companies	
Corporate income tax rate	25%
Branch profit tax rate	20%
Capital gains tax rate	0.1% - 25%
Basis	Worldwide
Participation exemption	Yes
Loss relief	
- Carryforward	5 years
- Carryback	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	Yes
Controlled foreign company rules	Yes
Tax year	Calendar year or accounting/financial year
Advance payment of tax	Yes
Income Tax Return due date	4 months after end of calendar year/tax year (can be extended to six months by notification to the DGT)

Withholding tax	
- Dividens	20% (non-resident); 10%/15% (resident)
- Interest	20% (non-resident); 15%/20% (resident)
- Royalties	20% (non-resident); 15% (resident)
- Technical Service fee	20% (non-resident); 2% (resident)
- Branch profit tax	20%
Capital tax	No
Social security contributions (employer contribution)	10.24%-11.74%
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 non-listed resident company's shares 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%
Stamp duty	Rp3,000/ Rp6,000
VAT	10%

Residence

A company is considered resident for tax purposes if it is established or domiciled in Indonesia or if its place of effective management is in Indonesia.

Taxable income and rates

Resident companies are taxed on worldwide income. Non-resident companies are taxed only on Indonesia-sourced income, including income attributable to a permanent establishment in Indonesia.

The current applicable standard corporate income tax rate is 25%.

Resident corporate taxpayers with gross revenue between Rp4.8 billion and Rp50 billion receive a 50% reduction in the corporate tax rate imposed on the taxable income that is attributable to gross revenue up to Rp4.8 billion. A public company with at least 40% of its total paid-up shares traded on a stock exchange in Indonesia and that complies with other requirements can obtain a 5% reduction in the corporate income tax rate.

Taxpayers who fulfil certain criteria with gross revenue not exceeding Rp4.8 billion in one tax year are subject to final income tax of 0.5% on gross revenue for certain

period of time. These taxpayers may opt to be subject to the standard income tax rate by submitting a notification to the tax authority.

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

Taxpayers engaged in certain business sectors, such as construction and shipping, pay income tax at a fixed percentage of gross income.

Companies engaged in the upstream oil and gas industry generally are required to calculate corporate income tax in accordance with a relevant PSC, and the income tax calculation for certain companies engaged in mining is governed by the contract of work. The tax provisions for oil and gas, geothermal, mining, and sharia-based industries are stipulated separately through government or Ministry of Finance regulations.

Debt-to-Equity Ratio

Effective from fiscal year 2016, the amount of deductible borrowing costs arising from debt is limited to a maximum DER of 4:1 (except for certain capital intensive sectors). As such, if a taxpayer's DER exceeds the prescribed 4:1 threshold, the excess borrowing costs are non-deductible for income tax calculation. It is important to note that the rule applies to domestic and foreign debts from both related and non-related parties. Definitions of debt and equity as well as the components of borrowing costs for this purpose are further governed under Minister of Finance regulation and regulation of Director General of Taxation. Furthermore, for taxpayers that have zero or negative equity, the entire borrowing costs are non-deductible.

Besides complying with the prescribed DER, taxpayers are also required to submit a report on DER calculation and a summary of overseas debt (if applicable) using the prescribed form as attachments to the annual CIT Return.

Capital gains taxation

Capital gains are taxable as ordinary income, and capital losses are deductible. However, the sale of shares listed on the Indonesian Stock Exchange is subject to a tax of 0.1% of the transaction value. Founder shares also are subject to an additional final tax of 0.5% on the share value at the time of an IPO, regardless of whether the shares are held or sold following the offering.

The sale or transfer of land and/or buildings is generally subject to a 2.5% final income tax on the sales proceeds. Different rates apply for certain transactions i.e. sale or transfer of low cost houses/apartments by real estate company (1%) and transfer to the government for the public interest (0%).

Income derived from the sale of non-listed Indonesian shares held by foreigners is

taxable at a rate of 5% of the gross proceeds, unless the rate is reduced under a tax treaty.

Branch Profit Tax

A branch of a foreign company in Indonesia is taxed at the standard corporate income tax rate, and a 20% branch profits tax is levied on taxable income after income tax. A relief on the branch profits tax rate is available if so provided under a tax treaty. An exemption from branch profits tax may be available if all the net profits of a PE are 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 to be used by the PE to do business or conduct activities of the PE in 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-source 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 and must be reported by the 20th of the following month.

