



Doing business in Indonesia

2016

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Contents

Introduction	3
– Country Profile.....	4
Legal overview	5
Conducting business in Indonesia.....	10
Tax system	14
Labour	21
Audit	25
Trade	27
Finance	29
Infrastructure	32

Introduction

This guide to doing business in Indonesia will provide foreign investors with an insight into the key aspects of undertaking business and investing in Indonesia. Indonesia is the largest archipelagic state in the world, comprising approximately 17,000 islands with coastlines exceeding 54,000 kilometres. Supported by its strategic location and its role as the fourth most populous country in the world, Indonesia's economy has played, and shall continue to play, an important role in the regional as well as global trading sector, making it attractive for overseas investors.

The Indonesian economy is built on a free market system with a free foreign exchange policy. Unless otherwise regulated in the frequently updated "Negative List of Investments", foreign investment companies are generally allowed to be set up with up to 100 per cent foreign shareholding.

The Indonesian economy has demonstrated continuing growth since the economic recession in 1998. Its rising middle-class, large domestic market and relatively low degree of export-led growth have significantly contributed to its resilience to the 2009 global financial crisis. With regards to macroeconomic stability, the World Bank recognised a significant drop in the country's Debt-to-GDP ratio from 61 per cent in 2003 to 27 per cent in 2015.

Foreign investment will continue to play an important role in the development of Indonesia. Under the Law on Investment, the Indonesian government expressly stated its non-discriminatory policy towards domestic and foreign investments. For foreign investors considering investing in Indonesia, the following factors are worth noting:

- A large, young workforce with relatively low costs
- A vast domestic market with a growing middle class
- The new government is now focusing on the development of a number of big infrastructure projects, such as inter-connected sea toll roads and harbours, with the aim of transforming Indonesia into a "global maritime axis"

- A flat Corporate Income Tax of 25 per cent, with 50 per cent reduction applicable to all businesses in respect to their annual turnover of up to IDR4.8 billion
- Additional tax incentives for strategic industries and regions

While this guide makes reference to some of the most common issues investors might face, it must be noted that certain industries, such as the mining or financial services sectors, are subject to special regulation and, therefore, companies wishing to invest in this area should seek legal advice.

The information in this publication is current at January 2016.

Country profile

Capital City	DKI Jakarta
Area	1,904,569 sq. km
Population	252,812,245
Language	Bahasa Indonesia
Currency	Rupiah (IDR)
International dialling code	+62
National Holidays 2016	<p>1 January – New Year Day</p> <p>8 February – Chinese New Year Day</p> <p>9 March – Nyepi Day, Saka New Year Day (Hindu)</p> <p>25 March – Crucifixion of Jesus Christ Day</p> <p>1 May – International Labor Day</p> <p>5 May – Easter Day</p> <p>6 May – Isra and Miraj Day</p> <p>22 May – Vesakh Day</p> <p>6 - 7 July – Eid al- Fitr Day</p> <p>17 August – Indonesian Independence Day</p> <p>12 September – Eid al-Adha Day</p> <p>2 October – Islamic New Year Day</p> <p>12 December – Milad un Nabi Prophet Muhammad SAW Day</p> <p>25 December – Christmas Day</p> <p>Communal Leave (businesses are allowed to close their operations on the following days, at the expense of employees' annual leave):</p> <p>4, 5 and 8 July – in celebration of Eid al-Fitr Day</p> <p>26 December – in celebration of Christmas Day</p>
Business and Banking hours	Monday to Friday 08:00 hrs to 15:30
Stock exchanges	Indonesian Stock Exchange
Political structure	Presidential system
Doing Business rank 2016	109

Ease of Doing Business

Topics	2016 rank	2015 rank	Change in rank
Starting a business	173	163	-10
Licenses and Permits	107	110	3
Getting Electricity	46	45	-1
Registering property	131	131	No change
Financing	70	71	1
Protecting Investors	88	87	-1
Paying Taxes	148	160	12
Trading Across Borders	105	104	-1
Enforcing Contracts	170	170	No change
Resolving Insolvency	77	73	-4

Source: World Bank Group (Doing Business)

Legal overview

Political and legal system

Indonesia is a republic with a presidential system, and predominantly adopts the civil law system, intermixed with customary law and the Roman Dutch law. The President acts as the Head of State, Head of Government, and the commander-in-chief of the Indonesian National Armed Forces, and has the power to appoint his/her cabinet members.

The following high-state institutions represent Indonesia's current political and legal system:

People's Consultative Assembly ("MPR") – The MPR has duties and powers to ratify amendments to the Constitution, inaugurate the elected President and Vice President, impeach the President/ Vice President (as proposed by the Parliament, and based on decision of the Constitutional Court) and appoint a new President and/or Vice President.

The elected members of the People Representative Council ("DPR") and the Regional Representative Council ("DPD") shall automatically become the members of the MPR.

People Representative Council ("DPR") – The DPR is essentially the holder of legislative power in Indonesia. The DPR and the President have the power to proclaim laws.

Regional Representative Council ("DPD") – This institution has the power to propose/initiate the drafting and discussion of a bill to the DPR relating to regional autonomy, central-regional relationships, division and merging of regions, management of natural resources and other economic resources, and other matters

concerning the balance between central and regional financial matters.

President and Vice President – The President and Vice President hold the executive power of Indonesia.

The Judicial power of Indonesia is held in the Supreme Court and Constitutional Court. The Constitutional Court has the power to conduct a judicial review of a law (if it is conflicting with the Constitution), whilst the Supreme Court has the power over the court system in general.

State Audit Board ("BPK") – This institution has the power to examine the management of national financial matters.

Data protection

Indonesia does not have a unified law on data protection. Data protection-related provisions can instead be found in various laws and regulations, such as laws on Archive, Company Documentation, Banking, Health, Telecommunication, Civil Administration, Electronic Information and Transaction, Public Information Disclosure, etc.

The provisions within these laws protect information of a private nature. Access to personal information, generally speaking, is only possible upon receiving permission from the relevant data subject. Under the Civil Administration Law, for example, only the Minister of Domestic Affairs has the power to grant access to personal data, based on application with specific reasons. Any person engaged in the unauthorised distribution of personal data is liable to a term of imprisonment for a maximum of two years and/or a fine of up to IDR25 million.

Foreign exchange controls

Indonesia operates a free foreign exchange policy. At present, there is no regulation that controls or otherwise restricts any repatriation of profits from foreign companies, and maintenance of bank deposits in any foreign currency by any party (regardless of nationality).

Notwithstanding the above, it is mandatory for any transacting parties (regardless of their nationality) to use IDR for any domestic transactions, with few exceptions as set out in the laws and regulations (in respect to transactions funded by State Budget, grant facility to or from other country, strategic infrastructure projects (by application), and for transactions based on agreement executed or renewed prior to 1 July 2015).

In line with the above requirement, such parties are prohibited to set (dual) prices based on foreign currency, and to reject any payment in IDR. Use of foreign exchange however, is still allowed in any international trade and financing transactions (where the counterparty is situated offshore).

Any breaches are threatened by the following sanctions:

- For cash-based transactions: imprisonment of up to one year and fine up to IDR200 million
- For non-cash based transaction: warning letter, fine amounting to one per cent of transaction value (max. IDR1 billion), and prohibition to participate in payment settlement process

In order to create a reliable information system related to the country's balance of payments, international investment positions



and other statistical functions, Indonesia has introduced the following regulatory framework and monitoring mechanisms:

- **Offshore Loan Reporting and Withdrawal Mechanism** – Businesses that have offshore loans in foreign currency (“Offshore Loan”) are obliged to submit monthly reports and any withdrawals of such Offshore Loan should be channelled through a domestic foreign exchange bank. In addition to this, businesses are also obliged to submit an annual report of any long-term Offshore Loan plan
- **Foreign Exchange Reporting and Export Proceeds Payment Mechanism** – Similarly, any businesses receiving foreign exchange from their business activities are obliged to submit monthly reports, and payments of export proceeds should also be channelled through a domestic foreign exchange bank
- **Fiduciary Duty Principle in the Management of Offshore Loans** – Businesses are required to manage, and regularly report (on a quarterly and annual basis), their Offshore Loan financing with due care and diligence, by observing reasonable debt to equity ratios and complying with the necessity to meet minimum credit rating assessment and maintain minimum hedging ratios (if net difference between foreign exchange assets minus liabilities USD100,000 or less). Businesses must also submit attestation reports in respect to the fourth quarter report, and submit audited financial statements on an annual basis
- **Restrictions in Rupiah Transaction with foreign and domestic parties** – Banks are obliged to observe the qualifications and restrictions

for the facilitation of Rupiah transactions and the provision of loan facilities in foreign exchange to its customers. Banks that breach this requirement shall be subject to administrative sanctions and fines of one per cent of the nominal value of the violating transaction for each transaction, with the least amount of penalties amounting IDR10,000,000.00 and the maximum amount of IDR1,000,000,000.00

Businesses that breach the above requirements will be subject to a fine and administrative sanctions. They normally receive a warning letter and a recommendation addressed to the technical department having jurisdiction over the respective company in breach.

Money laundering regulation

Indonesia enacted its Money Laundering Law in 2002. In line with provisions set out in the Money Laundering Law, an independent institution called the “Indonesian Financial Transaction Reports and Analysis Centre” (“PPATK”) was formed to actively prevent and eradicate money laundering crimes. The PPATK essentially serves as a financial intelligence information centre that monitors, manages and analyses transaction reports for transactions that may be suspected as money laundering crimes and/or other crimes.

PPATK requires financial services providers and other goods or services providers (motor vehicle dealers, property agents, jewellery stores, art and antiques stores and auction houses) to regularly report any suspicious transactions or transactions exceeding minimum prescribed amounts. Suspicious transactions include transactions that deviate from a customer’s profile and ordinary transaction

patterns, transactions that are suspected of being conducted to avoid reporting requirements or transactions that use assets that can be suspected of constituting proceeds of crime.

