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Investing in Indonesia 2021

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Contents

1 Introduction

The passing of Law No 11 Year 2020 on Job Creation (popularly known as the "Omnibus Law") marks an important milestone in Indonesia's effort to attract foreign investment to sustain future economic growth. The Omnibus Law revised 78 existing cross-sectoral laws to establish a coordinated framework in order to create more job opportunities across Indonesia. As of the publication of this report, 51 implementing regulations to the Omnibus Law have been issued. The impact of the Omnibus Law and its implementing regulations is discussed in various chapters of this publication. In our experience, it will likely take at least two years to see the positive impact of the Law.

While Indonesia is attractive to foreign investors because of its young workforce and large domestic market, its weak basic infrastructure relative to other comparable countries remains a major obstacle. During the period between 2014-2019, we have seen an unprecedented focus on infrastructure investments. Chapter 4 of this publication highlights the major infrastructure developments from 2014 to now.

In the last two years, like many countries, the Indonesian government was forced to reallocate significant resources to health care and the social safety net to tackle the negative impacts arising from the COVID-19 pandemic. Prior to COVID-19, the government was widely praised for its discipline in maintaining the fiscal deficit within the required limit of 3 percent. Since then, the deficit limit has been temporarily expanded to 5.82 percent in 2021 and 4.85 percent in 2022. The government's ability to rebalance the fiscal deficit is a key indicator to watch, as Indonesia expects to return to the 3 percent limit by 2023.

This publication is intended as a general guide to investing and doing business in Indonesia, primarily for new foreign investors looking to enter the Indonesian market. It also serves as a useful reference document for established foreign and domestic investors. Practical insights and other intelligence from KPMG's experience at the transaction "coalface" and from providing transaction, M&A and tax advisory services to foreign and local investors and lenders can also be found at appropriate junctures in this publication.

Note :
This publication is not intended to be a substitute for formal legal, tax or other professional advice. To the best of our knowledge, laws and regulations referred to throughout the document reflect the position as of 1 November 2021, or later where specifically referenced.

2 Country Facts and Overview

Official name	Republic of Indonesia
Capital city	Jakarta, which is also the business governmental center. In August 2019, President Joko Widodo announced the relocation of the capital to East Kalimantan, which is expected to be inaugurated in 2024.
Other major cities and provinces	Surabaya, Medan and Bandung. Surabaya is the second largest city and a major industrial center and port. There are 34 provinces comprising 416 regencies and 98 cities, 7,246 districts and 83,931villages.
Government	Type : Independent republic Independence : 17 August 1945 Head of government: President
Geography	Location : Southeast Asia, an archipelago between the Indian Ocean and the Pacific Ocean Largest islands : Sumatra, Java, Kalimantan (Borneo), Sulawesi and Papua account for over 90 percent of total land area. There are also two large groupings of smaller islands, Maluku and Nusa Tenggara. Area : 1,916,907 sq km; land: 1,823,862 sq km; water: 93,000 sq km Terrain : 16,056 islands Coastline : 108,000 km
Climate	Tropical, hot, humid, cooler in the highlands
People	Nationality : Indonesian Population : 268 million, 50.76 percent under age of 30 Ethnic Groups: 40 percent Javanese, 16 percent Sundanese and 44 percent other ethnic groups Religions : Islam 87 percent, Protestant 7 percent, Catholic 3 percent, Hindu 2 percent, Others 1 percent

Language	Bahasa Indonesia (akin to Malay) English is widely spoken by business people in major cities
Currency	Indonesian rupiah (IDR)
Inflation (year-on-year)	Average of 3.4 percent in 2015; 3.0 percent in 2016; 3.6 percent in 2017; 3.1 percent in 2018; 2.7 percent in 2019 and 1.7 percent in 2020. Central bank (*Bank Indonesia* or "BI") estimates annual average inflation rate at 3.1 percent in 2021.
Natural resources	Oil, tin, natural gas, coal, gold, copper, silver, nickel, bauxite, timber, fertile soils
Agricultural products	Rice, cassava (tapioca), peanuts, palm oil, rubber, cocoa, coffee, copra, poultry, beef, eggs

The country

Indonesia is located in Southeast Asia between the Indian and Pacific Oceans and is bordered by Malaysia, Singapore, East Timor and Papua New Guinea. The main islands of Java, Sumatra, Kalimantan, Sulawesi and Papua feature spectacular mountain ranges flanked by rich coastal plains, fertile valleys and large areas of lowlands. The smaller islands, many of which are uninhabited, are often fringed by brilliant beaches and coral reefs and bedecked with tropical palm trees.

A large percentage of world trade transits the strategically important Straits of Malacca that link the Indonesian ocean littoral to the South China Sea and the larger Pacific Ocean basin.

Indonesia is rich in natural resources like coal, minerals like tin, gold, copper, nickel, bauxite, oil and gas and fertile land to support agricultural products. The archipelago's tropical weather and huge landbank makes it ideal for producing palm oil, rubber, coffee, cocoa and rice, the staple of most of the population. It is these resources, together with the islands' central location between India and the Orient, that have made Indonesia so attractive to foreign traders, rulers and investors both historically and today.

The capital city: Jakarta

Jakarta is the hub of the Indonesian economy where almost all local and multinational corporate headquarters are located and business conducted. The Indonesian government ("GOI") is finalizing the plan to move the capital city from Jakarta to a city in East Kalimantan Province in Borneo Island, part of Kutai Kartanegara Regency and Penajam North Paser Regency, but the process of capital relocation is likely to take 10 to 20 years. Jakarta is expected to remain the hub of the Indonesian economy.

Mass commuting creates chronic daily traffic congestion in many parts of the city. In addition to the 10.56 million registered Jakarta residents, another 20 million people enter the sprawling city every day from outlying areas in Greater Jakarta. Traffic jams are unavoidable during peak hours and not uncommon at many other times of the day and early evening. Commuters spend an average of two hours traveling in and out of Jakarta, with resulting adverse productivity impacts.

Jakarta commenced the construction of its first mass rapid rail transport ("MRT") system in October 2013, which aims to ease traffic congestion. The MRT project will stretch approximately 110.3 km and involve construction of North-South and the East-West corridors. The project is estimated to cost at least USD1.7 billion and should be fully completed by 2027. The MRT project consists of several phases. The first phase was completed in March 2019 (half of the North-South line), which comprised 15.2 km of rail line from Lebak Bulus to Bundaran HI. Phase two will extend the route further by 8.1 km from Bundaran HI to Kampung Bandan, targeted for completion by 2024. The government also plans for the construction of an 87 km-long East-West corridor, which will connect Balaraja in Tangerang, Banten, to Cikarang in Bekasi, West Java. The project is targeted to become operational between 2024 and 2027.

Besides MRT, other projects currently in progress are Jakarta light rail transit ("LRT") and Greater Jakarta LRT (LRT *Jabodetabek*). The first phase of the Jakarta LRT project spans 5.8 km from Velodrome Station in East Jakarta to Kelapa Gading Station in North Jakarta. The construction, which was started in 2016, opened for a public trial run in June 2019 and officially commenced operation at the end of 2019. The Greater Jakarta LRT is planned to connect the Jakarta city center with other cities in Greater Jakarta, such as Bogor, Depok and Bekasi. The first phase of the Greater Jakarta LRT spans over 40 km, connecting Cawang (East Jakarta) - Cibubur (East Jakarta); Cawang (East Jakarta) - Dukuh Atas (Central Jakarta); and Cawang (East Jakarta) - East Bekasi (West Java). As of September 2021, the progress of Greater Jakarta LRT construction has reached 87.54 percent and is expected to be completed by June 2022.

In 2019, The Economist Intelligence Unit released "The Safe Cities Index 2019: Urban Security and Resilience in an Interconnected World" covering 60 cities based on an index comprising digital security, health security, infrastructure security and personal security. Jakarta ranked 53rd in 2019 and was in the bottom 10 for digital security and health security indicators. The top 10 positions in the overall index were occupied by several richer Asian and European cities, such as Tokyo, Singapore, Osaka, Amsterdam, Copenhagen and Seoul.

Other developing country cities, such as Manilla, Ho Chi Minh, Dhaka, Karachi, Cairo and New Delhi fall in the bottom half. Even though Jakarta is often pictured with a poverty issue, the latest Jakarta poverty statistics released by the Central Statistics Agency (*Badan Pusat Statistik* or "BPS") showed an improvement in poverty level to 4.72 percent as of March 2021 compared to 4.69 percent as of September 2020.

The people

The people of Indonesia are culturally diverse reflecting their differing ethnic origins, religions and histories.

With a total population of 268 million as of 2019, Indonesia is the fourth most populous nation in the world after China, India and USA, as well as the world's most populous Muslim nation. More than 67 percent of the population is between 15-64 years of age, which indicates a large workforce. More than 25 percent of the population is below age 14, while only 6 percent occupied is above 65 years. The most populous cities are Jakarta, Surabaya, Bandung, Bekasi and Medan. About 56.6 percent of the population resides in urban areas, with an annual rate of urbanization estimated at 2.27 percent over 2010-2020.

Most Indonesians are of Malay descent. The largest ethnic group, Javanese, makes up 40.1 percent of the total population followed by 15.5 percent Sundanese, 3.7 percent Malay, 3.6 percent Batak and 37.1 percent other. The Javanese are preeminent in the social elite, bureaucracy and the armed forces. There is also an ethnic Chinese minority whose influence in business is proportionately greater than their numbers. Papua, the eastern half of the island of New Guinea, is peopled by Melanesians.

The official language of the country is Bahasa Indonesia, which is akin to Malay. This is the second language of many rural Indonesians after their local dialect or tongue, of which there are almost 700. English language skills are actively encouraged in recognition of the business opportunities. English affords to Indonesians in education, commerce and international relations. English is understood by business people in the cities. The country has a 95 percent adult literacy rate.

Over 87 percent of the population follow the Muslim faith, but there are significant minorities of Hindus (centered in Bali) and Christians.

The climate

Straddling the equator from latitude 60°N to 110°S, Indonesia has a typically tropical climate marked by heavy rainfall as well as high humidity and hot temperatures. The tropical climate is moderated by mountains in large parts of the country. Temperatures generally range from 23° to 33°C.

There is a dry and wet season, with the onset and duration of seasons and weather patterns having become more difficult to predict in recent years.

The type of government

The 1945 Constitution provides for independent executive, legislative and judicial functions. The highest authority is the People's Consultative Assembly ("MPR"), which meets annually to hear accountability reports from the president and government agencies and provide policy guidance. The MPR includes the House of Representatives ("DPR"), which has 575 members, and the Council of Regional Representatives ("DPD") which has 136 members. Members are elected to five-year terms.

The president and vice-president are elected by direct popular vote. The president is the chief executive, the head of state and commander-in-chief of the armed forces, and also appoints cabinet ministers who are responsible only to him/her.

The country is divided administratively into 34 provinces headed by a governor and elected provincial assemblies, and hundreds of regencies headed by a regent or mayor, each with its own elected council assemblies.

The type of legal system

The judiciary is based on the Supreme Court and separate courts for public administration and military, religious and civil matters. A comprehensive system of civil laws has replaced most of the statutes established by the Dutch. In addition, there is an extensive range of decrees and regulations developed and applied by government ministries and departments. For foreign investors, the most relevant areas are laws regarding:

- Foreign investment
- Company law
- Business licensing and trade
- Taxation and customs
- Labor
- Land and buildings
- Regional regulations.

Certain industries are subject to specific regulations and requirements, including oil and gas, financial services and mining, which are covered in Chapter 5: Investment.

Indonesian laws become operative following issuance of implementing regulations and can be subsequently stipulated in ministerial and presidential regulations and decrees. A significant period of time can elapse between new laws being announced, drafted and passed by parliament, and the final regulations or decrees being rolled out.

Professional advice should always be obtained with regard to contracts and agreements made in Indonesia. One reason is that the civil law provides for certain clauses to apply to all agreements unless specifically excluded. Litigation can be unpredictable in terms of outcomes and is often protracted, time consuming and costly, and as a result is not commonly an effective route to resolve disputes. The protection provided by agreements can be limited and commercial arrangements should be designed, where possible, with safeguards which can operate in the event of later disagreements. Contracts commonly include Indonesian or international arbitration for resolution of disputes. A popular choice is Singapore in accordance with the rules and regulations of the Singapore International Arbitration Centre, where the final, binding arbitral award is automatically ratified in the Indonesian courts.

Indonesian language contracts

Law No. 24/2009 on Language, Flag, State Symbols and the National Anthem provides for all agreements with an Indonesian party to be in the Indonesian language.

Following issuance of Law No. 24/2009 the Ministry of Law and Human Rights ("MOLHR") provided written guidance that:

1. Commercial contracts should be in English or dual language pending issuance of the implementing regulations; and
2. Contracts are still enforceable if the language requirement is not met.

There are significant costs and time involved in translation and preparation of dual language documents. In practice, a common approach being adopted is for agreements and contracts to be in one language, with a standard clause providing for an executed Indonesian language version to be furnished at a future time, if required.

While Supreme Court decisions have held that this approach does not disturb contract enforceability, litigation at the District Court level has created legal uncertainty pending higher court appeals or release of the implementing regulations.

Transaction denominated in Indonesian rupiah

BI regulation No. 17/3/PBI/2015 ("PBI 17/2015") and Circular Letter 17/11/DKSP ("Circular Letter 17") lay down the rule that any transaction carried out in Indonesia, both by residents or non-residents, in cash or non-cash, must be effected in rupiah. Rupiah must be used for the following purposes:

(a) Payment transactions;

(b) The settlement of other obligations that must be discharged using money; and/or

(c) Other financial transactions.

The mandatory use of rupiah is exempted for the following types of transactions:

- Certain state budget ("APBN") transactions;
- Receipts or grants from or to other countries;
- International trade transactions;
- Bank deposits in foreign currencies;
- International financing transactions;
- Foreign currency transactions entered into under laws and regulations applying to specific business or industry sectors; and

- Infrastructure project finance approved by BI where the project is a strategic project endorsed as such by the central or regional government, as evidenced by a statement letter issued by the relevant government body.

PBI 17/2015 and Circular Letter 17 also prohibit the use of dual price denomination using rupiah and another currency. This prohibition applies to:

- Price labels, such as price labels on products;
- Fees, such as fees of real estate agents, for tourist services and consultancy services;
- Rent, for instance rent for apartments, houses, offices, buildings, land, warehouses and transportation;
- Tariffs, for instance tariffs for unloading containers in ports, air tickets, cargo;
- Price lists, such as restaurant menus;
- Contracts, such as price clauses that are included in contracts or agreements;
- Offers, loan documents, price clauses in invoices, delivery orders, purchase orders; and/or
- Evidence of payment, such as receipts.

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3 Economic Environment

Size and state of the Indonesian economy

Indonesia has a large domestic consumption base and the country's middle class, with increasing levels of disposable income and purchasing power, has grown substantially from 45 million in 2010 to 52 million in 2020. A 2020 World Bank report indicated that one in every five Indonesians now belongs to the middle class.

Individuals are considered to belong to the middle class if their per capita household consumption is adequate for them not to be at a risk of falling into vulnerability. Individuals with household consumption above 3.5 times the poverty line are considered to be economically secure enough to be in the middle class. The report also notes that 45 percent of the population, or 115 million people, are still considered "aspiring middle class," free from poverty but who have yet to achieve full economic security.

Controlled wage growth, accompanied by sustained improvements in employment, should support "the Indonesian consumer story". According to the World Bank, surging household consumption on the back of high employment will be among the key growth drivers for Indonesia.The large population and consumption base is a fundamental reason why many multinationals rank the country as the foreign investment destination of choice in Southeast Asia.

Indonesia is the largest economy in Southeast Asia, the eighth largest in the world as measured by purchasing power parity and the only Southeast Asian member of the G20. The G20 is an international economic forum that brings together governments and central bank governors from twenty major economies accounting for 66 percent of the world population. Current members of the G20 consist of Canada, France, Germany, Italy, Japan, the UK, the US, Argentina, Australia, Brazil, China, India, Indonesia, Mexico, South Korea, Russia, Saudi Arabia, South Africa and Turkey. Indonesia was honored to be inaugurated as a member of the G20 in 2008 and to chair G20 in 2022. Some of the most significant roles played by Indonesia at the G20 have included helping to create the General Expenditure Support Fund ("GESF") in 2008 and hosting Working Group 4 ("WG4") to discuss the reformation of Multilateral Development Banks ("MDBs").

Indonesia is also currently being grouped with Mexico, Nigeria and Turkey as one of the MINT countries. The MINT countries share a number of common features. First, they have relatively large, youthful and growing populations as compared to the ageing and shrinking populations of many developed countries. Second, they are geographically well placed to take advantage of large nearby markets. Last, they have diversified markets, meaning the country does not rely on only one industry for survival. Indonesia is included among the MINT countries due to its powerful emerging market and rapid economic growth. Indonesia's growth has been largely reliant on its pre-existing oil and coal extraction and export industries. With its large and growing population, Indonesia has an advantage over other countries in terms of labor force power.

Indonesia's population has grown at an average rate of 1.2 percent per year from 211 million in 2000 to 243 million in 2010, 264 million in 2017 and 268 million as of June 2019. The BPS estimates that Indonesia's population will grow at a rate of 3 million per year to reach over 305 million by 2035. Another report estimated that Indonesia's population will exceed the USA's by 2043. Indonesia is the most populous country in Southeast Asia as well as the largest market. As of 2017, Indonesia's 264 million people make up 41 percent of the combined ASEAN countries' population of 642 million.

Ease of doing business indicators

Based on the 2020 Transparency International Corruption Perception Index, Indonesia ranked 102nd out of 180 countries with a total score of 37 points. As the country's score is still below 50, Indonesia has experienced slow progress in anti-corruption efforts, with several government reform commitments not yet materializing.

In 2020, Indonesia maintained its rank at 73rd in the World Bank's Ease of Doing Business Index. Indonesia scored 69.6 out of 100, an increase of 1.64 points. However, the increase was lower compared to 2018, where Indonesia's score increased by 2.25 points to 66.47, and ranked 72nd. For 2020, the World Bank highlighted several of Indonesia's main reform activities in improving its business climate, these including: starting businesses, getting electricity, paying taxes, trading across borders and enforcing contracts.

As of 2020, Indonesia is still lagging behind neighboring countries, such as Singapore (2nd), Malaysia (12th), Thailand (21st), Brunei Darussalam (66th), and Vietnam (70th). However, Indonesia is still ahead of the Philippines (95th), Cambodia (144th), Lao PDR (154th) and Myanmar (165th). Among the G20 countries, Indonesia was ranked ahead of South Africa (84th), Brazil (124th), and Argentina (126th).

Indonesia's Ease of Doing Business Ranking:

Year	Rank
2014	120th
2015	114th
2016	109th
2017	91th
2018	72nd
2019	73rd
2020	73rd

When establishing a company and business in Indonesia, the investors need to undertake an average of 11 procedures with approximately 13 days completion time. The average for the Asia Pacific region is 6.5 procedures, with an average completion time of 25.6 days. In Indonesia, investors will need to deal with several ministries and agencies to obtain business licenses, permits, and certifications forms. These include the notary, the MOLHR, the municipality, the Ministry of Trade ("MOT"), the Ministry of Manpower ("MOM"), social security administrative bodies (*BPJS Ketenagakerjaan & BPJS Kesehatan*), and the Tax Office.

Country competitiveness

In its 2020 annual report on world competitiveness, International Institute for Management Development ("IMD") ranked Indonesia as 40th of 63 countries. The ranking is lower compared to the 2019 rank of 32nd but it remains higher than the 2018 rank of 43th. IMD stated the biggest improvements in the overall performance of Indonesia's economy are, among others: employment (long-term growth), labor force (long-term growth), number of patents in force, exchange rate stability, start-up days and exports of commercial services.

Indonesia was also described as having the lowest cost of labor among the 63 economies included in the rankings. Indonesia's competitiveness is currently above peer countries such as India, the Philippines, Turkey, South Africa and Brazil.

In the past few years, the GOI has issued several regulations to simplify the investing process in Indonesia. These regulations include:

Regulation No	Issuance date	Summary
Law No.11/2020 on Job Creation	2 November 2020	- The primary purpose of the law is to increase job opportunities for Indonesians by promoting greater investment growth. - Addresses matters related to investment, among others the investment ecosystem and business improvement; ease of doing business; and land acquisition. - Amends, deletes or adds provisions in 78 existing laws that cover various sectors.
Government Regulation ("GR") No. 5/2021 on Risk-Based Business Licensing Ready for Implementation	2 February 2021	- Introduces the Online Single Submission ("OSS") system, which is targeted to make business registration easier as several key permits - the location permit, environmental permit and building permit - can be obtained within one hour of submitting all required data. - The regulation mandates any existing or newly established businesses to obtain a Single Business Number (*Nomor Induk Berusaha* or "NIB"). NIB is a mandatory requirement for any business to apply/extend business licenses and/or commercial/operational licenses.
The Indonesian Investment Coordinating Board ("BKPM"). Regulation No. 4/2021 on Risk-Based Business Licensing Services and Investment Facilities	29 March 2021	- Addresses the divestment requirement for foreign investment ('PMA") companies and simplifies the requirements that apply to the foreign directors and commissioners of a PMA company. - The regulation addresses several matters related to the integration of the OSS system; investment licenses; compliance with foreign caps; investment value and capital; and procedures to obtain licenses and facilities. - Repeals and replaces BKPM Regulation No.13/2017, and amends BKPM Regulation No. 6/2018.
BKPM Regulation No. 5/2021 on Government Issues New Guidelines and Procedures for the Supervision of Risk-Based Business Licensing	29 March 2021	- Represents a further implementation of the OSS system as regulated under GR No. 24/2018. - Addresses the following matters: distribution of authority; investor rights, obligations and responsibilities; organization of investment controls; and administrative actions. - Repeals and replaces BKPM Regulation No.14/2017.

As of June 2021, the GOI had issued 51 implementing regulations, as a follow-up action for Law No. 11 of 2020 on Job Creation. These implementing regulations comprise 47 government and 4 presidential regulations. The key highlights of these implementing regulations are discussed in other chapters, as follows:

- **Ease of doing business:** Chapter 3 - Economic Environment; Chapter 4 - Infrastructure; Chapter 5 - Investment; Chapter 6 - Business Structure and Establishment; Chapter 7 - Foreign Exchange; Chapter 8 - Domestic and Foreign Trade – ASEAN; Chapter 9 - Labor and Employment and Chapter 10 - Taxation
- **Public works and public housing, transportation, energy and mineral resources:** Chapter 4 - Infrastructure
- **Labor and employment:** Chapter 9 - Labor and Employment
- **Trade and industry:** Chapter 5 - Investment and Chapter 8 - Domestic and Foreign Trade – ASEAN.

Refer to Appendix 2 for the list of 51 implementing regulations to the Omnibus Law.

Population growth, middle-income trap and poverty

According to the poverty data issued in July 2021 by BPS, Indonesia's poverty rate decreased from 10.19 percent in September 2020 to 10.14 percent in March 2021. Indonesia has maintained the poverty rate at a single-digit figure since 2018. In absolute terms, the number of poor people decreased from 27.55 million in September 2020 to 27.54 million in March 2021. The poverty line in March 2021 was recorded at IDR 472,525 per capita per month.

A World Bank report indicates that Indonesia's economy would need to grow faster than 5 percent to escape the so-called "middle-income trap", the phenomenon in which countries fail to evolve into high-income nations, which is characterized by a per capita income below USD12,400, low investment, slow manufacturing growth and low industrial diversification. Indonesia's economic growth is averaging about 5 percent a year, which is still far from the 7 percent target.

According to Indonesia's Ministry of Finance ("MOF"), high and inclusive economic growth; high-productivity human resources and infrastructure; clean and efficient bureaucracy; and a healthy and competitive private sector are required in order to escape the middle-income trap. For the past few years, the government has been focusing on improving Indonesia's competitiveness by accelerating infrastructure development, maintaining a stable financial system and improving the quality of human capital. This means investing heavily in healthcare, education and skill development to enhance the ability to innovate and adapt with technological transformations. Based on BKPM press release in July 2021, Indonesia still optimistic as direct investment supports the economy during the COVID-19 pandemic. The realization of Indonesian labor employment in January-June 2021 reached as many as 623,715 labors which consist of 331,314 labors (53.1 percent) from domestic direct investment ("DDI") projects and 292,401 labors (46.9 percent) from foreign direct investment ("FDI") projects.

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4 Infrastructure

Historical overview

Over 2014-2019, the GOI ramped up its focus on infrastructure development as the central plank in its economic development program to achieve an ambitious gross domestic product ("GDP") growth target of 5-7 percent per annum.

Despite significant progress made over the last 10 years, Indonesia still has poor basic infrastructure relative to other comparable countries and continues to remain underinvested, holding back not only the country's growth potential but also progress in poverty reduction. The symptoms of close to two decades of limited infrastructure investment from the late 1990's include increasing road congestion, airports operating at over capacity, weak rail connectivity, an undeveloped port sector, high inter-island cargo costs, electricity blackouts and poor access to clean sanitation and healthcare. Population pressures and the importance of attracting much-needed foreign investment to drive economic growth gave rise to an urgent need for infrastructure development. Unless progress is made, this will be a major barrier to sustaining longer term economic growth and development across many industries. Indonesia's low infrastructure ranking is consistently identified by foreign and local companies as a constraint on their operations, investment and capacity to achieve growth.

In recognition of this, the government has introduced a number of new infrastructure policies and initiatives and in parallel, accelerated delivery of infrastructure projects listed either under the national medium-term plan ("RPJMN"), national strategic projects ("PSN") or priority infrastructure projects ("PIP").

Focus of Indonesia Infrastructure Development 2014-2019

Logistics Infrastructure

- Development of ports and ferry terminals to strengthen sea connectivity
- Development or expansion of airports to strengthen air transport connectivity
- Improvement of land transport efficiency through development of road infrastructure
- Improvement of railway infrastructure, including enhancing urban transit networks in urban centers.

Energy Infrastructure

- Developing the 35 gigawatt ("GW") Electricity Program to improve the reach of electrification
- Ensuring efficiency of fuel production by optimizing domestic refineries
- Improving irrigation systems to achieve food sovereignty.

The Global Competitiveness Report released by the World Economic Forum positioned Indonesia's infrastructure as 72nd out of 141 countries in 2019, a decline from its previous rank of 71st in 2018.

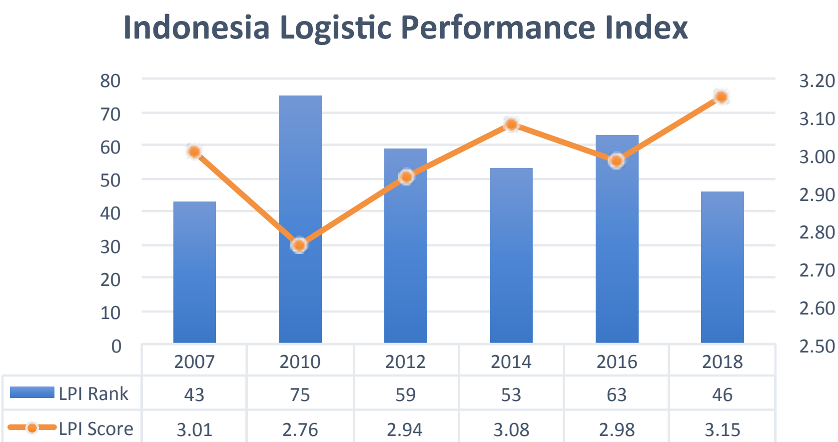
Infrastructure	Rank (ASEAN Countries)					
	Singapore	Malaysia	Thailand	Indonesia	Philippines	Vietnam
Road	1st	19th	55th	60th	88th	103rd
Railway	5th	13th	75th	19st	88th	54th
Port	1st	19th	73rd	61st	88th	83rd
Airport	1st	25th	48th	56th	96th	103rd
Power	2nd	38th	31st	54th	53rd	62nd

Source: The Global Competitiveness Report 2019

According to a recent World Bank study, Indonesia has climbed up the Logistics Performance Index ("LPI") from 2.76 (rank 75th) in 2010 to 3.15 (rank 46th) in 2018.

Logistics Performance Index Rank

Country	Year	LPI rank	LPI score	Customs	Infra-structure	International shipments	Logistics competence	Tracking & tracing	Time-lines
Germany	2018	1	4.20	4.09	4.37	3.86	4.31	4.24	4.39
Sweden	2018	2	4.05	4.05	4.24	3.92	3.98	3.88	4.28
Belgium	2018	3	4.04	3.66	3.98	3.99	4.13	4.05	4.41
Austria	2018	4	4.03	3.71	4.18	3.88	4.08	4.09	4.25
Japan	2018	5	4.03	3.99	4.25	3.59	4.09	4.05	4.25
Netherlands	2018	6	4.02	3.92	4.21	3.68	4.09	4.02	4.25
Singapore	2018	7	4.00	3.89	4.06	3.58	4.10	4.08	4.32
Denmark	2018	8	3.99	3.92	3.96	3.53	4.01	4.18	4.41
UK	2018	9	3.99	3.77	4.03	3.67	4.05	4.11	4.33
Finland	2018	10	3.97	3.82	4.00	3.56	3.89	4.32	4.28
Indonesia	2018	46	3.15	2.67	2.89	3.23	3.10	3.30	3.67



Indonesian ports are among the least efficient in Southeast Asia in terms of lead times, which are three days compared to only one day for most other ASEAN countries. As a result, Indonesia's logistics costs are significantly higher than most other countries in the region.

Indonesia Infrastructure Progress (2015 - 2019)	
Road network	• 3,387 km new roads • 92% in good operating conditions
Toll roads	• 947 km new roads
Railway network	• 1,147 km new railway • 1 new urban railway systems
Air transport	• 14 new airports
Maritime and land transport	• 18 new maritime shipping routes • New Bus Rapid Transit ("BRT") lines in 38 cities
Water resources	• 16 new dams • Additional 30 m^3 per second raw water supply
Power	• 98.86% electrification ratio • 66.13 GW capacity • 12.24% renewable energy • 1.077 kWh/capita electricity consumption
Telecommunication	• 90.8% 4G coverage • 64.8% internet user penetration

2020 – 2024 Infrastructure development agenda

Strong infrastructure development over the last five years has set the platform for an ambitious outlook for the government's 2020 – 2024 infrastructure agenda.

An outcome of the 2019 presidential and parliamentary elections was the reaffirmation President Joko Widodo's commitment to continue developing infrastructure, with the main focus on supporting infrastructure that connects existing "backbone" infrastructure with local and regional economic areas, including Special Economic Zones ("SEZ") and tourism destinations. The Indonesian National Development Agency ("BAPPENAS"), together with ministerial and local governments, has developed a planning framework which defines general policy and strategy for development of regional economic corridors: Sumatra, Java - Bali, Nusa Tenggara, Kalimantan, Sulawesi, Maluku and Papua. The Indonesian Planning Framework that was issued on 18 July 2019 and updated in January 2020 (according to Presidential Regulation ("PR") No. 18/2020) sets out a development framework comprising three key pillars (basic infrastructure, economic infrastructure and city/urban infrastructure), which will be supplemented by energy and digital infrastructure.

Indonesia Planning Framework Target (2020 – 2024)	
Basic infrastructure	• Reliable and safe housing coverage of 70% • Housing with decent access to clean drinking water for 100% of households (including safe access 15%) • Access to piped drinking water coverage for 24.45 million households • Household with access to proper sanitation (wastewater system coverage) of 90% (including safe access 20%) • New irrigation network coverage of 500,000ha • Additional provision of domestic and industrial raw water of 50m^3/second • 63 new multipurpose dams • Increase water productivity for rice production to 3m^3/kg • Increase disaster resilience for 20 provinces with high disaster risk.
Economic infrastructure	• Expansion of high-speed railway system (Jakarta – Semarang, Jakarta – Bandung) and Makassar – Parepare freight railway • Integrated operations of seven hub ports (Belawan/Kuala Tanjung, Pontianak/Kijing, Tanjung Priok/Patimban, Tanjung Perak, Makassar, Bitung and Sorong) • Build 2,500km of new long toll road • Build 3,000km of new long national road • Achieve national road reliability ratio of 97% • Develop 43 new skybridges • Decrease travel time on main road (1.9 hours/100km) • Increase efficiency of domestic shipping routes by forming loops regularly to 27%.
Cities/urban infrastructure	• Develop new mass urban transport in six metropolitan cities (Jakarta, Surabaya, Medan, Bandung, Makassar and Semarang) • Households with access to good waste management to achieve a handling target of 80% and a reduction target of 20%.

Indonesia Planning Framework Target (2020 – 2024)	
Energy and electricity development	• Increase national electricity consumption per capita to 1,500 kWh • Achieve an electrification ratio of 100% • Urban gas network coverage of 4 million households • Develop six oil refineries (two grassroot refineries ("GRR") and four under the refinery development master plan ("RDMP")).
Digital transformation	• Fiber optic network coverage 60% for each subdistrict • 95% of villages reachable by fiber optic network • Digital network coverage of 80% of the population • Three new unicorn start ups.

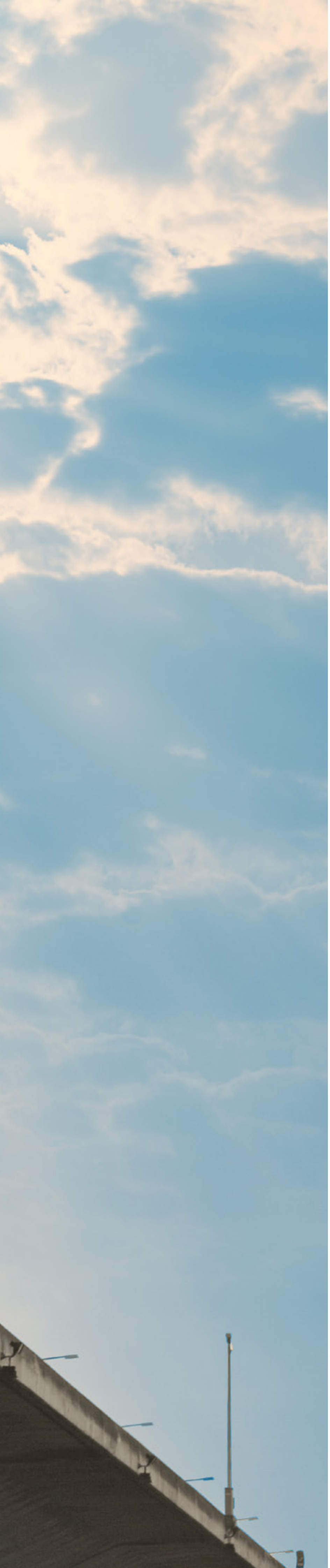
New national strategic projects

In May 2020, the government approved a total of 89 projects worth IDR1,422 trillion as PSN, out of 245 proposals. The new projects were in addition to 223 existing PSN and are expected to employ around 4 million workers every year from 2020 to 2024.

The 89 new projects comprise 15 road and bridge projects, 13 dams and irrigation systems, 13 border infrastructure projects and 12 energy projects. The remaining projects comprise six railway projects, six clean water projects, five airports, five seaports, five industrial zones, three technology projects, three smelters, one seawall, one waste management project and one land procurement project in Central Kalimantan.

Twenty-five of the projects are located in Java with a total value of IDR462 trillion, while the rest are spread across other regions including seven projects in Sumatra worth IDR117 trillion, 17 projects in Kalimantan worth IDR144 trillion, 8 projects in Sulawesi worth IDR208 trillion, 12 projects in Bali and Nusa Tenggara worth IDR28 trillion and Maluku up to Papua worth IDR111 trillion. There are also 11 nationwide projects worth IDR351 trillion

Indonesian Infrastructure (as of 2018, or otherwise stated)	
Road network	542,310km of which 60.84% is paved
Toll roads	• 1,521km (operated) • 1,584km (construction/land acquisition) • 492km (tender preparation/process) – as of 2019
Railway network	• 6,222km - as of 2019
Air	349 airports, of which 31 are international airports and 7 airports > 3,000m runway
Maritime and land transport	• 496 ports (110 ports managed under Pelindo I-IV & 386 non- ports under the Directorate of Sea Transportation and Ministry of Transportation) • Total loading/unloading nationwide: 1,180million ton
Clean water (as of 2019)	• 391 regional water supply companies ("PDAMs") • 57 non-regional water supply ("non-PDAM") of which 30 are limited liability companies • National average tariff IDR4.875/m^3
Power	• 98.93 percent electrification ratio (April 2020) • 69.6 GW installed capacity (December 2019) • 53,278kmc transmission lines • 953,460kmc distribution lines



Road and toll road

Basic road infrastructure is the platform for development of most other primary and secondary infrastructure.