The annual CIT return must be filed within 4 months of the end of the book year but could be extended for 2 months with notification to the Indonesia Tax Authority. 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.

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 for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other, and protect companies resident in one country from discriminatory taxation in the other.

To claim relief under a tax treaty, the foreign taxpayer must fulfil 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 “General anti-avoidance rule” section).

For administrative requirements, the foreign taxpayer must complete a specific document issued by the Indonesian Tax Authority, i.e. Form DGT. This form contains certain declarations to be made by the foreign income recipient related to its substance and beneficial ownership of income, as well as a Certificate of Domicile (CoD) which must be endorsed by the tax authorities of the treaty partner country.

If the foreign taxpayer is unable to obtain the endorsement, the foreign taxpayer can use any form of Certificate of Residence (CoR) commonly verified or issued by the tax treaty partner’s tax authorities, provided certain requirements are met. This form will be served as an attachment to the completed Form DGT. Treaty relief will be denied if the foreign taxpayer fails to fulfil any of the requirements.

The first tax withholder should submit the relevant information on the Form DGT through the electronic system administered by the DGT. A receipt will be issued upon submission and the tax withholder should forward this receipt to the foreign tax resident. The subsequent tax withholder only needs to check the receipt with the information available in the Indonesian Tax Authority’s electronic system and use a copy of the receipt for withholding tax settlement and reporting purposes.

Indonesia Tax Treaty Network			
Algeria	Hong Kong	New Zealand	Suriname
Armenia	Hungary	Norway	Sweden
Australia	India	Pakistan	Switzerland
Austria	Iran	Papua New Guinea	Syria
Bangladesh	Italy	Philippines	Taiwan
Belgium	Japan	Poland	Thailand

Brunei Darussalam	Jordan	Portugal	Tunisia
Bulgaria	Korea (DPRK)	Qatar	Turkey
Canada	Korea (ROK)	Romania	Ukraine
China	Kuwait	Russia	United Arab Emirates
Croatia	Laos	Seychelles	United Kingdom
Czech Republic	Luxembourg	Singapore	United States
Denmark	Malaysia	Slovakia	Uzbekistan
Egypt	Mexico	South Africa	Venezuela
Finland	Mongolia	Spain	Vietnam
France	Morocco	Sri Lanka	Zimbabwe
Germany	Netherlands	Sudan	Serbia

Anti-avoidance rules

General anti-avoidance rule

While Indonesia does not have a general anti-avoidance rule, there are general conditions that must be satisfied to obtain benefits under a tax treaty, as follows:

- a. The foreign income recipient must have:
 - A relevant economic substance either in the establishment of the entity or execution of the transaction;
 - The same legal form and economic substance either in the establishment of the entity or execution of the transaction;
 - Business activities managed by its own management and the management has sufficient authority to carry out transactions;
 - Fixed and non-fixed assets, sufficient and adequate to carry on business activities in the tax treaty partner state or partner jurisdiction other than the assets that generate income from Indonesia;
 - Employees with certain expertise in accordance with the business field that is carried out, in sufficient and adequate numbers; and
 - Activities or other active business other than only receiving income in the form of dividend, interest and/or royalty originating from Indonesia.
- b. The purpose/arrangement of the transaction is not to directly or indirectly obtain the benefits under the 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.

If a foreign taxpayer receives income for which the article in the relevant tax treaty stipulates a beneficial owner requirement, the following additional conditions must also be satisfied:

- a. For an individual foreign taxpayer, he/she does not act as an agent or nominee; or
- b. For a corporate foreign taxpayer, shall fulfil the following requirements:
 - Does not act as an agent or nominee, or conduit;
 - Has control to use or enjoy funds, assets or rights that bring in income from Indonesia;
 - Not more than 50% of its income is used to fulfil obligations to other parties;
 - Bears risks of the assets, capital, and/or its liabilities; and
 - Does not have an obligation, written or unwritten, to provide part or all of the income received from Indonesia to another party.

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

Transfer Pricing

The Indonesian Tax Authority requires that related-party transactions or dealings with affiliated companies (including profit sharing by multinational companies) be carried out in a “commercially justifiable way” and on an arm’s length basis. The most appropriate transfer pricing method must be used.