Furthermore, financial services providers must also conduct appropriate ‘Know Your Customer’ checks ensuring that every customer engaged in a business relationship with reporting institutions has submitted proof of identity with the appropriate supporting documents. Records and documentation relevant to the identification of customers must be retained for a period of at least five years from the termination of the business relationship.

Certain reporting obligations are also imposed on individuals, such as the need to report to the Customs and Excise Department when taking IDR100 million into or out of Indonesia. Any breaches are subject to fines and/or criminal sanctions.

In December 2013, a new money laundering law was being considered by the House of Representatives. However, this has yet to be enacted.

Intellectual Property Rights

In Indonesia, the protection of Intellectual Property Rights (IPR) is, by default, granted based on registration, except for copyright which is automatically given upon creation. The Intellectual Property Rights available include: copyright, patents, trademarks, industrial designs, trade secrets and integrated circuit lay-out designs.

In Indonesia, IPR matters are dealt with by the Intellectual Property Rights Office under the Ministry of Law and Human Rights.

COPYRIGHT

Copyright protection is granted automatically upon the creation of any other following:

- Book, brochure, published literary work cover, and all other literary works
- Speech, lecture, oration, and other creations having similar nature
- Models for educational and scientific purposes
- Song and/or music with or without lyrics
- Drama or opera, dance, choreography, shadow play with leather puppet (“Wayang”) and pantomime
- Arts in any form such as painting, drawing, carving, calligraphy, sculpture and collage
- Derivative arts
- Architectural works
- Map
- Batik art or other pattern art
- Photography works and Portraits
- Cinematography works
- Translation, interpretation, reworked material, codification, database, adaptation, arrangement, modification and other creations of transformation result
- Translation, adaptation, arrangement, transformation, or modification, compilation of traditional cultural expression
- Compilation of creations or data, readable by computer program or other media
- Video games and computer programs

Protection granted	<p>As copyright is automatically granted upon creation date, registration of a copyright is unnecessary for the purpose of validating the content, meaning, purpose or form of any registered copyright.</p> <p>Unless otherwise proven (by court decision), the registered person shall be deemed to be the true copyright owner.</p>
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COPYRIGHT (CONTINUED)

Infringement

Any breaches of copyright may lead to the imposition of the following criminal sanctions, in addition to a potential legal claim for damages:

- For illegal rental of creation, fixation of performance, or phonogram: a maximum of one year's imprisonment and/or fines to a maximum of IDR100 million
- For illegal translation, adaptation, arrangement, transformation, performance, or communication of creation, and illegal fixation (including for public access) or announcement of a performance: a maximum of three years' imprisonment and/or fines to a maximum of IDR500 million
- For illegal publishing, copying, distributing, or announcement of a creation, a fixation of performance, a phonogram or a broadcast: a maximum of four years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal publishing, copying, distributing, or announcement of a pirated creation, fixation of performance, phonogram or broadcast: a maximum of ten years' imprisonment and/or fines to a maximum of IDR4 billion
- For management of a trading centre that allows other parties to make illegal sale or copy: fine to a maximum of IDR100 million
- For illegal commercial use of Portraits (without permission by the photographed person): fines to a maximum of IDR500 million
- For illegal royalty collection: a maximum of four years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal copying of computer programs: a maximum of five years' imprisonment and/or fines to a maximum of IDR500 million
- For publishing a creation that is against government policy regarding religion, defence, decency and public order: a maximum of five years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal publishing of a photograph or broadcast: a maximum of two years' imprisonment and/or fines to a maximum of IDR150 million
- For breaches of moral rights and creation security mechanisms: a maximum of two years' imprisonment and/or fines to a maximum of IDR300 million a maximum of four years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal copying of computer programs: a maximum of five years' imprisonment and/or fines to a maximum of IDR500 million
- For publishing a creation that is against government policy regarding religion, defence, decency and public order: a maximum of five years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal publishing of a photograph or broadcast: a maximum of two years' imprisonment and/or fines to a maximum of IDR150 million
- For breaches of moral rights and creation security mechanisms: a maximum of two years' imprisonment and/or fines to a maximum of IDR300 million a maximum of four years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal copying of computer programs: a maximum of five years' imprisonment and/or fines to a maximum of IDR500 million
- For publishing a creation that is against government policy regarding religion, defence, decency and public order: a maximum of five years' imprisonment and/or fines to a maximum of IDR1 billion
- For illegal publishing of a photograph or broadcast: a maximum of two years' imprisonment and/or fines to a maximum of IDR150 million
- For breaches of moral rights and creation security mechanisms: a maximum of two years' imprisonment and/or fines to a maximum of IDR300 million
- For non-compliance with the requirements set by the government in relation to the production of a creation in the form of optical disks: a maximum of five years' imprisonment and/or fines up to IDR1.5 billion

It should be noted that criminal proceedings related to any of the above breaches shall only be processed based on report by the relevant copyright owner, and it may be cancelled upon withdrawal of the report during the process.

COPYRIGHT (CONTINUED)

Duration

Duration of copyright for the following creations are as follows:

- The creator's, or in case of joint creation, the last living creator's lifetime and plus 70 years thereafter, or, if the copyright holder is an entity, 50 years after the end of the year of the first publishing of:
 - Book, brochure, and other literary work
 - Speech, lecture, oration and other creations similar in nature
 - Educational or scientific purposes model
 - Song or music with or without text
 - Drama, opera, dance, choreography, Wayang and pantomime
 - Arts in any forms, such as painting, picture, carving, calligraphy, sculpture, statue, or collage
 - Architectural work
 - Map
 - Batik art and other pattern art
- 50 years after the first announcement of the production of, and 25 years after the first announcement of the production of any derivative forms of:
 - Photography work and portraits
 - Cinematography
 - Video game and computer program
 - Literary work cover
 - Translation, interpretation, reworked material, codification, database, adaptation, arrangement, modification, and other creations of a transformation result
 - Translation, adaptation, arrangement, transformation, modification, compilation of traditional cultural expressions
 - Compilation of creations or data, readable by computer program or other media
- Forever (indefinite period) for traditional cultural expressions held by the State
- 50 years after the end of the year of the first publishing of creations with unknown Creator (either held by the State or publisher for the interest of the Creator)
- Forever (indefinite period) for acknowledgment of the name of the Creator ("Moral Right")
- 50 years after the end of the year of fixation of performance or phonogram for respectively the actor and the producer, and 20 years after the end of the year of first announcement for broadcaster ("Related Rights")
- Copyright on books and other literary works, songs and/or music that are transferred under a sale and purchase agreement or a transfer agreement for indefinite period, shall automatically be transferred back to the respective creator of such creation upon the lapse of 25 years period

PATENTS

Patents protect technological inventions (in the form of a product or process or their development/refinement) which can be applied in an industrial environment.

For a patent to be granted, the invention must be new, have an inventive step which is not obvious to someone with experience in the subject and capable of being used in an industry at the time of application (or the first application date in the case of priority right application, as noted below).

Any invention in the form of new goods or tools that have practical usage due to its form, configuration or component may be granted simple patent protection.

Patents shall not be given for any of the following inventions:

- Pure discoveries
- Scientific or mathematical formulae
- Essential biological processes
- Method of examination, treatment, medication and/or surgery applicable towards humans and/or animals
- Those inventions whose announcements and/or usages are considered as conflicting with the prevailing regulations, religious morale, public order or decency standards

Protection granted	<p>A patent gives its owner the ability to use the patented product/process and to prohibit others (that have not yet obtained the owner's permission) from manufacturing, using, selling, importing, leasing, delivering, or make available for sale, lease or delivery of such product/process.</p> <p>A former user of an invention that is subsequently patented by another party shall have the right to continue using such invention, provided that the former use of such invention was not based on the knowledge obtained from the descriptions, pictures, or other explanations of the then patented product (requirements to be met to be qualified as a former user).</p> <p>By default, a patent right is accompanied with the obligation to use such patent in Indonesia; unless it can be proven that such usage is only feasible to be done regionally.</p>
Infringement	<p>Any forms of infringement are liable to criminal sanctions of up to four years' imprisonment and/or fines up to IDR500 million, in addition to any potential legal claim before a commercial court by the right owner for damages.</p>
Duration	<ul style="list-style-type: none"> • Simple patents are given for 10 years from the filing date and cannot be renewed • Regular patents are given for 20 years from the filing date and cannot be renewed
Priority Right	<p>The applicant has the right to obtain acknowledgment of the same filing date with his/her/ its prior registration application in one of the countries subject to the Paris Convention for the protection of Industrial Property or Agreement Establishing the World Trade Organisation, providing his/her/its application is filed within the permitted timeframe as stipulated by the Paris Convention (12 months).</p>

TRADE MARKS

A trade mark is a sign in the form of picture, name, word, letters, numbers, colours, or the combination thereof, that has a distinctive characteristic and is used in the trading of goods or services.

Protection granted	Trade mark protection is granted upon registration at the IPR's Office under the Ministry of Law and Human Rights
Infringement	Any forms of infringement are liable to criminal sanctions of up to five years' imprisonment and/or fines up to IDR1 billion, in addition to any potential legal claims before a commercial court by the right owner, for damages.
Duration	10 years (can be renewed indefinitely)
Priority Right	The applicant has the right to obtain acknowledgment of the same filing date with his/her/its prior registration application in one of the countries subject to the Paris Convention for the protection of Industrial Property or Agreement Establishing the World Trade Organisation, providing his/her/its application is filed within the permitted timeframe as stipulated by the Paris Convention (6 months).