As of 2018, Indonesia's road network covers 542,310km, of which 329,926km (60.84 percent) are paved or sealed and 1,521km are operational toll roads. From 2017-2018, an additional 2,957km of new roads and 276.65km of toll road have been added to Indonesia's road network. In 2020, 15 toll road sections were inaugurated, spanning 297km.

Indonesia has experienced a rapid increase in the number of vehicles in circulation, with virtually no major investment in toll and other road infrastructure. The rise of the Indonesian economy over the past decade has boosted the number of vehicles on the road with a compound annual growth rate ("CAGR") of 8.57 percent for two-wheeled vehicles and 6.27 percent for four-wheeled vehicles, compared to 1.98 percent annual growth of paved roads. As of 2018, there were a total of 146.9 million units of motor vehicles in Indonesia, the highest among ASEAN countries.

The road network is most developed on the islands and main population centers of Java, Sumatra and Bali, where over 80 percent of Indonesia's population live. Mining and plantation related transport infrastructure (road and rail) is more developed in Kalimantan compared to Sumatra.

Despite being given a high priority in government spending programs, road building in Indonesia is still progressing at a slow/moderate pace, mainly due to land acquisition challenges.

Toll road traffic volumes are increasing. A total of 736km of toll roads are operated by PT Jasa Marga (Persero) and an additional 785km are run privately through toll road concession agreements awarded/supervised by the toll road regulatory agency ("BPJT"). Jakarta is currently ranked as the tenth most congested city in the world with 88 million trips/day, of which 83 percent are made using private vehicles. Chronic traffic congestion in the Jakarta central business district ("CBD") and Greater Jakarta area is currently being alleviated by an "Odd-Even" number plate policy, implemented in August 2018. The "Odd-Even" policy is a precursor to an electronic road pricing ("ERP") system scheduled to be implemented at the end of 2020 under the greater Jakarta transportation plan ("RITJ"). However, due to the COVID-19 pandemic, this plan is temporarily on hold.

Recent regional connectivity developments include connecting the northern part of Java from east to west, and Sumatra and Kalimantan have opened toll roads connecting major cities such as Balikpapan and Samarinda in Kalimantan and Medan and Binjai in North Sumatra. In Kalimantan, investment has focused on mining-related transport infrastructure (road, rail) around the major coastal ports, where the main logistics hubs for commodities mined and produced in the interior of Kalimantan are located. In September 2020, the Minister of Public Works and Public Housing ("PUPR") announced three priority toll road construction projects, namely a Yogyakarta-Solo toll road, a Pekanbaru-Padang toll road and a Palembang-Betung-Jambi toll road.

Railway network

The railway system covers 6,222km. The majority of the rail network in Java is operated by the state-owned PT Kereta Api Indonesia (Persero). Outside of Java, state-owned rail lines are limited to key commodity regions in Northern Sumatra, Central Sumatra and Southern Sumatra. Kalimantan has a number of privately owned and operated rail lines specifically for coal.

As of 2019, an estimated 453 million people and 47,624 million tons of cargo (over half of it coal) are transported by rail each year in Sumatra and Java. Recognizing the importance of rail transport for continuing economic development throughout Indonesia, the government's plans include improving the quality of rail tracking as well as expanding the rail network across Indonesia.

The Jakarta-Bandung high speed rail project is currently under construction and targeted to be operational by 2023. There are also several inter-city railway projects under the RPJMN 2020-2024, which categorized as priority projects. These include the Soekarno-Hatta International Airport Railway, Makassar – Parepare Railway and East Kalimantan Railway.

Discussion in this section relates to the traditional rail track network in Indonesia. Landmark progress achieved in the development and operation of new urban MRT and LRT projects in Greater Jakarta and Palembang, Sumatra are addressed separately in Chapter 2.

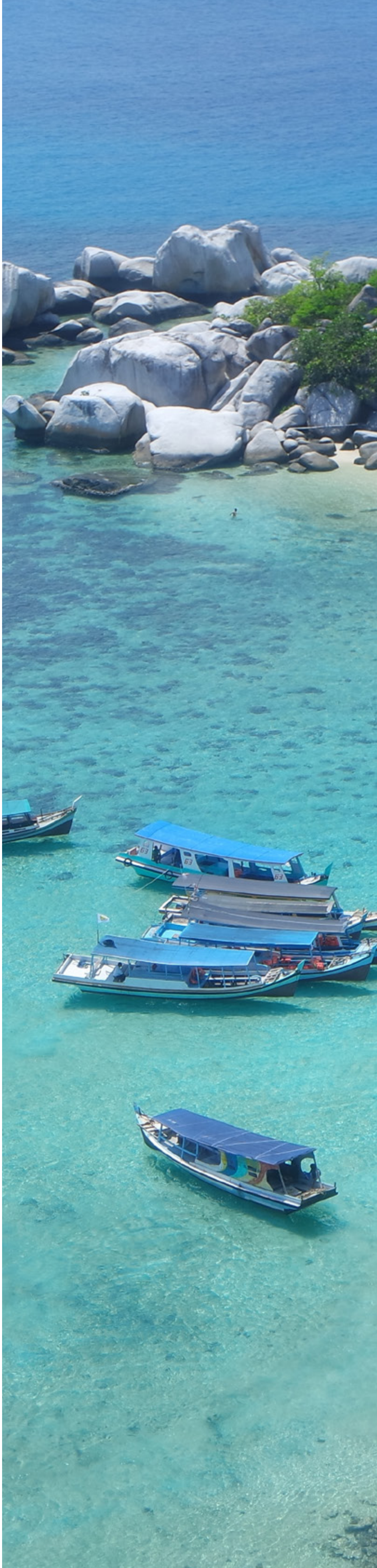
Air

Given Indonesia's geography and the underdeveloped state of its land and sea transportation, airports represent a key mode of transportation, not only for inter-island flights but also just between cities.

Soekarno-Hatta International Airport reported passenger traffic of 54.2 million in 2019, a decrease from 65.6 million in 2018 mainly due to relatively expensive ticket prices and also as a result of the large number of other transportation infrastructure that has been built, such as the Trans Java toll road and the Trans Sumatra toll road.

Across Indonesia, there are total of 349 airports, of which seven have runways of more than 3,000 meters. These airports are mostly managed and operated by state-owned enterprises ("SOEs" or "BUMN") Angkasa Pura I ("AP I") and Angkasa Pura II ("AP II") with the Directorate General for Aviation managing and operating other airports. Key annual statistics for 2019, both domestic and international, include: 194 million passengers; 1.6 tons of cargo and 2 million arrival and departure of aircraft.

As part of the continuing development of airport infrastructure to meet growing demand, the government has developed plans to build new airports and expand existing airport capacity. Under the PSN, there are four airport construction projects: Kertajati Airport (West Java) - realized in July 2019, Karawang Airport (West Java), New Yogyakarta International Airport/Kulon Prugo (Yogyakarta) and Panumban Airport (Banten). There are also three airport revitalization projects: S. Babullah Airport (Ternate), Tjilik Riwut Airport (Central Kalimantan) and Syamsuddin Noor Airport (South Kalimantan).



Plans for expansion of airport capacity through public private partnerships ("PPPs") are also in place for Labuhan Bajo Airport (Komodo Island), Singkawang Airport (West Kalimantan) and Hang Nadim Airport in Batam (realized in March 2021).

Maritime

As an archipelago nation comprising more than 17,000 islands covering an area of over 2 million km^2 straddling the main trade routes between the Indian Ocean and the Pacific Ocean, air and maritime connections are vital to Indonesia and its economy. There are 21,579 km of navigable waterways among the larger islands of Sumatra, Java, Madura, Kalimantan, Sulawesi and Irian Jaya, which represent over 90 percent of Indonesia's land.

According to 2018 Sea Transportation Statistics issued by BPS, there are 496 ports in Indonesia; 110 commercial ports under responsibility of Pelindo I to IV and 386 non-commercial ports under the Directorate of Sea Transportation and Ministry of Transportation. Over 40 percent of Indonesia's container port throughput is handled by Pelindo II (7.64 million twenty-foot equivalent units ("TEU")), including Indonesia's largest port, Tanjung Priok, Jakarta. Pelindo III (5.34 million TEU) manages Indonesia's second largest port, Tanjung Perak, Surabaya. Pelindo I (1.29 million TEU) manages the third largest port, Belawan in North Sumatra; and Pelindo IV (2.03 million TEU) manages the fourth largest port in Makassar, South Sulawesi.

Shipping and loading activities are conducted at 25 strategic ports located in 21 provinces. Those strategic ports are Port of Lhokseumawe, Belawan, Teluk Bayur, Dumai, Pekanbaru, Palembang, Panjang, Tanjung Pinang, Batam, Tanjung Priok, Tanjung Emas, Tanjung perak, Banten, Benoa, Tenau, Pontianak, Banjarmasin, Balikpapan, Samarinda, Bitung, Makassar, Ambon, Sorong, Jayapura and Biak. Of the 25 ports, four are classified as "Prime" ports, namely Port of Belawan (Medan), Tanjung Priok (Jakarta), Tanjung Perak (Surabaya) and Makassar. Fourteen ports are classified as "Class 1", including Tanjung Emas port (Semarang) and Banjarmasin Port. Prime and Class 1 ports are defined as deep water ports suitable for international shipping. It is generally accepted that Indonesia lacks a sufficient number of deep water ports relative to its needs.

According to a Review of Maritime Transport released by the United Nations Conference on Trade and Development (UNCTAD), the total marine fleet size operating in Indonesian waters as of 2019 was 2,145 vessels, consisting of 2,063 national vessels and 82 foreign vessels. More than half of the national fleet is dominated by small-sized vessels with specifications below 500 deadweight tons ("DWT") and 5,000 gross tons ("GT"). Total tonnage through Indonesian ports was 22,294,926 DWT in 2019, 93 percent of it Indonesian vessels.

The vision of the current Indonesian Sea Toll Program is to develop five hub ports – Jakarta, Surabaya, Makassar (which are already operational as international ports), Kuala Tanjung port (North Sumatra) and Bitung Port (North Sulawesi). The Sea Toll Road program is expected to lower the price gap between the more developed western part of Indonesia and the eastern islands by 30 percent. Expansion of Kuala Tanjung International port and Bitung Port is included in the list of national priority projects.

The governments of Indonesia and Japan are presently developing the Port of Patimban, West Java at an estimated cost of USD3 billion. The first development phase of the port was opened for partial operation in December 2020. The port is expected to be Indonesia's primary export port and ease the burden on Tanjung Priok Port and traffic congestion in Jakarta from the transport of cargo. In the first development phase, Patimban Port is planned to serve 3.75 million TEUs and accommodate 600,000 completely built-up ("CBU") vehicles. In the second phase, Patimban's capacity will increase to 5.5 million TEUs and it is expected to reach its final capacity of 7.5 million TEUs in phase 3.

Clean water

In 2011 only 64 percent of households in Indonesia had direct access to clean water. While this percentage has improved to reach 73.7 percent in 2015 and 75 percent in 2018, Indonesia still faces major challenges to achieve its target of 100 percent clean water access.

PDAMs operate with a primary function of providing and distributing clean water to their region. A PDAM operates under local or regional government regulations, with each region or district usually having its own dedicated PDAM.

As of 2019, the installed capacity of Indonesia's 391 PDAMs (with IDR 32.2 trillion of total assets) is 205,930 liters per second ("l/s"), effectively providing 153,881 l/s for 55.2 million of the estimated 157 million people in their service areas. The national average cost of water production is estimated at IDR 4,875/m^3 with the national average selling price estimated at IDR 5,174/m^3.

In early 2015, the Constitutional Court revoked Law No. 7/2004 on Water Resource Utilization, temporarily reviving the previous Law No. 11/1974 on Water Resource Development for a transition period while a new replacement law was formulated. This decision had a significant adverse impact on private sector participation in the water industry in Indonesia due to the limits on private sector direct utilization under Law No. 11/1974. In late 2015, a new GR No. 121/2015 regarding Exploitation of Water Resources for Business Purposes was issued.

In September 2019, the DPR passed a new Water Law as Law No. 17/2019. The Water Law came into force on 16 October 2019, and provides for:

- Government administration and control over all water resources
- Prioritization of water resource utilization for public clean drinking water needs, with commercial use by private business given a low priority. Businesses will need to obtain a water license to utilize state water, which requires payment of a water conservation fee.

Notwithstanding the challenges, the government has successfully launched four PPP water projects, in Lampung, West Semarang, Dumai and Umbulan. These projects are currently in the construction stage. As of July 2020, construction of the Umbulan water project has reached 98 percent.

Certain provisions under the new Water Law was further amended in the Omnibus Law on Job Creation (Law No 11 Year 2020).

Power

Recognizing that power represents one of the most important factors in supporting economic development, in 2016 the Indonesian government through the state-owned power company ("PLN"), launched a 35 GW electricity program to attract private sector investment in the power sector to meet the growing demand for electricity and to achieve a 99.9 percent electrification ratio across Indonesia by 2020. As of April 2020, Indonesia's electrification ratio was reported at 98.93 percent, above the Philippines (94.86 percent) and Vietnam (98 percent), but below Malaysia (100 percent) and Thailand (100 percent).

The capacity of Indonesia's power plants grew by almost 15 GW in 2019, to 69.6 GW from previously 54.7 GW, in the last five years. The growth in capacity was supported by the increase of new renewable energy ("NRE") based power plants, which have capacity of around 10.3 GW or 14.8 percent. Currently, PLN has a capacity of 42.35 GW (60.9 percent), followed by independent power producers ("IPP") at 18.12 (26 percent). Operation license ("IO") holders rank third with capacity of 5.46 GW (7.8 percent), private power utilities ("PPU") at 3.58 GW (5.1 percent), and finally the government at 0.05 GW (0.1 percent).

To boost electricity infrastructure, the government has set a target to increase capacity by 27.28 GW in the next five years, made up of fossil fuel power plants with 18.28 GW (67 percent) and NRE-based power plants with 9.05 GW (33 percent). This means Indonesia's total capacity in 2024 will reach 96.98 GW.

PLN is slated to receive IDR 9.6 trillion (IDR 5 trillion from the 2020 state budget and IDR 4.6 trillion diverted from the Ministry of Energy and Mineral Resources ("MEMR") budget (equivalent to USD 695 million) to develop power infrastructure in Indonesia and increase the country's electrification ratio. The funds allocation is stipulated in GR No. 37/2020 and No. 36/2020.

In addition to solar and geothermal power plants, Indonesia has strong potential for other types of renewable energy, such as biomass, hydro, wind and tidal energy. The MEMR has come up with a strategy to meet the 23 percent renewable energy mix target *Rencana Umum Energi Nasional* ("RUEN") by 2025 by developing roadmaps for each technology. Until the end of 2019, total renewable installed capacity was 10.17 GW. Hydropower still dominates with 5.4 GW, followed by geothermal at 2.13 GW, bioenergy at 1.9 GW, mini/micro hydro at 464.7 MW, wind at 148.5 MW, solar PV at 152.4 MW and waste power plants at 15.7 MW.

Out of 83 renewables power purchase agreements ("PPAs") signed between 2017 and 2020, 24 have started commercial operation, 28 PPAs are currently under construction and 24 PPAs are still looking for financial close and 8 of the proposed PPAs have been terminated. The latest commissioned solar IPP project, PLTS Likupang (15 MW), is now the biggest solar power plant in Indonesia. The project secured a price of 10 USD ct/kWh on signing the PPA 2017 and started to operate in September 2019.

The MEMR has released several energy sales price regulations to accelerate the progress of development of renewable energy to meet PLN's 2025 internal targets. Renewable energy is regulated under MEMR Regulation No. 12/2017 on the Utilization of Renewable Energy Resources for Electricity Supply. This regulation has undergone several amendments, with the most recent update under MEMR Regulation No. 4/2020. Under MEMR Regulation No. 12/2017, PLN is obliged to purchase electricity generated by IPPs which generate electricity from renewable energy sources. This regulation sets out the different bases, systems and price caps for the purchase of electricity. In the event that the local basic production price *(Biaya Pokok Penyediaan Pembangkitan* or "BPP") is higher than the average national BPP, then the maximum electrical power purchase price is subject to a ceiling of 85 percent of the local BPP. This was later amended by MEMR Regulation No. 50/2017, under which if the local BPP is higher than the average national BPP, the purchase price will be at a maximum of 100 percent for geothermal, hydro and municipal waste power plants, while for the other renewables will be capped at 85 percent. If the local BPP is equal to or lower than the average national BPP, then the purchase price will be determined by mutual agreement between the project owners and PLN (business-to-business agreement). The price for electricity purchases from any renewable energy sources must be approved by the MEMR. MEMR Regulation No. 50/2017 also introduces ocean energy (wave and tidal) as a new type of renewable energy source.

MEMR Regulation No. 53/2018, which amends MEMR Regulation No. 50/2017, introduces liquid biofuels as a new type of renewable energy that may be purchased by PLN. Under this regulation, PLN may only purchase electricity from a liquid biofuel IPP if the developer of the power plant has sufficient supply of biofuel for sustained operation over the period of the PPA. The purchase shall be made through the mechanism of direct selection at a price that is set based on agreement between the parties.

MEMR Regulation No. 50/2017 was amended again by MEMR Regulation No.4/2020, which was issued in February 2020 and introduced a new option to purchase electricity through direct appointment by PLN. Such purchases can be made in the following circumstances: 1) electricity supply emergencies; 2) purchases of excess power; 3) in order to increase the capacity of generators in existing power plants, provided that they continue to be operated in the same location; or 4) purchase of electricity if there is only one prospective electricity provider.

MEMR Regulation No. 4/2020 revokes the requirement for build, own, operate and transfer ("BOOT") schemes for renewable power plants previously required. Any IPP that has already signed a PPA with PLN may adjust the cooperation scheme to become a build, own and operate ("BOO") project, subject to the prevailing regulations related to land and private law.

MEMR Regulation No. 4/2020 allows the MEMR to assign PLN to purchase electricity from waste-to-energy ("WtE") power projects of IPPs that are appointed by the regional government. The assignment from the MEMR to PLN serves as a direct appointment for the purchase of electricity from the IPP and the MEMR's approval for the proposed electricity tariff.

Fuel Source	Applied regulation	Notes
Coal, Mine Mouth	MEMR 43/2018	Reference price
Coal, Non-Mine Mouth	MEMR 10/2020	Reference price
Gas	MEMR 45/2017	For wellhead: direct selection/general auction
Hydro	MEMR 4/2020	Direct selection/direct appointment (under certain circumstances)
Geothermal	MEMR 4/2020	General auction in accordance to the provisions of the legislation
Solar PV	MEMR 4/2020	Direct selection based on capacity quota
Wind	MEMR 4/2020	Direct selection based on capacity quota
Biomass	MEMR 4/2020	Direct selection
Biogas	MEMR 4/2020	Direct selection
Municipal Waste (WtE)	MEMR 4/2020	Direct purchase by PLN from the IPPs appointed by the regional government
Ocean Energy (wave and tidal)	MEMR 4/2020	Direct selection
Liquid Biofuel	MEMR 53/2018	Direct selection

To accelerate development of the power sector and in recognition of its importance to basic infrastructure development, PR No. 4/2016 on Acceleration of Electricity Infrastructure Development was issued in early 2016 to support the acceleration of the 35 GW electricity program. PR No 4/2016 was amended by PR No. 14/2017 on the same topic.

Accelerating infrastructure development through public-private partnership

In 2015 the government issued PR No. 38/2015 on Cooperation Between Government and Business Entities in Procurement of Infrastructure, which provides the regulatory basis for infrastructure development through PPPs. The regulation introduced the types of infrastructure that can be procured as a PPP and the availability payments (also known as performance based annuity schemes or "PBAS").

The new PPP regulation incorporated a number of key changes, in particular the expansion of the types of infrastructure that can be procured as a PPP, which now includes social infrastructure, and the introduction of availability payments as well as various other enhancements. The introduction of availability payments represents a significant step forward in Indonesia's development of a risk-sharing-based landscape more in line with international standards.

In the "Public-Private Partnership Book 2019 - Infrastructure Projects Plan in Indonesia", BAPPENAS announced the latest information on infrastructure PPP project plans.

The following projects are currently in the final business case stage in preparation for the tendering process:

- Riau Non-Toll Road Preservation
- Proving Ground BPLJSKB Bekasi
- Motor Vehicle Weighing Implementation Unit ("UPPKB") in Java and Sumatera
- Medan Municipal Transport (LRT)
- Baubau Port Proving Ground BPLJSKB
- Legok Nangka Regional Waste Treatment
- University of Sam Ratulangi Teaching Hospital
- Pirngadi Hospital
- Pekanbaru Water Supply
- Indonesia National Cancer Center Dharmais Hospital
- Surakarta Street Lighting
- Yogyakarta - Bawen Toll Road
- LRT Semarang
- Zainoel Abidin Hospital Aceh
- Relocation of Salemba Correctional Facility
- Nusakambangan Industrial Correctional Facility
- Institut Teknologi Bandung's Cirebon Campus Development
- Ciputat Market
- Bintuni Industrial Zone

BAPPENAS also lists nine tendered projects, 14 PPP infrastructure projects under construction and four PPP projects under operation.

Tendered projects are:

- Probolinggo–Banyuwangi Toll Road
- Makassar-Parepare Railway
- Multifunction Satellite
- Semarang-Demak Toll Road
- South Sumatera Non-Toll Road Preservation
- Airport of Komodo, Labuan Bajo
- Gorontalo Hospital
- Sidoarjo General Hospital
- Jatiluhur Regional Water Supply I (Unsolicited Project)

4 PPP projects under operation are: Batang-Semarang Toll Road; Pandaan-Malang Toll Road; Palapa Ring West Package and Palapa Ring Central Package.

14 PPP projects under construction are:

- Palapa Ring East Package
- Balikpapan–Samarinda Toll Road
- Manado-Bitung Toll Road
- Jakarta–Cikampek Elevated II Toll Road
- Krian-Legundi-Bunder-Manyar Toll Road
- Serpong-Balaraja Toll Road
- Jakarta–Cikampek II South Toll Road
- Serang–Panimbang Toll Road
- Cileunyi–Sumedang–Dawuan Toll Road
- Central Java Power Plant 2 X 1000 MW
- Umbulan Water Supply
- Bandar Lampung Water Supply
- West Semarang Water Supply
- Nambo Regional Waste Management

Land acquisition still the key challenge underpinning progress

Historically, the lack of clear regulations on land acquisition for public use and the provision of land compensation to owners has caused substantial delays in the development of infrastructure projects in Indonesia. There is a long history of informal land ownership in Indonesia that gives rise to any number of individuals claiming the rights to land during a land acquisition process. The implication of this is the need for an administrative process involving a number of government institutions to resolve land ownership issues.

Another issue frequently encountered is landowners holding onto their land as long as possible to benefit from appreciation in value while a project progresses, which has led to substantial land cost escalation, especially in Java and Jakarta where property prices have seen significant increases.

In recognition of the obstacles presented by land acquisition issues for infrastructure project development in Indonesia, PR No.36/2005 concerning Land Acquisition for Infrastructure Development was issued to outline the rules and procedures for land acquisition for infrastructure projects serving public purposes. However, the regulation was not very effective due to the vagueness in the rules.

The government then issued Law No.2/2012 concerning Land Procurement for Development Purposes in Public Interest to improve and clarify the land acquisition framework. However, for the law to be practical, supporting regulations elaborating on the law were required. PR No. 71/2012 concerning Administration of Land Procurement for Development Purposes in Public Interest was issued in August 2012 and subsequently in November 2012, national land agency ("BPN") Regulation No. 5/2012 was issued, which sets out technical implementation guidelines and rules.

Since 2012, PR No. 71/2012 has been amended several times in order to improve the legal structure and accelerate infrastructure projects through the issuance of PR No. 30/2015 and PR No.148/2015. Through PR No. 30/2015 and PR No. 148/2015, the government expanded the opportunity for private parties to participate in and accelerate the land acquisition process. In this regard, private parties are provided the opportunity to carry out the acquisition of land for public interest purposes by way of sale and purchase, exchange or mutually agreed methods between a landowner and the private party.

To support the funding of land acquisition, the government is expanding the mandate of the national asset management agency ("LMAN"). The mandate is regulated under PR No. 66/2020 on Land Acquisition Funding of Infrastructure for Public Interest for the Implementation of National Strategic Projects. PR No. 66/2020 laid down two funding mechanisms for land acquisition for PSN: funding implemented by the MOF with a mechanism for direct compensation payments to entitled parties; and payments to business entities that have already carried out compensation payments.

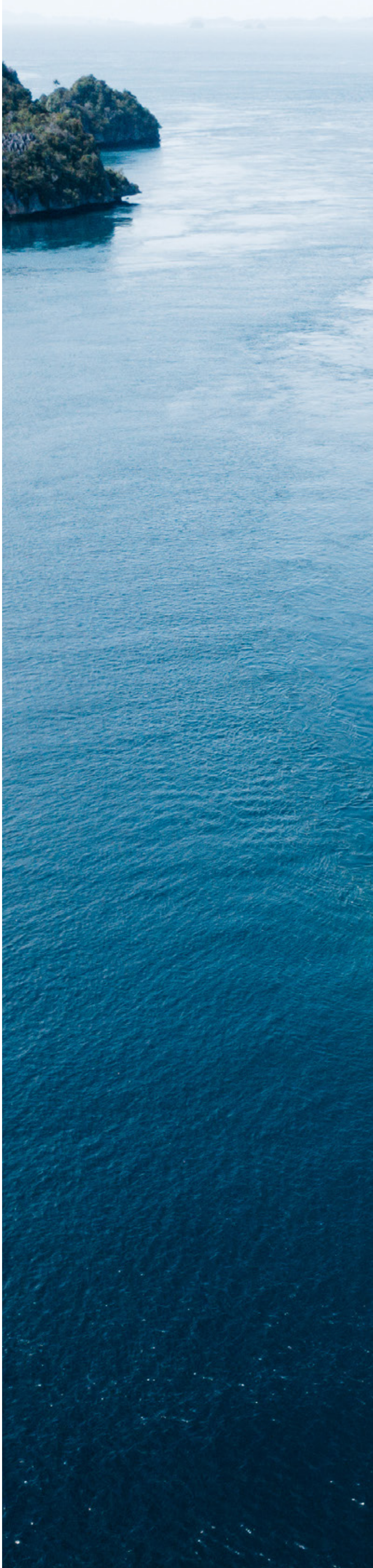
Another regulation related to funding for land acquisition is MOF Regulation No. 21/PMK.06//2017, which was later amended by MOF Regulation No. 100/PMK.06/2019 on Procedures for the Funding of Land Acquisition for National Strategic Projects and the Management of Assets Resulting from Land Acquisition by LMAN. The regulation allows for state funding to be allocated for land acquisition on PSN.

The Omnibus Law, which was issued in November 2020, further promotes the responsibility of the central government and regional governments for providing land and business licenses for PSN of the central/regional governments, BUMN/ regional-owned business entities ("BUMD").

Harmonization and relaxation of land related provisions

The Omnibus Law addresses several land-related provisions, including:

- Qualified foreign individuals or offshore companies having representative offices in Indonesia are now permitted to own strata-title properties on either right to use *(Hak Pakai* or "HP") titled land or right to build (*Hak Guna Bangunan* or "HGB") titled land.
- The central government is required to establish a Land Bank Board *(Badan Bank Tanah)*, which carries out planning, acquisition, procurement, management, utilization and distribution of land
- Recognition of land titles for space below the land surface.
- Introduction of a new electronic system for land registration.
- Procurement of land for public interest with an area of less than five hectares is now allowed to be negotiated directly with the original landowner. The time frame for the land procurement process is extended, from two years to three years with a possibility of a further one-year extension.
- PMA companies will be required to secure approval on the conformity of the business location with the relevant detailed spatial plan *(Rencana Detail Tata Ruang* or "RDTR") through the OSS before acquiring the targeted land.
- Stakeholders (government and businesses) will only be required to fulfill the suitability of spatial utilization activities *(kesesuaian kegiatan pemanfaatan ruang)*, and are no longer required to obtain a location permit.



Key government institutions

The Indonesian government has implemented a number of initiatives to support infrastructure development, including viability gap funding, availability payments, government guarantees streamlining permits and licensing.

To this end, the government has established a number of key infrastructure institutions to improve the coordination and implementation of the country's infrastructure program.

PT Sarana Multi Infrastruktur ("SMI") is an infrastructure financing company established as an SOE under the MOF in 2009. SMI plays a key role in enabling infrastructure development in Indonesia by acting as both project sponsor and financier/investor. In its role as project sponsor, SMI provides a range of advisory services, including project development and preparation, structuring and transaction advisory. SMI finances infrastructure projects across a range of sectors, including power, water and toll roads. SMI is a key pillar of plans to establish an Indonesian infrastructure development bank.

PT Penjaminan Infrastruktur Indonesia, otherwise known as the Indonesian Infrastructure Guarantee Fund ("IIGF"), was also established in 2009 as an SOE under the MOF. IIGF plays a key role in enhancing the bankability of infrastructure projects by acting as the single window for the provision of guarantees on obligations of government agencies under contractual arrangements for PPP projects. IIGF has also been assigned by the MOF to facilitate PPP project preparation.

Indonesia Infrastructure Finance ("IIF") is a private non-bank financial institution established in 2010 via cooperation between the government (via the MOF), the World Bank, the Asian Development Bank ("ADB") and other international multilateral agencies. IIF provides both advisory services and project financing for infrastructure projects in Indonesia, which to date have been provided across a range of sectors including water supply, toll roads, power plants and telecommunications.

Committee for Acceleration of Priority Infrastructure Delivery or *Komite Percepatan Penyediaan Infrastruktur Prioritas* ("KPPIP") was established in 2014 under PR No. 75/2014 on Acceleration of Priority Infrastructure to coordinate the preparation and delivery of strategic infrastructure projects. KPPIP's scope of work includes:

- Establishing strategies and policies to accelerate infrastructure priority development
- Monitoring and controlling the implementation of the strategies and policies in order to accelerate priority infrastructure development
- Facilitating capacity improvements for apparatuses and institutions related to infrastructure priority development.

PPP Joint Office *(Kantor Bersama KPBU Republik Indonesia)* given that cross-sector and cross-agency coordination is crucial to the implementation of PPP projects, a PPP Joint Office was established in 2016. The role of the PPP Joint Office is to assist government agencies and investors to answer queries relating to PPP implementation. Effectively, the PPP Joint Office works as a coordinating body to provide a 'one stop service' to support the acceleration of PPP implementation.

The members of the PPP Joint Office are BAPPENAS, the MOF, the Coordinating Ministry of Economic Affairs *(Kementerian Kooordinator Bidang Perekonomian)*, the Ministry of Home Affair *(Kementerian Dalam Negeri)*, BKPM, the National Public Procurement Agency *(Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah* or "LKPP") as well as IIGF.

Nusantara Investment Authority ("NIA") or Indonesia Investment Authority ("INA") is the Indonesian sovereign wealth fund, established in November 2020 under the framework of the Omnibus Law. INA is whollyowned by GOI and will focus on four short-term infrastructure sectors: healthcare, renewable energy, digital services and platform.

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5 Investment

Introduction

Indonesia welcomes foreign investment on its own terms. Government policies aim at ensuring that foreigners work with Indonesians to assist in development of the country's economy and skill-base. There is a general recognition that Indonesia needs the development capital, and the technical and management skills of foreigners.

Government regulation of foreign investment in Indonesia is manifested in a variety of ways, for example:

- approved and monitored through governmental bodies
- companies can employ only a limited number of expatriates, and are required to demonstrate plans for replacement of those expatriates by Indonesians (with the exception of expatriate directors and commissioners)
- certain fields of business are closed to investment by foreigners
- foreign individuals are permitted to acquire land or land rights with a number of restrictions.

A "foreign investor" is usually a foreign company incorporated under the laws of its host nation; however foreign individuals are also acceptable.

Direct and indirect investment

Law No.25/2007 concerning Capital Investment ("Investment Law") defines investment as direct investment and indirect investment. Indirect investments, also known as portfolio investments, are transactions made through the domestic capital market/stock exchanges of a country.

The Indonesian equity market is highly institutionalized, whereby over the period from 2011 to 2020 foreign institutions held around 65-75 percent of the free-float value of the Indonesian equity market.

The Indonesian government encourages direct investment by foreigners or FDI in most areas of the Indonesian economy, and less so in others. Foreign investment approvals can be issued either by BKPM in Jakarta or an investment board ("BPM") in every province, investment institution in regency municipality or through representative offices of the Republic of Indonesia in several countries.

Investment law, investment list and foreign direct investment

The Investment Law regulates FDI by granting a right of entry to foreign businesses through a government licensing procedure principally controlled by BKPM. It specifies that foreign investment shall be in the form of a limited liability PMA company incorporated in Indonesia, in which the investor goes into partnership with an Indonesian person or entity as shareholders. Foreign investors can generally hold between 49 percent to 100 percent ownership in various industries, but this varies within sectors and business fields and can be subject to ministerial approvals or special licenses.

Previously, to invest in Indonesia, an investor must first look at the Negative List which is updated with policy changes under the Investment Law. As indicated, if a business field is not mentioned in the Negative List, it is regarded as 'open' to foreign investment.

In February 2021, GOI amended the existing 2016 Negative List to Investment List through the issuance of PR No. 10 of 2021 ("Regulation 10"). The investment list is anticipated to promote priority industries that are open to both foreign and domestic investments.

Dubbed the Investment List, the regulation liberalizes over 245 business lines, including important sectors, such as transportation, energy, and telecommunications that had previous foreign ownership restrictions.

In contrast to the 2016 Negative List, the Investment List allowed all business fields to become open to investment, except for:

1. Six business fields which are still closed to investment are:
   - Class-I narcotics cultivation and industries;
   - All forms of gambling and/or casino-related activities;
   - Illegal fishing of endangered fish species;
   - Utilization of coral or natural reefs for certain uses;
   - Chemical weapons manufacturing industries; and
   - Industrial chemicals and industrial ozone-depleting substance industries
2. Activities that may only be carried out by the central government for instance service-based in nature or that relate to strategic defense and security and that are not permitted to be carried out in cooperation with any third parties.

   In terms of foreign investors and their investments, Regulation 10 sets the following requirements:

   a. Foreign investments must take the form of limited-liability companies that are established and located within Indonesian jurisdiction;

   b. Foreign investors are only allowed to engage in large-scale business activities with investment values that exceed IDR10 billion (excluding the values of the relevant land and buildings used for places of business); and/or

   c. The value of foreign investments in technology-based start-ups may amount to IDR10 billion or lower if undertaken within special economic zones.

Please refer to *appendix 1*. For the detail of 2021 Business Investment List.

The Regulation 10 stipulated 4 categories of business fields open to investment namely as follows:

1. Priority business fields – 245 fields (183 fields for tax allowance facility, 18 fields for tax holiday and 44 for investment allowance facility)
   - Be included as a part of nationally strategic programs/projects;
   - Be capital and/or labor-intensive;
   - Utilize advanced technologies;
   - Categorized as pioneering industries;
   - Oriented towards export/import substitutions; and/or
   - Oriented towards research, development and other innovation activities.