In order to provide detailed guidelines on transfer pricing matters, the DGT promulgated regulations No. PER-43/PJ/2010 (“PER-43”) and PER-32/PJ/2011 (“PER-32”) regarding the application of arm’s length principle in related party transactions. The Minister of Finance issued regulation No. 213/PMK.03/2016 (“PMK-213”) effective from 30 December 2016 to implement the three-tiered approach to transfer pricing documentation to support the initiative by OECD on Base Erosion and Profit Shifting (BEPS) Action 13. The three-tiered documentation approach refers to Master File, Local File and Country-by-Country (CbC) Report.

PMK-213 does not revoke PER-32 or PER-43. Therefore, some provisions in PER-43 or PER-32 are still applicable as long they have not been further stipulated in PMK-213.

Based on this regulation, taxpayers having related party transactions and meeting any one of the following thresholds/conditions are required to prepare the Master File and Local File.

Item	Threshold
Gross Revenue in the preceding tax year	Exceeding Indonesian Rupiah (Rp) 50,000,000,000 (fifty billion Rupiah)
Tangible goods transactions with related party in the preceding tax year	Exceeding Rp20,000,000,000 (twenty billion Rupiah)
OR	Exceeding Rp5,000,000,000 (five billion Rupiah)
Services, Royalties, Interest or other transactions in the preceding tax year	
Related party transactions with affiliated party located in a jurisdiction with tax rate lower than Indonesia (i.e. currently at 25%)	Any value

In addition, a taxpayer that qualifies as a Parent Entity (which is required to prepare consolidated financial statements under Indonesia Financial Accounting Standards) of a business group having consolidated gross revenue of minimum Rp11 trillion is also required to maintain a Master File and Local File.

A taxpayer who does not meet the above threshold to maintain Master and Local Files must still adhere to the arm's length principle for related party transactions. The regulation also states that the Master File and Local File must be available within 4 months after the end of the tax year and must be accompanied by a statement letter concerning the time of the availability of such documents.

The Master File and Local File must be submitted upon request within the time specified under the provisions of tax laws and regulations. The reports must be in the local language (Indonesian). Reports submitted late will not be considered and additional penalties may apply for non-compliance.

PMK-213 requires taxpayers to file a summary of the Master File and Local File as an attachment to the annual CIT return in the prescribed format. The summary contains a declaration that the Master File and Local File meet the minimum content requirements and provides the date on which the Master File and Local File became available. The summary is in addition to the Special Attachment Forms (Forms 3A/3A-1 and Forms 3B/3B-1).

A CbC Report must be prepared and submitted by a taxpayer that qualifies as the Parent Entity of a business group having consolidated gross revenue of at least Rp11 trillion.

Where the Parent Entity is located in a foreign jurisdiction, the resident taxpayer is required to submit the CbC Report when the country of the Parent Entity:

- Does not require submission of CbC Report; or

- Does not have an agreement with the Government of Indonesia on exchange of information; or
- Has an agreement but the CbC Report cannot be obtained by the Government of Indonesia.

The CbC Report is to be based on the data and information available up to the end of the Tax Year. If this condition is not satisfied, the taxpayer shall be deemed not to apply the arm's length principle. The CbC Report is required to be prepared in the form/format prescribed as an attachment to PMK-213. The format is broadly aligned with the CbC Report template prescribed in BEPS Action 13 with certain additional requirements.

The CbC Report must be available within 12 months after the end of the tax year. The first year of coverage was financial year 2016 and the report was required to be filed with the Annual CIT Return for the subsequent Tax Year i.e. Tax Year 2017. In addition, a taxpayer is also required to submit a CbC Notification form on an annual basis through the DGT online platform.

The Indonesian Ministry of Finance has also issued regulations on Mutual Agreement Procedure (MAP) and Advance Pricing Agreements (APA) as part of the alternate dispute resolution mechanism.

Controlled Foreign Companies (CFC) Rules

A CFC is a foreign company in which an Indonesian resident company or an individual holds, either direct or indirect, at least 50% of the total paid-in capital or voting rights (either alone or together with other resident taxpayers), with the 50% threshold criterion applied at each level. The CFC rules apply only to unlisted foreign companies. Indonesia does not have a white or black list of countries. If the CFC rules apply, the Ministry of Finance is authorized to determine when a dividend is deemed to be derived by the Indonesian resident shareholder if no actual dividends are declared. If no dividends are declared or derived from the offshore company, the resident taxpayer must calculate and report the deemed dividend in its tax return.