INDUSTRIAL DESIGNS

An industrial design is a two or three-dimensional creation of form, configuration, and/or the composition of lines and/or colours that produces an artistic impression, that can be used to produce a product, industrial commodity or handicraft.

Protection granted	The holder of an industrial design right has the exclusive right to use the right and to prohibit others (without the owner's consent) to produce, use, sell, import, export, and/or distribute goods with such industrial design right.
Infringement	Any forms of infringement are liable to criminal sanctions of up to four years' imprisonment and/or fines up to IDR300 million, in addition to any potential legal claim before a commercial court by the right owner, for damages.
Duration	10 years and cannot be renewed.
Priority Right	The applicant has the right to obtain acknowledgment of the same filing date with his/her/its prior registration application in one of the countries subject to the Paris Convention for the protection of Industrial Property or Agreement Establishing the World Trade Organisation, providing his/her/its application is filed within the permitted timeframe as stipulated by the Paris Convention (6 months).

TRADE SECRETS

A trade secret is defined as a piece of information that is not known to the general public, with regard to technology and/or business sectors, that is useful in business activity and thus has economic value, and is kept secret by the owner.

Protection granted	Trade secrets include methods of production, processing, sale, or other information in technology and/or business sectors, that have economic value and are not known by general public. The owner of a trade secret is entitled to licence a third party for the use of trade secrets, either on an exclusive or non-exclusive basis.
Infringement	Any forms of infringement are liable to criminal sanctions of up to two years' imprisonment and/or fines up to IDR300 million, in addition to any potential legal claims before a commercial court by the right owner, for damages.
Duration	Indefinite period – the law does not specify any definite period of protection.

INTEGRATED CIRCUIT LAY-OUT DESIGNS

An integrated circuit lay-out design is a creation in the form of a three dimensional lay-out consisting of various elements, one of which must at least possess an active element, and parts or all of which are inter-connected in an integrated circuit, and the lay-out is meant as preparation for the making of an integrated circuit.

Protection granted	Protection is granted upon application, which should be submitted, at the latest, within two years from the first commercial production, if the applied lay-out design has been used commercially.
Infringement	Any forms of infringement are liable to criminal sanctions of up to three years' imprisonment and/or fines up to IDR300 million, in addition to any potential legal claims before a commercial court by the right owner, for damages.
Duration	10 years as from first commercial use or filing date, and cannot be renewed.

Conducting business in Indonesia

Business entities

Indonesia generally promotes an open policy towards foreign investment. Unless otherwise restricted under the so-called 'Negative List of Investments', as issued by the Government, any business activity can be fully owned by foreign investors.

The 'Negative List of Investments' sets out the industries that are completely closed for investment, those opened only for local investors, and those opened for foreign investments with certain requirements (joint venture, partnership with local small-scale business, maximum percentage of foreign shareholding, etc).

Generally, any foreign investment in Indonesia must be conducted by way of establishing a limited liability company (PT), with a few exceptions for certain activities and sectors, as noted below.

Foreign-Investment Company (PMA)

A PMA Company is a limited liability (PT) company that has been granted permission by the Capital Investment Coordinating Board (BKPM) to have foreign shareholders.

Formation

A typical timeframe for a PT establishment is two to three months. PMA companies are established in three distinct phases:

- BKPM approval process
- Notarisation and subsequent approval of the company's Articles of Association by the Ministry of Law and Human Rights (MLHR)
- Obtaining of other relevant licenses and permits, as required

BKPM approval process

The Indonesian Government treats any application for the setting up of a PMA company as an "investment project". With this treatment, the steps for setting up a PMA company in Indonesia comprise the following three stages:

- Foreign investors submit an "investment plan" – If the plan meets the requirements, the government (through BKPM) shall issue a principle license
- Based on the principle license given, the PT structure can be set up, and basic licenses, as required, can be obtained. For a manufacturer, the manufacturing facility can be built at this stage, which may involve the importation of machinery and equipment
- Once the PT is ready to commercially operate, the PT must apply for the permanent business license (Izin Usaha) from the BKPM. For certain sectors, the permanent business license can only be applied for, once the PT has obtained the necessary additional operating license from the technical department having jurisdiction over its business activity

PMA Companies are generally expected to focus on one business sector only. Companies may focus on more than one business sector, but the BKPM may require applicants (noting the minimum two shareholders requirement) to make a higher investment in such cases. Each proposed business sector should be treated as an "investment project" (with its dedicated investment breakdown and source of funds), when it submits its application to the BKPM.

The BKPM requires an investment project to have an investment value of at least IDR10 billion,

excluding land and buildings (if any). For certain industries, the BKPM and/or other relevant technical department (which has jurisdiction over the proposed business sector) may expect a higher amount. A three-hour processing service is available for investment projects with a value of more than IDR100 billion and/or a work force of at least 1,000 workers (where BKPM shall actively assist in not only the processing of BKPM approval, but also the process of notarization of the articles of association, and obtainment of the tax identification number).

Funding of the proposed investment value may largely be obtained from a loan. The BKPM generally accepts a 3:1 debt to equity ratio, but higher proportions may be granted, depending on the proposed business sector and investment value (note however, for income tax calculation purposes, acceptable debt to equity ratio is maximum 4:1). With regard to the typical ratio, applicants should inject direct funds into a PMA company as equity (ie, as the proposed Issued Capital), for a minimum amount of an equivalent of IDR2.5 billion.

Operational Business License

For the general trading sector, BKPM approval would serve as the main operational business license (with the requirement to 'upgrade' the initial BKPM approval to become a permanent license when the licensed PMA company is ready to start production).

For certain industries, additional operational business licenses from the relevant technical department are required, in addition to the above BKPM approval (for example, pharmaceutical manufacturers must obtain manufacturing licenses from the Health Department).



In such cases, the 'Izin Usaha' can only be given after obtaining the special operational business license, notarisation and subsequent approval of the company's Articles of Association by the Ministry of Law and Human Rights (MLHR) and obtaining of other relevant licenses and permits, as required.

A basic set of licenses would include:

- Letter of Domicile
- Tax Identification Number (NPWP)
- VAT Firm Number (PKP)
- Company Register at the Department of Trade (TDP)

Obtaining work permits and stay-related licences for expatriates, if any, would also be required.

Other specific licences, such as an Import Licence, may also be required, depending on the company's business activity.

Shareholders

A PT must have at least two shareholders, one director and one Commissioner (duties are to supervise the director(s) and to safeguard the interests of the shareholders). It must be noted that, whilst the Indonesian Company law of 2007 does not set out the minimum requirement of shareholding by a shareholder, the BKPM would expect at least an equivalent amount of IDR10 million for a minority shareholder.

PMA companies are allowed to have expatriates in both their Board of director(s) and commissioner(s). Nevertheless, at least one director is expected to be resident in Indonesia, at least for taxation purposes.

Capital requirements

The stated amount of the authorised capital must not exceed four times the amount of Issued and paid-up capital. This amount serves as a 'ceiling' of the PT's share capital structure. A PT may issue more shares up to its Authorised Capital amount, providing it reports this to the Ministry of Law and Human Rights. Any increase of share capital above the Authorised Capital is subject to approval from the said ministry.

The Issued and Paid-up Capital are the share capital that should factually be injected into the company (and reflected in its books). The general minimum requirement of Issued and Paid-up Capital is as stated above (IDR2.5 billion), for PMA companies. Higher requirement may apply for certain industries.

Representative Office

For foreign companies wishing to set up a presence in Indonesia, but only to perform auxiliary services such as acting as a coordination office, promotion, research, or quality control, the representative office structure may be suitable.

Trading Representative Office (TRO)

The main purpose of this type of representative office is to enable foreign companies to set up a presence in Indonesia to perform several support functions, such as market research, quality control, and acting as a buying agent for its principal.

Regional Representative Office (RRO)

The main purpose of this type of representative office is to enable foreign companies to set up a

'coordinating' office in Indonesia, for the coordination of their offices around the South East Asia Region. This representative office is similar to the TRO, except for its business objective.

Both the TRO and RRO are only allowed to perform the above auxiliary services, and are prohibited to undertake trading activities and generate income in Indonesia.

Representative Office under Department of Public Work

Deviating from the above general rule on foreign investment, foreign construction services companies may be allowed to set up a representative office in Indonesia (BUJKA) and conduct profit generating business activities, subject to the following requirements:

- This representative office licence is only given to a big construction services company
- The representative office must partner with at least one local construction services company for every project it is involved in; any sub-contracted works should be given to local construction services companies
- The representative office is expected to be involved in high-risk, high-tech and high-cost projects only – construction projects should be valued at least IDR100 billion, whilst planning and supervision works should be valued at least IDR10 billion
- Any employment of expatriates should be accompanied by the employment of local persons at a similar skill level to enable the transfer of knowledge

Tax system

Indonesia operates a self-assessment system, which obliges each resident taxpayer to self-assess, settle and report their income tax liabilities during a certain period of time upon completion of a taxable transaction, and/or on a regular basis (monthly and annually).

Notwithstanding the above, Indonesian tax residents are also obliged to withhold income taxes on various payments to third parties. Unless otherwise classified as final income tax, any income-tax withholdings (WHT) would serve as tax prepayments for the concerned taxpayers, and can be offset with the taxpayers' income taxes of the relevant year.

Non-tax residents of Indonesia that are generating income from Indonesia, pay their income taxes through the above withholding mechanism, from payments made by their Indonesian counterparts.

Thus, income taxes in Indonesia are settled through a combination of the above self-assessment and tax withholding systems.

Corporate Income Tax (CIT) Scope

All tax-residents of Indonesia must declare and pay taxes on their worldwide income. Non-residents are liable to tax on income derived from Indonesia.