   Various benefits are provided to those who are looking to invest in priority business fields in the form of:

   a. Fiscal incentives (i.e. tax holidays, tax allowances, investment allowances and import-duty exemptions); and/or

   b. Non-fiscal incentives, which encompass ease of business licensing, provision of supporting infrastructure, energy, guaranteed availability of raw materials, immigration, employment and others.
2. Business fields that are allocated to or that require partnerships with cooperatives and micro-, small- and medium-scale enterprises ("MSMEs") – 89 fields.

   The category is determined based on the following criteria must:
   - Not use advanced technologies or must only utilize simple technologies;
   - Involve specific processes, must be labor-intensive and must be characterized by special and hereditary cultural heritage; and
   - Involve business capital that does not exceed IDR 10 billion (excluding any land and buildings used for places of business); and

   Business fields that involve large-scale businesses working in mandatory partnerships with cooperatives and MSME shall:
   - Be mostly occupied by cooperatives and MSMEs; and/or
   - Aim to scale-up operations in order to enter the supply chains of large-scale businesses
3. Business fields with certain requirements – 46 fields.

   This category includes business fields that are open to all investors (including MSMEs) that subject to:
   - Investment requirements for domestic investors;
   - Investment requirements with limitations placed on foreign investment exemptions:

     a. Investments that are carried out within certain business fields that were approved prior to the issuance of the Regulation 10

b. Investors who have secured special rights based on agreements between their countries and Indonesia

- Investment requirements that involve special licensing.

Requirements in business field with certain requirements are not applicable to investments in special economic zones and non-direct investments that are undertaken through the Indonesian Stock Exchange.

4. Business fields with categories other than above-mentioned are open to all investors without any additional requirements.

Grandfathering

Grandfathering provisions continue to apply to existing investments regardless that some new foreign investment limitations or closures have been introduced in the Regulation 10.

The following provisions shall apply toward companies whose business fields are included in the business field as referred to in Article 4 paragraph (1) letter (b), and which will change the ownership of foreign capital as a result of a merger, acquisition or consolidation in the same business fields:

a. the limitation of foreign capital ownership in the surviving company is as stated in the business licensing of the surviving company;

b. the limitation of foreign capital ownership in the acquired companies is as stated in the business licensing of the acquired company; or

c. the limitation of foreign capital ownership in a new company resulting from a consolidation is as stipulated in the provisions of laws and regulations at the time of formation of the new company resulting from the consolidation in question.

The Economic Policy Packages

Over the three-year period from 2015 until 2018, GOI had announced 16 Economic Policy Packages in order to improve national industry competitiveness, maintain economic stability as well as to promote Indonesia's investment climate to generate significant economic growth. The issuance of Economic Policy Packages was targeted to harmonize regulations, simplify bureaucratic process, and ensuring law enforceability. In addition to the 16 Economic Policy Packages, on 20 July 2020 the government has issued PR No. 82/2020 on Committee for Handling of Covid-19 and National Economic Recovery which has been amended in November 2020 in Presidential Regulation No. 108/2020.

The summary of policy packages is as follows:

The Economic Policy Packages

> *To improve national industry competitiveness, export and investment to generate significant economic growth*

Harmonizing Regulations | **Simplifying Bureaucratic Process** | **Ensuring Law Enforceability**

Phase I (9 Sept'15)
Improving national industry competitiveness

Phase II (29 Sept'15)
Easing permit requirement and simplifying export proceeds requirement

Phase III (7 Oct'15)
Financial services facilitation, export financing and elimination of business unnecessary burden

Phase IV (15 Oct'15)
Social safety net and betterment of people welfare

Phase V (22 Oct'15)
Improving industry and investment climate through tax incentives and deregulation on sharia banking

Phase VI (5 Nov'15)
Stimulating economic activities in border areas and facilitating strategic commodities availability

Phase VII (7 Dec'15)
Stimulating business activities in labor-intensive industries nation-wide through incentives in the form of accelerating land certification process for individuals

Phase VIII (21 Dec'15)
Resolving land acquisition disputes, intensifying domestic oil production, stimulating domestic parts and aviation industries

Phase IX (27 Jan'16)
Accelerating electricity generation, stabilizing meat prices and improving rural–urban logistics sector

Phase X (11 Feb'16)
Revising the Negative investment List and improving protection for small-and medium-scale enterprises ("SMEs")

Phase XI (29 Mar'16)
Stimulating national economy through facilitation to SMEs and industries

Phase XII (28 Apr'16)
Improving Indonesia's rank on Ease of Doing Business

Phase XIII (24Aug'16)
Low Cost Housing for Low-Income Communities

Phase XIV (10 Nov'16)
Roadmap for E-commerce

Phase XV (15Jun'17)
Improving logistics

Phase XVI (16Nov'18)
Improving the competitiveness and domestic economy

Omnibus Law

Following the inauguration of his second presidential term in October 2019, President Joko Widodo announced his administration's plans to continue regulatory reform by focusing on initiatives, such as developing a dynamic and qualified workforce, promoting industry cooperation through technology, further enhancing infrastructure development and economic reform as well as simplifying regulations and bureaucracy. To achieve such ends, in November 2020, the Government issued Law No. 11 of 2020 on Job Creation, also known as Omnibus Law, which replaces several already existing laws and consolidate them under a single legal framework.

The Omnibus Law regulates 3 areas, namely job creation, development and strengthening the financial sector and tax provision. Omnibus Law revises 78 existing laws on various cross-sectoral laws in order to establish a number of strategic policies and measures designed to generate more job opportunities across Indonesia and, in turn, eventually improve the welfare of Indonesia's citizens.

Provisions introduced by the Omnibus Law and the implications are further elaborated throughout several chapters in this publication.

Simplifying regulations through Omnibus Laws

Omnibus Laws group a diverse range of issues into legislation, aimed at creating jobs and empowering SMEs

Omnibus Law Priority Sectors

Taxes

Labour

Financial Sector

6 Pillars of Omnibus Law *Perpajakan* (Taxation)

1. Investment Funding
2. Territorial System
3. Personal Taxpayer
4. Taxpayer Compliance
5. Equity of Business
6. Taxation Facility

11 Clusters of Omnibus Law *Cipta Lapangan Kerja* (Job Creation)

1. Simplification of Licensing
2. Investment Requirements
3. Employment
4. Ease, Empowerment and Protection of MSMEs
5. Ease of Doing Business
6. Research and Innovation Support
7. Government Administration
8. Impositions of Sanctions
9. Land Acquisition
10. Government Investment and Projects
11. Economic Zone

Foreign investment restrictions

Fields of activity and local joint venture partner

Initial investment proposals to BKPM need to be in fields currently open to foreigners, as do applications for capital or capacity utilization expansion of existing facilities.

Foreign investment will usually require a joint venture ("JV") arrangement between the foreign investor and at least one local partner, either from inception of the project, or within a specified period for those companies which have approval to be wholly foreign-owned in the initial stages. The selection of a reliable and understanding local Indonesian shareholder and partner is essential. Unsuccessful foreign investment ventures can be associated with a background of tense relationships between local and overseas foreign shareholders. Once an investment is made, it can be a difficult, costly and painful exercise to extract or divest.

BKPM and industry regulators may maintain lists of potential local partners in certain fields from time to time, while investment banks, embassies and accounting firms can often provide information of a similar nature. In addition, accounting and investigation services firms can undertake independent, confidential corporate intelligence checks into the background and integrity of prominent or low-profile local individuals.

Minimum investment and equity participation

Divestment rules

Foreign investors can hold up to 100 percent equity initially, except in the industries where the various limitations on maximum foreign ownership exist which vary within sectors and business fields.

The old Foreign Investment Law No. 1/1967 through implementing regulation GR 20/1994 expressly provided for where 100 percent foreign ownership is initially permitted, for the foreign shareholder to divest a minority share to an Indonesian shareholder within 15 years, and that 5 percent is the intended minimum divestment.

The 2007 Investment Law which revoked Law No. 1/1967 is silent on divestment obligations. However, the general view is that implementing regulation GR 20/1994 remains valid, and thus the statutory obligation to divest. However, based on BKPM Circular Letter No. 23/SE/11/2008, a PMA company established under the 2007 Investment Law is no longer required to divest whilst older companies established pre-2007 Investment Law, with BKPM approval letters containing a divestment obligation, are still required to divest.

In practice, BKPM appears not to be enforcing any divestment obligations for PMA companies incorporated in the late 1990's operating in a business field where 100 percent foreign ownership is permitted and now reaching 15 years to divest.

Legal form

The Investment Law specifies that foreign investment shall be in the form of a limited liability company (*Perseroan Terbatas* or "PT") incorporated in Indonesia in accordance with the requirements of the MOLHR. A PMA company is a PT company having an approved foreign shareholding. Other forms of corporate entities are addressed in Chapter 6.

Term limit

The operating permit for a PMA company is unlimited as long as the PMA company is still active.

Operations

The Investment Law grants the foreign investor the freedom to manage a company for the term of its permit approval, which includes the right to appoint directors and, if necessary, foreign technicians and managers, where skilled Indonesians are not available. Certain industries only allow expatriate technical advisors (apart from board of directors and commissioners). More information on obligations around domestic and foreign employees is set out in Chapter 9 on Labor and Employment.

Foreign investment restrictions

Introduction

Foreign investment in certain industries is not administered by BKPM, but by the relevant ministry or regulatory authority directly. These industries are oil & gas, banking and non-bank financial institutions including insurance, multi-finance, securities brokerage and asset management. While BKPM has some role in the approval of mining and forestry licenses, the principal approvals are granted by the MEMR and the Ministry of Forestry. Shipping, seaports and telecommunications are other industries where regulation of foreign investment and related approval applications have been complicated by multiple laws, regulations and decrees issued by more than one regulatory authority body or institution.

Oil & gas

Under Law No.22/2001 concerning Petroleum & Natural Gas ("the Oil & Gas Law"), the oil & gas sector was administered by two state owned legal entities: BP Migas for upstream operations and BPH Migas for downstream operations. Prior to establishment of BP Migas in 2002, regulation of the oil & gas sector was conducted by the state-owned oil & gas company, PERTAMINA.

BP Migas had responsibility for management of the upstream operation of joint cooperation contracts which are predominately in the form of a production-sharing contract ("PSC"), with the foreign party/contractor responsible to BP Migas for the execution of the operation. BPH Migas had responsibility for granting licenses and supervising the operation of the downstream business.

In January 2013 a PR No.9/2013 was issued to establish a special task force, SKK Migas, to replace SKSP Migas.

Under the Oil & Gas Law, the industry is one of two that allows foreign participants to invest in the upstream oil & gas sector through a local branch of an overseas company (called a permanent establishment or "PE", which is referred to further in Chapter 10 on Taxation).

Omnibus Law amends various provisions in oil & gas sectors, with highlight of the changes including:

- Requirement for business entities to secure business licenses from the central government before engaging in any oil and gas business activities. This requirement applies to upstream and downstream business entities.
- Removal of multiple business licensing requirement for downstream oil and gas business activities (processing, transportation, storage and/or trading). Introduce a single integrated business license that is applicable for all the foregoing business activities. This business license will be processed through an online system managed by the central government.
- Downstream business entity who failed to obtain a business license will be subjected to administrative sanction.

Financial institutions

Effective 31 December 2013, the regulatory and supervisory functions, duties and authority in the banking sector moved from the BI to the Indonesia financial services authority (*Otoritas Jasa Keuangan* or "OJK"). The OJK now regulates and supervises all financial institutions (banking, insurance, and other non-bank financial institutions). BI is responsible for macroprudential and payments company regulation and supervision. Both BI and the OJK are generally free from interference from the government.

Financial conglomerates

In October 2020, the OJK released OJK Regulation No. 45/POJK.03/2020 ("POJK 45") on financial conglomerates to consolidate into one group with the ultimate goal of creating a healthy and competitive financial services industry.

Through this regulation, several criteria must be fulfilled for a certain group of financial services institutions to be identified as a financial conglomerate:

- The total assets of the group must be greater than or equal to IDR100 trillion, which should be calculated based on financial reports for the last positions for June and December of the relevant year; and
- The group must be engaging in business activity that involves more than one type of financial services institution (i.e. banking, insurance and reinsurance institutions, financing institutions and/or securities institutions).

Banking

Branches

Banking is the only other sector, in addition to upstream oil & gas, which technically allows foreign investors to invest direct into a local branch. However, no foreign bank branch licenses have been issued since 2003, and foreign banks have only been able to enter through acquisition of existing licensed banks.

Single presence policy/sole ownership

On 12 July 2017, OJK regulation No. 39/POJK.03/2017 replaced BI Regulation No.14/24/PBI/2012 dated 26 December 2012. This regulation specifies a 'Single Presence Policy' in respect of Indonesian banks, which provides for no single person, entity or group of companies to be a "controlling shareholder" in more than one bank. A controlling shareholder is defined as:

- Directly holds 25 percent or more of the issued shares of the bank (with voting rights); or
- Directly holds less than 25 percent of the issued capital of the bank (with voting rights), but the relevant party can be proven to have exercised either direct or indirect control.

Exceptions to the Single Presence Policy allowing an investor to be a controlling shareholder in more than one Indonesian bank are:

- The investor is a controlling shareholder in one conventional or commercial bank and one Sharia bank
- The investor is a controlling shareholder in two banks and one of the banks is a JV bank.

Ownership structures that do not comply with the Single Presence Policy need to be restructured through:

a. Merger/consolidation,

b. Establishment of an investment holding company or

c. Establishment of a holding function.

Options (a) or (b) need to be performed within one year of acquiring shares and option (c) within six months.

Regulation No. 39/POJK.03/2017 also specifies incentives for banks which pursue merger/consolidation, including time extension for the legal lending limits ("LLL"); greater ease of opening of branch offices and relaxation on implementing good corporate governance ("GCG") principles.

Shareholding thresholds and limitations

OJK Regulation No. 56/POJK.03/2016 replaces Bank Indonesia Regulation No.14/8/PBI/2012 concerning Commercial Bank Share Ownership.

OJK Circular Letter No. 12/SEOJK.03/2017 was the implementation of OJK Regulation No. 56/POJK.03/2016 on the Share Ownership in Commercial Banks. This Circular letter came into effect as of 17 March 2017.

The maximum amount of bank share ownership for a single shareholder depends on the category of shareholder. Shareholders, that are related through share ownership or family ties or that are deemed to be acting in concert with one another, are treated as a single party in determining the overall ownership cap that applies:

- Banks or a non-bank financial institutions: 40 percent of a bank's paid-up capital (subject to OJK approving a higher amount: see below)
- Non-financial institutions: 30 percent of a bank's paid-up capital.
- Individual shareholders: 20 percent of a bank's paid-up capital (25 percent if the bank is a Sharia bank).

In addition:

- for foreign or domestic investors that require a shareholding interest of more than 40 percent or a "controlling interest", application needs to be made to the OJK for approval. To obtain approval, the bank must:
  - Have a soundness rating of at least 1 or 2,
  - Have a recommendation from the bank's home regulator,
  - Be financially strong - Core tier 1 capital of at least 6 percent,
  - Commit to providing additional capital through hybrid debt securities issued by a local lender that are convertible into equity, and;
  - Provide a written commitment to supporting the development of the Indonesian economy (i.e. credit distribution prioritization to specific sectors and regions).

  A bank that receives approval to own more than 40 percent of a local bank will first be allowed to reach that 40 percent threshold. To raise its stake further, the local target bank must be assessed by the OJK to be financially strong and well-governed for three consecutive assessment periods within five years from the time the OJK approves the transaction.
- only those 'non-bank financial institutions' that are:
  - Authorized under their constitutional documents to participate in a 'long-term' investment; and
  - Governed and supervised by a financial regulator/authority, are permitted to hold up to a 40 percent stake in an Indonesian bank. A non-bank financial institution which fails to satisfy these two criteria is only allowed to hold up to a 30 percent stake in an Indonesian bank.

The Central Government is exempted from the limits (as is any agency that is called on to rescue a failing bank). This means the limits do not apply to state-owned banks.

Foreign investor criteria

Any prospective controlling shareholder who is a foreign investor must meet the following additional requirements:

- The investor is committed to support the economic development of Indonesia
- The investor has obtained recommendation from the financial services supervisory authority of the country of origin
- The investor is ranked at least:
  - One notch above the lowest investment grade for banks;
  - Two notches above the lowest investment grade for non-bank financial institutions; and
  - Three notches above the lowest investment grade for non-financial institutions.

Minimum capital requirements for commercial banks

Indonesia is a member of the Financial Stability Board and the Basel Committee on Banking Supervision ("BCBS") and is committed to adopting the recommendations generated by these forums, including their framework for standards of bank capitalization.

In 2016, the OJK issued regulations No. 11/POJK.03/2016 and No. 34/POJK.03/2016, which set out minimum capital requirements for commercial banks. Under these regulations, the OJK requires a minimum 8 percent capital adequacy ratio for banks with the soundest risk profile (rating 1) and up to 14 percent for banks with the worst risk profiles (rating 5).

To calculate the minimum capital based on risk profile, the OJK requires banks to implement an internal capital adequacy assessment process ("ICAAP"). The OJK will perform supervisory review and evaluation process ("SREP") on the ICAAP, which includes review of the sufficiency of active supervision from the banks' management; capital adequacy assessment; monitoring and reporting as well as internal controls.

On top of the 8-14 percent, banks are required to add a capital conservation buffer. Additionally, the supervisor may impose a Countercyclical Buffer, at a discretionary percentage (in the range of 0 percent–2.5 percent) and a capital surcharge for domestically systemically important banks (in the range of 1 percent–2.5 percent).

In July 2021, OJK issued a regulation that become the legal umbrella for digital bank for the industrial revolution 4.0 and 5.0 within the POJK No. 12/POJK.03/2021 concerning Commercial Banks.

Based on the new regulation, four categories of commercial bank which are previously classified "*Bank Umum Kelompok Usaha* (BUKU)" are changed into "*Bank Berdasarkan Modal Inti* ("KBMI")":

a) KBMI 1: core capital up to IDR6 trillion

b) KBMI 2: core capital is more than IDR6 trillion up to IDR14 trillion

c) KBMI 3: core capital is more than IDR14 trillion up to IDR70 trillion

d) KBMI 4: core capital is more than IDR70 trillion.

Digital Bank is an Indonesian legal entity bank (*Berbadan Hukum Indonesia* or "BHI Bank") that provides and runs business activities mainly through electronic channels without the need of physical office other than the head office or using a limited physical office.

Digital Banks can operate through:

a. establishment of a new BHI Bank as a Digital Bank; or

b. transformation from existing banking entity to Digital Bank.

In general, the redefinition of bank grouping aims to support the implementation of effective regulation and more efficient supervision. Banks are not required to make adjustments to core capital according to the KBMI.

In the Article 23-24 of POJK No. 12/POJK.03/2021, Digital Banks are describe as banks that carry out business activities mainly through electronic channels which in carrying out their operations are in the form of Indonesian legal entities (new) as well as the results of the transformation of Indonesian legal entities into Digital Banks.

OJK also requires that digital bank transformation includes business models use innovative and safe technology to serve customer needs. In addition, in the POJK, Digital Bank is required to have the ability to manage a prudent and sustainable banking business model and have adequate risk management.

Foreign entrants will need to be mindful of the stringent requirements around Basel III which may involve sizeable investment based on what is being seen in other countries: systems and operational modifications, establishment of new risk management and compliance functions and hiring of rare, qualified resources as well as consulting fees and other costs.

The full adoption of the Basel III rules was initially expected by 31 December 2019 but OJK later decided that the implementation of banking industry standards in accordance with Basel III Reforms standard in Indonesia, which includes the calculation of risk-weighted assets ("RWA") for operational risk, calculation of RWA for credit risk, calculation of RWA for market risk and credit valuation adjustment is postponed to January 1, 2023. This delay was one of three relaxation policies in response to the impact of Covid-19 on the Indonesia banking industry.

Micro small and medium business lending

Banks must comply with regulation on provision for loans or financing to MSME, which is at least 20 percent of total financing. MSME financing can include direct financing and indirect financing (executing or channeling by rural banks, sharia banks or non-financial institutions). For JV banks and foreign branches, MSME can include export financing (non-oil & gas).

Insurance

The 'New Insurance Law' (UU No. 40/2014) came into effect on 17 October 2014 replacing the previous Insurance law (UU No. 2/1992).

Single presence policy

The New Insurance Law also introduced a 'single presence' policy to the insurance sector in Indonesia. This law provides that each party can only be the 'controlling shareholder' of one of each of the following categories of insurance companies:

- Life insurance company
- General insurance company
- Re-insurance company
- Sharia life insurance company
- Sharia general insurance company
- Sharia re-insurance company

On 23 December 2016, the OJK issued Regulation No. 67/POJK.05/2016 ("POJK 67") on Licensing and Institution of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies. POJK 67 clarified the definition of definition of "controlling shareholder" as a party who:

- Directly holds 25 percent or more of the issued shares of the insurance company (with voting rights); or
- Directly holds less than 25 percent of the issued capital of the insurance company (with voting rights), but the relevant party can be proven to have exercised control over the insurance company.

This single presence policy must be complied with within 3 years as of the New Insurance Law comes into force (i.e., at the latest by 17 October 2017).

In order to comply with the single presence policy, in accordance with POJK 67, the controlling shareholder may merge, consolidate, divest such that it is no longer a controlling shareholder or do other corporate actions approved by OJK.

Shareholding thresholds and limitations

Under both the old law and the New Insurance Law, Indonesian shareholders must hold at least 20 percent of the issued capital of any joint venture Insurance Business Company ("IBC"), while foreign shareholders can hold up to 80 percent.

Under the Old Insurance Law, the Indonesian shareholders of an IBC can be Indonesian citizens and/or Indonesian legal entities fully owned by Indonesian citizens and/or Indonesian legal entities. The New Insurance Law has removed the words "and/or Indonesian legal entities" meaning that an Indonesian corporate IBC shareholder must now ultimately be fully owned by Indonesian citizens in order to qualify as Indonesian. This now makes unlawful the use of the dual-layer PMA company structure which foreign entities had previously utilized to ultimately own 100 percent of an IBC.

Insurance companies had five years (i.e., by 17 October 2019) in which to either:

- Ensure that the shares that must be held by Indonesian shareholders are all directly or indirectly held by Indonesian citizens; or
- Conduct an initial public offering ("IPO"), we presume with a minimum free float of 20 percent

Other major changes introduced in the 'New Insurance Law'

Other impacts include:

- Insurance and reinsurance companies must separate into a stand-alone entity all sharia divisions within 10 years from the enactment of the New Insurance Law, or when the sharia component exceeds 50 percent of the total insurance portfolio, whichever is earlier
- The insurance for any asset or risk located in Indonesia must be placed with a local insurer, irrespective of ownership of that asset or responsibility for a risk, unless no local insurer is able or willing to underwrite the risk. This removes the previous concession that allowed foreign entities to purchase insurance from offshore insurers
- A new policy assurance program replaces the existing mandatory guarantee fund, with the aim of providing protection to policyholders in case their insurer is liquidated or has its license revoked
- Insurance and reinsurance companies must optimize domestic capacity. In other words, domestic insurers and reinsurers must provide local reinsurance coverage "as far as possible". The intention is to encourage all insurers and reinsurers (both conventional and sharia) to assist with the expansion of the local reinsurance market.

Minimum capital requirements

POJK 67 increased minimum paid-up capital requirements for insurance and reinsurance companies, as follows:

- Conventional (life/general) – IDR150 billion (previously IDR100 billion)
- Sharia (life/general) – IDR100 billion (previously IDR50 billion)
- Conventional reinsurance – IDR300 billion (previously IDR200 billion)
- Sharia reinsurance – IDR175 billion (previously IDR100 billion)

The new minimum paid-up capital requirements apply if there is any change of ownership in the form of a statutory acquisition (usually through a capital injection) and/or upon a transfer of shares to a new shareholder, and/or on an establishment of a company.

POJK 67 also increased working capital requirements for sharia units of conventional insurers, as follows:

- Life/general – IDR50 billion (previously IDR25 billion)
- Reinsurance – IDR75 billion (previously IDR50 billion)

The OJK regulation requires an insurance company to target its risk-based capital ("RBC") solvency margin ratio at 120 percent and maintain its solvency margin ratio at minimum 100 percent. The regulator will require an insurance company to alter its business plan if it fails to exceed the 120 percent ratio.

Retention and domestic reinsurance rules

On 10 November 2015, the OJK issued regulation No. 14/POJK.05/2015, concerning self-retention and domestic reinsurance support. On 16 November 2015, the OJK issued the implementing regulation OJK Circular Letter No. 31/SEOJK.05/2015 ("Circular 31"). Appendix 1 of Circular 31 sets out the minimum self-retention limits, which differ based on risk type.

The new reinsurance regulations set out provisions regarding:

- reinsurance support strategy – a reinsurance support strategy must be submitted to the OJK. Reinsurance programs must comply with the regulations and be submitted to the OJK within 15 days of the agreement becoming effective.

- insurance support for simple risks – which mandates 100 percent domestic reinsurance coverage for motor, health, personal accident, credit, life and surety lines, unless the products are 'global in nature' and/or are specifically designed for multinational companies.
- minimum domestic automatic reinsurance support (aka 'treaty insurance') – other than for simple risks, an insurance company must have minimum automatic reinsurance support from domestic reinsurers of at least 25 percent of the automatic reinsurance capacity of each line of business or the minimum amount set out in Circular 31.
- minimum domestic facultative reinsurance support – other than for simple risks, if an insurance company fails to obtain automatic reinsurance support, an insurance company must have minimum facultative reinsurance support from domestic reinsurers of at least 25 percent of the total sum insured for each line of business, or the minimum amount set out in Circular 31.

Non-bank financial institutions

Effective 31 December 2013 "other financial institutions" including multi-finance companies (finance, venture capital, infrastructure finance, and microfinance), pension funds, and securities companies (asset management, underwriting, and brokerage) and other financial services institutions (such as credit insurance institutions, Indonesian export finance agencies and pawn shops) are supervised and regulated by the OJK.

Multi-finance companies

The multi-finance sector was previously regulated under PR No. 9/2009 on Multi-finance Institutions and MOF Regulation No. 84/PMK.012/2006 on Multi-finance Companies. Recently, in the last couple of years, OJK issued another sets of new regulations to further add provisions related to the multi-finance sector as follows:

- OJK regulation No. 47/POJK.05/2020 (previously 28/POJK.05/2014), concerning Licensing and Organization of Multi-finance Companies and Sharia Finance Companies
- OJK regulation No. 35/POJK.05/2018 (previously 29/POJK.05/2014), concerning Arrangement of Multi-finance Company Business
- OJK regulation Reg. No. 29/POJK.05/2020 (previously 30/POJK.05/2014), concerning Good Corporate Governance for Multi-finance Companies
- OJK regulation No. 10/POJK.05/2019, 28/POJK.05/2020 and 4/POJK.05/2021, concerning Arrangement of Sharia and Sharia Units Multi-finance Business.

These OJK regulations provide more detailed requirements and definitions around multi-finance companies. They define a multi-finance company as an entity that finances the procurement of goods or services. Permitted business activities include:

- Investment financing;
- Working capital financing;
- Multipurpose financing; and/or
- Any other financing business subject to OJK approval.

Multi-finance companies are prohibited from engaging in banking, issuing promissory notes or providing security, and they must maintain financial soundness at all times, including an equity ratio (comparison of adjusted capital and adjusted assets) of 10 percent, minimum IDR200 billion equity, and at least 50 percent of equity must be paid-up capital.

Any party wishing to engage in multi-finance activities must apply for a multi-finance business license from the OJK. The application review period is 20 days. Upon issuance of OJK License, the company must commence operations within three months.

The maximum foreign shareholding (either direct or indirect) is 85 percent of the paid-up capital. Multi-finance companies having foreign ownership (whether direct or indirect) must have at least 50 percent Indonesian-citizen directors. In the event there is an odd number of directors, the number of Indonesian-citizen directors must be greater than the number of foreign-citizen directors.

Capital markets and securities companies

Any party wishing to engage in capital markets activities (e.g. a securities company) must obtain an operating license and approval and registration from the OJK.

The principal regulation governing the capital markets is Law No. 8 of 1995 concerning the Capital Market. There are also implementing regulations issued by the President of Indonesia, MOF, the capital market and financial institution supervisory board ("BAPEPAM-LK") and the OJK. The Indonesia Stock Exchange ("IDX") also issues regulations and rules related to listing of companies and securities trading.

Ministerial Decree No.153/PMK.010/2010 concerning Share Ownership and Equity of Securities Companies, states:

- investment managers, underwriters combined with investment managers, and brokerage combined with investment managers should at least have IDR25 billion, IDR75 billion and IDR55 billion paid-up capital, respectively

- foreign non-securities financial Institutions may own up to 85 percent of the paid-in capital of JV securities companies
- foreign securities companies that are licensed or regulated by their respective local regulators may own up to 99 percent of paid-up capital of a JV securities company
- both foreign and local investors may purchase up to 100 percent shares of local or JV securities companies, both in the primary and secondary market
- foreign ownership of a private securities company is limited to a foreign legal entity that operates in the financial services sector area or in securities.

Venture capital companies

On 28 December 2015, the OJK issued four regulations which relate to venture capital business:

- OJK regulation No. 35/POJK.05/2015, concerning Arrangement of Venture Capital Company Business
- OJK regulation No. 34/POJK.05/2015, concerning Licensing and Organization of Venture Capital Companies
- OJK regulation No. 36/POJK.05/2015, concerning Good Corporate Governance for Venture Capital Companies
- OJK regulation No. 37/POJK.05/2015, concerning Direct Inspection of Venture Capital Companies, which was later replaced with OJK regulation No. 30/POJK.05/2020 on Second Amendment to Financial Services Authority Regulation No. 11/POJK.05/2014 concerning Direct Examination of Non-bank Financial Service Institutions.

These OJK regulations allow venture capital companies to invest in:

- Equity,
- Convertible bonds,
- Debt securities of start-up enterprises, and
- Financing of 'productive activities'.

The investments can be made as part of JV contracts with other venture capital companies and custodian banks.

The business activities of venture capital companies are defined as:

- The development of a new inventions
- The development companies or business people individuals in the early stages of their business experiencing financial difficulties
- The development of MSMEs and cooperatives
- Helping companies or business people individuals who are at a stage of development or decline of business
- Taking over the company or business people who are at a stage of development or decline of business
- Project development and engineering research
- Development of the use of technology and transfer new technologies from both inside Indonesia and overseas; and/or
- Helping the transfer of ownership of companies.

The regulations also allow venture capital companies to conduct:

- Fee based services, and
- "Other business activities", with the approval from the OJK.

The venture capital entities, and their investments can be structured as conventional or sharia. The minimum capital requirements are:

- Conventional limited liability company: IDR50 billion
- Conventional co-operative or limited partnership: IDR25 billion
- Sharia limited liability company: IDR20 billion
- Sharia co-operative or limited partnership: IDR10 billion. In addition, several other investment hurdles must meet:
    - Equity or convertible bond investments to be at least 15 percent of total investments within three years of the date of the business license
    - Investing assets (incl receivables from operating activities) to be at least 40 percent of total assets, within three years of the date of the business license
    - Equity to paid-up capital ratio to be at least 30 percent.

Any party wishing to engage in venture capital activities must apply for a venture capital license from the OJK.The maximum foreign shareholding is 85 percent of a limited liability venture capital company. Cooperatives and limited partnerships are restricted to Indonesian investment only.

Fintech lending

On 29 December 2016, the OJK released regulation No. 77/POJK.01/2016, concerning Information Technology-Based Lending Services (or peer-to-peer lending).

Key points include:

- minimum capital of IDR1 billion at registration and IDR2.5 billion at license request
- maximum foreign ownership of 85 percent
- legal lending limit: IDR2 billion
- borrowers must be Indonesian while lenders can be foreign-based or Indonesian
- risk management, governance and IT security frameworks need to be introduced (but no specific implementation guidance provided).

Payments

In 2019, BI published the Indonesian Payment System Blueprint 2025 to set a roadmap for the future growth of digital economy and finance sector in Indonesia. In December 2020, BI issued Regulation No 22/23/PBI/2020 ("Regulation No. 23/2020") on payment systems as the new framework for the payment industry in Indonesia. The Regulation No. 23/2020 introduces the new concept of the payment-system provider as follow:

1. Payment Service Providers ('PSP'), which are banks and non-bank institution that facilitating payment transactions.
2. Payment System Infrastructure Providers ('PSIP'), which provides infrastructure for fund transfer; and
3. Parties who support PSP and PSIP to organize payment system services ("Supporting Providers").

Notable provisions of Regulation No. 23/2020 include:

1) There are three categories of licenses for PSP, ranging from Category 1 which can conduct full activities to Category 3 which can only provide remittance services and other services as determined by BI. The validity period for each license category to be determined by BI based on the license category, activities being organized, and sources of funds being processed.

2) For non-bank institution, additional requirements in applying PSP license such as at least one director must domicile within Indonesia, minimum 15% of shares should be owned by Indonesia citizen/companies and Indonesia citizens/companies must have at least 51% of voting rights.

3) For non-bank institution, additional requirements in applying PSIP license such as at least 80% of shares should be owned by Indonesia citizen/companies with at least 80% of voting rights.

In 2021, BI further issued the regulations to govern PSP and PSIP, i.e., Regulation No. 23/6/PBI/2021 on Payment System Service Providers and Regulation No. 23/6/PBI/2021 on Payment System Infrastructure Providers.

Mining

Updates on the Mining Law: Law No. 3/2020

In June 2020, GOI issued Law No.3/2020 regarding amendment to Law No. 4/2009 regarding mineral and coal mining. This Law No. 3/2020 can be seen as the GOI's effort to provide answers to the challenges in Indonesia's mining industry in, amongst others, mining business licensing, mining areas, processing and refining activities, and divestment obligation.

Law No. 3/2020 contains several important amendments to the 2009 Mining Law, and has more detailed provisions on the following aspects:

Change of authority in mineral and coal mining

- The control of mineral and coal by the state shall be implemented by the central government. The control shall be implemented through policy, regulation, administration, management, and supervision.
- The central government in managing the mineral and coal mining, is authorized to, among others:
  - Stipulate the national mineral and coal management plan, national mineral and coal policy, laws and regulations, national standards, guidelines, and criteria.
  - Determine the mining area after decided by the provincial government, determine mining business license area (*Wilayah Izin Usaha Pertambangan* or "WIUP") for metal minerals, coal, non-metal minerals, and WIUP for rocks.
  - Determine the special mining business license area (*Wilayah Ijin Usaha Pertambangan Khusus* or "WIUPK").
  - Issue business licensing, guide, and supervision of the mineral and coal mining business activities carried out by business license holders.
  - Stipulate production, supervision, utilization, and conservation policies, cooperation, partnership, and community empowerment policies.

New forms of licenses

Law No. 3/2020 mentions several new forms of license:

- Special mining business license as continuation of contract/agreement operations (*Izin Usaha Pertambangan Khusus sebagai Kelanjutan Operasi Kontrak/Perjanjian*);
- Mining business license for sales (*Izin Usaha Pertambangan untuk Penjualan*);
- Transport and sales license (*Izin Pengangkutan dan Penjualan*)
- Rock mining license letter (*Surat Izin Penambangan Batuan or "SIPB"*); and
- Assignment license (*Izin Penugasan*).

Law No. 3/2020 no longer mentions the following licenses which were previously regulated under the 2009 Mining Law and its implementing regulations:

- Special production operation mining business license for processing and/or refining (*Izin Usaha Pertambangan Operasi Produksi Khusus Untuk Pengolahan dan/atau Pemurnian*) and
- Special production operation mining business license for transport and/or sales (*Izin Usaha Pertambangan Operasi Produksi Khusus Untuk Pengangkutan dan/atau Penjualan*).

Minimum area for exploration mining activities

Law No. 3/2020 does not stipulate any minimum area for exploration activities for metallic minerals exploration or non-metallic minerals exploration. Previously the 2009 Mining Law stipulated a minimum of 5,000 (five thousand) hectares for exploration areas under metallic mineral mining business license areas and a minimum of 500 (five hundred) hectares under non-metallic minerals mining business license areas.