The dividend is deemed to be derived either in the fourth month following the deadline for filing the tax return in the offshore 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 deemed dividend shall be the total amount of dividends that the Indonesian taxpayer is entitled to in proportion to its capital participation in the foreign company from the net passive income of the foreign company, which covers:

- a. Dividend;
- b. Interest, except interest earned by a foreign company with banking licence;
- c. Rent of land and/ or buildings;
- d. Rent of other assets to related parties;

- e. Royalty; and
- f. Gain on sale or transfer of assets.

Indirect Purchase of Indonesian Shares or Assets Involving Special Purpose Company (SPC)

The indirect purchase of shares or assets by an Indonesian taxpayer through an SPC can be stipulated as the purchase of shares or assets by the Indonesian taxpayer if the SPC has a special relationship with the Indonesian taxpayer and where there is unreasonable pricing.

Indirect Sale of Indonesian Shares Involving SPC

Sales of shares of a SPC established or domiciled in a tax haven country having special relation (related party) with Indonesian company or PE by a non-Indonesian tax resident can be deemed as a sale of shares in the Indonesian company or PE by the non-Indonesian tax resident.

Exchange of Information Regulation

Exchange of Information (EOI) between countries can be carried out to assist each country in identifying any tax avoidance or tax evasion scheme, and to expedite cross-border tax dispute resolution. EOI should be carried out based on provisions stipulated in:

1. DTA/Tax Treaty
2. Tax Information Exchange Agreement (TIEA)
3. Convention on Mutual Administrative Assistance in Tax Matters
4. Multilateral or Bilateral Competent Authority Agreement
5. Intergovernmental Agreement
6. Other Bilateral or Multilateral Agreement

The OECD has developed a Common Reporting Standard (CRS) for the automatic exchange of tax and financial information on a global level, whose intention is to reduce the possibility of tax evasion. It provides for the exchange of non-resident financial account information 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.

In preparation for the AEOI, the Government has issued a Minister of Finance regulation which provides instructions to financial institutions to release certain financial information for tax purposes to the Indonesian Tax Authority. Moreover, the regulations also introduce sanctions for non-compliant financial institutions. Under this regulation, financial accounts that are considered as assets in the form of undistributed inheritance also part of the information that will be automatically exchanged accordingly.

Indonesia, as one of the participants of the AEOI agreement, has conducted the first information exchange per September 2018. Currently, the Indonesian

Tax Authority has started to receive financial information from certain foreign countries; in the future, this information will be utilized for monitoring the tax compliance of taxpayers.

Indonesia’s Participation in OECD’s Base Erosion and Profit Shifting (BEPS) Projects

Although Indonesia is not a member of the OECD countries, Indonesia is a member of the G-20 countries 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)	Not yet known.
Hybrids (Action 2)	Not yet known.
CFCs (Action 3)	Indonesia already has CFC rules but limited only to dividend.
Interest deductions (Action 4)	A local thin capitalization rule is based on a debt: equity approach (balance sheet test), as opposed to the fixed or group ratio recommended by BEPS.
Harmful tax practices (Action 5)	Not yet known.
Prevent treaty abuse (Action 6)	Indonesia already has a rule to prevent treaty abuse.
Permanent establishment status (Action 7)	Not yet known.
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 is expected to be implemented shortly.
Disclosure of aggressive tax planning (Action 12)	Not yet known.

Action	Implementation
Transfer pricing documentation (Action 13)	<p>The Ministry of Finance has introduced the three-tiered level of documentation requirement for tax years ending on or after 30 December 2016.</p> <p>The requirements are broadly in line with the action 13 recommendations, with additional information requirements for both master file and local file. The documents must be prepared in Bahasa Indonesia and made available within four months from the end of the tax year. There are also new thresholds for determining the documentation requirements and the inclusion of domestic related parties within the scope of the transfer pricing rules.</p>
CbC reporting (Action 13)	<p>CbC reporting has been introduced in line with action 13 requirements, with certain additional details and applies for tax years ending on or after 30 December 2016. The CbC report 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 CbC report when the country of the parent entity:</p> <ul style="list-style-type: none"> • Does not require the submission of a CbC report; or • Does not have an exchange of information agreement with the Indonesian government; or • Has an agreement but the CbC report cannot be obtained by the Indonesian government. <p>Indonesia is one of the countries that signed a multilateral competent authority agreement for the automatic exchange of CbC reports.</p>