The tax-residency of a corporation is solely determined based on its place of incorporation. Foreign corporations that are present in Indonesia by virtue of having their places of management in Indonesia (as a Permanent Establishment or "PE"), representative offices, and branches of foreign banks operating in Indonesia are still considered as non-resident tax payers, although



a foreign corporation having a PE status would generally assume the same tax obligations as a resident taxpayer.

Corporate Income Tax (including branches or PE) is set at a flat rate of 25 per cent. In addition to this, after-tax profits of a branch or PE are also subject to withholding tax at 20 per cent (or at a lesser rate, as applicable under a tax treaty), regardless of whether such profits are remitted to the home country.

Small and medium-sized domestic companies (companies generating gross turnover of less than IDR50 billion) are entitled to a 50 per cent reduction of the tax rate. The reduced rate applies to taxable income corresponding to gross turnover of up to IDR4.8 billion.

Corporate Income Tax (including branches or PE) is set at a flat rate of 25 per cent.

Individual and corporate taxpayers (excluding permanent establishments) that generate an annual gross turnover of no more than IDR4.8 billion and meet the criteria set out by the government are subject to a final income tax of one per cent of monthly gross turnover.

Special tax rates are also granted to petroleum, mining, construction, foreign drilling and non-resident international shipping companies and airlines.

Indonesia has enacted a number of international treaties for the avoidance of double taxation.

Taxable income

In Indonesia, taxable profits are calculated based on the actual, historical costs accounting principles, as modified by certain tax adjustments. Indonesian accounting standards have now adopted IFRS principles which are mainly based on the use of 'fair value'. This new accounting system will oblige corporations to do fiscal adjustments before they can assess and settle their tax obligations and file the corresponding tax returns.

Deductions

Any expenditure incurred to obtain, collect, and maintain taxable profits can generally be deducted. Adjustments may be made due to timing difference relating to the recognition of certain expenses, or due to limitations applied towards certain expenses, as set out by the tax laws and regulations.

The following costs and expenses are generally disallowed for income tax calculation purposes:

- Any expenses of private nature
- Any provisions, unless those that are specifically allowed for: banking and financing companies,

insurance companies, Deposit Insurance Institution, mining companies, forestry companies and industrial waste disposal companies

- Benefits-in-kind (BIKs), other than BIKs costs for:
 - food and beverages provided to all employees
 - job-performance related BIKs, such as work uniforms and protective clothes
 - transportation costs to and from places of work
 - accommodations for ship crews and the like
 - BIKs costs of businesses in remote areas
 - certain company-provided cars and cellular phones
- Income tax and tax penalties or sanctions
- Social-security related expenses that are borne by the employer that are not treated as part of taxable income of employees
- Any deemed tax adjustments

Losses

Tax losses may be carried forward for a maximum of five years (sliding scale). Tax losses cannot be carried back.

Administration

Generally, the tax period is the calendar year (January to December). Corporations are permitted to use a different tax period, which can be set at its establishment date. Any subsequent changes must be approved by the Director General of Taxation.

Corporations are subject to monthly as well as annual tax reporting obligations, with most taxes to be paid on a monthly basis, as noted below.

Monthly reporting and payments

Most withholding taxes and monthly income tax instalments need to be paid by the 10th or 15th day

of the following month, whilst the corresponding monthly tax returns must be lodged with the relevant tax office by the 20th of the following month.

The monthly income tax instalment is set based on the previous year's tax liability calculation (with exclusion of any extraordinary, non-recurring items).

Annual Reporting and payments

Corporations need to file their annual Corporate Income Tax Returns (CITR) by the end of the fourth month following the end of the reported tax year, by which time the corporations must have settled the corresponding outstanding tax obligations, if any.

Extension of the above deadline (for a maximum of two months) may automatically apply upon submission of a written notification to the Director General of Taxation before the deadline, by attaching a tentative tax calculation. In such cases, any outstanding tax obligations must be settled prior to the filing of the CITR based on the attached tentative tax calculation.

Any tax payment can be made through any designated tax-payment banks, to the State Treasury account. A copy of the tax payment receipt should be attached to the monthly or annual tax returns only in the case of a manual submission of the tax return (ie, if the taxpayer has not yet registered to obtain electronic Taxpayer ID for the submission of tax returns).

Interest penalty (at two per cent per month on the outstanding tax payment, for a maximum of 24 months) is imposed on any late payments. An administrative penalty of between IDR100,000 and IDR1 million shall also be imposed for any late filing of tax returns.

Capital gains

Capital gains derived by residents are included in the taxable income and taxed at the standard rate. Capital gains derived by non-residents are subject to tax at a rate of 20 per cent.

The proceeds of sales of publicly listed shares through the Indonesian Stock Exchange are subject to a 0.1 per cent withholding tax. An additional rate of 0.5 per cent is levied on the share value on sales of founder shares associated with a public offering.

The sale of land and/or buildings is subject to a transaction tax rate of five per cent. This tax is levied on either the transaction value or the government official value for the purpose of calculating land and building tax, whichever is higher.

Groups

Tax calculations and tax returns are to be made by each corporation based on their unconsolidated financial statements. Consequently, no offsetting of losses within group companies is allowed.

Thin capitalisation

Where a 'special relationship' is deemed to exist, interest may be disallowed as a deduction where such charges are considered excessive.

Furthermore, the tax law allows the authorities to define the maximum debt-to-equity ratio in determining deductible interest. Under the recent regulation issued by the Minister of Finance, which applies to tax year 2016 onwards, the acceptable debt to equity ratio for companies is set at the maximum of 4:1. The following parties however, are exempted from this ratio requirement:

- Banks
- Financing companies

- Insurance and reinsurance companies
- Mining companies operating under production sharing or cooperation agreement wherein a specific ratio is agreed upon (valid until expiration date thereof)
- Taxpayers whose incomes are entirely subjected to final income tax
- Taxpayers engaging in infrastructure businesses

Under the same regulation, taxpayers having offshore loans are required to report their loans to the Directorate General of Taxation. Non-compliance of this requirement shall result in the non-deductibility of costs related to such non-reported loans.

Withholding tax

As previously noted, various payments to corporations or individuals are subject to withholding tax requirements. Different rates on payments of passive income, such as interest, royalty or dividend payments, are applied towards resident corporations, resident individuals and non-tax resident taxpayers, as noted below:

Taxable Income	WHT rate (%)		
	Resident Corporation	Resident Individual	Non-resident taxpayer
Interest	15	15	20
Royalty	15	15	20
Dividend	15, or nil if holding is more than 25	10 Final	20
Branch profits	N/A	N/A	20

Payments to a non-tax resident of Indonesia are, by default, subject to 20 per cent final withholding income tax. Reduced rates may apply based on the enforceability of a tax treaty.

Non-residents can only benefit from the reduced rate provided for in the applicable tax treaty if they can provide a certificate as prescribed by the Indonesian tax authority. Additionally, they need to provide a certificate from their home country tax authority to prove they are tax residents of that country (known as DGT-1 form).

Payments of a passive income nature (such as interests, royalties or dividends) to any special purpose vehicles that are beneficially owned by Indonesian tax residents must not receive any such benefit.

Income tax withholding is also applied towards certain types of transactions, such as:

- Importation of goods
- Sale of goods to the government
- Sale or purchase of certain products (cement, automobiles, etc.)
- Sale or purchase of luxurious goods (airplane, yacht, house etc exceeding certain thresholds)
- Payment of certain services

Any withholding taxes on income that are not subject to final tax shall serve as tax prepayments, and may be offset against the annual income tax payment. Conversely, any withholding taxes on income that are subject to final tax shall constitute the only income tax payable on such income. Consequently, income that is subject to final tax shall not be taken into account in the year-end income tax calculation, and any expenses attributable to the generating of such incomes shall not be deductible.

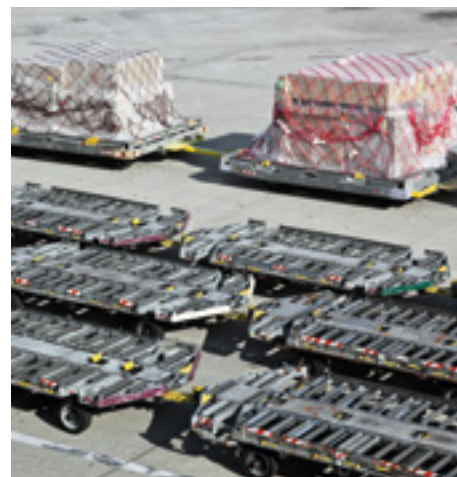
A summary of various withholding tax rates that are subject to final income tax is noted below:

Taxable Income	Final income tax rate (%)
Land and building rental fees	10
Land and building right transfer proceeds	5
Construction services fees (as the contractor – depending on business classifications)	2, 3 or 4
Construction services fees (as planner or supervisor – depending on business classifications)	4 or 6
Interest on time deposit, whose funds are from export proceeds in USD	10 (one month) 7.5 (three months) 2.5 (six months) 0 (more than six month)
Interest on time deposit, whose funds are from export proceeds in IDR	7.5 (one month) 5 (three months) 0 (six months or more)
Interest on time/saving deposit/Bank of Indonesia Certificates (SBIs), other than that payable to banks operating in Indonesia and to government approved pension funds	20
Interest on bonds, other than that payable to banks operating in Indonesia and to government approved pension funds	15
Sale of exchange traded shares on Indonesian Stock Exchange	0.1
Lottery prize	25
Forward contract derivatives	2.5

Other types of services as stipulated by Regulation of the Minister of Finance (mostly service fees) are subject to withholding tax at the rate of two per cent.

Transfer pricing

The Director General of Taxation (DGT) is authorised to recalculate taxable income and deductible costs and/or deem a loan as share capital for the purpose of the tax calculation of a taxpayer that has a 'special relationship' with its counter party transaction. This is done in line with the arm's length transaction principle, based on any of the following methods:



Any withholding taxes on income that are not subject to final tax shall serve as tax prepayments, and may be offset against the annual income tax payment.