Continuation operation to contract of work and coal contract of work

Law 3/2020 includes provisions giving certainty on continuation of contract of work ("COW") and coal contract of work ("CCOW"). Under this new law, COW and CCOW holders are guaranteed an extension in the form of a special mining business license as continuation of contract/ agreement operations.

Transfers of mining licenses

The transfer of an mining business license (*Ijin Usaha Pertambangan* or "IUP") and/or special mining business license (*Ijin Usaha Pertambangan Khusus* or "IUPK") is allowed with an approval from the MEMR only applies to companies in which 51 percent or more shares are not owned by the holder of IUP/IUPK. The approval will be given if IUP or IUPK holders satisfy certain requirements:

a. the holders have completed the exploration as evidenced by the availability of resources and reserve data, and

b. the holders satisfy administrative, technical and financial requirements.

Updates on the Mining Law: Law No. 11/2020 (Omnibus Law)

Omnibus Law introduced new provision related to royalty. The law states that business owners who carry out the increasing of added-value of mineral and/or coal resources may be granted with 0 percent royalty tariff. Further details on this new incentive are still to be addressed by the GR.

Other key changes regulated under the Omnibus Law including:

- Introduction of a new structure of business licenses, which is now integrated into a single business license called *Perizinan Berusaha*.
- Integration of business licenses for mining activities. There is now an NIB, consisting of a business identification number, standard certificates and a specific license issued by the central government.
- Relaxation of the forestry permit requirements for mining activities carried out within forest areas by amending Law Number 41 of 1999 on Forestry.
- Imposition of value-added tax ("VAT") on domestic sal. es of coal commodity. Coal mining companies will be required to register for VAT and will need to charge 10 percent VAT on their domestic sales.

The New Mining Law also provides guarantees for the extension of mining operation periods. The effect of such extensions in the New Mining Law effectively guarantees the continued operations of some of the largest coal miners in Indonesia, where some mining contracts were due to expire between 2020 and 2025.

Moreover, the law also introduced the imposition of criminal sanctions, whereby any person who prevents or disrupts any mining business activities of the holder of community mining license (*Izin Pertambangan Rakyat*) and rock mining license (*Surat Izin Penambang Batuan*) may be imposed with maximum imprisonment of one year and a maximum fine of IDR100 million.

Other industries

Forest concessions are issued to Indonesian companies for specified activities, such as industrial estate forestry, natural wood forestry and rattan wood forestry. A number of forestry activities are restricted to domestically owned businesses.

Other industries where foreign investment regulation is to varying degrees under the control of ministries through ministerial regulations, decrees or other authorities include shipping, construction, seaports, telecommunications, healthcare and pharmaceutical and plantations.

The Law No. 39 of 2014 or commonly known as "Law on Plantations" was introduced effective October 2014, replacing the existing 2004 framework which was considered to be outdated.

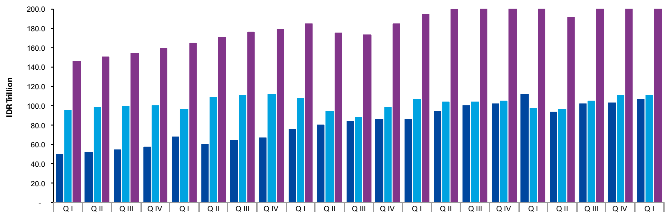
As indicated, navigating the Foreign Investment Law, Negative List and other regulations, Ministerial decrees or specific industry laws that also can regulate foreign investment is fraught with danger without professional advice and support.

A good example of this is the shipping industry where some or all of the following (depending on the sector) may need to be considered:

- Law No.17/2008 regarding Shipping (partially amended and discussed under the Omnibus Law)
- GR No. 22/2011 concerning Amendment of GR No. 20/2010 concerning Water Transport
- GR No. 9/1999 concerning Commodities Future Trading and Decree No. 33/2001 concerning Implementation and Utilization of Sea Transport
- Presidential Decree No. 61/1988 concerning Financial Institutions
- Presidential Instruction No. 5/2005 on National Sailing Industry Empowerment and Ministry of Transportation Regulation
- Regulation No.71/2005 which applies the principle of cabotage

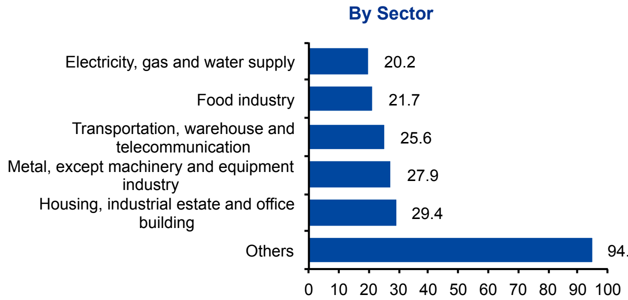
- Regulation of Minister of Transportation No. 93 of 2013 on Operation and Business of Sea Transport which sets out restrictions on the type of vessels which a 49 percent:51 percent JV company is required to own in order to satisfy licensing requirements.

Total realized FDI: 2016-2021



	2016 Q I	2016 Q II	2016 Q III	2016 Q IV	2017 Q I	2017 Q II	2017 Q III	2017 Q IV	2018 Q I	2018 Q II	2018 Q III	2018 Q IV	2019 Q I	2019 Q II	2019 Q III	2019 Q IV	2020 Q I	2020 Q II	2020 Q III	2020 Q IV	2021 Q I
DDI	50.4	52.2	55.6	58.1	68.8	61.0	64.9	67.6	76.4	80.6	84.7	86.9	87.2	95.6	100.7	103.0	112.7	94.3	102.9	103.6	108.0
FDI	96.1	99.4	99.7	101.3	97.0	109.9	111.7	112.0	108.9	95.7	89.1	99.0	107.9	104.9	105.0	105.3	98.0	97.6	106.1	111.1	111.7
Total	146.5	151.6	155.3	159.4	165.8	170.9	176.6	179.6	185.3	176.3	173.8	185.9	195.1	200.5	205.7	208.3	210.7	191.9	209.0	214.7	219.7

Investment on Upstream Oil and Gas, Banking, Non-Bank Financial Institution, Insurance, and Micro Business are excluded. Recent government policy announcements to improve the human could shortage through investment in vocational training programs to counter deficiencies in the education system, promote infrastructure development and indicate corruption appear aligned.



DDI				FDI			
NO.	SECTOR	INVESTMENT (IDR Billion)	PROJECT	NO.	SECTOR	INVESTMENT (USD Million)	PROJECT
1	Housing, industrial estate and office building	21,609.8	1,538	1	Metal, except machinery and equipment industry	1,712.0	441
2	Transportation, warehouse and telecommunication	13,299.2	1,648	2	Food industry	968.3	886
3	Electricity, gas and water supply	11,470.5	551	3	Transportation, warehouse and telecommunication	843.4	336
4	Food crops, plantations and livestock	9,889.9	1,363	4	Electricity, gas and water supply	597.8	220
5	Construction	9,562.8	3,083	5	Vehicle and other transportation industry	597.1	505
6	Food industry	7,614.5	1,948	6	Housing, industrial estate and office building	535.8	497
7	Hotel and restaurant	5,733.6	2,767	7	Mining	508.8	274
8	Trade and reparation	4,887.8	16,744	8	Chemical and pharmaceutical industry	493.8	578
9	Mining	4,578.2	648	9	Food crops, plantations and livestock	276.6	457
10	Non-metalic mineral industry	4,216.5	314	10	Other services	236.5	1,909
11	Other services	3,689.5	4,627	11	Machinery, electronic, medical instrument, precision, optical and watch industry	225.6	539
12	Paper and printing industry	3,101.6	369	12	Paper and printing industry	123.5	183
13	Metal, except machinery and equipment industry	2,863.2	448	13	Textile industry	98.0	429
14	Chemical and pharmaceutical industry	2,238.3	727	14	Non-metalic mineral industry	84.9	124
15	Rubber, rubber and plastic based goods industry	1,226.8	555	15	Trade and reparation	77.1	2,761
16	Textile industry	813.3	387	16	Hotel and restaurant	75.9	1,440
17	Vehicle and other transportation industry	472.0	190	17	Leather goods and footwear industry	74.9	149
18	Other industries	204.5	439	18	Rubber, rubber and plastic based goods industry	59.1	438
19	Fishery	191.4	170	19	Other industries	25.0	393
20	Forestry	133.5	104	20	Forestry	16.9	44
21	Leather goods and footwear industry	115.0	125	21	Wood industry	11.2	196
22	Wood industry	56.5	304	22	Construction	5.3	156
23	Machinery, electronic, medical instrument, precision, optical and watch industry	49.0	285	23	Fishery	5.2	55
	TOTAL	108,017.3	39,334		TOTAL	7,652.8	13,010

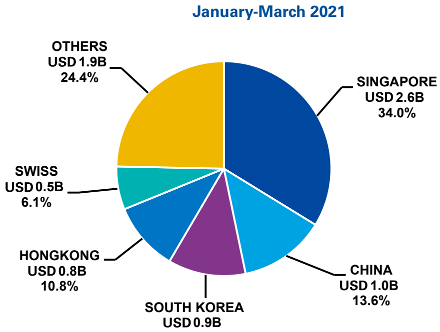
Source: BKPM website, Investment Realization in Quarter 1 2021: Based on Sector

According to BKPM, there was a slowdown in the DDI investment realization in the first quarter of 2021 when compared to the same period in 2020 by 4.2 percent, namely from the investment realization value of IDR112.7 trillion to IDR108 trillion. FDI investment realization in the first quarter of 2021 increased by 14 percent compared to the same period in 2020 from IDR98 trillion to IDR111.7 trillion. DDI realization based on top five leading locations were: West Java (IDR16 trillion); East Java (IDR10 trillion); Special Territory of Jakarta (IDR8.7 trillion); Central Java (IDR8.4 trillion); and Banten (IDR7 trillion). FDI realization based on top five leading locations were: West Java (USD1.4 billion); Special Territory of Jakarta (USD1 billion); Central Sulawesi (USD0.6 billion); Riau (USD0.6 billion); and Southeast Sulawesi (USD0.5 billion).

The investment realization based on Regions in the period of January – March 2021 can be figured as follows:

- In Sumatera equal to IDR52.4 trillion (23.8 percent), consists of IDR31.6 trillion of DDI and USD1.4 billion of FDI.
- In Java equal to IDR105.3 trillion (47.9 percent), consists of IDR50.8 trillion of DDI and USD3.7 billion of FDI.
- In Kalimantan equal to IDR13.6 trillion (6.2 percent), consists of IDR10 trillion of DDI and USD0.2 billion of FDI.
- In Sulawesi equal to IDR27.3 trillion (12.4 percent), consists of IDR8.8 trillion of DDI and USD1.3 billion of FDI.
- In Bali and Nusa Tenggara equal to IDR7.6 trillion (3.5 percent), consists of IDR5.2 trillion of DDI and USD0.2 billion of FDI.
- In Maluku and Papua equal to IDR13.5 trillion (6.2 percent), consists of IDR1.7 trillion of DDI and USD0.8 billion of FDI.

The investment climate in the upstream oil & gas industry has been adversely impacted for some time now by various country investment risks and a range fast moving regulatory and policy changes. This includes MEMR Decree No. 11/2017 on gap use for power plants, and the introduction of a replacement cost recovery scheme under MEMR Decree No. 8/2017. The government has also made it mandatory for all oil & gas companies to offer a 10 percent participating interest in upstream fields to local government. Investment in the upstream sector is large scale, long term and involves significant capital investments in a low global crude oil price environment.



Other countries outside the "Top 5" are USA, EU, Japan, Malaysia, Taiwan and then Australia. Reported capital inflows are distorted to the extent this is investment originating in other countries, or "round tripping" of Indonesian capital flows.

For many years, foreign investors from numerous countries, as well as Indonesian domestic investors, have also typically structured transactions through group holding companies or other entities in Singapore for tax structuring and other reasons, including its close geographical proximity to Indonesia. This distorts to some degree the top ranking of Singapore in the foreign investment stakes.

Current inflows from Japanese are now being directed into upstream industries like steel and chemicals (plastics): it is relevant that these are raw materials for the automotive sector. Japanese automotive investment remains strong. New domestic industry sectors being targeted include food and beverage, logistics, information technology and retail sectors.

With domestic organic and acquisition growth opportunities in Japan having been shrinking for some time now, Japanese corporates continue to aggressively look for expansion opportunities abroad. The Japanese know emerging markets well and are well received in Southeast Asian countries like Indonesia, Thailand and Vietnam which the Japanese generally prefer to China.

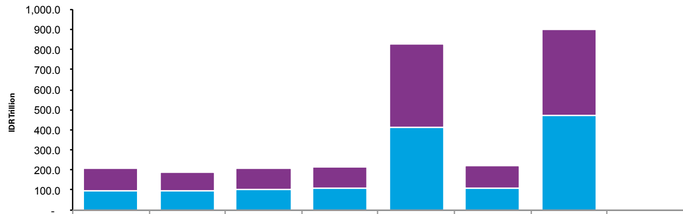
Regarding the realization of Chinese investment in Indonesia, as stated by BKPM, at the virtual press conference on investment realization for the 4th quarter of 2020, 25 January 2021, China ranks 2nd largest foreign investor in Indonesia with investment realization reaching USD4.8 billion in in 2020, an increase from the realization of investment of USD4.7 billion in 2019. This figure does not include the realization of Hong Kong investment which again ranks 3rd for the largest foreign investment in Indonesia in 2020 with a value of USD3.5 billion, an increase from the previous year of USD2.9 billion. This value is consistent with the realization of Chinese investment in Indonesia which has continued to increase every year since 2016. Several large Chinese investors have also stated their commitment to invest in new energy, which, if realized, will play an important role in Indonesia's contribution to the global electric car development industry.

BKPM has announced plans to establish a China Desk alongside established Japan and South Korea Desks. These are the three countries KPMG sees as most active in investing in Indonesia, notwithstanding investments may end up being structured through and reported as being from other countries.

Total investment composition

BKPM classifies investment into three categories: FDI, DDI and non-direct investment which includes foreign and local domestic expenditure on housing and commercial buildings, transportation, machinery and heavy equipment. Both FDI and DDI will comprise the following investment types:

- Merger & acquisition ("M&A")
- Greenfield
- Existing capacity expansions (which also require BKPM approval and licensing)



	Q I 2020	Q II 2020	Q III 2020	Q IV 2020	Jan-Dec 2020	Q I 2021	Target 2021*	Achievement**
DDI	112.7	94.3	102.9	103.6	413.5	108.0	430.2	25.1%
FDI	98.0	97.6	106.1	111.1	412.8	111.7	469.8	23.8%

**) The adjustment of investment realization target for 2021 based on the BKPM Regulation No. 2 of 2020 on the Strategic Plan of BKPM of 2020-2024 is 858.5T.*
***) Towards the 2021 investment realization target*

As indicated, important points for the achievement of investment realization in the first quarter are:

i. investment realization outside Java Island increased by 11.7 percent compared to 2020 in the same period,

ii. the manufacturing industry dominates the achievement of investment realization, namely metal, metal-based goods, non-machinery and equipment industry; food industry; and vehicle and other transportation industry,

iii. Switzerland entered rank 5th for the first time as the FDI contributor to Indonesia.

Compared to the last quarter of 2020, DDI experienced a breakthrough by 4.2 percent, from IDR103,6 trillion in the fourth quarter of 2020 to IDR108.8 trillion in the first quarter of 2021. Meanwhile, FDI increased by 14 percent from IDR98 trillion in the fourth quarter of 2020 to IDR111.7 trillion

"The foreign direct investment realization comprised 50.8 percent of the total investment realization if the first quarter of 2021 shows the world's confidence in the investment climate and potential in Indonesia. This achievement certainly needs to be appreciated, especially for the cooperation of all parties who have helped us in encouraging investment growth, especially when the Covid-19 pandemic is still being felt today."

in the first quarter of 2021. FDI realization hold 50.8 percent of the realization in the first quarter of 2021.

Foreign investors have a number of options in terms of market entry:

- Share acquisition (buy-out majority and minority) through M&A
- Asset acquisition deals or transfer through M&A
- Greenfield through establishment of a PMA company
- Partnership arrangements under distribution agreements. with an Indonesian distributor or importer.

Analysis and discussion of the benefits, risks, challenges, opportunities and pitfalls surrounding each of the above is outside the scope of this publication. The steps involved in establishment of a PMA company, a representative office and other fewer common options are addressed as part of Business Structures and Establishment in Chapter 6.

Political instability and economic uncertainty together with some other country risks that prevailed post-Asian economic crisis and, in the years, leading up to the 2008 global financial crisis "("GFC") largely disappeared, with the major remaining ones being:

- Regulatory risk around foreign investment and other laws; underpinned by
- Legal uncertainty from unclear, conflicting laws and regulations and delayed law changes. This also applies to the tax regime; and
- A judicial system still in need of significant reform. Enforcing rights under contracts and agreements in the Indonesian courts is not a preferred route for foreign or Indonesian investors (refer to Chapter 2 and "The type of legal system").

In addition, a lack of adequate infrastructure, crucial to sustained long-term economic growth, including basic road, as the platform for other primary and secondary infrastructure, continues to hamper development across the country, as well as adversely impacting cost structures and the international competitiveness of Indonesian companies. Investment in education and healthcare is also crucial to maintain sustained levels of economic growth.

A new key country investment risk that emerged post GFC, when the Indonesian economic growth story really took flight, is a human capital shortage which is restricting Indonesian companies from reaching their potential, and is now a potentially key constraint to economic growth. This is a function of deficiencies in the formal and tertiary education sectors which would benefit from investment by foreign higher education strategic corporates and private equity houses. Also, continuing rapid population growth, a reducing rate of poverty reduction and increase in the number of Indonesians living below the poverty line, are restraining economic growth by stagnating domestic consumption in the lower income class.

Foreign currency risk has resurfaced as a potential country investment risk when in 2013 the IDR encountered some volatility before progressively depreciating through 2014, adversely impacting the operating performance of foreign exchange risk exposed Indonesian companies.

Corruption is still endemic in government and some other circles, but not uncommonly viewed by many foreign investors as being manageable, particularly those which have had a presence in Indonesia or Asia for a long time.

A potential exception exists if an investor needs to formally comply with Foreign Corrupt Practices Act ("FCPA") or UK Anti-bribery Act ("UKBA") due diligence (but even then adverse findings can have remedial options). What are considered common practices forming part of day-to-day business in Indonesia in order to "get things done" might not pass corporate governance standards in developed western markets. Efforts by recent governments to tackle corruption have generally been commended. It is slightly ironic that a myriad of local Indonesian anti-bribery and corruption laws, regulations and decrees administered by various different regulatory authorities are actually more onerous than the corresponding FCPA and UKBA.

Uncompetitive labor laws create challenges for employers, particularly those operating in highly labor-intensive industries. The revised Omnibus Law on Job Creation and Law No.13/2003 on Labor imposes onerous obligations on employers in the areas of the ability to involuntary terminate and severance benefits: refer to Chapter 9.

Common complaints from foreign investors and demands for reform largely relate to day-to-day problems present "in the field"; a condition acknowledged by BKPM:

- complicated and unclear tax policies and procedures
- diffluent handling mechanisms for imported goods and prolonged difficulties around customs clearance
- complicated (six months) work permit procedures
- unpredictability of rules and regulations.

Practical insights and observations

Indonesia has an abundance of foreign capital lining up for investment, but a relative lack of readily identifiable targets and deals to invest in. For a combination of reasons, deal origination, execution and completion present significant challenges right across the transaction cycle for foreign and local investors alike. Sustained investment interest and transaction activity are accompanied by high deal execution risks which translate into volatile country FDI inflows. It is common for transaction and due diligence timetables to experience slippage, and the rate of deals "falling over" or aborting is high. Reasons include overcooked pricing or pricing mismatch, transactions structuring complications and other "deal breakers" or deficiencies found in due diligence.

Despite all the challenges and frustrations, for foreign investors that "get it right" by finding the right local Indonesian partner, and the right "best fit" target at the right price, a not uncommon story is that a multinational's

Indonesian investment can be its most profitable and favorite in Southeast Asia.

Many global and local private equity firms, foreign strategic corporates and international trading houses from diverse countries (with Japan and Korea featured prominently) have prioritized Indonesia as one of their "Top 3" preferred FDI destinations in Southeast Asia, if not the destination of choice. A number of governments have also openly signaled that Indonesia is their country's preferred investment destination.

Post GFC, the large international private equity houses generally started to shift attention away from China and India finding those countries' investment landscapes too difficult, crowded or overpriced, with better opportunities and less competition for foreign capital in Southeast Asia. Local private equity houses have been active to varying degrees for many years.

Previous "willingness to sell" barriers may finally be starting to alleviate within these often large diversified groups. A "prodigal son" or daughter returning from overseas studies and/or business experience is usually more approachable and commercial than his or her father, also bringing home a recognition that partnering with the right foreign investor can deliver scale, expertise, a new customer platform or other values to a business operating in a competitive Indonesian domestic environment to preserve is longevity.

Asian companies have demonstrated greater motivation to identify transaction opportunities, driven by a need to acquire global scale, expertise and technology. Indonesian cooperates are no exceptions, opening up noticeably more visible opportunities for the right foreign investors.

To conclude, there are risks and challenges in investing and doing business in this emerging, high growth market, and Indonesia continues to be a difficult country in which to do business, relative to western or more developed Asian markets. A successfully planned and executed investment; however, can be very rewarding. Foreign investors, of course, take a country's investment risk profile into their overall investment models and decision-making policies. Indonesia is no different. To successfully invest in Indonesia and reap the benefits from a large, rapidly expanding population and all the upside of a quite remarkable economic growth story, having a degree of risk appetite is fundamental.

Sources:

(1) BKPM website: www.bkpm.go.id

(2) Embassy of the Republic of Indonesia Beijing, People's Republic of China, "Indonesia's Exports to China and Chinese Investment to Indonesia in 2020 are Increasing", 28 February 2021

(3) Indonesia Investment Coordinating Board (BKPM) Press Release, "Domestic and Foreign Direct Investment Realization", 26 April 2021

(4) Indonesia Investment Coordinating Board (BKPM) Press Release, "First Quarter 2021 Investment Realization: IDR 219.7 trillion, Chairman of BKPM Optimistic to Reach Investment Target", 26 April 2021

(5) Indonesia Investment Coordinating Board (BKPM) Press Release, "Report on Investment Realization in Indonesia throughout 2020", 25 January 2021

(6) Bank Indonesia. Indonesia Presentation Book April 2021.

(7) Financial Services Authority (OJK) Press Release, "OJK Keluarkan Paket Kebijakan Lanjutan Stimulus COVID-19 (SP 37/DHMS/OJK/V/2020)"

6 Business Structures and Establishment

The Company Law

The Company Law issued in 1995 stipulates the legal framework for companies. Previously, business was regulated by the provisions of the Indonesian Commercial Code and Indonesian Civil Code. These were drafted in the last century based on Dutch Colonial Law. In August 2007, the 1995 Company Law was further amended by Law No.40/2007 concerning Limited Liability Company ("the Company Law").

Legal entities for doing business

There are a number of legal forms of entities that can engage in business in Indonesia:

- Sole proprietor: proprietor has unlimited liability
- General partnership (FA or *Firma*): partners have joint and several unlimited liability
- Limited partnership (CV): silent partners are liable to the extent of their capital contribution, while managing partners have unlimited liability
- State-owned corporation (BUMN or SOE): company owned by the government and reliant upon the state to fund any deficit
- Branch of a foreign corporation: foreign companies cannot, in most cases, establish operations in Indonesia through a locally-registered branch; banking and upstream oil & gas being the only exceptions
- Limited liability companies (PT): shareholders have limited liability.

As indicated, a PT company formed with a foreign shareholder in accordance with the requirements of the Investment Law and BKPM rules and regulations is referred to as a PMA company, and PTs with domestic investment status are known as domestic investment companies or "PMDN". A "PT *Biasa*" is the term given to a local Indonesian private company administered by the MOT which is unlikely to be directly relevant to foreign investment. A customs master list regulated by BKPM provides import duty relief and incentives on import of machinery and equipment for initial and capacity expansion investments made by PMA and PMDN companies.

For foreign investors, a PMA company is the only form permitted under the Investment Law. However, foreigners may have a presence other than through a direct investment, and this is discussed later in this chapter.

Deed of establishment, authorized and paid-up capital

The deed of establishment requires the approval of the MOLHR, which will ensure that the terms do not contradict the Company Law, or other laws, regulations and policies. The MOLHR has issued standard forms of establishment deeds to simplify approval requirements.

There are requirements that at least 25 percent of the authorized capital must be subscribed at the time of establishment, and all issued shares must be fully paid-up before the business license is obtained. The Company Law stipulates minimum authorized share capital to be IDR50 million, of which at least 25 percent must be issued and fully paid-up.

With the issuance of Omnibus Law, the requirement of minimum authorized share capital of IDR50 million has been removed. The Omnibus Law stipulates that the amount of authorized capital of a PT company shall be based on the agreement of the company's founders. This requirement shall be further implemented by a GR.

The deed of establishment can be drafted by a lawyer or a notary, and a notary public will attend to the requisite approvals and registrations.

The provisions relating to the PT are contained in the articles of association ("AoA") formed by the notarial deed of establishment. The AoA contained in the deed address, among other things:

- Rights and duties of shareholders
- Rights and duties of commissioners and directors
- Name of the company, its purpose, duration, domicile
- Authorized capital and the division into shares
- Number of shares taken by founders
- Dividends.

Investment value

Based on the prevailing investment regulation (BKPM regulation No 1/2020), PMA is required to meet the following capital and investment-value requirements:

- The total investment value should exceed IDR10 billion, excluding land and buildings, per the Indonesian standard industrial classifications ("KBLI") business sector per relevant project location;
- The amount of issued capital must be equivalent to the relevant paid-up capital and should amount to at least IDR2.5 billion; and
- Share ownership percentages should be calculated based on the nominal value of shares.

Shareholders, directors and employees

A PT company must have two shareholders upon establishment, even for a PMA initially permitted 100 percent foreign ownership.

However, this requirement has been updated under the Omnibus Law. The Omnibus Law adds new types of PT company that are exempted from the minimum of two shareholders requirement. The exemption is applicable to regional-owned enterprises, village-owned enterprises, and companies that meet criteria of micro-small enterprises. As such, it is now allowable for an individual to form a single-shareholder legal entity in the form of a PT company if the business is classified as a micro and small enterprise. Once the PT company no longer meets the criteria for a micro-small-scale business, it must reclassified as an ordinary type of PT company under the applicable regulations.

Article 33 of the Investment Law expressly prohibits or deems unenforceable nominee arrangements in making investments in limited liability companies. Any agreement and/or statement providing for share ownership in a limited liability company to be for and on behalf of another party is null and void. In practical terms, in the event relationships breakdown between a real foreign owner and a local Indonesian nominee shareholder, the foreign investor effectively "has nothing" in terms of legally enforceable rights. Such nominee arrangements are not uncommon in Indonesia.

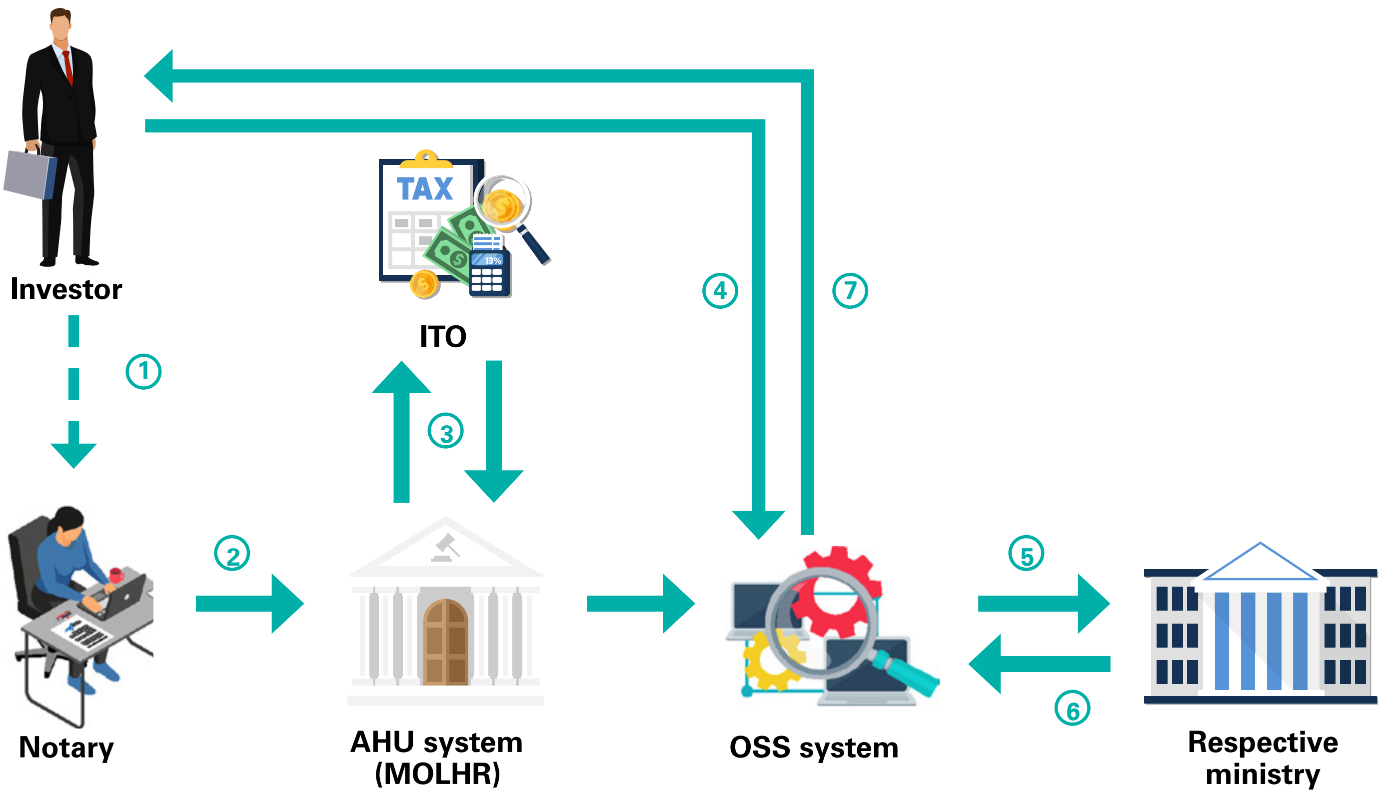
Companies may have one or more directors, one of which must be the president director. The board of directors ("BOD") oversees the day-to-day operations. The directors are usually full-time employees of the company or a related party or group company. Under the Company Law, a company is also required to have a board of commissioners ("BOC"). These are non-executives who oversee the activities of the directors. They supervise the corporate governance aspects of the company and the policies of the BOD. Under certain circumstances, they may perform some executive functions on a temporary basis if all the members of the BOD have been dismissed or there are no members of the BOD available for whatever reason.

Minimum requirements are one BOD and one BOC member, and these cannot be the same person. Both the director and commissioner can be foreign or Indonesian nationals, but there are specific industry requirements about the composition of foreign and Indonesia nationals in BOD and BOC.

Establishment and application procedures for incorporation of a PMA

Once the nature of the project and size of investment have been established, registration must be made with BKPM. Historically the registration needed to be filed with BKPM, MOLHR, Indonesian Tax Office ("ITO") and relevant ministries/ government agencies that regulate specific industries which prolonged the time needed for establishment (typically between 3 to 4 months). Since August 2019, business and investment application procedures have been simplified with BKPM as the main contact for potential investors and a system known as OSS has been used to manage the entire business application tracking and approval process.

In order to utilize the OSS system, a potential investor needs to obtain access rights by submitting applications via the OSS system, which is responsible for the administration of business licensing registrations. The workflow of business application process using the OSS system is illustrated below:



Step	Process
1	Notarial deed of establishment by notary, notary needs to conduct an interview before the establishment of AoA.
2	Notary handles the registration process to MOLHR using administration of general laws ("AHU") system and obtain the MOLHR approval for the legal entity establishment.
3	AHU system connects with ITO to generate the auto approved taxpayer identification number (*Nomor Pokok Wajib Pajak* or "NPWP") and transfers all relevant data (AoA, MOLHR approval and NPWP) to OSS system.
4	Investor registers to OSS system to activate the account and get access right and provide additional information to get a NIB.
5	OSS forwards NIB issued to various ministries/government institutions to process the operational and/or commercial licenses (*izin usaha and/or izin operasional*).
6	Operational and/or commercial licenses are issued by the respective ministries/government institutions.
7	OSS notifies investor on the status of application and whether operational and/or commercial licenses are granted by the related ministries/government institutions.

Risk-based business licensing

The Omnibus Law has introduced the new business licensing approach, known as the risk-based approach, with the objective to further simplify Indonesia's business licensing requirements.

Under the risk-based approach, the number of licenses and permits required for each business will be based on the business risk level that will be determined by the scale of the hazards that a business has the potential to create and the risks posed by the business activities.

By taking health, safety, environment, and resources aspects into account, the Omnibus Law differentiates business risks into three categories:

a. Low risk business activities

   Business activities will only be required to obtain a NIB. NIB serves as proof of registration to carry out business activities.

b. Medium/intermediate risk business activities

   This category consists of lower-medium risk business activities and upper-medium risk business activities. Companies that fall in the lower-medium risk category will be required to provide NIB & a statement letter of fulfillment of business standards. While companies under the upper-medium risk category will be required to provide NIB & obtain a business standards certificate from the central or regional government.

c. High risk business activities

   Business activities that are classified as high-risk business activities are required to obtain NIB and a license in the form of an approval/permit issued by the central or regional government for the business actors to perform their business activities. The license/permit must be obtained prior to conducting the business activities.

Refer to Appendix 2 for the implementing regulation of risk-based business licensing and the supervision of business activities.

Licenses and permits

The OSS system is integrated with various systems hosted in the relevant ministries/government institutions.The licenses and permits that have been consolidated in OSS system include:

1) NIB, which is the first license for new business before securing business, commercial and operational licenses from the relevant ministries/government institutions that regulate specific industries. The NIB is also functioned as:
   - Company registration certificate ("TDP");
   - Import identification number ("API");
   - Customs access rights;
   - Initial report in relation to mandatory employment reporting; and
   - Proof of participation in the social security for health ("*BPJS Kesehatan*") and manpower ("*BPJS Ketenagakerjaan*") programs.
2) Business and commercial/operational licenses for specific regulated industries. Basically, there are four types of business and commercial/operational licenses:
   a) License without commitment fulfilment (Type 1), business license become effective immediately upon the issuance via OSS system.
   b) License with technical requirements (Type 2).
   c) License with fee requirements (Type 3).
   d) License with technical and fee requirements (Type 4).

Other than Type 1 license, the business license issued via OSS system will become effective upon the fulfillment of relevant commitments and be validated by relevant ministries/government institutions that regulate specific industries. The tracking of application status is available in OSS system (Refer to step 6 of the workflow of business application process.)

To apply for these business licenses, OSS system will indicate whether:

- a technical evaluation is required to assess the fulfillment of commitment. The related ministries/government institutions are required to conduct the technical evaluation within five business days upon the receipt of the complete and accurate application. Otherwise, the business application will be deemed as approved.

- a field/laboratory examination is required to assess the fulfillment of commitment. If the commitment is fulfilled, then the related ministries/government institutions need to conduct field/laboratory examination within 15 business days upon the receipt of the complete and accurate application. Otherwise, the business application will be deemed as approved.

Approval notification will be delivered through OSS system and/or via the relevant ministries/government institutions' systems integrated into the OSS system.

Simplification of business licensing requirements

Omnibus Law eliminates the need for business to obtain a location permit. Business will only need to ensure that their business location conforms to the relevant RDTR. If the location conforms to the RDTR, business will only need to input the business location coordinates to the OSS system. The Omnibus Law also amends the procedures for building construction approvals, environmental approvals, and function feasibility certificate (*sertifikat laik fungsi*).