Action	Implementation
Dispute resolution (Action 14)	<p>The Minister of Finance issued Regulation No 49/PK.03/2019 (PMK-49) concerning “The Implementation Guidelines of Mutual Agreement Procedure” which is an updated version of the Mutual Agreement Procedure (MAP) framework in Indonesia issued with a view to meet the minimum standards set out in Action 14 of OECD’s BEPS project on “Making Dispute Resolution Mechanisms More Effective” (Action 14).</p> <p>Effective from 26 April 2019, PMK-49 replaces the previous MAP regulation, i.e. Minister of Finance Regulation No. 240/PMK.03/2014 (previous MAP regulation), which was issued before the final BEPS reports were delivered in 2015.</p> <p>PMK-49 broadly aligns Indonesia’s position with the recommendations under Action 14. PMK-49 is issued as part of the Directorate General of Taxes’ 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.</p>
Multilateral instrument (Action 15)	<p>Indonesia signed the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on 7 June 2017 and provided its “MLI position” (a list of reservations and notifications). Among others, Indonesia has provisionally chosen PPT plus Simplified Limitation on Benefit (LOB).</p>

4. Taxes on individuals

Indonesia Quick Tax Facts for Individuals	
Income tax rates	5%-30%
Capital gains tax rates	0.1% - 30%
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	10% (for resident); 20% (for non-resident)
- Interest	15%/20% (for resident); 20% (for non-resident)
- Royalties	15% (for resident); 20% (for non-resident)
Net wealth tax	Generally No
Social security	1% - 4%
Inheritance tax	No
Land and building tax	0.3%
Land and building acquisition duty	5%
Transfer tax	0.1% (transfer of shares listed on Indonesian stock exchange); 5% (transfer of non-listed resident company's shares 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%

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. 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), 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. Benefits-in-kind received by employees are not, in most cases, taxable to the employee (or deductible for the employer). Employment income in Indonesia is subject to tax, regardless of where the income is paid. Benefits-in-kind could be subject to tax if they are provided by certain employers.

Deductions and reliefs

Deductions are generally available for expenses incurred in generating income.

Basis of deduction	Deductible amount (per year)
Taxpayer	Rp54,000,000
Spouse	Rp4,500,000 (additional Rp54,000,000 for a wife whose income is combined with the husband's)
Dependents	Rp4,500,000 each (up to a maximum of three individuals related by blood or marriage)
Occupational support	5% of gross income, up to a maximum of Rp6,000,000
Pension cost (available to pensioners)	5% of gross income, up to a maximum of Rp2,400,000
Contribution to approved pension fund, e.g. BPJS Manpower	Amount of personal-contribution

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

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

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

Rates

Taxable Income	Rate(1)
Up to Rp50,000,000	5%
Over Rp50,000,000 but not exceeding Rp250,000,000	15%
Over Rp250,000,000 but not exceeding Rp500,000,000	25%
Over Rp500,000,000	30%

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, the introduction of Tax Amnesty law enables Tax Authorities to consider taxpayer's undeclared wealth as taxable income under certain circumstances. Taxpayers were given the opportunity to file tax amnesty application only up to 31 March 2017.

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 ID number. 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 woman who will fulfil their individual tax obligation jointly with their husband.

Individual taxpayers are required to file annual individual income tax returns, declaring their worldwide income and assets and liabilities. 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, but the most common penalty is 2% monthly interest on tax underpaid.

5. Withholding Taxes (WHT)

Dividends

Dividends paid to a non-resident are subject to a 20% WHT, unless the rate is reduced under a tax treaty. The tax is considered a final tax. Dividends paid by a domestic corporate taxpayer to a resident company or cooperative are subject to a 15% WHT (unless the participation exemption applies – i.e. the recipient holds at least 25% of the capital of the payer company and the dividends are sourced from retained earnings), which represents an advance payment of the company's tax liability. A 10% final income tax is imposed on dividends paid to a resident individual.