- Comparable Uncontrolled Price (CUP)
- Resale Price Method (RPM)
- Cost Plus Method (CPM)
- Profit Split Method (PSM)
- Transactional Net Margin Method (TNMM)

In anticipation of a transfer pricing dispute, the DGT provides the possibility for a taxpayer to enact an Advance Pricing Arrangements (APAs) with the government.

In the case of a transfer pricing dispute involving two or more countries, the concerned taxpayer can apply for a Mutual Agreement Procedure (MAP) concurrently with the processing of a local dispute resolution (applying for a tax objection, appealing to the Tax Court and requesting a reduction or cancellation of administrative sanctions), subject to certain limitations.

Controlled foreign companies (CFC)

An offshore company may be determined to be a controlled foreign company by the Ministry of Finance if a resident taxpayer participates in such company and either the taxpayer, or the taxpayer and other resident taxpayers, own at least 50 per cent of the company's voting shares. This applies only if the foreign company does not trade its shares on the stock exchange.

If the controlled foreign company rules apply, the Ministry of Finance can deem a dividend to be derived by the Indonesian resident shareholder, if no 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; otherwise, the Ministry of Finance may do so.

Tax incentives

Tax holidays

Any company that meets the following requirements may be granted income tax reduction of 10 per cent or more, or, if deemed qualified, income tax exemption (tax holiday), for a period of five to a maximum of 20 years as from the commencement date of commercial production:

- The company is newly established, and engages in certain pioneer industries as set out by the government
- The company must have obtained legal entity status no earlier than 15 August 2011
- The company's new investment plan, as approved by the relevant authority, must be valued at a minimum of IDR1 trillion (or IDR500 billion for high-tech telecommunication, information and communication industry). The company's debt to equity ratio is below or at the maximum of 4:1
- The company must maintain deposits in a domestic bank for an amount constituting at least 10 per cent of their planned investment value, which must not be withdrawn before the commencement of the realisation of the investment plan
- If the (non-listed) company's shareholder is an Indonesian legal entity or foreign entity having permanent establishment, the shareholder must also obtain a fiscal explanatory letter issued by Directorate General of Taxation

The submission of the proposal for the granting of the above facility should be filed to BKPM for which shall subsequently issue recommendation to the Minister of Finance. The decision to grant the above facility shall be made by the Minister of Finance based on input from the verification committee that is assigned to conduct research

and verification on the applicant company, in view of its significance of contribution towards the national economy.

Tax concessions

Companies having high investment value or export-oriented business, large number of employees, or high local content, and engaging in certain designated business activities and/or located in certain designated regions may be entitled to the following tax concessions, upon application to the Minister of Finance and with recommendation from the Capital Investment Coordinating Board (BKPM):

- Reduction in net income of up to 30 per cent investment value, to be applied at five per cent rate for six years from the start of commercial production (with the requirement to retain ownership over assets within the same six years or utilization period, whichever is longer)
- Acceleration of fiscal depreciation and amortization deductions
- Longer fiscal carry forward losses (for up to ten years)
- Reduction of withholding tax rate to 10 per cent for payment of dividends to non-residents

Companies within Integrated Economic Development Zones ("KAPET") may obtain similar tax benefits based on the prevailing tax regulations for KAPET areas.

Public companies

Public companies that meet the following conditions are entitled to a five per cent tax discount, thus effectively shall be subject to a 20 per cent income tax rate:

- The respective company must have at least 40 per cent of its issued shares listed at the Indonesian Stock Exchange and kept at the Securities Depository and Settlement Institution

- The listed shares must be owned by at least 300 parties, each having less than five per cent of the respective company's total issued capital
- The above conditions must be met at least for the period of 183 days within one tax year

Other tax facilities:

- Small corporate taxpayers with an annual turnover of not more than IDR50 billion are entitled to a tax discount for an amount equal to half the standard rate (effective rate of 12.5 per cent multiplied by the proportion of taxable income allowed for such reduced rate (IDR4.8 billion divided by the total annual gross revenue, as multiplied by the total taxable income)
- Export-oriented companies with bonded zone status are entitled to the following tax postponements or exemption:
 - Exemption from Value Added Tax (VAT) and Luxury Goods Sales Tax (LGST) on certain luxury goods transactions
 - Exemption from prepaid income tax (Article 22) on importation of any capital goods and other equipment that are directly related to production activities
 - Import duty on capital goods and equipment and goods and materials for further processing is postponed
 - Excise subjected goods purchased from tax territory into bonded zone for further processing is exempted from excise duty
 - Upon application, sale of machinery and/or certain spare parts are exempted from import duty, provided that the machinery and certain spare parts have been imported for at least four years and used for at least two years
- Merging companies that meet certain requirements may use the book-value ("tax-neutral") merger approach
- Profits of a venture capital company may be exempted from income tax, if such profits are received from appropriation of profit distribution from the corporation in partnership with the respective venture capital company, and such corporation is classified as micro/small/mid-size company or engages in certain sectors as set out by the Minister of Finance, and its shares are not publicly traded at the Indonesian Stock Exchange
- Permanent Establishments (PEs) may be granted branch profit tax exemption, if all after-tax profits are re-invested in Indonesia by the end of subsequent tax year, in the form of a share participation in another Indonesian legal entity, or fixed asset purchase or investment in intangible assets for the conducting of its activities in Indonesia

Personal Income Tax

Individuals liable to Indonesian tax

Indonesian residents are subject to personal income tax on their worldwide income; non-residents are subject to tax on their Indonesian-source income only. Unless otherwise specified by an applicable tax treaty, an individual is considered to reside in Indonesia when:

- Present in Indonesia for more than 183 days within any 12-month period
- Present in Indonesia for less than 183 days but intends to reside in Indonesia

Taxable income

Income tax is payable on all employment income, business income, director's fees and investment income.

For tax calculation purposes:

- The following items can be deducted from gross revenue:
 - Occupational support amounting to five per cent of gross income, up to a maximum of IDR500,000 per month
 - Contribution paid by employee to a pension fund that has been approved by the Minister of Finance
 - Contribution paid by employee to BPJS 'Ketenagakerjaan' (the old-age benefit of the obligatory social security program)
- Insurance premiums paid by the employer should constitute part of revenue
- The following annual allowances can be deducted from taxable income
 - For the concerned taxpayer IDR36,000,000
 - For spouse (if married) IDR3,000,000
 - For dependents (maximum 3) IDR3,000,000 (each)

Taxable Income	Rate (%)
On the first IDR50 million	5
On the next IDR200 million	15
On the next IDR250 million	25
On the amount in excess of IDR500 million	30

Income earned by a non-tax resident individual is subject to the default 20 per cent final income tax rate or a lower rate if provisions of the relevant tax treaty apply.

Income that is already subject to final tax, such as dividend income, shall not be subject to the above progressive rates, and shall be excluded from the annual tax calculation.



Tax returns

Personal Income Tax Returns (PITR) need to be filed within three months following the end of the applicable tax year, by which time the concerned individual must have settled any outstanding tax obligations. As for corporations, an extension of this deadline (for a maximum of two months) may automatically apply upon submission of a written notification to the Director General of Taxation before the deadline, by attaching a tentative tax calculation. In such cases, any outstanding tax obligations (as per the tentative tax calculation) must be settled prior to the filing of the PITR based on the attached tentative tax calculation.

Individuals having only one source of income (ie, as an employee of a single company) are not obliged to submit monthly tax returns. Conversely, if an individual has more than one source of income, he/she is generally subject to the same monthly tax reporting (and tax instalment) obligations as applied towards corporations.

Tax payments can be made through any designated tax-payment bank, to the State Treasury account. A

copy of the tax payment receipt should be attached to the monthly or annual tax returns.

An interest penalty (at two per cent per month on the outstanding tax payment, for a maximum of 24 months) is imposed on any late payment. An administrative penalty of between IDR100,000 and IDR1 million shall also be imposed for any late filing of tax returns.

Other taxes

Value Added Tax (VAT) and Luxury Goods Sales Tax (LGST)

VAT

VAT is a transaction tax, the cost of which ultimately falls on the end customer. The majority of transactions involving the supply of goods, the provision of services and importations will be subject to this tax. VAT is indirectly collected at each level of production, with the application of an offsetting mechanism.

All businesses engaged in the supply of goods and services liable to VAT must register for VAT as 'taxable entrepreneurs', unless they qualify as 'small entrepreneurs'. Small entrepreneurs are defined

as any business with an annual turnover of less than IDR4.8 billion. This requirement also extends to permanent establishments of non-resident businesses.

Under the VAT Law, the Indonesian government may set VAT rates from five to 15 per cent. Nevertheless, the government has not changed such rates since the pronouncement of the VAT Law back in 1984.

Unless otherwise excluded by the VAT Law, VAT shall be applied towards:

- Sale/delivery of any goods and services within Indonesia, at the rate of 10 per cent
- Exportation of any goods and limited types of services as set out by the Regulation of the Minister of Finance (currently, toll manufacturing, repair and maintenance, and construction services), at the rate of 0 per cent
- Importation of any goods (including inbound use/consumption of intangible goods) and services (inbound use/consumption of foreign services), at the rate of 10 per cent



Taxpayers can recover input VAT by deducting it from output VAT, providing a valid tax invoice or customs document accompanies the claim. If the input VAT exceeds any output VAT due, this excess can be claimed as a refund or carried over in the subsequent month. Notwithstanding, in cases where VAT is calculated based on a deemed percentage of invoiced amount (such as for courier service, where taxable income is set at 10 per cent of invoiced amount), the relevant input VAT may not be credited.

Monthly VAT returns must be filed by the last day of the proceeding tax period. Any VAT due must be settled prior to the submission of the return.