On-going accounting and reporting requirements

There is a public register of PT companies maintained by the MOT, and there are annual corporate filing obligations. Companies are required to keep accounting records and prepare annual financial reports in accordance with the Indonesian Financial Accounting Standards ("SAK") which are adopted from the International Financial Reporting Standards ("IFRS"). It is relevant; however, that no private company search function exists in Indonesia and, as corporate filing obligations are not strictly enforced, the level of compliance by private companies can be low.

For certain entities under OJK supervision, there are additional regulatory reporting requirements and requirements to publish annual report (that includes the audited financial statements) in company's website.

The BOD is required to present annual report after it has been examined by the BOC at a general meeting of shareholders ("GMS") within six months of the company's financial year-end. Generally, financial year-ends are the same as the calendar year; however, companies that are not under OJK supervision can have a different financial year. The establishment deed may impose other obligations.

The Company Law requires annual and extraordinary GMSs in accordance with the AoA. Unless stated to the contrary in the establishment deed, shareholders will hold one vote for each share, and a simple majority is all that is needed for voting purposes. The Company Law prohibits the directors from voting on behalf of shareholders. Directors acting as proxies of the shareholders will have no voting rights.

Tax regulations require the books to be maintained in Indonesian language and IDR currency. However, in certain cases companies may seek permission from the MOF to maintain records in other languages and USD currency.

A PMA company is required to have a physical office address. The Indonesian authorities do not recognize virtual offices.

Financial statements, statutory filing and audit obligations

Companies over a certain size and foreign-owned companies are required to prepare annual statutory financial statements in accordance with SAK.

The Company Law, as well as regulations issued by the MOT, set out requirements for the filing of annual financial statements.

Under Article 68 of the Company Law, financial statements of a private company with assets and/or turnover exceeding IDR50 billion are required to be audited. Under the Company Law, the appointment of external auditor needs to be ratified at an annual general meeting of shareholders.

MOT Regulation No. 25/2020 regarding Submission of Annual Financial Statements requires every company which are:

- Publicly listed entities
- Companies involved in accumulating funds from the public (such as banks and insurance companies)
- Companies issuing debt instruments
- Companies with assets of IDR25 billion or more
- Bank debtors whose financial statements are required by the bank to be audited
- Foreign company domiciled and conducting their business in Indonesia, including branch offices, auxiliary offices, subsidiaries as well as agents and representatives of those companies having the authority to enter into an agreement
- State-owned enterprise.

to submit annual audited financial statement to the MOT within six months of an entity's financial year-end. Annual audited financial statements are to be filed online through the licensing information system ("SIPT"), which has been integrated to the OSS system. The Directorate General of Domestic Trade will issue an annual financial statements submission receipt within five days after the submission. Previously, the company had to submit their annual financial statements physically to the Directorate of Business Development and Company Registration at the MOT.

Furthermore, MOT Regulation No. 25/2020 also acknowledges annual financial statements submission required by other government institutions. Therefore, if the company has submitted its annual financial statements to: (i) regulators, (ii) authorities regulating submission of financial reports, (iii) Minister of State-Owned Enterprises, and/or (iv) MOF, the company will be deemed to have submitted its annual audited financial statements.

Loss of limited liability

The Company Law stipulates that a company must have at least two shareholders to retain its limited liability status. If a company is left with only one shareholder and this situation persists for six months or more, then that shareholder will be liable for the company's liabilities and losses, and the company may be dissolved.

Options open to foreigners other than incorporating a PMA company

Background

In Chapter 5, the opportunities for non-Indonesians to seek approval for investment in sectors open to foreigners was discussed. Foreigners can also have a business presence in Indonesia through entities other than PMA companies. These options are set out below.

Representative office

Trade promotion can be encouraged through the establishment of a representative office. The representative, who may be an expatriate or an Indonesian national, is not usually permitted to carry out any direct business activities, such as accepting orders, bidding for tenders, importing, exporting, signing contracts or distributing. The activities of a representative office are restricted to the issue and collection of information, and the provision of assistance to local agents and distributors as well as marketing and promotional activities.

An exception applies to representative offices of foreign companies engaged in construction services. Foreign companies have been allowed for some time to provide construction services in Indonesia in a joint operation ("JO") with a local construction company.

In a recent development, Minister of Public Works and Housing Circular Letter No. 22/SE/M/2019 concerning Guidelines for the Licensing of Foreign Construction Services Business Entities articulates general procedures and provisions for the application, extension or revocation of construction business licenses for foreign investment construction companies and foreign construction company representative office.

The circular letter stipulates that the issuance and extension of construction business licenses shall be done through the OSS system. An effective construction business license lasts for three years if the foreign construction business has been established as a representative office in cooperation with an Indonesian construction company, or indefinitely if the foreign business has incorporated a legal entity in a joint JV with an Indonesian construction company, provided the JV undertakes at least one project every three years.

Representative office applications are generally made to BKPM. Some foreign investors initially enter the Indonesian market through a representative office, and later as business opportunities grow, apply for establishment of a PMA company in order to commence proper trading activities.

Care must be taken in establishing a representative office due to the possibility or risk that group company transactions otherwise not taxable in Indonesia may become assessable due to the existence of a PE for tax purposes. This is discussed further in Chapter 10 on Taxation.

Branch

The oil & gas sector and foreign bank branches are addressed in Chapter 5. No foreign bank branch licenses have been issued since 2003.

Agent or distributor

A foreign company that wishes to sell its products in Indonesia will usually appoint one or more Indonesian agents or distributors. The agent or distributor may apply for a work permit for the employment of an expatriate, who is familiar with the foreign company's products.

Technical assistance or franchise agreement

A local company may sign a contract with a foreign party to supply technical assistance and management services or support. It would be normal for the local company to employ foreign experts, supplied in accordance with the agreements, and for fees to be charged based on an agreed mechanism or structure.

Government contracts

Where technology or expertise is not available domestically, the GOI can enter into contracts with foreign companies. A company would normally enter into a contract in conjunction with local contractors or may act as a subcontractor to a local contractor. The contract permits the company to establish a presence in Indonesia for the purpose of undertaking a project

Sources:
(1) KPMG Research and Intelligence
(2) Law No. 40/2007 concerning Limited Liability Company
(3) BKPM website: www.bkpm.go.id
(4) BKPM "Monitoring Investment Climate in Indonesia": Seminar 20 May 2015
(5) Minister of Public Works and Housing. Circular Letter no 22/SE/M/2019
(6) Ministry of Trade. Regulation no 25/2020


DOLLARS
RESERVE NOTE
THE
FILIPINO
IS
WORTH
DYING FOR
UNITED STATES
FEDERAL RESERVE SYSTEM
Secretary of the Treasury
PISO
ONG DOLLARS
拾元
中国人民

7 Foreign Exchange

Introduction

The IDR is freely convertible into foreign currency and Indonesia has no restrictions on foreign exchange ("forex") and the repatriation of funds. Though Indonesia does not restrict the transfer of foreign currency to or from foreign countries, incoming investment capital inflows require approval. Moreover, all foreign exchange transactions between an onshore entity and an offshore counterparty must be reported to BI. Foreign banks, JV banks and foreign banks, JV banks and 44 reserve banks are licensed to carry out foreign exchange transactions.

The Currency Law

The Indonesian Parliament passed Law No.7/2011 concerning Currency ("the Currency Law") in June 2011 requiring mandatory use of the IDR for all domestic transactions conducted in Indonesia. In the absence of an implementing regulation scheduled to have been issued in June 2012, most investors, banks and business owners had been relying on a MOF Guidance Note that limited the operation of the law to cash transactions.

On 31 March 2015, PBI 17/2015 was issued which expressly provides for parties to transact in IDR on a broad range of domestic Indonesian transactions and clarifies uncertainty in the Currency Law on international financing and other commercial transaction exemptions.

Key requirements include:

- application to non-cash (effective 1 July 2015) as well as cash transactions (at odds with the Guidance Note)
- pricing to be stated or "quoted" in IDR in addition to payments made.

Exemptions include:

- international trade transactions involving export and import of goods and trade transactions related to services conducted by way of cross border supplies (including goods, services and expert manpower)
- certain transactions related to state budget, income and grants from/to foreign countries
- foreign currency savings in banks
- international financing and trade transactions
- acceptance or provision of grants from or to overseas
- transactions in foreign exchange conducted pursuant to the Capital Investment Law and Fund Transfer Law
- strategic infrastructure projects
- certain ad hoc exemptions, upon BI approval.

Some of the above can be open to broad interpretation in practice.

The Currency Law had initially resulted in concerns of adverse consequence of conducting business. It is now clear how the law generally operates in practice, with domestic transactions needing to be conducted in IDR. A December 2017 study by BI in conjunction with Padjadjaran University showed that in the roughly two years since the introduction of PBI 17/2015:

- a decrease in the use of foreign currencies in domestic transactions between residents (one sample showing a 38 percent decrease)
- an increase in the amount of IDR in circulation, both M1 (cash and checking deposits) and M2 (M1+ saving and time deposits, money market accounts and mutual funds)
- an increase in kartal money, demand deposits and IDR savings
- an overall decrease in IDR volatility and contribution to economic stability.

Foreign exchange controls

Indonesia maintains an open capital account, but with some transaction limitations. Only authorized banks may carry out foreign trade-related exchange operations. BI requires the submission of evidence of underlying transactions to support the purchase of a foreign currency against the IDR through banks exceeding USD25,000 per month. Certain prohibitions and restrictions exist in conducting foreign exchange transactions with foreign counterparts. This is regulated under BI Regulation No 18/19/PBI/2016.

The limit on transaction amounts for commercial banks engaging in derivative transactions with foreign counterparts is USD1 million. This limit covers all types of transactions involving foreign exchange selling and purchasing against the IDR. However, these restrictions do not apply if the transactions are conducted for hedging purposes within the framework of an investment in Indonesia lasting for at least three months. Foreign or domestic currency lending to foreign counterparts requires the form of a syndicated loan engaging a prime bank (over a certain credit rating threshold) as lead bank for project financing in the real state sector. Violation levy is a fine of 10 percent of the transaction value.

In line with anti-money laundering laws (Law No. 8/2010 on Prevention and Eradication of Money Laundering), Indonesia tightened its restrictions on the amount of cash that may be carried across its borders. Carrying more than IDR100 million requires prior approval from BI and must be reported to the Director General of Customs and Excise ("DGCE"). A 10 percent fine up to IDR300 million may be applied for failure to report. Persons bringing in more than IDR100 million must declare the amount. Under a new BI Regulation No. 20/2/PBI/2018 on Amendment to BI Regulation No 19/7/PBI/2017 dated 5 May 2017 and effective from 8 March 2018, only banks and licensed money changers are allowed to bring in foreign currency bank notes equivalent to IDR1 billion.

Exporters in Indonesia must repatriate their export earnings from offshore banks to domestic banks within 90 days from the date of an export declaration form. Once repatriated to Indonesia, there are no restrictions on exporters from retransferring export earnings back to an offshore bank. BI also requires borrowers to conduct foreign currency borrowing through domestic banks registered with BI. This applies to borrowings in cash, non-revolving loan agreements and debt securities.

Impact of digital currencies

On 8 February 2019, Indonesia's commodity futures trading regulatory agency ("BAPPEBTI") issued Ministerial Regulation No. 5/2019 regarding Technical Provisions for the Implementation of the Physical Market for Crypto Assets on the Futures Exchange ("Reg. No. 5/2019"). Under this regulation, cryptocurrencies are regarded as trading commodities which may be legally traded on futures exchanges, provided that cryptocurrency traders in Indonesia comply with consumer protection, anti-money laundering ("AML") and counter terrorism financing ("CFT") risk assessment requirements, and keep the transaction data of cryptocurrencies traded on their platforms for at least five years and have a local server in Indonesia.

Physical traders of crypto assets who have carried out crypto asset trading business prior to Reg. No. 5/2019 coming into force and prospective physical traders of crypto assets are required to register with BAPPEBTI and have at least IDR100 billion in paid-up capital, of which IDR80 billion must be maintained in bank accounts.

According to the BAPPEPTI Ministrial Regulation No. 9/2019 regarding Amendments to No. 5/2019 concerning Technical Provisions for the Implementation of the Physical Market for Crypto Assets (Crypto Asset) in the Futures Exchange, to get approval to facilitate crypto asset transactions between customers, a physical trader of crypto assets is required to have at least IDR50 billion in paid-up capital, of which at least IDR40 billion must be maintained in bank accounts. Crypto asset exchanges and crypto asset custodians are obligated to report the list of parties included as controllers and beneficial owners to the Head of BAPPEBTI.

Related to crypto asset physical trader, BAPPEBTI Ministrial Regulation No. 9/2019 required crypto asset physical trader to have at least one person which passes BAPPEBTI fit and proper test. The personnel can either be a director, commissioner, shareholder, or even beneficial owner. It is also required for a physical trader to maintain 2:1 debt to equity ratio. Furthermore, the physical trader is now only allowed to keep the maximum of 50 percent of their crypto assets in their own storage, the rest must be stored in wallet service provider which they have an agreement with.

The list of approved crypto assets is contained in BAPPEBTI Regulation No. 7 of 2020 regarding the Stipulation of the List of Crypto Assets that are Allowed to be Traded in the Crypto Asset Physical Market. According to the regulation, there are total of 229 crypto assets that can legally be traded in Indonesia.

Regardless of Reg. No. 5/2019, BI and the Indonesian government have since stressed that commodities are not an area subject to regulator by BI, and that crypto currencies remain banned as payment instruments or currency in Indonesia. This is the current position pursuant to a BI Statement dated 6 February 2014 and reaffirmed in a BI press release on 13 January 2018.

All payment system operators and financial technology operators in Indonesia, both bank and non-bank institutions, are prohibited from processing transactions using virtual currency under BI Regulation No. 18/40/PBI/2016 on Implementation of Payment Transaction Processing and BI Regulation No. 19/12/PBI/2017 on Provision of Financial Technology.

Repatriation of capital, profits and remittance of royalties and fees

While there are no current foreign exchange rules restricting the movement of funds to and from Indonesia, certain reporting requirements exist. The remitting company must submit a report of the transfer to BI, with the amount stated in IDR, along with an annual balance sheet and profit and loss statement.

The Investment Law grants the right to transfer abroad various types of funds by guaranteeing foreign investors the right to transfer (in original currency, at the exchange rate from the time of investment) all current after-tax profits, certain costs, depreciation of capital assets and (in the event of nationalization) compensation. In certain circumstances, convertibility is also guaranteed for capital repatriation. Proceeds from an investment's sale are remitted at the exchange rate at the time of transfer, unless the company's investment agreement specifies another rate. Reinvested profits receive the same treatment as initial capital.

Restrictions on trade-related payments

According to BI Regulation No.13/20/PBI/2011 regarding Income of Foreign Exchange Derived from Export and Withdrawal of Foreign Exchange of Foreign Debt, export payments and loan proceeds obtained from overseas have to be received in Indonesia through the Indonesian banking system. The regulation was meant to create a stable source of foreign exchange by forcing exporters to repatriate their earnings and ensuring that loan proceeds are actually remitted into the country.

The regulation requires the export proceeds to be received by a domestic bank no later than 90 days after the date of declaration of goods exported ("PEB"). Exporters who do not save their foreign exchange from export proceeds domestically. may be subject to a sanction in the form of fine of 0.5 percent of the nominal value of export which have not been received with the maximum fine of IDR100 million for one-month registration of export declaration. This is stated under BI regulation No.16/20/PBI/2014, which is the amendment of BI Regulation No.13/20/PBI/2011.

GR No. 1 of 2019 ("GR 1/2019"), which came into force on 10 January 2019 requires natural-resource companies in Indonesia to repatriate export earnings for recirculation into the domestic financial system. The main objective is to help the domestic foreign exchange market cope with highly volatile capital flows.

This is part of Indonesia's 16th Economic Stimulus Package: Investment, Tax Holiday & Export Earnings. Exporters are only required to repatriate export earnings for depositing into special accounts at domestic banks. They are not obliged to convert the export earnings into IDR and are free to use forex earnings on foreign borrowings, imports and other business activities in line with the Investment Law. Interest income on deposits enjoys lower taxes or no taxes at all.

GR 1/2019 is imposed on export companies operating in mining, forestry, plantations and fisheries sectors, which are net exporters and collectively account for more than 50 percent of total export earnings. Manufacturing exporters, often net importers, are exempted.

For import payments, amounts exceeding IDR100 million require completion of a form issued by BI. Indonesia blocks the import of several goods and requires special licenses for the import of others. Refer to Chapter 8 on Domestic and Foreign Trade.

Hedging regulations on offshore loans and reporting

An offshore foreign currency loan hedging requirements were introduced in late 2014 under Regulation No. 16/20/PBI/2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-bank Corporations ("Reg. No. 16/20"). The purpose of the regulation was to require Indonesian debtor companies that have offshore borrowings to meet three key criteria:
i) hedging ratio;
ii) liquidity ratio; and
iii) credit rating.

The regulation is understood to have been issued in response to significant increases in Indonesian corporate offshore, foreign currency denominated debt.

Shortly after, BI issued Regulation No. 16/21/PB/2014 ("Reg. No. 16/21") which revoked Reg. No.16/20, and also issued a Circular Letter No.116/24/DKEM/2014. Reg. No. 16/21 provides clarification around the three key requirements in Reg. No. 16/20, the underlying principles of which remain in place:

- Minimum hedging ratio: if foreign exchange obligations exceed foreign exchange assets, the hedge must cover 25 percent of the differential
- Minimum liquidity ratio of 70 percent calculated based on foreign exchange assets and liabilities with maturities less than three months
- Minimum credit rating of BB- (or equivalent). Credit ratings of related parties can be used under certain conditions.

  Exemptions exist for government and institutional infrastructure loans, refinancing with thresholds; institutional bilateral or multilateral guaranteed loans and trade credits.

The rules came into force on 1 January 2015, and starting from 1 January 2017, a company's foreign currency hedging instruments must be acquired from a local Indonesian bank, presumably to allow time for local banks to prepare their financial instrument systems and product offerings internally.

BI Regulation No. 16/22/PBI/2014 on Foreign Activities Reporting and the Application of the Prudential Principle in Managing Offshore Loans for Non-bank Companies Reporting ("Reg No. 16/22") has two reporting requirements:

- Foreign exchange activities report
- The prudential principle report.

Non-compliance can attract administrative sanctions including a BI warning letter.

Foreign currency assets include cash, giros, bank deposits, receivables, inventories, marketable securities and payables under forward, swap and option contracts, counted based on a company's quarterly balance sheet:

- Receivables must be due within six months, non-refundable and counted after provisions for "reduction in value".
- Inventories can only be included as foreign currency assets for companies which have, in the preceding calendar year, generated more than 50 percent of revenues from exports. The borrower is entitled to include 100 percent of its finished products, 50 percent of its work in progress, and 25 percent of its raw materials in underlying calculations. Equipment and tools are not allowed to be included.
- Payables under forward, swap and option contracts must meet BI qualifying criteria and be due within six months. In addition, only hedging transactions taken out prior to the relevant calendar quarter may be counted as foreign currency assets.
- Marketable securities must be truly liquid and counted at current trading price.

Foreign currency liabilities are broadly defined and include all foreign currency liabilities falling due within six months. There is a specific exception for facilities in the process of "rollover", "revolving" or "refinancing", provided there is adequate supporting documentation.

There is a minimum threshold which provides that net foreign currency liabilities (i.e. after deducting foreign currency assets) do not need to be hedged if this calculation or position is less than USD100,000.

Exception from hedging requirements

Exceptions from hedging (but not liquidity) requirements for non-bank companies which recorded financial report in USD and fulfill below requirements:

- Have export revenues exceeding 50 percent of their total revenues in the preceding calendar year
- Have permission from the MOF to report its financial statements in USD.

Credit rating requirements

An Indonesian borrower may rely on a holding or parent company's rating if a loan is made or guaranteed by that holding or parent company; or for newly established companies, it may rely on a holding or parent company's rating for a period of up to three years after starting commercial operations. If a borrower or creditor is relying on a rating of similar securities, the rating must be no more than two years old. Rating for each of the acceptable international and Indonesian ratings institutions (as of 2020) are:

Rating Institution	Rating
Standard & Poor's	BBB
Fitch Ratings	BBB
Moody's Investor Service	Baa2
Japan Credit Rating Agency	BBB+
Rating and Investment Information Inc.	BBB+
PT Pemeringkat Efek Indonesia (Pefindo)	BB-
Fitch Ratings Indonesia	BBB
Investment & Credit Rating Agency Indonesia	BB-

Exemptions from credit rating requirements

There are exemptions for the following offshore loans to non-bank corporations:

- Refinancing loans (provided amount outstanding does not increase more than USD2 million or 5 percent of the amount of the loan, if greater)
- Infrastructure loans with more than 50 percent participation by international bilateral or multilateral institutions
- Infrastructure loans for central and local government projects
- Loans guaranteed by international bilateral or multilateral institutions
- Trade credit
- Other debts, described as debts [not based] on a loan agreement, debt securities or trade credit (for example, an insurance payment obligation). Bilateral institutions are defined as foreign governments, their central banks, autonomous public bodies and official export credit agencies.

Other foreign exchange-denominated liabilities

BI issued Regulation No. 21/1/PBI/2019 on 1 March 2019 ("Reg 21/2019") on Offshore Debts and Other Bank Obligations in Foreign Currencies. Reg 21/2019 includes forex-denominated other bank liabilities and adds more detail into what comprises offshore debt.

Offshore debt includes loan agreement-based debts, debts securities (including letters of credit, bonds, commercial papers), demand, time and savings deposits and call money, as well as other forms of debt.

Forex-denominated other bank liabilities include domestic forex-denominated bonds and risk participation arrangements. Risk participation agreements must:

- Be conducted between a bank as grantor, and a non-resident as participant
- Be accompanied by a flow of funds when the arrangement is funded by the non-resident
- Not involve an assignment of claims from the bank to the non-resident (which would otherwise be treated as offshore debt).

Reg 21/2019 emphasis that prudential norms must be adhered to in respect of offshore bank debts and forex-denominated other liabilities. Applicable prudential norms differ depending on whether the debt or liability is short- or long-term.

Short-term

Banks must observe a daily limit on short-term liabilities (or long-term liabilities which have an original maturity that has been shortened to one year or less) of 30 percent of capital. There are, however, exemptions to this limit, including but not limited to:

- Short-term offshore bank debts owed to a controlling shareholder based on an emergency liquidity loan, or a loan to be on-lent into the real sector
- Demand deposits held by non-residents for investment activities in Indonesia or to accommodate the proceeds of the sale or divestment of an investment
- Demand or time deposits held by non-residents that are used to temporarily accommodate injections of bank capital, as referred to in OJK regulations on minimum capital requirements.

An Indonesian branch office of an offshore bank must notify BI of its declared operating funds, and maintain a minimum daily operating funds balance of 90 percent of its declared operating funds.

Long-term

Banks that intend to incur a long-term liability must first submit a market entry plan to BI for approval, with some exceptions in case of subordinated loans based on OJK recommendations, essential to addressing a pressing problem at the banks or satisfying the requirements of the relevant authority.

Reports must be submitted to BI on market-entry realization within 7 days of market-entry or the settlement date, depending on the type of offshore bank debt or FX-denominated other bank liability that is incurred.

Foreign exchange e-trading platforms

In October 2019, the member of the Board of Governors of Bank Indonesia released regulation no 21/19/PADG/2019 on Electronic Trading Platform Providers, in view of BI Regulation no 21/5/PBI/2019 regarding Transaction Implementation Facility Organizer in Money Market and Foreign Exchange Market. The regulation limit fixing the maximum foreign ownership in any Indonesian company that provides electronic trading platforms for forex at 49 percent, and has a minimum paid-up capital of IDR30 billion. There is a three-year transition period for companies needing to comply with the new restriction. Companies are required to comply with the licensing requirements at the latest on 31 October 2022.

Sources:
1) KPMG Research and Intelligence
2) Bank Indonesia website: www.bi.go.id
3) OJK website: ww.ojk.go.id
4) www.exports.com
5) www.hukumonline.com
6) https://www.cnbc.com/2019/10/14/china-to-scrap-foreign-ownership-limits-on-securities-futures-fund-management.html
7) Bank Indonesia. Indonesia Sovereign Rating December 2020. https://www.bi.go.id/en/iru/economic-market-data/Pages/Indonesian-Sovereign-Rating-December-2020.aspx

8 Domestic and Foreign Trade - ASEAN

Trading in Indonesia

The trade sector includes import, export and distribution in the domestic market for imported and locally produced goods. In general, PMA companies engaged in manufacturing are permitted to:

- Import or buy on the domestic market: capital equipment, spare parts and raw materials for their own production process
- Export their own products, and processed goods of other PMA and domestic PMDN companies
- Sell their own products directly to other companies in Indonesia and use these goods as capital equipment, spare parts or for raw material in their production processes
- Import complementary goods from affiliates outside Indonesia, and sell them into the domestic market (production companies only)
- Sell their own products directly to a large-scale retailer.

Overseas based foreign companies which export into Indonesia will need to establish a relationship with a local import and distribution agent. This relationship can be facilitated by seconding foreign experts to assist the local trading company in business, technical and management matters. Another alternative is to establish a representative office to conduct market research and promote the parent company's product range.

Imports: customs licensing and registration

Importing into Indonesia

Importation of goods into Indonesia must be declared with the Indonesian Directorate General of Customs and Excise ("Customs Office") using an import declaration form.

PMA and PMDN companies can only import if they obtain an import license. This may be a general importer identification number ("API-U") issued to importers which import goods for trading or transfer to other parties, or a producer importer identification number ("API-P") issued to importers which import goods for their own use, such as raw and supporting materials and/or to support production in manufacturing activities. Goods imported using API-P are prohibited from being traded or transferred unless the goods are granted import duty facilities and have been used for at least two years from the date of import customs notification.

An API is valid as long as the importer remains in business. The license is applicable for the entire Indonesian customs territory. An electronic data interchange ("EDI") enables a company to administer its customs affairs online.

The EDI will enable the exchange of data among all players in the import and export processes (customs, and almost 20 other relevant government offices involved in seaport and airport handling, banks, shipping lines and freight forwarders). EDI has improved the collection of international trade data and, most importantly, virtually abolish physical contact between business people and customs officers, which has long been the stage most vulnerable to corruption. EDI also helps to minimize the risk of under-invoicing of imported goods.

Import licensing revisions

As part of the implementation of OSS system, MOT had issued Regulation No. 75/2018, which revoked the Regulation No. 70/M-DAG/PER/9/2015 on Importer Identification Number. Key changes include the use of NIB as API-U or API-P. By obtaining NIB, importers are no longer required to obtain API from MOT. However, there are additional requirements for import of foreign banknotes and business entities or contractors in the energy, oil and natural gas, mineral and other natural resource sectors.

There are still relatively onerous layers or pre-requisite licensing as part of the overall import license registration, but the whole process should be routine if carefully managed. There are no direct licensing application costs.

Import goods clearance lane

Registered importers are assigned red, yellow or green lane status depending on the risk profile of the importer as determined by the Customs Office which is a function of the nature of the goods or commodities and country of origin. There is also a main-partner priority ("MITA" or priority lane).

The different processes and procedures involved for releasing imported goods are:

- Red lane involves a more onerous process of physical examination of imported goods attaching to a customs import declaration ("PIB") and verification of documentation before any goods are cleared
- Yellow lane process is without physical inspection of goods but involves verification of the PIB documentation before goods are release
- Green lane process is without physical inspection and PIB documentation is verified after goods are released
- Priority lane goods are subject to no physical inspection or document surveillance and examination. Only companies with the cleanest track records qualify, including SOEs or governmental bodies operating business activity in the national interest, for example.

A green lane company can be given an automatically computer generated, random red lane determination on a single import transaction basis but revert back to green for the next PIB import transaction.

In terms of costs, the difference between red and green lanes comes down to storage costs and fees at port. Companies with green lane status can have goods cleared in 4 hours. Red status can take 5 to 7 days or more.

Companies are subject to periodic customs audits administered by the Customs Office which typically resemble tax audits conducted by the ITO.

Fast track customs clearance

Since 2016, BKPM officially introduced its fast-track custom clearance facility as part of the Indonesian government's overall efforts to improve the foreign investment climate.

The specific objective of the facility is to assist investors which are in the construction phase of the investment cycle in order to bring commissioning of plants and projects on schedule. BKPM pre-approved imported machinery is to enjoy faster customs clearance of 30 minutes compared to 3 to 5 days; and qualifying companies:

- receive direct access to the green lane
- can demonstrate that construction is in progress and compliance with other administrative requirements is adhered to.

Certain goods subject to import restrictions

In order to protect local industry and/or to maintain economic and political stability, restrictions on imports are imposed at three levels:

- Prohibited - for example, motorized vehicle tires, electric light bulbs, matches, certain types of textiles, batteries, iron sheets, fully assembled automobiles and motorcycles, radio and television sets, explosives, narcotics and certain traditional Chinese medicines
- Restricted to SOEs - such as fuel for vehicles, ships and aircraft
- Restricted to sole agencies who must be approved by the GOI, including CBU motor vehicles of a type not assembled in Indonesia.

The classification of goods subject to import restrictions periodically changes. Intending importers should consult with the MOT.

Exports

Exporting from Indonesia

Any organization that possesses a principle (manufacturing) license or business (trading or services) license is permitted to export. PMA companies may be formed for the purpose of exporting Indonesian products and manufactured goods.

Goods in the following categories are subject to export restrictions:

- Prohibited: goods including some categories of rubber, scrap metal and antiques are prohibited from being exported due to considerations, such as preserving nature, guaranteeing supply of raw materials for small industries or craftsmen and preserving goods with historic and cultural value
- Restricted to certain approved exporters: textiles, plywood and coffee
- Restricted to approved exporters only: certain basic commodities can only be exported if domestic demand has been met. Examples are flour, palm oil, sugar and petroleum. Approval is also required for certain metals: silver, gold, copper and aluminum.

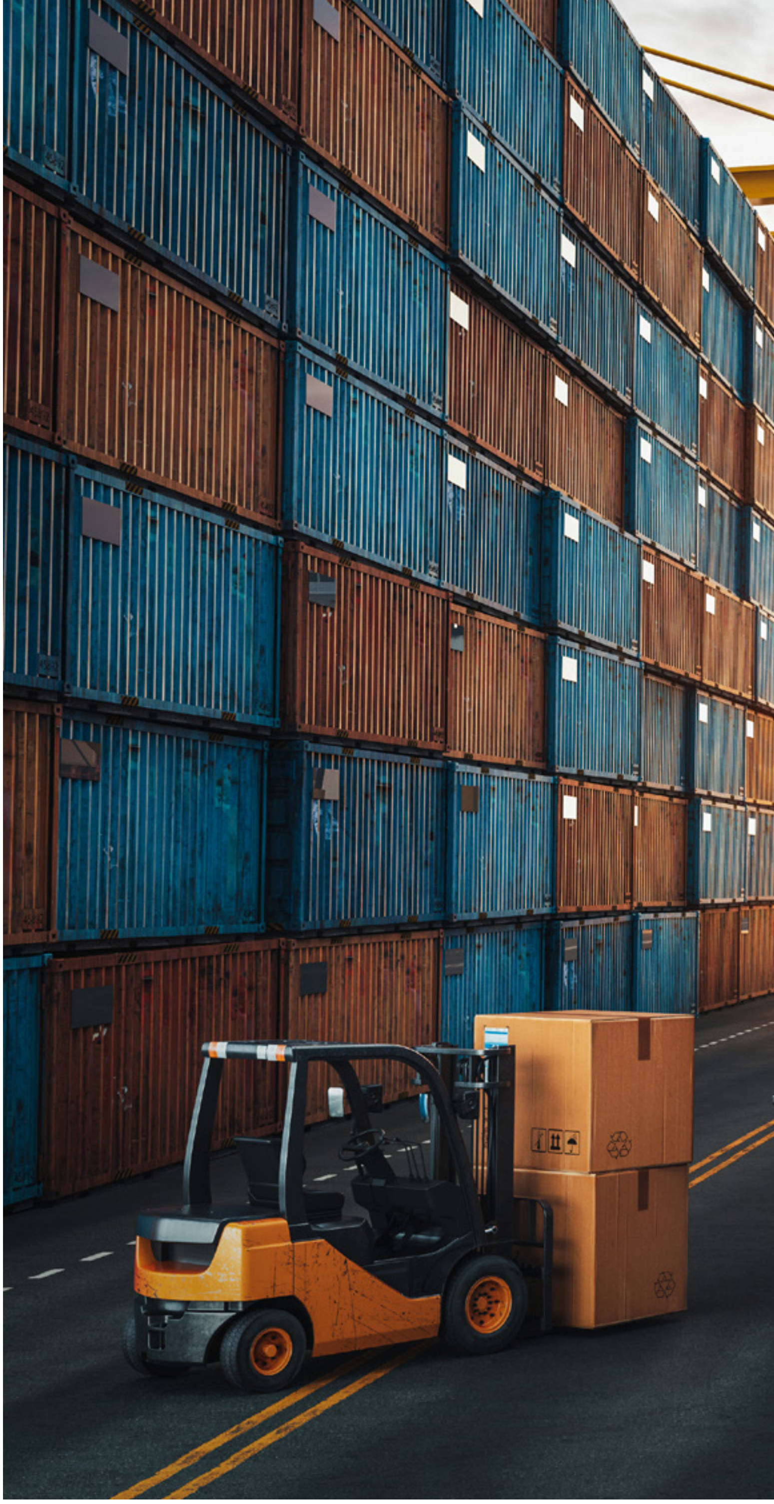
Taxes on exports

Commodities, such as palm oil, rattan and wood, are subject to export duty. The export duty is calculated based on the export reference price which is set by a decree of the MOT and valid for a certain period of time. Export duties are aimed at meeting objectives, such as guaranteeing fulfillment of domestic demand, protecting natural resources and maintaining stability of local market prices of certain commodities. Export duty is calculated based on the export duty tariff and harmonized system classification. The MOF is authorized to decide goods that are exempted from export duty.

Customs procedures that apply to exports

Exported goods are subject to inspection in Indonesia only in the following circumstances:

- Where application has been made for restitution or exemption from duties and taxes of imported components
- Where suspicion exists that goods are subject to ban or restriction.



Export incentives

The government has stated aim of encouraging exports. A number of incentives exist, including:

- The foreign exchange arising from proceeds of sales abroad may be retained or sold to third-parties by the exporter
- VAT on exports is at the rate of 0 percent, enabling exporters to claim refund of input VAT.

Import duties may be reimbursable, or not payable on imports, under various special schemes for export manufacturers.

Bonded Logistic Centers

GR No. 85 of 2015 dated 25 November 2015 ("Regulation 85") and Regulation of Minister of Finance Decree No. 272/PMK.04/2015 concerning Bonded Logistic Centre dated 31 December 2015 were introduced as part of the second economic stimulus package and provides for the introduction of Bonded Logistic Centre as the seventh type of Bonded Storage Place, a qualifying site area used to store imported goods:

1. Bonded Warehouse
2. Bonded Zone
3. Bonded Exhibition Area
4. Duty Free shop
5. Bonded Auction place
6. Bonded Recycling Zone
7. Bonded Logistic Centre

The Bonded Logistic Centre concept expands the functionality of a Bonded Warehouse through relaxation of goods storage time and opens entry to non-imported goods. Also Bonded Zone goods must be subject to manufacturing or other industrial activity of some description whereas Bonded Logistic Centre goods do not.

A key feature of a Bonded Logistic Centre is the ability of a business to store imported overseas or other goods originating domestically in a separate area in Indonesia customs for later export or distribution into the domestic market. Previously, the bulk of goods imported by Indonesian companies are stored in Singapore or Malaysia. A Bonded Logistic Centre is designed to facilitate a reduction in logistics costs in Indonesia which are high relative to other neighboring Southeast Asian countries.

Imported or goods from other Bonded Logistic Centre, other Bonded Storage Places, SEZ, free trade areas ("FTAs") or other economic zones as well as from other places in the Indonesian customs area are granted a combination of customs and tax relief. The facilities available depend on whether goods are designated for export or domestic markets, origin of the goods and whether intended to be consumed internally within the Bonded Logistic Centre:

- postponement of import duty
- non-collection of VAT, Sales Tax on Luxury Goods ("STLG") and Article 22 Income Tax on Imports
- Excise duty exemption
- non-collection of VAT or VAT and STLG.