Interest

Interest paid to a non-resident is subject to a 20% WHT, unless the rate is reduced by a tax treaty. Interest paid by a domestic taxpayer to a resident generally is subject to a 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 companies 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 due on employees' salaries and other remuneration. The employer must file an employment withholding tax return on a monthly basis.

The employers and employees are required to contribute to the general social security schemes (please refer to section “Labour Environment” for more details).

Other transactions

Fees for technical services remitted abroad are subject to a 20% WHT, unless the rate is reduced under a tax treaty.

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

Compliance

The collection of tax on dividends, interest, royalties, rentals, professional service fees, technical and management service fees, construction service fees, etc. is via withholding at source. If the recipient is an Indonesian resident, the tax withheld is considered a payment on account of the recipient’s year-end tax liability, but if the recipient is a non-resident, the tax withheld represents a final tax. 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.

6. Indirect taxes

Value added tax (VAT)

VAT is levied at each stage of the production and distribution chain and is levied on the supply of goods and the provision of services at a standard rate of 10%. VAT on exports of taxable goods; intangible taxable goods; and certain taxable services is zero rated.

VAT applies to intangible goods (including royalties) and to virtually all services provided outside Indonesia to Indonesian businesses (i.e. imported 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.

Definition of export of services shall be taxable services furnished or rendered within Indonesian customs territory for the benefit of recipient located outside Indonesian customs territory. Certain types of taxable services considered as export that could enjoy a zero-rated VAT are as follows:

- a. Services in connection with movable goods exported for use outside Indonesian customs territory, covering:
 - Toll manufacturing services (“makloon”), for which further criteria are

- provided under a MoF regulation;
 - Repair and maintenance services;
 - Freight forwarding services for goods to be exported.
- b. Services in connection with immovable goods located outside Indonesian customs territory, i.e., construction consultation services, which cover assessment, planning, and design of construction related to building or plan for building outside Indonesian customs territory.
- c. Services utilized outside Indonesian customs territory, covering:
- Technology and information services;
 - Research and development services;
 - Charter of airplane and/or sea vessel, for international flight or shipping activities;
 - Business and management consulting, legal consulting, architectural and interior design activity, human resources consulting, engineering, marketing, accounting or bookkeeping, financial statements audit, and taxation;
 - Intermediary services, i.e., services to search for a seller of goods for export in Indonesian customs territory; and
 - Interconnection, satellite, and/or data communication/connectivity services provider.

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

The VAT on inputs is creditable against the VAT on outputs subject to certain requirements. Overpayments of VAT may either be carried forward, or be recovered but only after a tax audit has been carried out. Claims for VAT refund can only be made at the end of a tax year, except for certain VATable entrepreneurs that are eligible to claim tax refund at each monthly period.

VAT incentives are available in the form of VAT exemption, deferred, or not collected for certain imports or purchases, including:

- Strategic goods, such as machinery, factory equipment, etc.;
- Raw materials for processing by companies inside a Bonded Zone;
- Delivery and/ or import of taxable goods into a Free Trade Zone;
- Imports and delivery of services, equipment, and other supplies required to perform a project financed by foreign aid;
- Imports and purchases made by companies in certain industries such as national shipping or airline companies, etc.;
- Import of certain goods which duty is exempted.

Entrepreneurs whose annual sales of taxable goods and/or taxable services exceed Rp4.8 billion are required to register for VAT purposes and issue a VAT invoice on the delivery of those goods and services.

A VAT invoice is an instrument to levy VAT (for the seller) and to claim VAT credit (for the buyer). All VATable entrepreneurs are required to supply e-VAT invoices.

Entrepreneurs must first obtain an activation code and password and also request an electronic certificate, either from the tax office where they are registered or through the DGT website. The e-VAT invoices, including replacement and cancellation, must be generated via an electronic system designated by the DGT, denoted in Indonesian Rupiah (IDR) and signed electronically.

Monthly VAT return is due by end of the following month and any VAT liability (output VAT less input VAT) should be settled before the submission. Self-assessed VAT on utilisation of intangible goods or service subject to VAT from abroad within the Indonesian customs area is due by 15th of the following month it becomes payable.