LGST

Similarly to VAT, LGST is a tax which falls on the end-users of goods/services that are considered as "luxurious" products. LGST is applied once, upon the importation of luxury goods, or, in case of

subsequent manufacturing activities, upon delivery by the manufacturer. Unlike VAT, LGST does not use a single rate but may be imposed at different rates, depending on the category of goods. Under the VAT and LGST Law, the rates may range from 10 per cent to 200 per cent.

Import and export duty

Import duties are applied on various goods upon importation at various rates, as set out by the Indonesian government on a regular basis. The exportation of goods is generally free from any export duty. Certain commodities are subject to export duty at various rates, depending on the type, grade of products, and/or other criteria (for example, export duty rates on certain mining products also depend on the level of construction of refinery plant committed to be built by the concerned manufacturer/exporter).

Land and building tax

Land and building tax (known as "PBB") is chargeable each year at a rate of up to 0.3 per cent

of the government determined value. The tax is payable within six months upon issuance of the PBB assessment.

In case of transfer of land and building rights, the transaction is subject to five per cent "Acquisition of Land and Building Right Levy" (known as "BPHTB"), to be calculated based on the transaction value or the government determined value, whichever is higher.

Stamp duty

Stamp duty is applied towards legal receipts and documents, at the nominal amount of either IDR3,000 or IDR6,000. Payment of stamp duty is made by way of fixing a stamp duty on the signing section of the relevant document, whereby the signing officer (in case of legal receipt) or one of the concerned parties (in the case of a contract) should sign across it. Subsequent payment (after execution of document) through the Post Office is permitted.

Labour

In Indonesia, employment-related issues are governed by various manpower laws and regulations, most of which are obligatory in nature, and cannot be contravened on a contractual basis.

Manpower laws and regulations

The Law on Manpower, issued in 2003, as 'amended' several times by the decisions of the Constitutional Court, is the main law governing manpower-related issues, especially in respect to the rights of individual employees. This law covers, among others, issues regarding employment, wages, working time and leave, dismissal due to resignation, termination or sickness, child and female workers, company regulation and collective labour agreements.

The Law on National Social Security System of 2004, which was implemented through the formation of two national Social Security Service Providers "BPJS" at the end of 2013, is the main law governing health and employment-related social security services. This covers employees, all residents of Indonesia and expatriates who have been domiciled in Indonesia for at least six months.

The two BPJS, which handle employment-related social security services ("BPJS Ketenagakerjaan") and health insurance social security services ("BPJS Kesehatan"), respectively, are now the only two official providers for the holding of social security programs for employees.

Other manpower-related legislation governs the procedures for dispute settlement, the creation and administration of labour unions and other specific matters.

Employment contract

Employment contracts can be executed orally or in writing. Nevertheless, in principle, contracts must be made in writing and can only be executed orally if specific circumstances restrict the provision of a written agreement. Engagement of a non-permanent employee must be based on a written contract in Indonesian, otherwise the employee shall be deemed permanent by law.

Employment agreements must include specific requirements and must be entered into and performed in accordance with the relevant labour laws.

Minimum wage

In Indonesia, the minimum wage for each province is set out by the respective Governor. If deemed necessary, the Governor, based on a recommendation from the respective Regent/Major, may also issue a minimum wage that applies to a specific region/city or industrial sector.

For the year 2016, the minimum wage of DKI Jakarta, the Capital City, has been set at IDR3.1million per month.

Working time and leave **Working hours**

Employees can work a maximum of 40 hours per week, over five or six working days. Employees are entitled to at least half an hour's break for every four hours of work.

An employee's consent is required for any overtime work, and this must not exceed three hours per day and 14 hours per week. Employers that breach this threshold are liable to a fine (for a minimum of IDR5 million to a maximum of IDR50 million). Overtime pay is set out by Ministerial Decree. At



Employees can work a maximum of 40 hours per week, over five or six working days. Employees are entitled to at least half an hour's break for every four hours of work.

present, overtime pay is based on the hourly salary (1/173 x monthly salary, including fixed allowances), and this hourly basis salary must be multiplied by different factors, depending on the number hours and day of the overtime.

Annual leave

Employers must provide employees with 12 days of annual leave per annum (which is exercisable from the second year of employment).

Paid leave

Other paid leave entitlements regulated by the Manpower Law include: menstruation leave (up to two days), maternity leave (three months), miscarriage leave (1.5 months) and sick leave (must be accompanied by a doctor’s certificate).

After each six consecutive years of employment, employees are entitled to receive a long leave (for a minimum of two months), which shall be exercisable in the seventh and eighth years of employment, replacing the normal annual leave of 12 days during the said years. As of the date of writing, this long leave is applicable to companies that have exercised this policy prior to 8 April 2004 (the relevant Ministerial Decree).

Any breaches of non-payment, minimum work breaks (daily, weekly, and annual) and leave permission arrangements are punishable by a detention sanction (for a minimum of one month to a maximum of 12 months) and/or a fine penalty (for a minimum of IDR10 million to a maximum of IDR100 million).

Breaches of the right to exercise religious activities and leave for giving birth or miscarriage are punishable by imprisonment (for a minimum of one year to a maximum of four years) and/or a fine penalty (for a minimum of IDR100 million to a maximum of IDR400 million).

Social security

Each company must enrol its employees into the obligatory social security programs provided by BPJS Ketenagakerjaan and BPJS Kesehatan, and pay the following premiums based on an employee’s monthly salary, as noted below:

- Pension Program: two per cent to be paid by the employer, one per cent to be paid by the respective employee (maximum calculation base: IDR7 million)
- Old age benefit: 3.7 per cent to be paid by the employer, 2.0 per cent to be paid by the respective employee
- Work accident: between 0.24 per cent - 1.74 per cent to be paid by the employer (business activity based)
- Death insurance: 0.3 per cent to be paid by the employer

- Health insurance: 4.0 per cent to be paid by the employer, one per cent to be paid by the respective employee. Maximum calculation base is IDR7 million

Dismissal

Dismissal can be based on voluntary resignation by the respective employee, by consensus or based on an approval decision from the commission for the handling of industrial relationship dispute settlement (if no consensus is reached between the employer and the dismissed employee or the labour union representing the dismissed employee, if any).

Instead of applying for voluntary resignation, an employee may formally submit an application for termination for reasons as specified in the Manpower Law (such as due to harassment, humiliation, etc). If the application is approved by the authority, the employee shall be entitled to receive twice the severance pay plus the long service pay and compensation. However, if the proposed reason for such termination proves to be untrue, the employer may terminate the employee immediately and the employee shall be entitled to receive compensation only.

An employee that has been suffering from long-time illness or becomes handicapped after a work related accident and thus is unable to continue work for a period of at least 12 months may apply for termination and is entitled to twice the severance payment, twice the applicable long service pay and the relevant compensation.

Termination package

The termination package, comprising severance pay, long-service pay and compensation, is provided based on the employee’s most recent monthly salary and duration of service.

Severance pay

Employment Period (years)	Month’s salary
< 1	1
< 2	2
< 3	3
< 4	4
< 5	5
< 6	6
< 7	7
< 8	8
> 8	9



Long-service Pay

Employment Period (years)	Month's salary
3 – 6	2
6 – 9	3
9 – 12	4
12 – 15	5
15 – 18	6
18 – 21	7
21 – 24	8
>24	10

Compensation

- Annual leave that is still valid and has not been taken
- Repatriation costs to place of hire
- Medical and housing compensation amounting to 15 per cent of the severance pay and/or long service pay received by the employee
- Other things as regulated in an employment contract, company regulations or a collective labour agreement (KKB)

Generally, in the case of any dismissal of an employee, the dismissed employee shall be entitled to receive:

- In case of voluntary resignation, compensation only (plus separation money, if applicable, as regulated in employment contract, company regulations or collective labour agreement)
- In case of involuntary resignation, severance pay, long-service pay, and compensation
- If the termination is not due to the fault of the dismissed employee, the severance pay should be doubled

Employment of foreign employees

In order for a company in Indonesia to hire an expatriate, they must obtain permission from the government. Furthermore, government policy states that foreigners who work in Indonesia must be “experts” in their field. The Manpower Law prohibits an individual employer (ie,

self-employed businessman) to hire expatriates, and sets out the following sanctions and penalties for the following breaches:

- Employing expatriates without obtaining any licence: imprisonment for one to four years and/or fines of IDR100 – 400 million
- Not appointing local employees as required by the prevailing regulations to ensure the transfer of skill from each expatriate hired by the company (not applicable for expatriate director or commissioner): detention for a minimum of one month to a maximum of 12 months, and/or fines for a minimum of IDR10 million to a maximum of IDR100 million.

Licences for expatriates

Several licences must be obtained in order to employ an expatriate, as noted below in chronological order:

- Employment plan
- Work permit (“IMTA”) – Skill Development Fund (“DPKK”) of USD1,200 per annum should be paid to the Government for employment of one expatriate
- Working visa – at this point, the expatriate can collect the visa at the designated Indonesian Embassy/ Consulate and enter into Indonesia
- Stay permit and Multiple Exit Re-entry Permit (“MERP”)
- Several other licences related to the expatriate’s temporary resident status, to be applied to the local government offices

The process for the above arrangements takes three to four months to complete. The employed expatriate should be able to enter Indonesia at the second month, immediately after obtaining the working visa.

Trade unions

The right of employees to either join or create a labour union is protected by the Manpower Law, and is further stipulated in the Law on Labour Union. Any labour union whose members represent at least 10 per cent of the total employees of a company may be involved in the negotiation process for the making of collective labour agreement with their employer.

Audit

Indonesia does not have a law that specifically regulates matters concerning financial reporting requirements. The requirement to have a bookkeeping system that is in compliance with Indonesian accounting standards is found in various laws and regulations, including the Limited Liability Company Law, the Tax laws and their implementing regulations.