The MOF regulation sets out criteria to be met for areas to qualify as a Bonded Logistic Centre and for issuance of operator licenses in order to be came a Bonded Logistic Centre Entrepreneur.

Regulation 85 amended GR No. 32 of 2009 on Bonded Storage Places, and also introduced various other changes around definitions of Bonded Zones, expansion of places of entry to/from a Bonded Storage Place, location of duty-free shops in airport terminals and others.

In March 2016, the Indonesian President inaugurated 11 Bonded Logistic Centers, mostly in Java.

Eleventh Economic Stimulus Package: shorter port dwell times for import and export of goods

Introduction of an Indonesian Single Risk Management ("ISRM") mechanism in assessing import and export permits on 29 March 2016 was designed to reduce historically excessive dwell times and resulting high logistics costs at the country's ports. As part of this, companies will be issued with a single ID for import and export permit applications through a licensing portal referred to as Indonesian National Single Window ("INSW").

Integration of import and export data managed by and approvals needed from 18 different ministries, agencies and governmental institutions including Ministry of Transportation, ITO, Custom Office, Immigration and Quarantine Agency, Drug and Food Control Agency, is targeting to reduce average dwell time at seaports.

At present, the INSW systems have been applied to several Customs and Excise Service Offices to serve the process of export - imports transactions. INSW is considered as an important part in providing facilities to obtain data and information regarding matters relating to investment nationally or internationally.

Imports and exports, customs and free trade zones

The largest ever free trade agreement was signed on 15 November 2020 after eight years of negotiations. Indonesia is included as one of the 15 countries who came together to sign one of the largest ever free trade agreements – the Regional Comprehensive Economic Partnership ("RCEP").

The mega deal partnership was expected to help Indonesia book double-digit growth in exports and investment within five years after it comes into force. The MOT promised to ratify the trade agreements on 1 January 2022. Market transparency is considered as one of the biggest challenges to be negotiated amongst these 15 countries, especially ASEAN.

Indonesia is also one of the 160 countries to adopt the Safe Framework of Standard to Secure and Facilitate Global Trade ("SAFE FoS"). The SAFE FoS is widely known as the standard for securing and facilitating safety trade globally in terms of supply and chain. This framework is a part of the Authorized Economic Operator ("AEO") program initiative to help ease of doing business and accelerate the global logistics chain.

According to the GR No. 41 of 2021 dated 2 February 2021 ("Regulation 41"), trusted and credible business operators with at least 6-month GCG inside the free trade zone ("FTZ") can be granted with these two facilities, AEO facility and MITA or priority lane. One of the main difference in Regulation 41 need to be highlighted from the previous GR No. 10 of 2012 is that the entry of excisable goods from overseas may not be subject to the imposition of excise, provided that said goods are utilized as raw materials and/or supporting materials in relation to industrial activities. The implementation of these two facilities will help business operators in terms of:

- Custom procedure benefit – less administrative and/or physical examinations and simplified customs procedures and/or administrative examination process;
- Internal control benefit – reduce delayed shipments which minimize the chance of theft and losses;
- Intangible benefit – reduce security and safe incidents (safe, secure and compliant business partners in international trade).

Further discussion on imports and exports, customs duties and taxes as well as FTZ is in Chapter 10 on Taxation.

ASEAN

ASEAN is a regional organization promoting governmental and economic cooperation and regional stability, has ten members - Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

Since its formation in 1967, the organization has helped an underdeveloped region grow into one of the main drivers of the global economy, with a combined GDP of USD3 trillion in 2018. With a large, young workforce, predicted average GDP growth of 5 percent over the next few years, and the single market - the ASEAN Economic Community ("AEC") - the region provides an attractive destination for investors.

The AEC combines the markets of the 10 ASEAN member countries into one giant bloc with a combined GDP of USD3 trillion in 2018.

Diverse economies

Although ASEAN aspires to be an increasingly integrated single market, the reality is that there are still disparities between economies. Growth does tend to be higher in certain countries, albeit from a much lower base.

Indonesia is the biggest economy in ASEAN, contributed around 35.05 percent of ASEAN GDP in 2021 and around 41.1 percent of total population in ASEAN.

The economies of ASEAN vary dramatically, from the high-value knowledge economy of Singapore to the resource-focused industries of Myanmar. Real GDP growth for the ASEAN-5 (Indonesia, Malaysia, Thailand, Philippines and Vietnam) in 2020 was negative 3.4 percent. As the impact of COVID-19, International Monetary Fund ("IMF") projected that the economic growth of ASEAN-5 to be 4.9 percent in 2021 but with a V-shape recovery of 6.1 percent in 2022.

The region's 649 million-strong population, more than half of whom are under the age of 30, provides an attractive workforce for manufacturers seeking regional facilities outside of China, as well as a large and increasingly affluent domestic market.

Major investment in infrastructure is needed if the region is to take full advantage of its geographic location at the crossroads of much global trade, providing opportunities for investment and public-private partnerships.

In 2019, ASEAN is the fifth biggest economy in the world after Japan and Germany, following by United States, China and Japan.. ASEAN's 649 million population represents nearly 10 percent of the world's population.

Attractive investment destination

According to UNCTAD, the COVID-19 Pandemic impacted the decline of FDI inflows into ASEAN by 31 percent or equivalent to USD107 billion in 2020. This drop of FDI inflows was much less significant compare to the global FDI 42 percent.

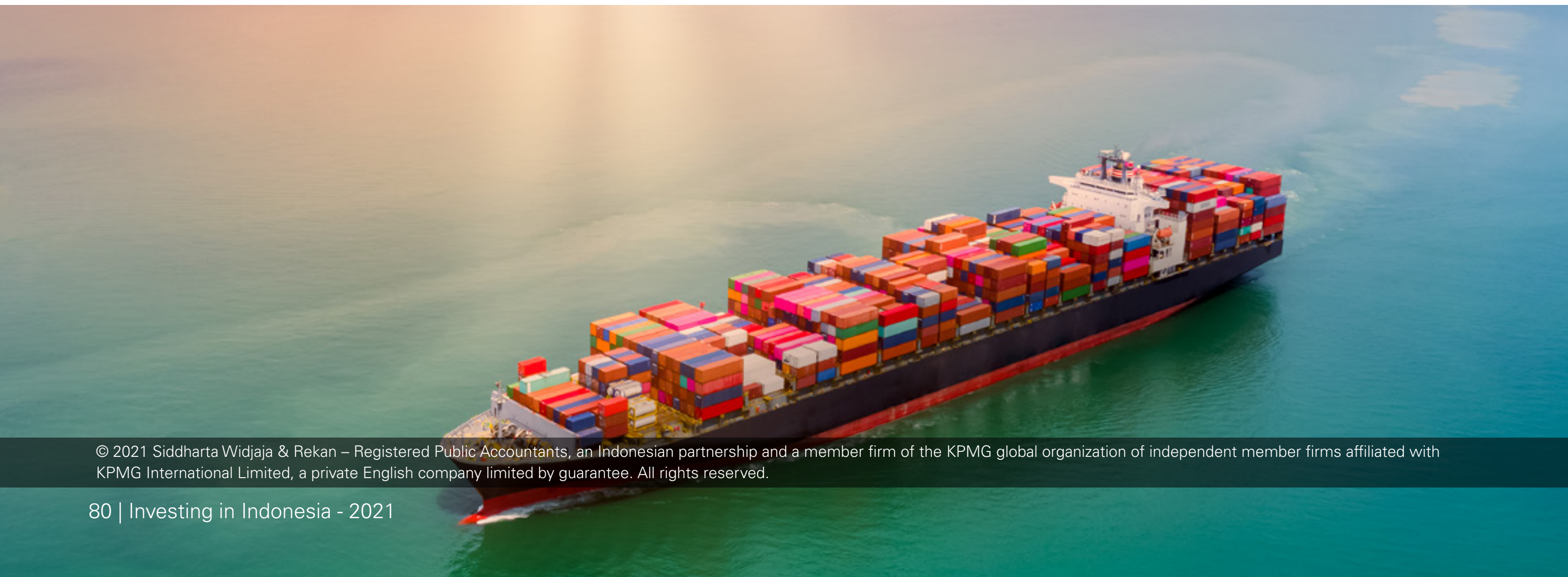
FDI inflows to Southeast Asia, which includes members of ASEAN as well as Timor Leste, grew by 5 percent in 2019 to USD155 billion. This is the fifth consecutive year in which FDI inflows to ASEAN member countries have increased. Within Southeast Asia, Indonesia, Singapore, Cambodia and Vietnam are the only countries recorded with the highest level of inward FDI.

Greater economic integration

The establishment of the AEC provides a single market across the region. The simpler cross-border processes and harmonized regulation in areas such as intellectual property paves the way for a company based in on ASEAN country to do business in all others.

Established in 2015, the AEC has:

- Virtually eliminated tariffs between members, with formal restrictions in the service sector being gradually removed
- Simplified and harmonized customs and technical regulations
- Enhanced mobility of skilled professionals between member countries.



The ASEAN member states have adopted a blueprint of their goals for 2025. Key characteristics are:

A highly integrated and cohesive economy	• Trade in goods • Trade in services • Investment environment • Financial integration, financial inclusion and financial stability • Facilitate movement of skilled labor and business visitors • Enhance participation in global value chains
A competitive, innovative, and dynamic ASEAN	• Effective competition policy • Consumer protection • Strengthening intellectual property rights cooperation • Productivity-driven growth, innovation, research and development and technology commercialization • Taxation cooperation • Good governance • Effective, efficient, coherent and responsive regulations and good regulatory practice • Sustainable economic development • Global megatrends and emerging trade-related issues
Enhanced connectivity and sectorial cooperation	• Transport • Information and communications technology • E-commerce • Energy • Food, agriculture and forestry • Tourism • Healthcare • Minerals • Science and technology
A resilient, inclusive, people-oriented, people-centered ASEAN	• Strengthen role of MSMEs • Strengthen role of private sector • Public-private partnership • Narrow development gap • Contribution of stakeholders on regional integration efforts
A global ASEAN	• More strategic and coherent approach towards external economics relations • Review and improve ASEAN FTAs and comprehensive economic partnerships ("CEPs") • Enhance economic partnerships with non-FTA dialogue partners by upgrading and strengthening trade and investment work programs/plans • Engage with regional and global partners to explore strategic engagement to pursue economic partnerships • Continue strongly supporting the multilateral trading system and actively participating in regional fora • Continue to promote engagement with global and regional institutions

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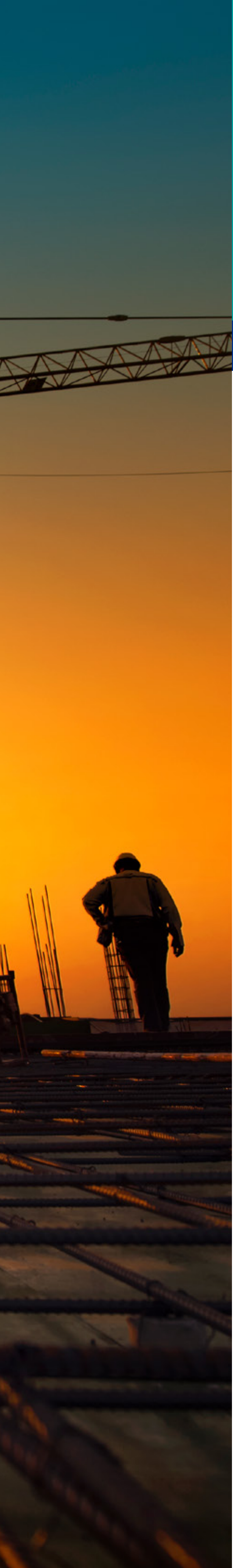


9 Labor and Employment

Indonesian labor laws, regulations and landscape

The main employment law in Indonesia is contained in Law No.13/2003 on Labor ("Labor Law"). There is also Law No.2/2004 on Industrial Relations Dispute Settlement; Law No.21/2009 on Labor Unions and Law No.3/1992 on Workers Social Security, Law Number 40 of 2004 on National Social Security System, Law Number 24 of 2011 on Social Security Implementing Agency, as well as other subsequently issued employment laws, regulations and decrees or rules referred to in this chapter. These laws are designed to safeguard interests of employees. The main regulatory authority is the MOM.

Employers generally consider the Labor Law places onerous obligations on employers, particularly in respect of ability to terminate and the level of severance and termination benefits payable. For companies operating in highly labor-intensive industries, this can make wage and benefit levels uncompetitive compared to other neighboring countries. A lack of training, cultural background and difficulty in terminating non-performing workers often means that staff numbers can reach higher levels than an investor may initially anticipate. Attempts by governments in the past to make aspects of the law more friendly to employers has led to street demonstrations and is politically sensitive.

Notwithstanding recent increases in statutory minimum wages, Indonesia still considered to have one of the lowest average wage rates in Asia. The cost of labor is still lower than China, Thailand, and Malaysia. However, lower average wages available in Vietnam, India, and Bangladesh present real and more than emerging threats.

GOI recognizes the need to focus on creating regulatory framework that can support the labor force environment. With such objective in mind, in November 2020 the Government finally issued the Law No. 11/2020 concerning Job Creation (Omnibus Law), which addresses some important changes to the Indonesian labor law and regulations. These changes are expected to support the improvement of labor force productivity and competitiveness while also providing protections to employees.

Resource pool of skilled Indonesian workers

As at August 2020, Indonesia's working age population aged 15-64 has reached 203.97 million (2019: 197.91 million; 2018: 194.78 million; 2017: 192.08 million). Indonesia thus has a large pool of workers, even with a reported labor force of 138.22 million people in August 2020, and a labor force participation rate of 67.77 percent. These statistics exclude the self-employed in the informal sector. With the high birthrate in recent decades and the drift away from traditional village life, the number of economically active workforce has been growing at an average of 3.1 million per year over the last three years. Indonesian workforce mostly concentrated in Java and Bali, and workers continuously migrate from rural to urban areas in search of jobs.

Despite the large population, the country's resource pool is being "stretched thin" with corporate demand for skilled and experienced Indonesian professionals and technicians across various disciplines outstripping supply. This is considered to be a function not only of rapid economic growth post GFC but deficiencies in the education system. Remedying deficiencies is a long-term, challenging exercise.

A commonly communicated concern expressed by industry leaders and more recently acknowledged and embraced by the government is the preparedness of Indonesian university graduates to enter the labor market. Whilst there is a plentiful supply of graduates, many fail to meet employer expectations in terms of talent and future employability. The report findings included a lack of practical day-to-day business skills (communication, problem solving, critical thinking and people management) and a lack of ability to work in teams. English language skills were also found to be deficient.

English language proficiency

Based on a 2019 Education First English Proficiency Index ("EPI"), Indonesia's scored 74th on a worldwide ranking of 100 countries (2019: 61st). In terms of Southeast Asian countries, Indonesia ranks 5th, behind Singapore, Philippines, Malaysia and Vietnam; but scoring higher than Thailand, Myanmar, and Cambodia.

The EPI is a global English language skills ranking index which analyses relationships between a country's English learning trends and proficiency and economic competitiveness. Media articles regularly report the concerns of economic and education commentators who have sounded warnings on the ability of Indonesia's people to compete with those of other ASEAN countries. Criticism has been leveled at a lack of change and development in the country's national education system and language curriculum. Remedial actions have been looked at, but no visible progress yet to be made.

English language and education commentators have called for the retraining and upskilling of English teachers at junior high school level where the relative decline in students English language proficiency starts.

Levels of wages and benefits: overview

Basic salary and wage levels can vary considerably across geographic regions and industries.

Previously, under Article 89 of the Labor Law, each province/city is given the power to frame its own provincial minimum wage or "UMP" which is reviewed and set annually under basis of agreement between corporates, organizations and labor unions as finally determined by the governor of each province.

Regulation of the minimum wage is stipulated in Articles 88, 89, and 90:

a. Provincial or district/city-based minimum wage

b. Provincial or district/city-based sectoral minimum wage.

Historically, once a year each provincial government has adjusted the UMP based on a governor decree on minimum wage. A Remuneration Council, a non-structural tripartite organization which consists of government, entrepreneur associations and labor union or organization representatives (as stipulated under Presidential Decree No.107/2004) made recommendations on UMP based on a "decent living needs survey". With regional autonomy fully implemented at provincial level, there is a regency minimum wage ("UMK") for each city in every province based on recommendations from the Regent Mayor and a Remuneration Council.

Every year, the average UMP increases. Historical average UMP ranges are:

- 2017: IDR1.3 million to IDR3.4 million
- 2018: IDR1.5 million to IDR3.6 million
- 2019: IDR1.6 million to IDR3.9 million
- 2020: IDR1.7 million to IDR4.3 million
- 2021: IDR1.8 million to IDR4.4 million

Jakarta's UMP is the highest in Indonesia, increased from IDR3.9 million in 2019 to IDR4.3 million in 2020 (10 percent) and further to IDR4.4 million in 2021 (2 percent)

The confederation of Indonesian labor unions ("KSPI") monitors compliance with UMP.

Under the Omnibus Law, only the governor can determine the provincial and municipal minimum wage. The municipal minimum wage must be higher than the provincial minimum wage. The minimum wage requirement shall be exempted for micro and small enterprises. The wage in micro and small enterprises shall be stipulated based on an agreement between the employer and the worker. The minimum wage only applies to employees working for less than one year. The Omnibus Law no longer specifies the ability for employer to postpone the payment of minimum wage.

Under the Labor Law, employer shall formulate the structure and scale of wages by considering the level, position, work period, education and competence of the worker. Currently the Omnibus Law requires employer to consider the company's ability and productivity in formulating the structure and scale of wage. In the event of company liquidation, the Omnibus Law prioritizes the payment of workers' wages and other rights over the payment of debts to the employers' other creditors

Fourth Economic Stimulus: Employment

In addition to the Labor Law regulation, the government released the Fourth Economic Stimulus package: Employment in October 2015 which prescribed fixed formula to determine annual wage increases. GR No. 78/2015 concerning Wages was introduced in October 2015 and formulates a measured annual wage increase that takes into account two main factors: inflation and GDP (or economic growth), underpinned by a rationale that considers both purchasing power and productivity, whilst creating economic certainty for business.

Provincial government (governors) must apply the formula in determining UMPs on 1 November each year. The previous triparte organized Remuneration Council reviews had been subject to criticism as being "politicized" causing "irrational and unpredictable" wage increases.

Whilst the Seventh Economic Stimulus and others include electricity tariff cuts, tax incentives and relaxation of various regulatory requirements for labor-intensive industries to promote employment, ironically the large domestic labor market presents one of the biggest challenges for textile and apparel, footwear and other highly labor intensive industries: 1) growing risk of regionally uncompetitive wage levels; and 2) onerous labor laws and regulations; and 3) market productivity:

- Indonesia's 2020 monthly minimum average wage level of USD183 were higher than corresponding wage levels in the other neighboring labor-intensive manufacturing countries of Bangladesh (USD96.15) and India (USD76).
- As indicated, Indonesia's Labor Law has been subject to criticism over many years as being strict by international standards and for placing onerous obligations on employers around termination and severance obligations which can in broad terms upon involuntary dismissal average more than 20 percent of annual salary for each year of service.

- A foreign investor will include worker productivity as a key determinant in any market entry and location assessment strategy. GDP growth and labor productivity input-based measurements place Vietnam in a higher positioning than Indonesia

Under the Labor Law, an employer is prohibited from paying below the minimum wage which covers basic salary and a fixed allowance, the salary component comprising at least 75 percent. Working hours are seven or eight hours per day depending on whether five or six working days per week, with additional hours considered overtime which is calculated based on formula in the law. The Omnibus Law extends the overtime working hours from the maximum of three hours per day and 14 hours per week to the maximum of four hours per day and 18 hours per week. The Omnibus Law also introduces the exemption of working hours provision that applicable to certain business sectors or works. The implementation of working hours in a company shall be regulated in employment agreement, company regulation or collective employment agreement.

In March 2016 the MOM issued Regulation No. 6 of 2016 on Religious Festivity Allowance for Employees in Companies; replacing Regulation No. PER-04/MEN/1994 of 1994 ("Regulation 4"). The allowance is commonly referred to as "THR", a mandatory benefit for all employees provided to coincide with the religious holiday or festivity recognized by an employee. All employees are entitled to THR at one month salary. Key changes to Regulation 4 are not significant. Chinese New Year recognized as a religious event in addition to existing holidays for Idul Fitri (Islam or Muslim); Christmas, Seclusion (Hindu); Vesak or "Waisak" for Buddhists. Employers who fail to provide THR are subject to administrative sanctions, the form of which are prescribed in GR No. 78 of 2015 on Wages and range from written warning to suspension of business activities.

Other aspects of the Labor Law deal with workers social security, employee facilities, annual leave as well as various other paid leave including sickness, marriage, maternity and death which may be higher or better under company rules ("PP") or internal corporate human resources ("HR") policy than what is stipulated in the law. Note that Article153 of the Labor Law on sick workers and sick leave prohibits an employer from terminating an employee for absence due to sick leave, provided the employee has a doctor's certificate and the period of absence does not exceed a continuous period of 12 months. During the twelve-month period, the employer is obligated to pay salary and benefits to the employee under a sliding scale of 100 percent to 25 percent of full salary and benefits.

The Labor Law is structured around two main types of employment: indefinite and definite period employment.

Permanent employees (indefinite period employment)

Permanent employment status is the more commonly used type of employment in most industries. Under the Labor Law: Article156, a company has an obligation to pay severance, gratuity and other compensation to permanent employees:

- In the general occurrence of employees resigning voluntarily or terminating working relations with the employer in the normal course, but only if company policy provides for this. Following a Ministerial Letter issued in 2005, employers are no longer legally obligated to provide this benefit
- To employees being involuntary terminated or retrenched when a company is demonstrably committed to either termination before the normal retirement age; or providing termination benefits as a result of an offer made in order to encourage voluntary redundancy.

The termination and severance payment needs to be the higher of that provided under the Labor Law, the Company Regulations or a collective labor agreement ("CLA"). In general terms, minimum severance pay is based on one month's salary or wages for each year of service, up to a maximum of nine-month pay.

With the implementation of Omnibus Law, the calculation of severance payment, reward payment and/or compensation of right payment will be similar for all basis of termination of employment. The coverage of compensation will now exclude compensation for housing allowance, medical and health care allowance that is determined at 15 percent of the severance payment and/or reward payment for those who are eligible.

The termination of employees needs to be handled carefully. Most employment contracts or agreements provide for an initial three-month probation period, after which staff may be terminated only on strong grounds and usually only after several written warning letters. Termination by notice or salary in lieu of notice is not permitted in Indonesia; however, terminations should involve negotiations in bipartite meetings, mediation or conciliation, and labor court approval as a last measure. An employee also has a right of appeal to the MOM. In practice, negotiations normally occur with the objective of an employee agreeing to termination terms and benefits in writing.

The MOM must also be advised of imminent staff retrenchments, due to downturn or discontinuation of business activity.

Omnibus Law simplifies the process for termination of employment by using notification to the respective worker and/or workers union on the objectives and reasons of the termination of employment as the main step. Bipartite negotiation will only be required if the worker rejects the termination of employment after being notified by the employer. Stipulation from the industrial relation dispute settlement agency will no longer be required for the termination of employment.

The Omnibus Law has added the suspension of debt repayment as a basis for termination of employment. Omnibus Law also allows termination of employment due to efficiency that is followed or not followed by the closing of the company. Previously, efficiency can be basis for termination of employment only if it is followed by the closing of the company. Omnibus law removed the obligation to have evidence of audited financial statements by a public accountant for company that terminates employment on the grounds of experiencing continuous losses for two years.

Contract employees and daily workers (definite period employment) and outsourcing

Introduction

There is more flexibility around ease of termination or non-renewal of working agreements for contract employees, daily workers, and outsourced personnel compared to permanent employees which makes employment of such staff attractive to employers in certain industries in terms of managing employee profiles and labor cost structures.

There is more flexibility around ease of termination or non-renewal of working agreements compared to permanent employees which makes employment of such staff attractive to employers in certain industries in terms of managing employee profiles and labor cost structures.

Contract employees

A contract employee is employed under a working agreement for a specified period ("Work Contract"). The Labor Law states the following (some of which have been updated through the issuance of Omnibus Law):

- "Definite period employment agreements" or Work Contracts can only be made for certain jobs which according to kind and characteristics of activities will be completed in a specified period (jobs expected to be completed in a short-time frame, seasonal jobs or jobs related to new products or activities which are still in trial run or exploration stage, work that its type and nature or its activities are non-permanent)
- Work Contracts are reserved for non-core or supporting roles, and generally cannot be applied to regular jobs which need to be held by permanent employees
- No probation is allowed for Work Contracts
- Period of time or completion of certain work for Work Contracts shall be determined based on an employment contract. Work Contracts for a specified period can be extendable and renewable for work which are estimated to be completed not in a long time.
- Employer shall provide monetary compensation to the Work Contracts workers after the end of validity period or after the completion of certain work. The amount of monetary compensation shall be calculated in accordance with the worker's employment period. Violation to pay this monetary compensation may lead to the imposition of administrative sanction. Further provisions regarding monetary compensation will be regulated in a GR.

If the MOM identifies any non-compliance with the Labor Law on the appropriate employment of contract employees, it could result in the employees being classified as permanent and thus be entitled to all the rights and benefits afforded to permanent employees.

Daily workers

Under the Decree of the MOM No. Kep.100/MEN/VI/2004 regarding the Implementing Regulation on the Definite Period Employment Agreement, the employment of a daily worker is appropriate where the volume of work and the period within which a certain job is to be performed is irregular in nature and changes from time to time. Wages are paid based on daily presence at work, which must be completed in a relatively short period of time (three months) with a maximum of 20 working days per month. A daily worker is not bound by general working hours applicable in a company and receives his or her salary based on daily presence at a work site.

Daily workers are commonly seen in the plantation and other agriculture industry sectors.

Outsourced personnel

Omnibus Law removes most of the provisions related to outsourcing as previously regulated under the Labor Law. Under the Omnibus Law, there is no criteria for types of work that can be outsourced. Employer is allowed to employ outsourced workers for conducting main business activities or other activities that directly relate to production process.

Omnibus Law focuses on the relationship between the outsourcing company and the outsourced worker. Omnibus Law no longer stipulates any provisions which specify the relationship between the outsourced worker and the employer, and now explicitly specifies that the protection of outsourced worker, wages and welfare, employment requirements as well as disputes that arise shall become the responsibility of the outsourcing company. Outsourced workers will only have employment relation with the outsourcing company. Outsourcing company is required to guarantee the transfer of protection of rights for the outsourced workers.

Article 64 of the Labor Law provides for a company to delegate part of its work to other legal entities (or service providers) by way of: i) sub-contracting; or ii) outsourcing.

Article 65 stipulates that sub-contracted work must meet the following requirements:

- The work can be done separately from the main activity
- The work is to be undertaken under either a direct or an indirect order from the party commissioning the work
- The work is an entirely auxiliary activity of the enterprise
- The work does not directly inhibit the production process.

Under Article 66(1), outsourcing is only for activities which are not directly related to the company's production process. The elucidation of Article 66(1) states such supporting activities to be:

- Cleaning services
- Catering
- Security
- Oil & mining supporting services
- Transportation services for workers.

Regulation No.19/2012 on Conditions for Outsourcing the Implementation of Work to Other Companies ("Regulation 19") was enacted on 19 November 2012. Regulation 19 replaced two previous MOM, i.e. Decrees 101 and 220. Regulation 19 reflects the provisions of the Labor Law, maintaining the two types of outsourcing already regulated:

- Outsourcing of work: the work contracted out to a service provider must be "supplemental"
- Outsourcing of workers (or labor supply): the outsourcing of labor is limited to the above 5 "supporting activities."

In addition, work contracted out must be conducted separately from the main activities of a company.

All companies involved in the outsourcing of work must have complied with the regulation by 19 November 2013. Any violation of Article 66(1) will cause outsourced personnel to become employees of the instructing company. Contingent liabilities and exposures would then be triggered because outsourced workers may become entitled to all of the rights and benefits of permanent employees under the Labor Law, including severance upon termination.

Outsourcing agreements for labor supply also need to have a minimum prescribed content and be registered with the local MOM office. Employment between the labor supply company and its workers assigned to user companies were able to be based on definite period employment agreements or indefinite period employment agreements, but the labor supply company must have had written agreements with its workers that are also registered at the local MOM office. On 17 January 2012 the constitutional court issued a Decision No. 27/PUU-IX/2011 ("Decision 27") relating to Outsourcing. Decision 27 has invalidated the phrase "definite period employment agreement" in Article 65(7) and Article 66(2b) of the Labor Law. However, the invalidation is limited. It only applies where the definite period employment agreement of the outsourced worker does not include a clause protecting the worker's rights if the company that engages the labor supplier/outsourcing company changes service provider.

Following Decision 27, on 20 January 2012, the Director General of the Development of Industrial Relations and Workers' Social Security, MOM issued Circular Letter No. B.31/PHIJSK/I/2012 on the Implementation of Decision 27 ("Circular Letter 31").

The position under Circular Letter 31 is:

- If an employment agreement between a labor supplier (outsourcing company) and an outsourced worker does not include a clause protecting the outsourced worker's rights and the company engaging the labor supplier changes service provider, the employment of the relevant outsourced worker will be on an indefinite period basis
- If the employment agreement between the labor supplier and the outsourced worker does include such clause, the outsourced worker can be employed on definite period basis.

Companies that outsource work or engage labor suppliers are encouraged to contact the service provider and seek clarifications as to whether:

- The outsourced workers provided are definite period workers; and
- If so, whether the employment agreements of the definite period workers include a clause in relation to the protection of the rights of the workers in the event of a change of service provider during the term of the contract.

Worker’s social security scheme

Under Law No. 3/1992 on Workers Social Security, companies with a payroll exceeding IDR1 million per month, or employing 10 or more staff, need to enroll their employees in the JAMSOSTEK program.

JAMSOSTEK was a government social security scheme, mandatory by law, to which an employee and employer made monthly contributions based on a percentage of basic salary for:

(i) Employee work accident insurance,

(ii) Retirement benefit fund,

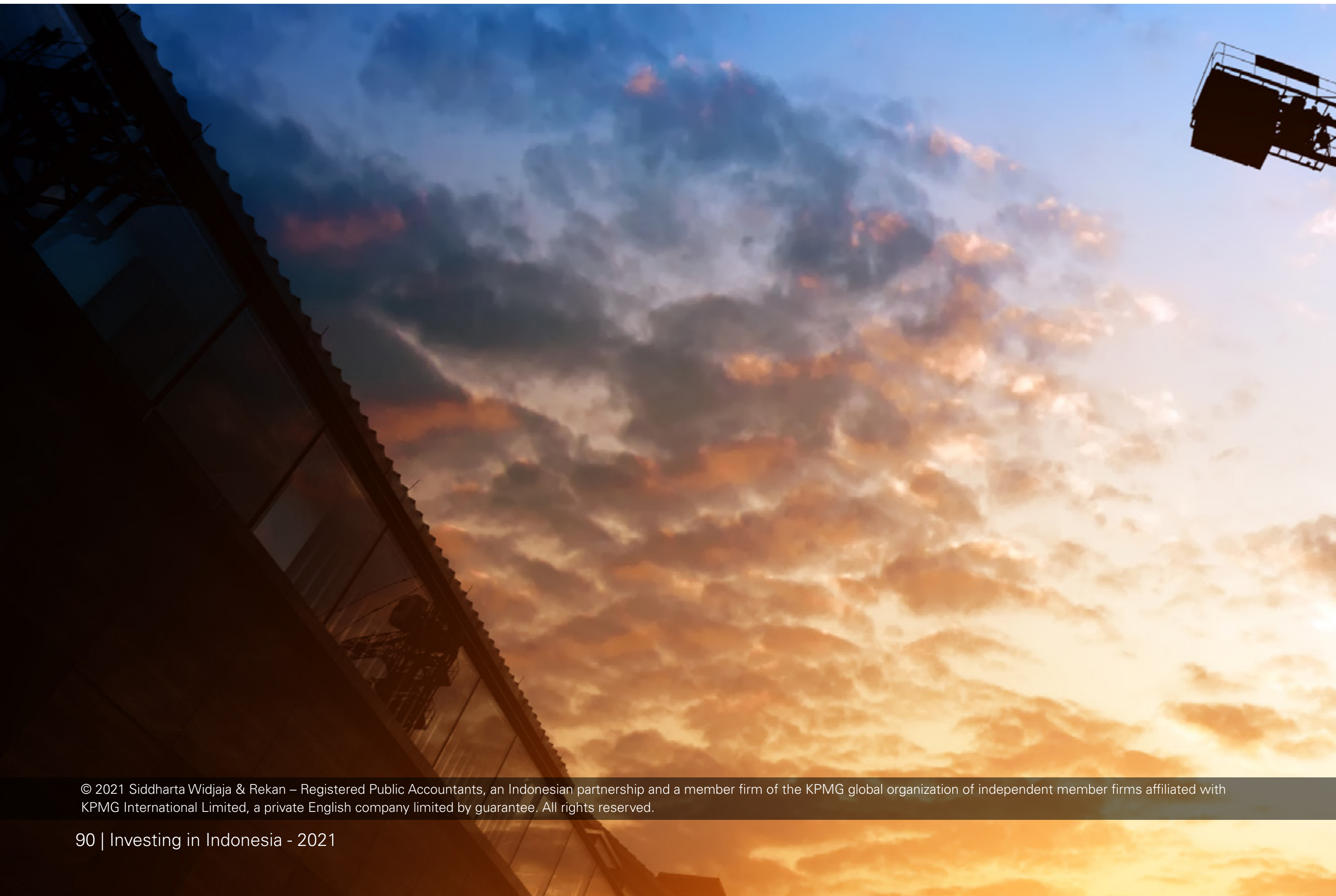
(iii) Life insurance, and

iv) Healthcare benefit coverage.

The first three were mandatory. Healthcare benefit contributions were payable only if the employer did not provide equivalent or better health benefits.

Contribution fees needed to comply with the standard provisions in Government Decree No.14/1993. Fees varied across job classifications and industries, but generally fell in a range of 4.24 percent to 5.74 percent of basic salary. Employee contributions were made by the employer, except for retirement benefit insurance to which the employee also contributed.

Permanent, contract employees and daily workers needed to be covered by JAMSOSTEK. Expatriates were required to be enrolled unless covered by an equivalent scheme in his or her home country.



Effective 1 January 2014 – BPJS Ketenagakerjaan and BPJS Kesehatan

The GOI commenced implementing the new "BPJS" social security system effective 1 January 2014 based on Law No. 24/2011 regarding Social Security Agencies which builds on Law No. 40/2004 regarding the national social security system ("SJSN"). BPJS *Ketenagakerjaan* became the new social security administration body or workers social security agency.

The compulsory requirements to join the new social security scheme (both worker's social security and healthcare) cover all employees (not outsourced personnel), including expatriates who have been working in Indonesia for more than six months. Starting 1 January 2014, BPJS *Ketenagakerjaan* administers worker's social security comprising workplace accident, old age, death and pension benefits, while BPJS *Kesehatan* administers healthcare benefits.

All participants of the worker's social security program comprising workplace accident, old age and death benefits under JAMSOSTEK automatically became participants of BPJS *Ketenagakerjaan* with the same benefits effective 1 January 2014. The existing worker's social security scheme is expanded to include pension benefits effective 1 July 2015 when Indonesia introduced a new statutory social security pension plan under BPJS *Ketenagakerjaan* ("BPJS *Pensiun*"). Corresponding additional payroll contributions were required to be made at an initial rate of 3 percent of base salary and fixed allowances up to IDR7 million per month: 2 percent from the employer and 1 percent for employees.