Indonesia does not have a VAT grouping concept. If a company has one or more branches situated in different tax office jurisdictions, the company can file a request for centralization of VAT payment and filing of the VAT returns. The centralization usually is made by the main/head office, but it can also be centralized at the level of an active branch, provided certain criteria are met.

Capital gains tax

There is no VAT imposed on capital gains.

Real estate tax

Land and building tax is payable annually on land, buildings and permanent structures. The rate is maximum 0.3% of the estimated value of the property. A certain non-taxable amount of the sales value is excluded from this tax.

The sale of land and/or buildings 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 Rp60 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 Rp80 million. A taxpayer who receives such rights by way of inheritance is entitled to a non-taxable threshold of a minimum of Rp350 million.

Transfer tax

The sale of shares listed on the Indonesian stock exchange is subject to a tax of 0.1% of the transaction value. Founder shares also are subject to a final tax of 0.5% on the share value at the time of an initial public offering, regardless of whether they are held or sold following the offering.

The transfer of a resident company's shares by a non-resident is subject to a withholding tax 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 NJOP, whichever is the highest, is payable when a person obtains rights to land or a building with a value greater than Rp60 million. Various exemptions apply, including on transfers in connection with a merger and transfers to relatives.

Stamp duty

Stamp duty applies to financial transactions, deeds and receipts, at the minimum rate is Rp3,000 and the maximum is Rp6,000, depending on the amount of the transaction and type of document.

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. The importer must obtain Import and Custom Registration Number. The process is now much faster through the online system:

New establishment PMA company, after obtaining Articles of Incorporation (AOI) and Ministry of Law and Human Rights (MOLHR) approval, must submit the Business Registration Number (“NIB” or Nomor Induk Berusaha) through OSS system. The application submitted already mentioned that Company need Import and Custom Registration Number. The Import License and Custom Registration Number will be issued together with the NIB.

Further, the licensing services can be offered via the OSS system, which include:

- Licensing of Bonded Warehouse (TPB)
- Licensing of Ease of Import for Export (KITE)
- Licensing 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 totally 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.

Excise duties are also imposed on certain goods as part of the government's effort to curb the distribution of such goods in Indonesia. A number of excise duties are levied, primarily on alcohol, tobacco and HPTL products. 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. Failure to comply can give rise to an administrative penalty depending on the amount of underpayment. The underpayment of import duty resulting from customs valuation is subject to an administrative penalty of ranging between 100% and 1000%. If the customs duty tariff is 0% and the import duty underpayment is "nil," the penalty is Rp5 million. There is no penalty for wrong tariff classification.

Environmental taxes

The central government does not have any specific environmental taxes. However, in certain regions, a permit to dump liquid waste into certain water resources is subject to a user fee collected by the local government.

Luxury Goods Sales Tax (LGST)

LGST is levied in addition to VAT on a variety of goods at rates ranging from 10% to 200%. The tax is levied upon importation or, in the case of manufacturing, at the time of the delivery of the luxury goods by the producing company.

E. 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 board 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) audited 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 is 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 50 billion Rupiah 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 years cooling period. This mandatory rotation only applies to the Public Accountant, and not the Public Accounting Firm.

F. Labor Environment

1. Employee rights and remuneration

Manpower Law No. 13/2003 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 Labour 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 labour, freedom of association and protection of the rights of association. ILO Convention 138 on the minimum age for employment is incorporated in Indonesian law, and ILO Convention 182 on the elimination of the worst forms of child labour 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

Provincial wage councils set minimum wage levels for each province and for each of the districts within the province. These councils comprise representatives from the Ministry of Manpower the All-Indonesia Workers' Union, employers' associations and academia. Wage levels have been increasing over the past few years in line with inflation. District-level minimum wages can be substantially higher than provincial wages.

Wages include a minimum wage, overtime pay, sick pay and holiday pay. Cash wages must constitute 75% of the minimum wage, with the remainder typically allotted for food and transport. Foreign firms typically start employees at salaries that are double the minimum wage. Most local firms pay rates slightly above the minimum wage.

Fringe benefits include annual holidays (typically 12 days a year) and paid leave for national holidays, religious obligations, family obligations (including marriage), paid maternity leave, and sick leave. Severance compensation is required upon termination or retirement. Employees receive a one month's bonus as a Religious Festival Allowance (THR). The extra month salary is to be paid before Lebaran (end of Ramadhan) for Muslims, before Christmas for Christians, before Nyepi Day for Hindus, and before Buddha's Enlightenment Day for Buddhists.