Accounting standards

Indonesian Accounting Standards (SAK) are undergoing a convergence process to adopt the International Financial Reporting Standards (IFRS). As of 1 January 2012, the standards have been aligned with the 2009 version of IFRS, and other amendments have been issued, following changes in IFRS after 2009. As of 1 January 2015, the SAK will have completed the second alignment to significantly adopt the 2013 IFRS. This alignment will further minimise any gap between SAK and IFRS.

The Indonesian Institute of Certified Public Accountant (IAPI) has issued and adopted some revised professional standards that are based on the International Federation of Accountant (IFAC) Standards, which are the Standards on Quality Control, Auditing Standards and Review Standards. The revised standards have been applied for financial statements covering periods beginning on or after 1 January 2013 for listed companies, and 1 January 2014 for other companies.

Some standards on other assurance and related services have not been adopted. Thus, during this transition period, such services will be conducted based on the existing professional standards which are largely based on the standards

issued by the American Institute of Public Accountants.

Accounting records

Every business in Indonesia is required to have a bookkeeping system, to be maintained in the Indonesian language and using IDR as its reporting currency.

Notwithstanding the above, usage of the English language and USD currency may be allowed upon application to the Indonesian Tax Authority on behalf of the Minister of Finance, based on stipulated reasons (typically, USD as the functional currency of applicant company).

As at the date of this guidance, no other currency and language is allowed.

Typically, the accounting period is the calendar year, from the first of January to the end of December each year. Companies, however, may determine their own financial years from their respective dates of establishment. Any change of financial year would be subject to notification to the Minister of Law and Human Rights, and approval from the Indonesian Tax Authority, on behalf of the Minister of Finance (for tax reporting purposes).

By law, every business must maintain their books, records and other supporting documentation in Indonesia at their place of domicile for at least 10 years following the end of the applicable financial year.

Accounting basis and preparation of financial statements

Bookkeeping must be maintained on an accrual basis, and financial statements must be prepared at least once a year by the



...usage of the English language and USD currency may be allowed upon application to the Indonesian Tax Authority on behalf of the Minister of Finance, based on stipulated reasons



management board of each respective business. Under the Limited Liability Company Law, the management board (Directors and Commissioners) must present their annual report, which includes the financial statements, before and for the ratification by the General Meeting of Shareholders each year, within six months upon closing of the reported financial year. The management board of a corporation shall be severally and jointly liable for any losses incurred due to any misleading or incorrect financial statements.

A complete set of financial statements of one financial year is presented on a corresponding basis with the previous year, and shall consist of the following:

- A statement of financial position
- A statement of comprehensive income
- A statement of cash flows
- A statement of changes in equity
- Notes to the financial statements

Filing and submission of statutory financial statements

The books and records of a business must be stored at the place of domicile of the business. There is no requirement for these books and

records to be audited or filed with any government institutions, except for taxation purposes. This does not however, eliminate the authority of various government institutions to request such financial-statement related information concerning their technical jurisdictions, which, in many cases, may be required to be translated into specific forms of report.

One event that would trigger the necessity for a company to have its financial statements audited is when it has an Offshore Loan (in foreign currency), in which case the company shall be subject to a reporting requirement to the Central Bank of Indonesia.

Audit requirements

Although there is no statutory audit requirement for companies, businesses in certain sectors and those that meet the following criteria, are required to have their books audited, and subsequently report the audited financial statements to the Minister of Trade (in the form of "LKTP" or Corporate Annual Financial Statements), the Ministry of Law and Human Rights, Indonesian Stock Exchange authority, and/or other relevant departments:

- Companies that accumulate and manage public funds
- Companies that issue debt instruments to general public
- Public listed companies
- Certain types of state-owned enterprises (to be audited by State Audit Board)
- Companies having assets at least IDR25 billion (as per the LKTP regulation by the Minister of Trade)
- Companies having assets and/or annual turnover at least IDR50 billion (as per the Limited Liability Company Law)
- Foreign companies conducting business in Indonesia with authority to enter into contracts (generally known in taxation as "Permanent Establishment")
- Other criteria as may be set by specific laws and regulations. For example, under the LKTP regulation, any bank debtors with audit requirement (as set out by the bank) must also submit LKTP report

Furthermore, being a counter party in a private business transaction, such as a bank creditor as mentioned above, may also invoke the need for a company to have its books audited.

Trade

Foreign Direct Investment

Indonesia generally promotes an open policy towards foreign investment. Except when restricted by the government, any business activity can be set up with 100 per cent foreign investment. Restrictions may be in the form of maximum shareholding, partnership requirement with local businesses or certain operational areas.

Under the current “Negative List of Investments” the trading sector is generally closed to foreign investment, except for wholesale trading (up to 33 per cent foreign shareholding) and big retailers (with certain minimum retail space). The manufacturing sector is generally open for foreign investment.

Government incentives

Alongside the incentives documented in the tax section, the Indonesian government offers several incentives for investment in certain strategic sectors. These are available for both domestic and foreign investors:

- Import Duty Facility: for the importation of machinery for production purposes, or for those using locally-produced machinery constituting 30 per cent of the total value of their machinery, for production purposes
- Tax allowances: reduction of net income by a total of 30 per cent of investment value, at five per cent for six years, acceleration of depreciation and amortization, lower dividends tax, longer carry forward losses period
- Tax holiday for certain pioneer industries having investment plan of the minimum of IDR1 trillion: basic metal industries, oil refinery industries and/or basic organic chemicals originating from oil and natural gas, machinery industries,

agriculture, forestry and fishery products based processing industries, telecommunication, information and communication industries, marine transportation industries, prime processing industries located in Special Economic Zone (KEK), and economic infrastructures other than those under cooperation scheme between government and corporation

Imports

Most goods can be imported into Indonesia without the need for special licences other than the below mentioned. The Indonesian government issues a list of commodities that are either subject to trading restrictions, quotas or additional licences for monitoring purposes. A single tariff is applied on goods, without discrimination between local and foreign-owned businesses.

Generally, there are two types of Import Licences issued by the Indonesian government:

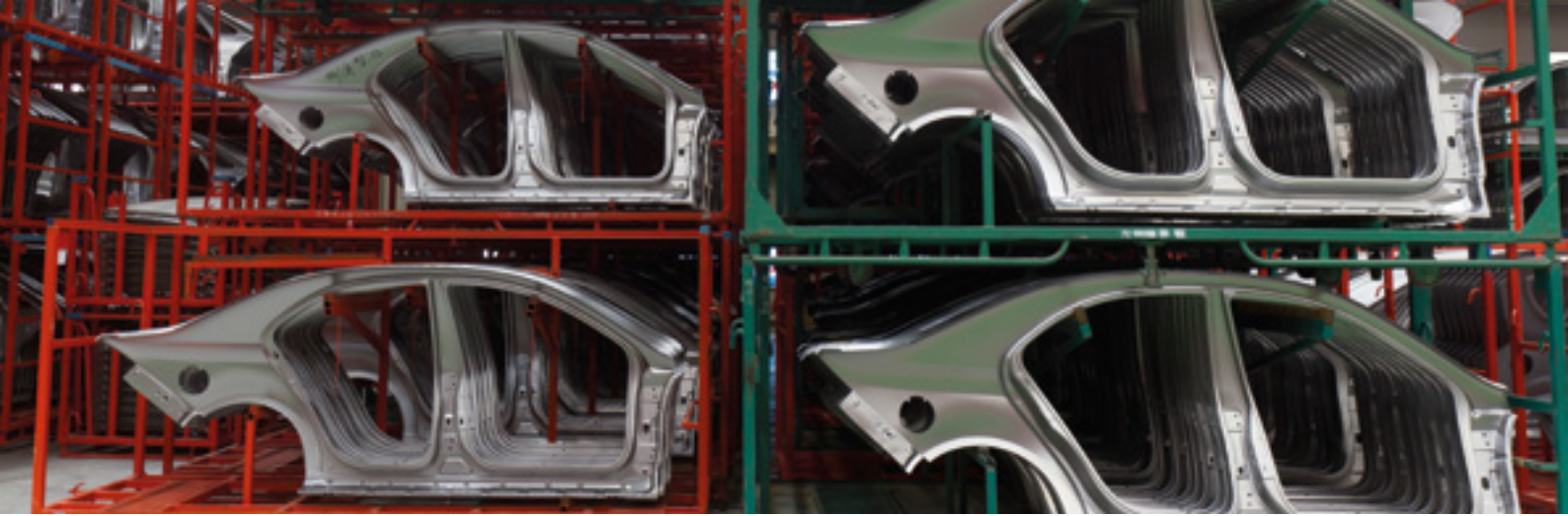
- General Importer’s Identification Number (API-U) – for import trading purposes
- Manufacturer Importer’s Identification Number (API-P) – for the importation of machinery and raw materials for own plant or further processing

A company can only obtain one import licence, thus creating the need to separate manufacturing activities from import trading activities, into separate business entities.

Upon obtaining one of the above licenses, every importer must register with the Department of Customs and Excise, to obtain a Customs Identification Number (NIK for import, and NEK for export).