According to PR No. 12/2013, as amended by PR No. 111/2013 regarding Healthcare Benefits, effective 1 January 2014:

- All employees covered by healthcare benefits under JAMSOSTEK are transitioned to a national healthcare benefits program (*Jaminan Kesehatan Nasional* or "JKN") under BPJS *Kesehatan*
- There is no "opt-out" clause for companies who already provide healthcare benefits for employees and their dependents via self-administered plans or health insurance programs or a combination of the two. Small, medium, large and state-owned enterprises were obligated to register their employees with JKN by 1 January 2015. Companies can continue providing private healthcare coverage but now also make the corresponding contributions to BPJS *Kesehatan.*

Employers and employees of private companies are required to make monthly contributions for each social security program, which calculated based on the following:

Administrator	Social security program	Percentage of regular wage	
		Employer contribution	Employee contribution
BPJS Workforce or Manpower (BPJS *Ketenagakerjaan)*	Work accident security	0.24 – 1.74%	-
	Old age security	3.7%	2%
	Death security (life insurance)	0.3%	-
	Pension security	2%	1%
BPJS Health (BPJS *Kesehatan)*	Healthcare security (JKN)	4%	1%

The calculation of JKN is subject to maximum wages of IDR12,000,000 (twelve million Rupiah) per month. The cap may change in the future. The mandatory premium covers a husband, wife, and three dependents.

Omnibus Law introduces a new social security program, namely unemployment security. Workers who experience termination of employment relationships are entitled to obtain unemployment security. The unemployment security will be administered by BPJS *Ketenagakerjaan* and the central government, and the premium will be borne by the central government. The benefits of unemployment insurance will be in the form of cash, access to job market information, and job training. The maximum amount of the benefit is six months salary, and shall be received by the participants after they reach certain membership period. Further provisions will be regulated under the GR.

In summary, the BPJS scheme now comprises the following:

BPJS Scheme Summary		
No	Name	Coverage
1	BPJS Workforce or Manpower (BPJS *Ketenagakerjaan*)	Old age, work accident, pension, death, and unemployment security
2	BPJS Health (BPJS *Kesehatan* or JKN)	Healthcare

Starting 1 July 2015, BPJS has monitored companies operating in Indonesia to ensure mandatory registration of employees into the scheme is complied with, and has authority to enforce the law and proceed with litigation. Penalties and other sanctions can also apply.

Failure to comply with the employer registration and premium contribution obligations of BPJS may lead to various sanctions from administrative to criminal sanctions in the form of:

i) Written warnings;
ii) Fines of up to IDR1 billion;
iii) Impediment to receive certain public services (refusal to grant business licenses, building permit (*Ijin Mendirikan Bangunan* or IMB) and land title certificates); and
iv) Imprisonment for up to eight years.

In practice, requests for compliance will be made before sanctions are imposed and, in our experience, historically these sanctions have been rarely imposed under the JAMSOSTEK predecessor scheme.

Employee entitlements and benefits relating to change in ownership

Under the Labor Law, employers are liable to pay severance, gratuity and other compensation to those employees who elect not to continue their employment in the event of a change in ownership of the employer. This will normally occur as part of a transaction involving an acquisition of shares. The change of ownership provisions and compensation obligations are generally considered to be triggered on a change control or ownership in share capital. Other considerations can also apply.

The Omnibus Law requires employers to pay employee the severance pay, service year pay and compensation of rights. The previously regulated minimum calculation of severance pay and long service pay under paragraphs (2) and (3) of Article 156 of the Labor Law are now the maximum amount of severance pay and long service pay under the Omnibus Law. For the compensation of rights, the Omnibus Law removes the compensation for housing allowance, medical and health care allowance at 15 percent service pay as one of its components.

The Labor Law requires the amount of severance, gratuity and compensation to be calculated as follows:

- Scenario (a): any employee electing to voluntarily resign – voluntary resignation. Employees are entitled to one time severance, one times gratuity and 15 percent compensation payment of total severance and gratuity
- Scenario (b): employer decides to terminate employment – involuntary resignation. Employees are entitled two times severance, one time gratuity, and 15 percent compensation payment of total severance and gratuity.

The MOMT some time ago issued guidelines on its interpretation of a change of ownership under Article 163(1) which are:

- A "take-over" of target as defined in the Company Law No. 40/2007.
- The change of ownership that results in:
  - A change in control of a target, in conjunction with;
  - A reorganization of the work force, changes in working conditions and employee rights and obligations.
- If there is no reorganization of the work force even with a change in control, then employees do not have the right to exercise Article 163 (1)

The multipliers of the severance, gratuity and compensation is based on period of service set out in the Labor Law.

In KPMG's experience on a few higher profile transactions in recent years, regardless of the above guidelines, some employees and/or labor unions have taken a position that any direct change of ownership in a target triggers a right to elect to voluntarily terminate under Article 163(1), regardless that no change of control, HR policy or workforce reorganization may have occurred.

In practice and for most industries, changes in ownership usually do not trigger mass resignations. These resignations may only be limited to long serving employees who consider a relatively large compensation payment attractive. Also, the more sophisticated the employee, generally the less likely an election will be made for involuntary resignation and an earlier but smaller "windfall" compensation payment. An issue can sometimes exist in industries where there is strong demand for scarce, quality resources. Experienced, competent middle management can be difficult to retain and recruit across many industry sectors.

When cases involving the above are litigated in the courts, there are no precedence to draw on as decisions are usually not reported in Indonesia.

Labor unions have been known to intervene with the process and take overly aggressive positions on behalf of employees around interpretations of the law and statutory compensation benefits payable.

Industrial relations and labor unions

The reformation in labor politics in Indonesia was initiated by the issuance of Ministerial Regulation No. 5/1998 concerning Labor Union Registration, which ended the monopoly of all-Indonesian workers union confederation ("KSPSI"). Following enactment of Law No.21/2000 concerning Trade/Labor Union, many local labor unions representing many different industries have emerged and registered their establishments with the MOM.

Membership is not compulsory. The majority of Indonesian workers are not unionized (this may be partly a function of Indonesian labor laws providing for generous severance and termination benefits as well as labor court approval for involuntary resignations, except where accepted by written agreement or resignation).

The Indonesian labor movement council ("MPBI') was set up in May 2012 to launch a strong resistance movement against Indonesian labor/worker issues and exploitation. It comprises of three main labor confederations: KSPSI, KSPI and the confederation of Indonesian prosperous labor unions ("KSBSI"), as well many small unions.

The government enacted Ministerial Regulation No. Per.16/MEN/XI/2011 concerning Procedures for the Making and Ratification of Company Rules and the Making and Registration of Collective Labor Agreement. A company that employs at least 10 workers must register a PP which documents its working policies and requirements. A CLA is a bipartite agreement which covers working, wage payments, health-and-safety benefits and systems as well as regulations on violations and sanctions for workers, the employer and union. In case there is only one labor union in a company, the union may have the right to negotiate a CLA if it is supported by more than 50 percent of all workers. If there is more than one labor union, a maximum of 3 labor unions which have a minimum of 10 percent of all workers may have right to negotiate a CLA. Both parties must submit a renewal of the PP and CLA at the latest 30 working days before expiration.

In accordance with the Labor Law, a labor strike is legal and recognized as a fundamental right of workers and their unions, which must be staged legally, in an orderly and peacefully manner and as a result of failed negotiations. Article 140 No. 1 of the Labor Law stipulates that within a period of no less than seven days prior to an intended strike being staged, workers/laborers and trade/labor unions are under an obligation to give written notification of the intention to the employer and the local MOM office. The MOM has enacted Ministerial Decree No. 232/MEN/2003 concerning the Legal Consequences of Illegal Strike which is designed to prevent occurrences of sudden and illegal strikes in Indonesia.

Labor unrest and strikes have historically tended to be brief and factory-specific, although country-wide demonstrations have occurred in relation to perceived improper use of contract employees, outsourcing of workers and cheap labor policy. Employers have also reported occurrences of labor problems relating to minimum wage increases and comparisons to the cost of living. It is relevant that the Labor Law is very employee friendly and annual minimum statutory wages increases exist as prescribed by formula.

Employment of expatriates

The government classifies jobs into those closed to foreigners, those open only while Indonesian nationals are being trained and those open for other reasons. The MOM regulates the employment of foreign citizens for certain positions and for certain time periods only as determined and specified in Ministerial Decree No. 40/2012 concerning Restricted Positions for Foreign Employees. Accordingly, expatriate employment requires government approval, and foreigners must obtain a limited stay visa ("VITAS"), limited stay permit card ("KITAS") and work permit (*Izin Mempekerjakan Tenaga Asing* or "IMTA") through their sponsoring employer. Certain other documentary formalities are also normally required. Once an expatriate has a KITAS, he or she can bring a spouse and children to Indonesia.

Omnibus Law eliminates the requirement of obtaining IMTA. Any employer who employs foreign workers must possess an expatriate manpower utilization plan ("RPTKA") which is ratified by the central government. This RPTKA shall serve as a work permit for the foreign employee. Moreover, the employer is required to give notification on the hiring of the foreign employee to the MOM after the RPTKA is granted. It contains information on the position that will be held by the expatriate, the number of expatriates required by the employer, the duration for employing the expatriate, the proposed commencement date for employing the expatriate and details on the Indonesian worker appointed as the counterpart (position, education and work experience).

In theory, the government will expect the number of expatriates in any organization to reduce over time, and may require the employers who employ foreign workers to:

- Appoint workers of Indonesian citizenship as accompanying working partners for expatriates to facilitate transfer of knowledge, technology and expertise
- Educate and train workers of Indonesian citizenship until they have the qualifications required to hold the positions currently occupied by expatriates.

MOM Regulation on Foreign Workers: Regulation N0. 10/2018

In July 2018 the MOM issued Regulation No. 10/2018 on Procedure for Utilization of Foreign Manpower. This revoked Regulation No. 35 which was issued in 2015. Regulation No. 10/2018 sets out the new procedures for the arrangement of the foreign worker work permit, including:

- Foreign worker work permit now consists of a RPTKA and a notification. The IMTA is no longer required in order to employ an individual expatriate. The validity period of the RPTKA will be in accordance to the work agreement.
- RPTKA must be filed through online system. Notification application must be submitted to the Directorate General under the MOM. Notification from the Ministry along with personal data of the foreigner will be used to issue VITAS or limited stay permit (*Izin Tinggal Terbatas* or "ITAS")

- To employ foreign workers, employers are also obliged to:
  1) Pay compensation for the use of foreign manpower ("DKP-TKA") of USD100 on monthly basis for each position that is held by each foreign worker until termination;
  2) Register the foreign workers with insurance programs;
  3) Appoint Indonesian companion employees for the transfer of technology and skills from the foreign workers and provide training for the Indonesian companion employees.
- Every foreign workers to be employed in Indonesia is required to:
  1) Possess qualified education for the position;
  2) Own a minimum five years of related work experience;
  3) Hold an Indonesian taxpayer registration number (for expatriates who have worked in Indonesia for at least six months);
  4) Own temporary stay permit/card issued by authorized agency;
  5) Transfer knowledge to Indonesian companion employee.

As regulated under the Omnibus Law, RPTKA is exempted for:

- BOD or BOC with certain shareholding threshold or shareholders in accordance with the prevailing laws and regulations.
- Diplomatic and consulate staff in foreign country representative office.
- Foreign workers required by the employers in types of production activities that has stopped due to emergencies, vocational activities, technology-based start-up companies, business visits and research for a certain period of time.

Foreign workers may be employed in Indonesia only in an employment relationship for certain positions and a specified period as well as having competence in accordance with positions that will be occupied. Provisions on certain positions and specified period will be further regulated by the GR.

Training for foreign workers

Regulation No. 10/2018 also mandates employer to facilitate Indonesian language education and training for long-term work permit non-director/commissioner positions. The language training is not required for directors, commissioners and foreign workers using a short-term or urgent/emergency work permit. The Indonesian language education and training may be conducted by the employer or in collaboration with any Indonesian language training institution. Failure to facilitate Indonesian language education and training will result in a temporary cease of the licensing process of the foreign workers.

Omnibus Law introduces new type of job training organizer, namely Company Job Training Institution. Company Job Training Institution is defined as training unit within the company. Company Job Training Institution is not required to obtain specific business license to conduct job training activity. Company Job Training Institution only needs to register such activity to the respective government agency responsible for manpower affairs at the regency/city level.

New expatriate employment positions proposal

The Labor Law provides that:

(i) Expatriates may be employed in certain positions and for certain periods of time only; and

(ii) These are to be specified in a ministerial decree: Article 42(4)-(5) of the Labor Law.

On 27 August 2019 the MOM issued implementing decree No. 228/2019 ("Decree 228"). This sets out a new list of positions in which expatriate workers can be employed in Indonesia. PR No.20 of 2018 on Guidelines of Employment of Expatriates was enacted prior to this implement decree.

The MOM had previously issued several regulations with respect to the specific positions which are open for expatriate workers across business sectors. Decree 228 effectively repealed those regulations which are replaced with the list as attached to Decree 228.

Below a summary of the key points provided under Decree 228:

1. **International Standard Classification of Occupation**
   The positions that may be occupied by expatriates under Decree 228 are classified under specific sectors by reference to the International Standard Classification of Occupation ("ISCO") issued by the International Labor Organization. The ISCO has been adopted by the GOI under the Indonesian standard classification of positions (*Klasifikasi Baku Jabatan Indonesia* – "KBJI").
2. **Director and commissioner position**
   Expatriates are now clearly allowed to occupy the position of commissioner or director to the extent that such position does not relate to human resources matters and does not contravene the prevailing laws and regulations. This is a positive development as before the enactment of Decree 228, this matter was not specifically regulated and thus raised questions.
3. **Non-listed positions**
   Where an intended position to be occupied by an expatriate is not listed in the Attachment 1 to Decree 228, the MOM or authorized officials may nonetheless grant an employment permit to the relevant expatriate. Despite this, we anticipate that the MOM will be fairly conservative in its exercise of this discretion in line with its previous practice.

4. **Periodic evaluation**
The list of positions that can be occupied by expatriate, as well as the requirements for such positions (as currently set out in Attachment 1 to Decree 228), will be periodically evaluated (at least every two years) or more regularly if deemed necessary.

5. **Validity of existing expatriate employment permits**
Expatriate employment permits issued before the enactment of Decree 228 will remain valid until their respective expiry date.

6. **List of positions that can be occupied by expatriates**
Attachment 1 to Decree 228 contains a list of positions (and the corresponding requirements) that can be occupied by expatriates across 18 business sectors, namely:

1) Construction;
2) Real estate;
3) Education;
4) Processing industry;
5) Water management waste-water management, waste management and recycling, and remediation activities;
6) Transportation and warehousing;
7) Arts, entertainment, and recreation;
8) Provision of accommodation and provision of food and beverages;
9) Agriculture, forestry and fisheries;
10) Renting and leasing without option rights, employment, travel agents and other supporting business;
11) Financial and insurance activities;
12) Human health activities and social activities;
13) Information and telecommunications;
14) Mining and excavation:
15) Procurement of electricity, gas, hot water/vapor and cold air;
16) Wholesale and retail, reparation and maintenance of cars and motorcycle;
17) Activities involving other services; and
18) Activities in the professional, scientific and technical sectors.

Decree 228 includes several new open sectors for expatriate which previously were not being regulated, among others: real estate, activities involving other services, and activities in the professional, scientific and technical sectors. For real estate sector, we note there is only a small number of positions open for expatriate (i.e. general manager, deputy general manager, retail development manager, corporate planning manager, marketing manager and marketing specialist). We view this can be considered as a positive development as it provides legal certainty for these open positions.

Companies which currently employ (or wish to employ) expatriates and are engaged in any of these 18 sectors should be aware of this new development. If the intended position to be occupied by the expatriates is not listed in Attachment 1, then the relevant employer should engage with the relevant manpower authorities and check if the position is indeed open for expatriates.

The number of expatriates employed in Indonesia has, for a long time, been a matter of government concern as it seeks to find the right balance between two competing considerations. On the one hand, the government wants to create more job opportunities for Indonesian workers given the country's endemic problem of unemployment/ underemployment, particularly among your people. On the other hand, the government recognizes (albeit reluctantly) that:

(i) Indonesian workers do not always have the skills and experience required by companies (whether foreign owned or locally owned), and

(ii) Foreign investors understandably often want to have home country employees, whom they know and trust, fill key positions in their Indonesian subsidiaries. Finding in the right balance has proved to elusive, but the unquestionable trend has been towards ever increasing restrictions on the employment of expatriates resulting in many fewer expatriates currently being employed in Indonesia compared to the situation only a few years ago.

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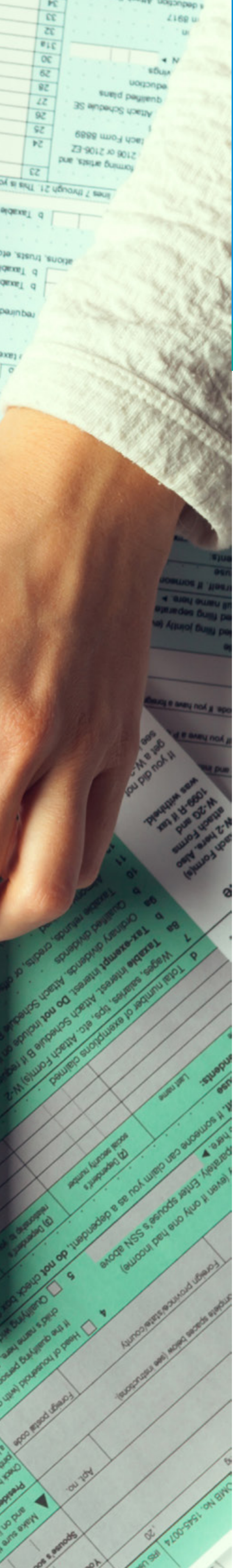

10 Taxation

Summary data

Corporate tax rates

Rate (percent)	Applicable year
22 (flat rate)	from 2020

Listed companies which meet certain conditions are eligible for a 3 percent reduction of the corporate tax rate.

A company with gross turnover less than IDR50 billion is eligible for up to a 50 percent reduction of the corporate tax rate based on the percentage of its taxable income which results when IDR4.8 billion is divided by its gross annual turnover.

If gross turnover is below IDR4.8 billion, the 50 percent reduction applies on all taxable income.

Article 31E Law Number 36/2008.

Personal tax rates

Rate (percent)	Taxable income
5	< IDR50 million
15	IDR50 million – IDR250 million
25	IDR250 million – IDR500 million
30	> IDR500 million

Article 17 Law No.36/2008

General

In Indonesia, taxes are levied under three laws that were introduced in December 1983. These cover:

- General tax provisions and procedures
- Income tax
- VAT on goods and services, and STLG.

With certain exceptions, withholding tax ("WHT") is imposed on payments to onshore and offshore parties, including payments, such as dividends, interest, royalties and fees paid for services. The GOI also collects taxes on land and buildings, stamp duty and import duties. Local governments collect various other taxes.

The official tax year runs from January 1 to December 31. Companies may adopt different year-ends in their AoA and may change their financial years with prior approval from the Indonesian tax authorities. A financial year cannot exceed 12 months for tax purposes.

Indonesia has a self-assessment system under which returns are considered final if not queried by the ITO within five years.

Residence

All organizations incorporated in Indonesia are subject to taxation. Corporate organizations include limited liability companies, other companies, partnerships, cooperatives, foundations, pension funds and associations.

Individuals present in Indonesia for more than 183 days per year and corporate organizations incorporated overseas receiving or accruing income from Indonesia are subject to taxation. These corporate organizations are obliged to register for tax purposes if they have a PE in Indonesia. Certain types of income payable to non-residents by resident taxpayers are subject to WHT.

Representative offices of foreign companies are also required to register as taxpayers, even though they may not be a PE. This is necessary as the representative office will have to withhold tax on payments to employees and third parties and lodge relevant tax returns.

VAT registration is available only to registered taxpayers.

Permanent Establishment

A PE generally covers representative offices, management base offices, branch offices, office buildings, plants, warehouses, dependent agencies and may also include construction projects, mines or other places of extraction of natural resources, as well as consultants providing services in Indonesia.

This is very broadly defined so that the presence of an employee in Indonesia performing work for a foreign company is sufficient to establish the existence of a PE. Foreign companies should be beware of inadvertently creating a PE and should take positive steps to enter into one of the formal arrangements permitted in Indonesia.

Significant economic presence permanent establishment and electronic transaction tax

Overseas e-commerce companies which have a significant economic presence in Indonesia will be deemed to have a PE for tax purposes. The significant economic presence will be further determined by the MOF based on the following factors:

- Consolidated gross revenue;
- Sales amounts in Indonesia; and/or
- The size of active members in Indonesia.

If the concept of a deemed a PE as stated above cannot be applied because of available tax treaty exemptions, an electronic transaction tax ("ETT") will be imposed on sales to Indonesian buyers/users. As per August 2021, the new rules have not been implemented and, therefore, do not yet apply.

Capital gains

Capital gains, regardless of the reason for the disposal of the asset, are taxable. A taxable gain, except for land and buildings, is defined as the net proceeds less the adjusted tax basis at the time of disposal. The tax rate is 22 percent for corporate taxpayers and progressive rates for individual taxpayers (this income is reported together with regular income in the annual tax returns).

Losses from a sale or transfer of property or rights used in a business to earn income are deductible unless the transaction is subject to final tax.

Disposals of land and buildings are subject to a 2.5 percent final income tax based on the selling price or the deemed tax market value of the property, whichever is higher. The acquiror is also required to pay a 5 percent levy/transfer title tax ("BPHTB") on the purchase price.

Capital gains on the sale of shares listed on the IDX are subject to a final tax rate of 0.1 percent of gross proceeds (plus an additional 0.5 percent for founder shares on the share value at the time of an IPO). However, certain types of venture capital companies are not required to pay tax on capital gains under certain circumstances.There is also a final tax, being 5 percent of gross proceeds, on the sale of unlisted shares held by a foreign shareholder in an Indonesian company, unless exempt under a double tax agreement ("DTA") subject to certain requirements.

Dividends

Dividends and other shares of profit derived by resident limited liability companies, cooperatives, SOEs or BUMD enterprises from participation in the capital of an enterprise established in Indonesia are excluded from the taxable income. Dividends and shares of profits from other sources, including offshore sourced, may be exempt under certain conditions. A foreign tax credit is allowed for any tax withheld on foreign-source dividends. A credit is however not available for foreign tax on underlying profits.

Losses

The carry forward of tax losses is limited to five years, commencing the first year after the loss was incurred. This period may be extended for up to 10 years under special facilities available for certain regions and/or industries. No provision for the carry-back of losses exists. Changes in shareholders do not affect the validity of the carried forward losses.

Capital losses are treated the same as operating losses provided that the losses are reasonable based on sound market practice. No foreign sourced losses can be included in the tax computation.

Grouping/consolidation

No provision exists for group or consolidated income tax returns under Indonesian law.

Tax depreciation/capital allowances

Depreciable property is defined as tangible property owned and used in the business or owned for the production, recovery and securing of income, which has a useful life of more than one year. Land is not depreciable, except for certain industries.

Buildings and other immovable property are depreciated only using the straight-line method. For all assets other than buildings and other immovable property, depreciation is calculated using either the declining balance or the straight-line method at a company's option. These assets must be grouped into categories defined by the tax regulations, as there are the useful lives to be applied in calculating tax depreciation for each category.

Once applied, taxpayers are not allowed to change the method of depreciation without ITO approval. Special rules apply in the oil & gas and mining sectors.

Amortization of expenditure

The acquisition price of intangible property with a useful life of more than one year must be amortized consistently using either the straight-line or declining balance method over the useful life of the asset, following the rates of depreciation for tangible assets. For mining industries, forestry and other natural resources businesses, the taxpayer must use the unit of production method with a maximum of 20 percent per year. It should be noted that any newly declared assets under the Tax Amnesty Program, which ran from 1 July 2016 until 31 March 2017 (see further below), cannot be depreciated or amortized for tax purposes.

Interest

Interest on funds borrowed by a company for the purposes of obtaining, collecting and maintaining income is deductible from gross income (subject to thin capitalization rules). However, where funds are used to derive income subject to final tax (such as interest on domestic bank deposits) no deduction is available.

Interest may also be disallowed as a deductible item if such charges might be considered excessive, such as interest rates in excess of commercial rates. Interest-free loans from shareholders may in certain cases create the risk of the imposition of deemed interest and WHT obligations for the borrower.

Tax administration

Registration

All taxpayers are required to register for income tax purposes. A non-resident foreign company is only obliged to register if it has a PE as defined in the domestic tax law or applicable DTA. Upon registration, an NPWP is obtained. The ITO may register any entity or person which, in its opinion, should be registered as a taxpayer. Subsequently, that entity or person must meet all obligations stated in the law.

A taxpayer must deregister with the ITO when it ceases to be a taxpayer in Indonesia. The ITO will generally perform a tax audit in order to ensure that the taxpayer has met all obligations. Until the ITO deregisters a company, all obligations stated in the tax law continue to apply.

Tax installments

Corporate and individual taxpayers must pay monthly income tax installments. For most taxpayers, installments are based on the income tax payable reflected in the annual income tax return of the prior year. Banks and other taxpayers which are required to submit periodical financial reports should base their installments on such reports, as adjusted for tax purposes.

Returns

Companies are required to self-assess and lodge annual corporate income tax returns. Consolidated returns for commonly owned entities are not permitted. The returns must be lodged with the relevant ITO within four months after the end of the calendar year or tax year, this deadline may be extended for two months by notifying the ITO.

Withholding taxes - Transactions between residents

WHT is imposed at various rates on various amounts payable either by a resident corporation, a PE of a foreign company or certain individuals appointed as WHT collectors, to other residents. In most cases, the withholding liability arises when the expense is incurred, not when the payment is made. This WHT is generally prepaid tax (except for final tax WHT) and to be offset against annual tax payable. If claiming this prepaid tax results in tax overpayment, the taxpayer can ask for a refund (which will trigger an automatic tax audit).

The regulations are numerous and the following is a summary of the main types of transactions subject to WHT and the related WHT rate:

*Amounts payable to resident **individuals:***

- Compensation for work or services: 5-30 percent (special rates may apply for pensions)
- Dividends: 10 percent (final) or exempt under certain conditions
- Royalties: 15 percent
- Interest:
  - bank interest: 20 percent (WHT is final on interest from local banks)
  - bonds and certain other securities: 15 percent (final)
  - other interest: 15 percent
- Rental and other income relating to the use of real property: 10 percent (final)
- Prizes and awards - lotteries: 25 percent.

*Amounts payable to **resident companies** and **PEs:***

- Royalties: 15 percent
- Interest:
  - bank interest: 20 percent (WHT is final on interest from local banks)
  - bonds and certain other securities: 15 percent (final)
  - other interest: 15 percent
- Rental and other income relating to the use of real property: 10 percent (final)
- Rental of equipment and vehicles: 2 percent
- Services: 2 percent (includes technical services, management services, other services)
- Amounts payable to local banks are exempted from WHT
- Dividends to resident companies: exempt (dividends to PE's are deemed to be distributed to the foreign company).

The purchase of goods is generally not subject to WHT, except for certain goods as stipulated by the ITO.

Disposal of property

Tax is also imposed at source on proceeds of disposal of property:

- shares listed on the IDX - 0.1 percent (final)
- founders' shares are subject to an additional 0.5 percent (final) upon listing
- transfer of title of land and buildings – 2.5 percent income tax (final) for the seller and 5 percent title transfer tax (duty/BPHTB) for the buyer
- sale of unlisted shares held by a foreign shareholder in an Indonesian company - 5 percent of proceeds (final), unless exempt under a DTA.

Exemption

Where the WHT is a prepayment of the recipient's income tax liability, the recipient may be able to apply for an exemption from withholding in certain circumstances.

Tax Amnesty Law

On 28 June 2016 the Indonesian parliament approved the Tax Amnesty Law ("the TA Law"). The TA Law was effective during the period from 1 July 2016 until 31 March 2017. The TA Law aimed to increase tax revenues, make fairer tax reforms possible due to an expanded tax base and accelerate economic growth.

According to the TA Law, tax amnesty is a waiver of:

(i) The tax due,

(ii) Administrative sanctions, and

(iii) Criminal sanctions by way of declaring previously undeclared assets and paying a so-called Clearance Levy on these assets.

The tax amnesty was granted on tax obligations which had not been paid or fully settled by taxpayers up to fiscal years ending in 2016 (31 December 2016 at the latest). The tax amnesty covered income tax, VAT and STLG. The declaration period ran from 1 July 2016 until 31 March 2017. It is important to note that not only individuals could make use of the amnesty. The tax amnesty was also open to companies (including PMA companies).

In practice, many companies joined the program. One of the benefits of the amnesty was that tax audits would not be conducted up to the last tax year. In addition, the Clearance Levy rates were significantly lower than the normal corporate tax rate of 25 percent. In order to apply for the amnesty, a taxpayer had to file a so-called assets declaration letter for tax amnesty ("Declaration Letter").

The tax amnesty was granted for all non-declared net-assets (assets minus liabilities) in- or outside Indonesia, which were declared in the Declaration Letter. As mentioned above, on the non-declared assets, Clearance Levy had to be paid. The Clearance Levy rate was based on various variables (e.g., whether offshore based funds or Indonesia based funds, period of declaration, etc.). The rates varied from 2 percent to 10 percent. The "taxable" base of the Clearance Levy was calculated based on the Net Asset Value of the non-declared assets.

Tax incentives

Takeovers, mergers and acquisitions

Assets may be transferred at book value as part of a merger or in the context of certain other reorganizations, subject to prior approval from the ITO. A VAT exemption may apply as well. In addition, there may be partial relief from the 5 percent transfer of title tax on land and buildings and full relief from the 2.5 percent income tax on the transfer of land and buildings.

Tax holidays

Tax holidays may be available for significant investments in business sectors which constitute "pioneer" industries:

- Integrated upstream basic metals
- Integrated oil and gas refinery
- Integrated petrochemicals from oil, gas or coal
- Integrated inorganic basic chemicals
- Integrated organic basic chemicals from agriculture, plantation or forestry products
- Integrated pharmaceutical raw materials
- Irradiation, electro medical or electrotherapy equipment
- Main components of electronics or telematics equipment
- Machinery and main components of machinery
- Robotics components that support the creation of manufacturing machinery
- Main components of power plant machinery
- Motor vehicles and main components of motor vehicles
- Main components of vessels
- Main components of trains
- Main components of aircraft and activities supporting the aerospace industry
- Agricultural, plantation or forestry-based processing that produce pulp
- Economic infrastructure
- Digital economy which includes data processing, hosting and related activities.

The eligible industries are published in a separate list of KBLIs by the Head of the BKPM. The current list contains 185 KBLIs. Not listed business sectors may still be eligible to apply for a tax holiday if all remaining requirements have been fulfilled. To qualify, applicants must invest a minimum of IDR100 billion. The potential tax holiday percentage and duration depends on the investment amount. For investments between IDR100 billion and IDR500 billion, a 50 percent tax reduction may apply for a five-year period and a 25 percent reduction for the following two years after expiry.

For investments as from IDR500 billion up to IDR30 trillion and more, a 100 percent tax reduction applies for a period of five to 20 years and a 50 percent reduction for the following two years after expiry. The tax holiday starts at the time that commercial production has started. This will be assessed by the ITO during a field audit. Submission of the application should be done through the OSS system. Taxpayers applying for a tax holiday for not listed business sectors should file their application with the BKPM. The BKPM will subsequently discuss the eligibility with the various relevant ministries. If eligible, the head of the BKPM will forward the application through the OSS system.

The ITO should issue a decision within five working days after receiving the complete application proposal from OSS.

Tax Holiday proposals can be submitted until 8 October 2024.

Direct tax incentives for new enterprises

New entities established under the Foreign Investment Law may apply for an exemption from tax payable on the importation of capital goods and raw materials. New enterprises must secure an exemption certificate from the ITO where the new entity is registered. The exemption is granted for capital goods indicated in the BKPM Master list and must be applied for each year.

Investment in certain businesses and/or certain regions

Effective as per 13 December 2019, income tax relief is available for investments in 33 selected sectors (166 sub-sectors) irrespective of the location in Indonesia. In addition, there are seven business sectors (17 sub-sectors) that qualify if located in specific locations in various regions (mostly outside Jakarta). Investors should consult with the ITO or their tax advisors as qualifying sectors and geographical regions may change from time to time.

The tax relief for the selected sectors/regions comprise of four incentives:

- Additional tax deduction of 5 percent of the realized capital investment (depreciable and non-depreciable assets) each year up to six years (revoked if the assets are transferred during facility period)
- Option to use accelerated tax depreciation at double normal rates
- The period for tax loss carry forward may be extended to a maximum of 10 years (instead of five years)
- WHT on dividends to non-resident shareholders is reduced to 10 percent (or a lower DTA rate).

The selected business sectors are economic sectors that have high priority on a national scale, particularly in respect of boosting exports, employment creation or local content ratio. The selected regions are remote regions, which are economically potentially worthy of development but whose economic infrastructure is generally inadequate and where access by public transport is difficult, including maritime waters with a depth of over 50 meters where the seabed has mineral reserves, including natural gas.

The application to obtain the income tax benefits should be submitted electronically, utilizing the OSS system, together with an application for a business identification number or within one year after OSS has issued a business license for the investment and/or expansion.

Special economic zones

Companies conducting business in SEZ may make use of tax facilities comparable to the direct tax facilities like the tax holiday and the tax allowance. The SEZ are specifically regulated in a GR.

Investment in industries with certain features

Effective as per 26 June 2019, tax facilities exist for investments in labor-intensive industries, for human resources development in certain competencies and for certain research and development activities in Indonesia. It regards facilities creating a deduction of net income of 60 percent of the amount invested in tangible fixed assets over a certain period or a reduction of gross income of up to 300 percent of the amount spent for a qualifying activity.

Free trade zones and free port areas

FTZ and free port areas ("FPA") are treated as if they were outside of the Indonesian customs territory. There are no import duties and other taxes on the importation of goods. Goods delivered to other locations within Indonesia are treated as imports and are subject to normal customs and other impositions.

The regulations provide specific area coordinates and boundaries, including maps of the area coverage of the FTZ and FPA.

Business activities conducted in the FTZ and FPA include trading, maritime, industry, transportation, banking, tourism and other activities. Other activities are subject to further stipulation by separate GRs. The regulations stipulate that the economic development of the FTZ and FPA must be conducted in accordance with the regional master plan. These GRs do not revoke any agreements, arrangements or cooperation, as well as any licenses or facilities granted prior to the stipulation of the 2007 GRs. These will still apply until expiration.

Aid-funded projects

Goods, materials and construction equipment imported by a main contractor in connection with an approved government project funded by foreign loans or grants are entitled to the following relief:

- Exemption from import duty
- No collection of VAT and STLG
- Income tax is borne by the government for primary contractors, consultants and suppliers working on such projects.

Imported goods

The duty and tax relief available for the importation of goods are summarized in "Indirect and Other Taxes".

International tax

Double tax relief

Indonesia grants a credit for WHTs directly paid on income received or accrued in a foreign country. There is no credit for taxes on underlying profits. The credit is only granted if the income is taxable in Indonesia as being part of worldwide earned income. The credit is limited to the lesser of the tax payable in Indonesia on the foreign income or the amount of the foreign tax paid, or the maximum tax rate stated in the relevant DTA.

If the foreign tax is reduced or refunded, the credit will be reduced and the tax payable in Indonesia will have to be increased by the amount of the reduction or refund in the year that such refund or reduction is made.

Withholding taxes

Transactions with non-residents

WHT is imposed at 20 percent on various amounts payable to non-residents, unless the non-resident has a PE in Indonesia, whereby the rates applicable to payments to residents apply. The WHT may be reduced if the foreign resident is exempted or eligible for a reduced WHT rate by virtue of a DTA.

In order to qualify for any relief under a relevant tax treaty, non-residents must provide a certificate from the tax authority in their country of residence using a standard form (i.e., form Directorate General of Taxes or "DGT") issued by the ITO. The foreign competent authority must acknowledge this form DGT either by signing Part II of the form or by using their standard certificate of domicile.