Pensions and social insurance

There are currently two types of social security (BPJS) program: BPJS Manpower

and BPJS Health Care. Premiums for both programs are paid by both the employer and employee.

The new BPJS Manpower scheme came into effect on 1 January 2014 but in general it continues the previous social security or Jamsostek and the premium will remain the same as the Jamsostek premium, i.e. 0.24% to 1.74% (by employer) for workers accident Insurance, 0.30% (by employer) for life insurance, and 3.70% (by employer) and 2.00% (by employee) for retirement plan. On 1 July 2015 the Government introduced additional social security program under the pension plan. The premium payable under this program is 2% (by employer) and 1% (by employee), and expatriate employees are excluded from the pension plan coverage.

The health care scheme replaces the old health care scheme and has been mandatory since 1 January 2019. The premium is 4.0% paid by the employer and 1.0% is paid by the employee. The cap for the employee's monthly salary used to determine the premium amount is two times the Indonesian tax exemption amount (married with one child), or currently Rp8,000,000/month. The cap may change in the future. The mandatory premium will cover husband, wife, and two children. Additional family members can be covered with additional premium.

Under the current regulation, participants also include foreign workers (expatriates) who work for at least six months in Indonesia (must hold valid work/ stay permit).

Other benefits

There are legal restraints on the dismissal of a worker who has been employed continuously for at least three months. Even if a production cutback is needed or the worker is deemed unfit, the employer may not discharge the worker without a severance-pay settlement agreed between the employee and employer. If an agreement cannot be reached, the employer must obtain the approval of the Ministry of Manpower.

3. Termination of employment

There are legal restraints on the dismissal of a worker who has been employed continuously for at least three months. Even if a production cutback is needed or the worker is deemed unfit, the employer may not discharge the worker without a severance-pay settlement agreed between the employee and employer. If an agreement cannot be reached, the employer must obtain the approval of the Ministry of Manpower.

Severance payments consist of one to nine times the employee's last monthly salary (depending on the length of service), and (after at least three years of service) a gratuity payment at double the employee's last monthly salary. Other entitlements upon termination of employment include cash payments for accrued annual leave, and housing and medical benefits equal to 15% of the severance and gratuity payments.

4. Labour-management relations

Labour contracts are common, and typically cover employees who enter a firm within a certain time period. Contracts can be renewed for one to three years. Collective bargaining is typically conducted at the company level if a union represents or gains the approval of at least 51% of the workforce. Labour disputes are addressed by a special provincial-level commercial court.

5. Employment of foreigners

Employment of foreigners is allowed only in positions that Indonesians cannot fill and only if regular and systematic training is provided so that Indonesians can eventually replace the expatriates. There are normally no difficulties in obtaining permission to employ foreign managers and technicians if the government believes no Indonesians are available to fill the positions. However, foreigners are not eligible to fill certain positions (e.g. personnel managers).

Foreigners fall into four classes: professionals, managers, supervisors and technicians/operators. Work permits are required for all four classes.

Foreigners must have level of education in line with the requirement for the position being applied; having a certificate of competency, or having at least 5 years of work experience which is relevant to the position being applied to work in Indonesia and must have an Indonesian counterpart (except for director or commissioner positions). The general ratio is 1:1 (one expatriate to one Indonesian counterpart), however this could vary depends on the type of legal entity and the industry. Copy of Indonesia ID card and job description of the Indonesian counterpart needs to be attached to the expatriate's work permit application.

Firms must submit an expatriate utilization plan (RPTKA) to the Ministry of Manpower before inviting the expatriates for working. Mandatory report and staff welfare report are required to be attached in the RPTKA application. The RPTKA application should state all positions to be filled by expatriates during a one-year period, the qualifications for each position, and plans for training Indonesian staff. During renewal process, the company should provide a report which proves that the expatriate has transferred the knowledge to the Indonesian counterpart. The Ministry grants individual work permits based on approved manpower plans. Approval for work-permit applications can take up to three months.

All positions for expatriates working in Indonesia need approval from the Ministry of Manpower's Office for Placement of Foreign Workers.

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About Deloitte Indonesia

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