Most goods can be imported into Indonesia without the need for special licences



Importation of certain commodities can only be made through the following ports in restricted amounts:

- Seaports: Belawan in Medan, Tanjung Priok in Jakarta, Tanjung Emas in Semarang, Tanjung Perak in Surabaya, Soekarno Hatta in Makassar, Dumai in Dumai, Jayapura in Jayapura, Tarakan in Tarakan, Krueng Geukuh in North Aceh, Bitung in Bitung
- Land ports: Cikarang Dry Port in Bekasi
- Airports: Kualanamu in Deli Serdang, Soekarno Hatta in Tangerang, Ahmad Yani in Semarang, Juanda in Surabaya, and Hasanuddin in Makassar
- Note that the seaports of Dumai in Dumai, Jayapura in Jayapura, and Tarakan in Tarakan can only be used for importation of foods and beverages

Monopoly and unfair competition

The Commission for the Supervision of Business Competition (“KPPU”) may conduct investigations to check if monopolistic and/or unfair business competition has taken place. The KPPU is authorised to impose administrative sanctions to any party considered to be in breach of the anti-monopoly and unfair competition rules, which may be given in the form of:

- Cancellation of agreement
- Cancellation of merger, acquisition or consolidation
- Prohibition to proceed with vertical integration, misuse of dominant position or other

monopolistic and/or unfair business practices

- Compensation of any incurred losses
- Fines from IDR1 billion to IDR25 billion

In anticipation of any monopolistic and/or unfair business practices, the KPPU has released various transaction guidelines. The KPPU encourages business practitioners to voluntarily apply for consultation with the KPPU in anticipation of the execution of any major business transaction, if such transaction, upon execution, is feared to potentially breach the law or result in prohibited dominant position.

Land rights

In Indonesia, the purchase and use of land is subject to a number of land rights. Indonesian Land Law recognises several land rights, with a mixture of them permitted, due to its ‘horizontal’ principle that differentiates ownership of land with the ownership of the structures built on it. The main land rights are as follows:

- Right to Ownership (*Hak Milik*) – this is an inheritable right that can be held only by Indonesian citizens, similar to the popularly known ‘freehold’ title
- Right to Cultivate (*Hak Guna Usaha*) – this is a right that can be given by the government (for land with state land status) to either Indonesian citizens or Indonesian legal entities for the cultivation of land for agriculture and plantation businesses. This right can be given for the maximum period of 35 years, and extended for a maximum period of 25 years
- Right to Build (*Hak Guna Bangunan*) – this is a right that

can be given by the government (for land with state land status) or private individuals (based on contract, for land with Hak Milik status) to either Indonesian citizens or Indonesian legal entities for the construction and ownership of buildings. This right can be given for a maximum period of 30 years, and extended for a maximum period of 20 years

- Right to Use (*Hak Pakai*) – this is a right that can be given by the government (for land with state land status) or private individuals (based on contract, for land with Hak Milik status) to any party, including foreign citizens or entities, for the use and/or taking proceeds from such land. This right can be given for an indefinite period. Notwithstanding, based on the prevailing implementing regulation, Hak Pakai for foreigners having domicile in Indonesia can initially be given for the maximum of 30 years, extendable for another 20 years and renewable for another 30 years, with the requirement to transfer the right within a year, upon them no longer residing in Indonesia
- Right to Manage (*Hak Pengelolaan*) – this is a right that can be given by the government to certain institutions to ‘manage’ certain (large) parcel(s) of land

A new right can usually be given upon expiration of the above periods (as extended) by the government, as long as the city plan covering the subjected area still allows it.

All land rights should be registered at the Land Registration Office at the National Land Agency (Badan Pertanahan National – “BPN”).

Finance

Financial Services Authority (OJK)

In Indonesia, any financial-related industries are under the jurisdiction of the Financial Services Authority (OJK). The OJK has the authority to regulate and monitor (and give operating licences to) the following industries:

- Banking
- Non-bank Financial Institutions
- Capital Markets
- Insurance
- Other financial-services providers, such as pawnshops, Deposit Insurance Institutions (LPS), export financing institutions, housing secondary financing institutions, social security program providers, pension funds

The OJK is managed by a collective and collegial Board of Commissioners consisting of nine members, with two ex-officio members from the Bank of Indonesia and the Ministry of Finance, respectively. In addition, a coordination forum has been created, wherein the Minister of Finance (as the Coordinator), the Governor of the Central Bank of Indonesia, President Commissioner of LPS and President Commissioner of OJK are its members.

The above 'across authorities' board composition and coordination forum have been formed to ensure the stability of the overall financial system in Indonesia.

Capital markets

Capital market activities are performed through the Indonesian Stock Exchange (IDX) in Jakarta. The principal securities traded on the IDX are shares (including rights) and bonds. Some share options and futures trading are also carried on, but not a significant amount.



The key pieces of legislation governing the industry include: Capital Markets Act, IDX rules on listing, trading, and membership requirements, Indonesian Securities Central Depository (KSEI) regulations and Indonesian Securities Guarantee Clearing (KPEI) regulations.

The IDX comprises two boards; the main board and the development board. In order to secure a listing on either, the main or development board, the listing company must comply with a number of requirements:

- Limited liability
- A registration statement declared effective by the OJK
- At least 30 per cent of its board of commissioners consisting of independent members
- At least one non-affiliated director
- A corporate secretary

Capital market activities are performed through the Indonesian Stock Exchange (IDX) in Jakarta. The principal securities traded on the IDX are shares (including rights) and bonds.



- An established audit committee (or established within six months of listing)
- Shares with a par value of at least IDR100 per share

If a company wishes to list on the main board, the company must have undertaken its core business for at least 36 consecutive months at the date of application, and have Net Tangible Asset of minimum IDR100 billion.

If a company wishes to list on the development board, the company must have undertaken its core business for at least 12 consecutive months at the date of application, and have Net Tangible Asset of minimum IDR5 billion.

Certain financial reporting requirements may also apply.

Banking system

The banking industry is regulated by the OJK. While previously charged with banking regulation, the Bank of Indonesia (the Central Bank of Indonesia) is now charged with macro-regulation. This includes ensuring monetary stability, payment system stability and financial system stability.

The banking industry is still dominated by private banks (of which there are 35 foreign-exchange banks, 30 non-foreign-exchange banks, 15 foreign-joint banks, 26 regional development banks, 10 foreign bank branches), with only

four state-owned banks. OJK, as the new regulating authority, is aiming to reduce the number of banks to around 60 over a ten-year period by providing incentives for mergers, acquisitions and consolidation of banks.

Banks are allowed to provide conventional banking services as well as Sharia-based banking services but must operate through separate business units for each line.

Insurance industry

The insurance industry in Indonesia provides general and life insurance to individuals and businesses. The life sector still has a very low penetration rate of less than two per cent.

The Indonesian insurance market has attracted significant foreign investment in recent years, although the FDI limit remains at 80 per cent. The insurance industry in Indonesia has been identified as having large growth potential as the current levels of product penetration and density are much lower than that of other South East Asian countries. Despite the low penetration rate, in 2014, the premiums generated from life insurance business reached IDR167.76 trillion, a 33 per cent increase from 2013. From the general insurance business, around IDR55.1 trillion of premiums were generated during the same period, around an 18 per cent increase from 2013.

As mentioned above, the insurance industry is now regulated by the OJK. The New Insurance Law that was issued in October 2014 provides that the relevant implementing regulations must be issued within two and a half years of the new law being promulgated.

Investment management industry

The Indonesian investment management industry is relatively immature; there are around 250,000 retail mutual fund investors in Indonesia. Typically, the demand for funds has comprised time deposit plus funds and equity funds.

There are around 80 fund management firms operating in Indonesia, with market share predominately concentrated in the top 10 firms. Foreign-based investors are required to incorporate a local business before they can sell funds locally. Furthermore, no more than 15 per cent of the net asset value in mutual funds sold in Indonesia can be invested in securities issued/traded on an offshore exchange.

The Indonesian asset management industry is regulated by the OJK. The OJK has been working in conjunction with the government to help expand the domestic investor base. On the regulatory side, the regulator is continuing to work on new rules to increase the clarity of customers' rights and obligations in mutual funds and make them more accessible to retail clients.

Infrastructure

Indonesia is currently facing a number of challenges with its domestic infrastructure. Rapid economic development in cities such as Jakarta is placing immense pressure on the current system of roads, inter-connected public transportations, data cabling network, etc.

Internet communication is rapidly growing, despite its relatively new existence in Indonesia. Internet by cable communication is predominately found in big cities with the appropriate infrastructure. However, there has been substantial growth in smartphone technology, as supported by high-speed data transmission (4G) facilities by big telecommunication operators. This has significantly contributed to the increases in internet traffic across the nation. This rapid growth in internet traffic has raised a number of concerns in the central government, in view of the lack of any comprehensive and clear control (censorship) and data protection policy. In 2013, the Indonesian Defence Minister proposed a plan to create a “cyber army” to protect the state’s portals and websites. No implementation of this plan has yet been enacted.

In response to the increasing infrastructure demands, the Indonesian Government is focusing on the development of several important infrastructure projects, and has recently issued several regulations in respect to the following projects:

- Planned “Maritime Axis” project – this project aims to create inter-connected sea-lines across Indonesia, harbour to harbour, and combined with sea-toll roads. This shift of development focus has resulted the delay of the

previously studied “Sunda Strait Bridge Project”

- There are a number of toll roads being built and completed across cities in Indonesia, among others:
 - Trans-Java toll road (9 projects, around 615 km)
 - Trans-Sumatera toll roads (around 2,818 km) from Lampung to Aceh
 - Samarinda-Balikpapan toll roads (around 99 km) in Kalimantan
 - Manado – Bitung (around 29 km) in Sulawesi
- Jakarta is undergoing the development of its first Mass Rapid Transit project, alongside the continuing development of the bus public transportation system and new train railways project to the Soekarno-Hatta International Airport
- The development of integrated light-rail transit train infrastructure in Jakarta and its surrounding cities. In line with this, a special body has been formed to manage transportation across the cities, which is accountable to the Minister of Transportation
- The development of a super-fast train from Jakarta to Bandung has begun. The President attended the ground-breaking ceremony of the development
- The Indonesian government has also stated that it will prioritise the development of the eastern parts of Indonesia, although no plans have been published at the time of writing



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