WHT applies to the following:

- Dividends
- Interest, including premiums, discounts and compensation for loan guarantees (effective as per 2 August 2021, interest on fixed income securities is subject to 10 percent WHT instead of 20 percent)
- Royalties
- Rent and other income connected with use of property
- Cross border leases
- Gifts and awards
- Compensation for work by individuals or services or activities by overseas entities (applies irrespective whether services are performed outside or inside Indonesia)
- Insurance premiums (the rate of tax is reduced depending on the nature of the transaction)
  - Insured - 10 percent
  - Insurance company - 2 percent
  - Reinsurance company - 1 percent
- Disposals of shares in unlisted Indonesian companies. The effective rate of tax is 5 percent. If a foreigner is buying the shares in a company, the company must pay the WHT before the transfer of ownership can be recorded.

Branch profits tax

PE's of foreign enterprises are subject to 20 percent WHT on their after-tax income unless eligible for a reduced rate by virtue of a DTA.

Double tax agreements

In July 2021, Indonesia had DTA's with 70 countries in force (excluding the treaty with Saudi Arabia which only governs air transport). In addition, Indonesia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument or "MLI") on 17 June 2017. The MLI allows jurisdictions to swiftly modify their tax treaties with the aim of reducing multinational tax avoidance and is a key component of the Organization for Economic Cooperation and Development ("OECD")'s Base Erosion and Profit Shifting ("BEPS") project. It was ratified by Indonesia on 12 November 2019. The MLI entered into force and effect as per 1 January 2021 for WHT and as per 1 November 2020 for the other provisions.

Anti-avoidance rules

Introduction

The income tax law contains specific anti-avoidance provisions. Where the ITO considers that transactions have not been conducted at arm's length due to the existence of a "special relationship" between the parties, the consideration paid may be adjusted. The ITO's power extends to all domestic and cross border transactions.

In addition to the power of the ITO to adjust transfer prices, there are "Thin Capitalization" considerations and controlled foreign company rules. These are summarized below.

Transfer pricing

The regulations/guidelines which have been issued with regard to transfer pricing are now largely in line with the OECD Transfer Pricing Guidelines.

A special relationship includes:

- A relationship between two or more taxpayers that are under common ownership or control, whether directly or indirectly
- A relationship between a taxpayer that owns 25 percent or more of the capital of another party, or a relationship between a taxpayer that owns 25 percent or more of two or more parties, and the relationship between the two or more parties last mentioned
- A family relationship, either of the same blood or by marriage in one straight descent line and/or one degree sideways.

It is important to note that the above transfer pricing rules apply to domestic as well as cross-border transactions.

In 2013, the ITO released a standard transfer pricing questionnaire. This extensive questionnaire is not only sent to taxpayers that are under tax audit but also to other taxpayers.

A taxpayer may request for a mutual agreement procedure ("MAP"), should a transfer pricing adjustment lead to double taxation.

The ITO may also enter into advance pricing agreements ("APA") on prices with companies and other tax jurisdictions. The ITO issued an updated regulation covering the policies and procedures in 2020. Data published on the ITO's website indicates that Indonesia has negotiated a number of APA's and MAP's and that many requests are pending.

Local file, master file and country-by-country reporting

On 30 December 2016, the MOF of The Republic of Indonesia issued MOF Regulation No.213/PMK.03/2016 ("PMK-213") which implemented the OECD BEPS Action 13 initiative.

PMK-213 requires the preparation of three documents regarding related party transactions:

i. A master file ("MF"), containing general information on the group;

ii. A local file ("LF"), containing specific information on operations in Indonesia; and

iii. A country-by-country Reporting file ("CBCR"), containing detailed financial and other information on each of the members of the group.

The MF and LF must be available upon request four months after each fiscal year-end, in either Bahasa Indonesia or English (for taxpayers having approval to maintain bookkeeping in English language, but it must be accompanied by a Bahasa Indonesia translation). The CBCR submission is due within one year after each fiscal year-end.

Thresholds for preparing and maintaining master files and local files

An MF and LF are mandated if a taxpayer meets any of the following thresholds in a fiscal year (some of the explanations are our view on this regulation):

A taxpayer conducting:

1. any related-party transactions and its gross revenue was above IDR50 billion (approximately USD3.4 million) in the previous year - there is no threshold on the total amount of related party transactions; or

2. related party tangible goods transactions (sale and purchase of goods, materials, etc.) of more than IDR20 billion (approximately USD1.4 million) in the previous year; or

3. related party non-tangible goods transactions (interest, royalties and/or services) of more than IDR5 billion (approximately USD345 thousand) in the previous year; or

4. related party transactions of any amount with a related party in a jurisdiction which has a corporate tax rate lower than Indonesia's corporate tax rate, currently 22 percent. As there is no threshold for the level of the related party transactions, all such transactions, however small, are covered under this provision. A list of countries meeting this criterium has been published by the ITO.

Thresholds for preparing and maintaining CBCR files

A CBCR is mandated if a taxpayer meets either of the following thresholds in a fiscal year (some of the explanations are our view on this regulation):

1. It is a parent entity with consolidated group revenue of more than IDR11 trillion (approximately USD759 million) which applies to Indonesian group companies; or

2. It is a part of a foreign parent entity that:
   i. Is not required to submit a CBCR, or
   ii. Is in a country that does not have an information exchange agreement with Indonesia, or
   iii. If the ITO is unable to obtain a CBCR through an information exchange agreement.

The ITO has published a list of countries that have a suitable exchange of information arrangement with Indonesia.

PMK 213 includes an extensive list of the information to be disclosed in the CBCR. However, in most cases Indonesian subsidiaries of multinational entities are only required to file an online notification relating to the CBCR.

Penalties

A taxpayer that falls under the above requirements has four months (12 months for CBCR) after each financial year-end to prepare and declare, starting in its 2016 corporate tax return, that it is ready to submit the MF/LF. The MF/LF must be summarized in an attachment to the annual corporate income tax return ("CITR") and the CBCR attached to the tax return of the following year.

Penalties exist for failing to prepare and submit the MF/LF upon request. Failure to prepare MF/LF is treated under Article 3(3) as not applying the arm's length principle. Failure to deliver MF/LF when requested would result, under Article 5(3), in the taxpayer being deemed as not having transfer pricing documentation.

The ITO can request the above documents for compliance checking, a tax audit, an objection, a reduction of an administrative sanction and in other cases.

Application of "Thin Capitalization" concepts

Where a special relationship exists, interest may be disallowed as a deduction where such charges are considered excessive, such as interest rates in excess of commercial rates. Interest-free loans from shareholders may in certain cases create a risk of deemed interest being imposed, giving rise to withholding tax obligations for the borrower.

As per fiscal year 2016, Indonesia applies Thin Capitalization rules. Under these rules, a debt-to-equity ratio ("DER") is set of 4:1. Some corporate taxpayers are exempted from the DER:

1. Banks, including BI,
2. Financial institutions/leasing companies that engage in providing funds and/or capital goods,
3. Insurance and reinsurance companies, including sharia compliant insurance and reinsurance companies,
4. Oil and gas, and mining companies under a COW, PSC or other agreements with the government that have specific provisions for DER (if such provisions do not exist, the taxpayer is not exempted from the DER),
5. Companies subject to a final tax regime, and
6. Companies engaged in infrastructure businesses.

If a company does not comply with the DER, its financing costs related to the excessive debt portion are not deductible for corporate income tax purposes.

Controlled foreign company provisions

Effective from the 2019 tax year, the controlled foreign company ("CFC") rules whereby Indonesian resident shareholders may be subject to tax on deemed dividends have changed. A CFC is defined as a foreign unlisted corporation in which an Indonesian resident individual or corporate shareholder, either individually or as a group, hold directly or indirectly 50 percent or more of the total paid-in capital. Listed corporations are not CFCs. The Indonesian shareholders shall be deemed to receive dividends within four months after filing the tax return, or seven months after the end of the fiscal year where there is no obligation to file an annual tax return or there is no specific deadline of filing in the country of residence of the CFC. The CFC income subject to the deemed repatriation is limited to passive income.

Taxation of individuals

Introduction

An employer is obliged to withhold, remit and report tax on income received by an employee in connection with employment. Individuals who are resident in Indonesia for tax purposes are required to obtain a personal NPWP and file an individual tax return, unless he or she receives net income below the non-taxable income threshold (discussed below).

Residence

The tax law distinguishes between resident and non-resident taxpayers.

A resident taxpayer is defined as:

- An Indonesian citizen;
- An individual present in Indonesia for more than 183 days in any consecutive 12-month period; or
- Any individual present in Indonesia and intending to reside in Indonesia.

An Indonesian citizen is considered a resident from birth unless they obtain an approval as foreign tax subject or leave Indonesia permanently and close their NPWP. An expatriate is resident until the date of final departure from Indonesia.

Resident individuals are taxed at the normal rates on taxable income, i.e. worldwide gross income less allowable deductions and non-taxable income.

Taxable income

Gross income is broadly defined as any economic benefit received or accrued by a taxpayer, whether originating from within or outside Indonesia. Gross income includes wages, salaries, bonuses and other compensation for work performed, honoraria, lottery prizes and awards, gross profits from a business, gains from the sale or transfer of property, dividends, interest, royalties, rent and income from the cancellation of indebtedness.

Based on the Omnibus Law, which was ratified on 2 November 2020, the following individuals may be exempted from the worldwide income tax rule:

a. An Indonesian citizen who resides outside Indonesia for more than 183 days will be treated as a non-resident taxpayer provided "several conditions" are met in order to obtain an approval as a foreign tax subject;

b. Foreigner employees who meet "certain skills" requirement will be exempted from worldwide income reporting for four years starting from when they first arrive in Indonesia. They are only subject to tax on Indonesian-sourced income.

There are limited deductions available for individual taxpayers, which are as follows:

- Individual personal allowances,
- Social security contribution, and
- Certain religious offerings paid to the approved religious institutions.

Interest income earned by individuals from time deposits held in Indonesia is subject to a 20 percent final WHT, accounted for by the paying bank. This income is not subject to further taxation in the hands of the recipient.

Income from the rental of land and buildings is subject to 10 percent final WHT. Corporate tenants must deduct the 10 percent tax from amounts payable to the lessor.

Indonesian tax can be reduced by tax paid or due abroad on income received or accrued abroad by an individual in the same fiscal year. The permitted foreign tax credit for such year shall be limited to the lesser of the actual tax paid in the source country/jurisdiction, the maximum allowable on effective tax rate or the tax treaty rate.

Capital gains tax

Similar to companies, capital gains derived by individuals are taxable as normal income.

Dividends

Dividends are taxable to individuals. Dividends received from domestic taxpayers are subject to a final WHT of 10 percent. The dividend may be exempt if certain conditions are fulfilled.

A foreign tax credit may be available for any foreign taxes paid on dividends received from overseas.

Employment income/employee benefits

By special concession, Indonesian nationals are allowed the full benefit of non-taxable income allowances and the lower bands of tax rates against part-year employment income. In all cases, the occupational support deduction is limited to the lower of 5 percent of gross income or IDR500,000 per month.

Employee benefits

Generally, the full cost of benefits-in-kind is excluded from the taxable income of an employee and is not an allowable deduction from gross income in determining the taxable income of the employer.

Benefits-in-kind are any benefits received by the employee or his or her family from an employer not in the form of cash. For example, the medical expenses of an employee paid directly by the employer to a hospital are excluded from taxable income because the benefit was not received as cash and was paid directly to a third party. Such benefits can also include housing (except in isolated areas), home leave, motor vehicles, children's education expenses and tax borne by an employer on behalf of an employee.

For oil & gas and mining contractors, the cost of benefits-in-kind may be deducted from taxable income.

Personal allowances

Resident individual taxpayers can also deduct the following in determining taxable income:

- For the individual taxpayer – IDR54,000,000/year
- For a married taxpayer who is the principal earner – an additional IDR4,500,000/year
- For each lineal family member by blood or marriage who is a full dependent (up to a maximum of three dependents) – an additional IDR4,500,000/year per dependent.

Resident individual taxpayers are also allowed the following tax deductions:

- For occupational support, an additional allowance of 5 percent of gross income up to a maximum of IDR6,000,000/year
- Contributions to registered pension funds and the BPJS scheme.

Tax rates

The following are the rates of tax applied to the annual taxable income of resident individuals:

Rate (percent)	Taxable income
5	< IDR50 million
15	IDR50 million – IDR250 million
25	IDR250 million – IDR500 million
30	> IDR500 million

Article 17 Law No.36/2008

An employee who does not have an NPWP is subject to a surcharge of 20 percent on the tax rate, such that the maximum rate will be 36 percent.

Subject to relevant DTAs, income received or earned by a non-resident for any work or services performed in Indonesia and paid by, or charged to an Indonesian entity, is subject to a final withholding tax of 20 percent applied to the gross amount of the income. The payer of the income is responsible for the WHT due on the income paid to the non-resident.

Payments to non-residents in the form of dividends, interest, royalties, rent for property, compensation for services, prizes and awards, pensions and other periodic payments, rentals, insurance premiums or the deemed gain (i.e., 25 percent of the transaction value) from the disposal of shares in unlisted Indonesian companies in Indonesia are also subject to a 20 percent WHT, unless reduced or exempted by an applicable DTA. This 20 percent WHT can be treated as a prepayment of tax if a non-resident becomes a resident taxpayer.

The tax year is the calendar year.

Tax administration

Payment of taxes

Individuals must pay and submit their annual income tax return by 31 March of the following year. They must pay monthly installments based on regular non-employment income declared in the previous year's tax return by the 15th of the following month.

Income tax withheld by employers from payments of wages, salaries, honoraria and other payments to individuals subject to tax, must be remitted on a monthly basis by the 10th day of the following month.

Employers must file a monthly tax return by the 20th day of the following month outlining total compensation and taxes withheld. There is no annual employee tax return. However, the December tax return to be lodged on 20 January, must detail, by individual, all taxes paid and income earned during the year by employees and other individuals subject to withholding. Any income tax payable as shown in such December tax return must be remitted before the filing date of 20 January.

Individual tax returns may be subject to tax audit. Payment of tax audit assessments is due within one month following the issuance of the tax assessment by the ITO.

There is a five-year statute of limitations.

Other issues

Standard salary guideline

Under the tax law, resident individuals including expatriates are taxed on worldwide income. The ITO has issued a schedule of salary guidelines, the most recent version of which was issued in April 2002. The guidelines address the industry of employment, nationality and job title. They are used by the ITO in circumstances that indicate that salaries are not being properly declared for employee income tax purposes.

For expatriates commencing or terminating employment during the year, annualization of income is required for calculating the tax payable on the part-year income. This effectively pro-rates the non-taxable income allowances and the lower bands of tax rates. As such, the timing of arrival in or departure from Indonesia of expatriates is of no significance for tax purposes.

Expatriate employees of drilling companies are subject to withholding tax on a deemed salary basis, for which separate regulations exist. Nonetheless, if the employee is a tax resident, he/she must self-report the full salary and other worldwide income in the individual annual income tax return.

Indirect and other taxes

Value-added tax

Overview

A person or body, in whatever form, which in the course of its operations, produces, imports or exports taxable goods, conducts trading activities or renders taxable services, is required to register as a "Taxable Entrepreneur" with the ITO. However, only a resident or a PE can obtain a VAT registration. Registration by non-residents is not allowed.

The rate of VAT is 10 percent, but under the law, the government may amend this rate to a minimum of 5 percent and a maximum of 15 percent. VAT on exports (including export of certain services) is levied at 0 percent.

Goods and services subject to VAT

VAT is imposed on:

- The delivery of taxable goods (tangible or intangible) in Indonesia by Taxable Entrepreneur
- The importation of taxable goods
- The rendering of taxable services in Indonesia
- Utilization of intangible taxable goods from outside the Indonesia
- Utilization of offshore taxable services in Indonesia
- Export of taxable goods by a Taxable Entrepreneur
- The activities of self-construction
- The disposal of fixed assets by a Taxable Entrepreneur, including the transfer in the course of a merger (except where VAT on the original acquisition could not be credited).

Special schemes for VAT apply to sales of cigarettes, pre-recorded cassette tapes and compact discs.

Collection, filing and payment of tax

VAT is determined by applying the tax rate of 10 percent to the sale, replacement or import price. The sales price is the money value, including all costs of delivery, installation, insurance, technical and maintenance, commission, guarantees, interest and others, as long as they relate to the delivery of goods. Compensation for services is the money value, including all costs, which relate to the delivery of the services.

Excluded from the sales price, are sales tax and discounts and rebates, as long as these are included on the tax invoice.

For imported goods, the import value is the value used as the basis for calculating the import duty together with other levies imposed on the basis of the provisions in the customs law, but excluding VAT and STLG.

In cases where a special relationship exists between two parties involved in a transaction, the ITO may substitute a market price that becomes the basis on which the VAT is charged.

Monthly remittances to the government are required for the excess of output VAT over input VAT. Output VAT is VAT charged by a taxable entity on its sales of goods and services. Conversely, input VAT is the VAT incurred on purchases of goods and services used in the business. If input VAT exceeds output VAT for any month, it can be carried forward to the next month or a refund can be claimed (except input VAT for certain transactions). A refund claim triggers a tax audit. Input VAT, supported by a valid tax invoice, is only creditable if it is reported within three months after the end of the period stated in the tax invoice.

There is a self-collection obligation in relation to input VAT on offshore services purchased from non-residents for the benefit of residents.

Monthly VAT returns must be filed by the end of the following month and any VAT payable must be paid before the submission of the return.

Certain government bodies, production sharing contractors and mining companies are subject to special rules as they are designated VAT collectors. These bodies are obliged to remit VAT related to their purchases directly to the ITO.

Exemptions and reliefs

The principal activities not subject to VAT are as follows:

- Goods produced by mining or drilling that are taken directly from their source: crude oil, natural gas, geothermal energy, sand and gravel, coal (before processed into briquettes), and ores (iron, tin, gold, copper, nickel, silver and bauxite)
- Basic necessities needed by the population as a whole: rice, corn, sago, soybeans and salt
- Money, gold ingots and negotiable instruments
- Banking, insurance, leasing services and securities
- Manpower services
- Social, health, religious and education services
- Public transportation, postal services, non-commercial broadcasting
- Entertainment services
- Hotel and catering services
- Government services.

There are also goods and services that are granted an exemption from VAT.

Relief for export manufacturers

There is a number of relief schemes to allow exporter manufacturers to operate on a virtually VAT and duty-free basis. Such schemes include bonded zones, economic development zones ("KAPET") and FTZ. The government has approved a number of bonded areas located throughout Indonesia.

FTZ and FPA are located in Indonesia but are considered outside the customs area and, therefore, goods brought into these areas are exempted from import duties, VAT and STLG. Business activities that can be carried out in a FTZ include, among others, trade, services, mining, transportation, banking and manufacturing.

An import incentive is granted to a manufacturer who imports raw materials to be used for processing, assembling or installing goods, provided those goods will be 100 percent exported. A manufacturer must be registered in order to be entitled to this incentive. A bank guarantee or customs bond is required for the full amount of the import duty, excise, VAT and STLG that would otherwise have been payable. When goods are exported, the guaranty or bond is released. A refund can be granted on any import duty, excise and tax paid on imported goods that are later used in producing items for export.

VAT transactions by foreign e-commerce players

As of 1 July 2020, the DGT can appoint foreign e-commerce players carrying out transactions with Indonesian customers as VAT collectors (if certain conditions are met). If appointed, the foreign e-commerce players have to charge, report and pay 10 percent VAT on their transactions with Indonesian customers. It should be noted that the appointed foreign e-commerce players are not considered to be Indonesian VAT payers. They are only collecting the VAT. The obligation to charge 10 percent VAT applies on both business-to-business ("B2B") and business-to-customer ("B2C") transactions. Registered Indonesian VAT payers can credit the VAT levied as input VAT in their monthly VAT returns.

Sales tax on luxury goods

The VAT law also imposes a STLG on deliveries of luxury goods by manufacturers in Indonesia and on the importation of luxury goods. The rates vary depending on the category of the goods. The current rates range from 10 percent up to 75 percent, although the law allows for a maximum of 200 percent. Conceptually, this tax is charged only once. Like VAT, STLG is charged at 0 percent on the export of luxury goods and any STLG suffered may be reclaimed. STLG is calculated by multiplying the applicable rate against the sales price or import price, excluding VAT. The STLG payable on the purchase of luxury goods cannot be credited against the VAT collectable when the goods are subsequently sold.

It is necessary to determine the applicability of the STLG on a case-by-case basis as the rules are complex and subject to change. There is an exemption from STLG on certain items for public use.

Customs duties

Customs duties are imposed on items imported into Indonesia. Customs duties are generally imposed on an ad valorem basis.

Duties are payable based on the harmonized system classification. Duties are based on the cost, insurance and freight ("CIF") value of the imported item and, in general, are imposed at rates of 0 percent to 20 percent for most goods, 25 percent to 80 percent for cars, and 170 percent for alcoholic beverages.

The Indonesian customs procedures are based upon General Agreement on Tariffs and Trade ("GATT") principles.

Some key features of the current system are:

- Ports have a "red and green channel" system for imported goods. Red channel goods are all inspected. Green channel goods are normally not inspected unless there is some justification
- Duties and taxes shown on the import declaration must be paid through a designated bank in order for the goods to be released
- Valuation of goods is based on GATT conventions
- The accuracy of the declaration and value is subject to subsequent audit of the importer's records.

Simplified procedures apply for goods entering bonded areas. Special rules apply for imports in the oil & gas sector, and goods for government projects funded by loans or grants from other governments.

Import duties are not payable in certain circumstances, including:

- Imports used in the production of exports where the manufacturer is located in a bonded zone or FTZ
- Certain imports by the petroleum, geothermal and mining industries.

Other relief includes:

- For certain goods which are imported on a temporary basis, the importer must pay 2 percent of the import duty and VAT each month for the period of usage. The remaining amount can be guaranteed. If the goods are not re-exported, the full amount of import duty and taxes plus a 100 percent penalty on the import duty must be paid
- Import duty tariffs are reduced to 5 percent on importation of goods by approved foreign and domestic investment companies using master list facilities.

Excise duties

Excise duties are levied on specific products whose consumption is restricted or controlled, namely alcoholic beverages and tobacco products.

Stamp duty

A stamp duty tax of IDR10,000 is charged on certain documents, such as receipts, agreements, powers of attorney and other legal documents.

Tax on land and buildings

This is a tax levied on the holding of land or buildings within Indonesia. The ITO, or in practice delegated regional authorities, will initially determine who the taxpayer is and issue a report on the tax object to that property. Normally, the owner is responsible for paying the tax due.

Tax rate and method of calculation

Tax is currently imposed at 20 percent or 40 percent of the full statutory rate, which is 0.5 percent of the sales value. Thus, the actual tax rate is 0.1 percent or 0.2 percent. The sales value is the actual transaction price or, in the absence of a transaction, the price of a similar holding can be used. The law provides that the sales value is to be fixed every three years, except for certain areas where it is fixed annually.

The tax is to be determined for the tax year, being the calendar year, based on the condition of the land and buildings as at 1 January. Specific calculation formula are stipulated for plantations, mining and forestry businesses.

Property title transfer tax

A transfer tax is payable on every transfer of title of land or land and buildings. The taxpayer is the recipient of the rights.

The definition of "transfer" is broadly defined, and includes:

- A sale and purchase transaction
- An exchange of assets
- A grant or a gift
- A testamentary grant
- The enforcement of a judicial ruling with permanent legal force
- A business merger, liquidation or expansion.

Exemptions

Tax is not imposed on certain transfers, such as:

- Transfers of title to the state for the public interest
- Transfers to diplomatic representatives and certain international organizations
- Donations for certain religious and community purposes.

Tax rate and method of calculation

The tax is 5 percent of the transfer price. There is a non-taxable amount of IDR60 million. The amount to be taxed is the acquisition cost. If the deemed sale value determined for land and buildings tax purposes is higher, that amount will be used as the basis for the transfer tax.

The property title transfer tax can be reduced in certain cases, including:

- Grant of property to certain close family members - 50 percent reduction
- Transfer of property in an approved merger or consolidation - 50 percent reduction.

Collection of tax

This tax becomes payable before the transfer is legalized. A lawyer or notary cannot legalize any legal documents in relation to a transfer if the tax has not been paid. The ITO is granted the power to review the property title transfer tax. If any underpayment is found, the ITO can issue a tax assessment.

Payroll taxes

There are no additional payroll taxes in Indonesia other than the employee income tax withholding system. However, BPJS are based on payroll, most of which are borne by the employer.

Regional and local taxes

Local governments collect regional and local taxes. These taxes include:

- Entertainment tax
- Advertisement tax
- Motor vehicle taxes
- Hotel and restaurant tax
- Street lighting tax
- Tax on the use of underground and surface water.

Sources:
(1) KPMG Research and Intelligence
(2) Law on General Provisions and Procedures of Taxation: Law No.6/1983 (amended by Law No.16/2000) concerning General Provisions and Procedures of Taxation
(3) Income Tax Law: Law No.7/1983 (amended by Law No.17/2000; amended by Law No.36/2008) concerning Income Tax
(4) Value Added Tax Law: Law No.8/1983 (amended by Law No.18/2000) concerning Goods and Services and Sales Tax on Luxury Goods
(5) Customs Law: Law No.10/1995 (amended by Law No.17/2006) concerning Customs
(6) Tax Court Law: Law No.14/2002 concerning Tax Court
(7) www.pajak.go.id

Appendix 1

Investment List
(based on Law No 11/220, President Regulation No 44/2016, President Regulation No 10/2021 and President Regulation No 49/2021)

List of business fields that are closed to investment (based on Law No 11/2020)	
SECTOR	**BUSINESS FIELDS**
Agriculture	Cultivation for and industry of type I narcotics.
Forestry	Fishing of species of fish listed in Appendix 1 of Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES").
Maritime and fisheries	Gathering (retrieval) of coral from nature for: construction materials/ lime/calcium, aquarium, and souvenirs/jewelry as well as living coral or dead coral (recently dead coral) from nature.
Industry	1. Manufacture of industrial chemicals and manufacture of ozone depleting substances 2. Manufacture of chemical weapons 3. Industry of liquor and beverages containing alcohol and malt*. *) In March 2021, President Joko Widodo announced the revocation of the provision in the Positive Investment List regarding the opening of investment in the industry of liquor and beverages containing alcohol and malt due to concern raised by the public, thus the industry is closed for investment.
Tourism and creative economy	All forms of gambling and/or casino-related activities.

Additional business field closed to investment (based on President Regulation No 49/2021)	
SECTOR	**BUSINESS FIELDS**
Alcoholic Beverage	Under Regulation 10/2021, new investments in alcoholic beverage-related industries operating under KBLI 11010 (Alcoholic Beverage Industries), KBLI 11020 (Alcoholic Beverage Industries: Wine) and KBLI 11031 (Malted Beverage Industries) are permitted in certain provinces only (Bali, East Nusa Tenggara, North Sulawesi and Papua) and should be carried out in line with local wisdom and culture. These four provinces are generally known as producers of traditional alcoholic beverages and therefore the government has been attempting to facilitate industrial development in these areas in order to encourage economic growth. However, under the Amendment, investment in alcoholic beverages within the areas concerned is no longer permitted.

Sources:
1) Law No 11/2020 on Job Creation Law
2) Presidential Regulation No. 44/2016 on List of Business Fields that are Closed to and Business Fields that are Open with Conditions to Investment
3) Presidential Regulation No 10/2021 on Investment Business Fields
4) Presidential Regulation No. 49/2021 on "Government Officially Closes Alcoholic Beverage Sector to Investment".
5) Tempo, 2 March 2021: "Jokowi Revokes Policy on Alcoholic Drink Investment" https://en.tempo.co/read/1437979/jokowi-revokes-policy-on-alcoholic-drink-investment

List of business fields that are fully open to foreign ownership, open with certain requirements, reserved MSMEs and cooperatives or requires partnership with MSMEs

SECTOR	SUB-SECTOR	2016 NEGATIVE LIST	2021 NEW INVESTMENT LIST
Air Transportation	Airport services	Maximum 49 percent foreign shareholding (Minimum investment requirements according to MOT No. 45/2015).	Not restricted, however subject to project basis concession agreement terms and conditions issued by the government.
	Airport-related services	Maximum 67 percent foreign shareholding.	Not restricted.
	Scheduled air transportation	Maximum 49 percent foreign shareholding.	Remained unchanged.
Sea Transportation	Port facilities provision	Maximum 49 percent foreign shareholding (Minimum investment requirements according to MOT No. 45/2015).	Not restricted.
	Terminal supporting business	Maximum 67 percent foreign shareholding (Minimum investment requirements according to MOT No. 45/2015).	Not restricted.
	Scheduled sea transportation	Maximum 49 percent foreign shareholding.	Remained unchanged
Drinking Water	Drinking water business	Maximum 95 percent foreign shareholding.	Not restricted (with certain tax allowances).
Power	Distribution of electricity	Maximum 95 percent foreign shareholding (100 percent foreign investment with a PPP arrangement during the concession period).	Not restricted.
	Electricity transmission	Maximum 95 percent foreign shareholding (100 percent foreign shareholding with a PPP arrangement during the concession period).	Not restricted.
	Electricity installation consultancy services	Maximum 49 percent foreign shareholding.	MSMEs partnership is required.
	Provision of electricity <1 MW	Required 100 percent domestic investment.	Reserved for MSMEs.
	Small scale electricity power plant (1-10 MW)	Maximum 95 percent foreign shareholding (100 percent foreign shareholding with a PPP arrangement during the concession period).	Not restricted.
	Electricity power plant > 10 MW	Maximum 95 percent foreign shareholding (100 percent foreign shareholding with a PPP arrangement during the concession period)	Not restricted.
	Geothermal power plant </= 10 MW	Maximum 67 percent foreign shareholding.	Not restricted.
	Operation and maintenance of power plant	Maximum 95 percent foreign shareholding.	Not restricted.
Construction Services	High risk and/or high value construction implementation services involving advanced technology.	Maximum 67 percent foreign shareholding or 70 percent for ASEAN countries investors with a project value exceeding IDR 50 billion.	• Not restricted • Subject to the local requirement for joint venture under the Construction Services Law. • Additional requirement to MSMEs partner applies for buildings and industrial buildings construction.
	High risk and/or high value construction consulting services involving high technology.	Maximum 67 percent foreign shareholding or 70 percent for ASEAN countries investors with a project value exceeding IDR 10 billion.	

List of business fields that are fully open to foreign ownership, open with certain requirements, reserved MSMEs and cooperatives or requires partnership with MSMEs

SECTOR	SUB-SECTOR	2016 NEGATIVE LIST	2021 NEW INVESTMENT LIST
Mining	Gold mining*	Not restricted.	Not restricted.
	Coal mining*	Not restricted.	Not restricted.
	Nickel mining*	Not restricted.	Not restricted.
	Mining services*	Not restricted.	Not restricted.
	Other mining services*	Not restricted.	Not restricted.
Oil and Gas	Oil and gas construction (platforms)	Maximum 95 percent foreign shareholding	Not restricted.
	Onshore and offshore oil and gas drilling services	Required 100 percent domestic investment (onshore) and 75 percent foreign shareholding (offshore).	Not restricted.
Telecoms & Towers	Fixed telecommunications networks	Foreign shareholding maximum 67 percent.	Not restricted.
	Mobile telecommunications networks		
	Telecommunications services integrated networks		
	Content provision telecommunications services		
	Internet providers		
	Data communication services		
	Public internet services		
	Interconnection services		
	Other telephone-related services (call centers, information centers)		
	Telecommunications tower suppliers, its operators (operation and leasing), and building service providers.	Required 100 percent domestic investment.	• Not restricted • Exception for tower construction service providers that use simple or intermediate technologies that is reserved for MSMEs.
Marketplaces, E-commerce	Commercial web portals and/or digital channels (e.g., marketplaces, digital ads, and on-demand online services)	• Not restricted for an investment value exceeding IDR 100 billion • Maximum 49 percent foreign shareholding for investment value fewer than IDR 100 billion.	Not restricted.
	Retail businesses utilizing digital ordering systems (e-commerce)	• Must be partnered with MSMEs • Only food, non-alcoholic drinks, cigarettes, chemicals, medical products, cosmetics, laboratory equipment, fabric, garments, footwear, personal belongings, household items, including kitchen appliances can be sold by an entirely foreign-owned online retailer • An online retailer that offers products that aren't in one of the previous section categories must be wholly owned by domestic investors.	Not restricted.

*) Although mining activities are not included in the New Investment List (and would theoretically be 100 percent open to foreign investment), Indonesia's mining laws and regulations (in particular, Law No. 4 of 2009 (as amended) and GR No. 23 of 2020) continue to require foreign-owned mining companies to gradually divest to local shareholders so that, by the tenth year of commencing commercial production operations, at least 51 percent of the shares in the mining company are held by Indonesian shareholders.

List of business fields that are fully open to foreign ownership, open with certain requirements, reserved MSMEs and cooperatives or requires partnership with MSMEs			
SECTOR	**SUB-SECTOR**	**2016 NEGATIVE LIST**	**2021 NEW INVESTMENT LIST**
Media	Printed publication (e.g., newspapers, magazines, bulletins)	Required 100 percent domestic investment.	• Requires 100 percent domestic investment at the time of formation, however foreign ownership can own up to 49 percent for business expansion and growth (intended for listed target companies). • The restrictions of foreign investment are not applied to investments in Special Economic Zones.
	Subscription broadcasting institutions	Required 100 percent domestic investment on the establishment, but can have up to 20 percent.	• Remain unchanged • The restrictions of foreign investment are not applied to investments in Special Economic Zones.
	Private broadcasting institutions (radio and television)		
Defense and Security	Main equipment industry	Required 100 percent domestic investment and required recommendation from the Ministry of Defense.	Capital ownership requires approval from the Minister of Defense.
Pharmaceutical Manufacturing	Raw materials manufacturing for pharmaceutical products	Not restricted.	Remained unchanged.
	Finished pharmaceutical products manufacturing	Foreign shareholding maximum 85 percent.	Not restricted.
Pharmaceutical Distribution	Raw materials distribution for pharmaceutical products	Required 100 percent domestic investment.	Not restricted.
	Finished pharmaceutical products distribution	Not restricted, however sector under Ministry of Health ("MOH") and Indonesia's food and drug administration ("BPOM") unwritten policies.	Not restricted.
Pharmaceutical Retail	Retail pharmaceutical business (pharmacies, drugstores, medical device stores, opticians)	Required 100 percent domestic investment.	Reserved for MSMEs.
Traditional Medicine Manufacturing	Finished products traditional medicine manufacturing	Required 100 percent domestic investment.	Remained unchanged.
	Raw materials of traditional medicine	Not restricted.	Requires 100 percent domestic investment.
	Small and micro business category for traditional medicine finished products	Required 100 percent domestic investment.	Reserved for MSMEs.
Traditional Medicine Distribution	Finished product of traditional medicine distribution.	Not restricted, however closed sector under MOH and BPOM unwritten policies.	No restriction (but may be subject to MOH and BPOM unwritten policies.
Health Equipment Manufacturing	Class A medical equipment	Foreign shareholding maximum 33 percent.	MSMEs partnership is required.
	Class B, C, and D medical equipment	Not restricted, however MOH special license is required.	Not restricted.
Health Equipment Distribution	Medical equipment distribution	Foreign shareholding maximum 49 percent.	Not restricted.
Hospitals	General and specialized hospitals	• Foreign shareholding maximum 67 percent foreign investment, or ASEAN investors were capped at 70 percent • Additional sectoral standards, which include Hospital GR, applied.	Not restricted, however additional standard of minimum beds applies.

List of business fields that are fully open to foreign ownership, open with certain requirements, reserved MSMEs and cooperatives or requires partnership with MSMEs			
SECTOR	**SUB-SECTOR**	**2016 NEGATIVE LIST**	**2021 NEW INVESTMENT LIST**
Clinics	Main clinics (*klinik utama)*	• Foreign shareholding maximum 67 percent • Additional sectoral standards applied.	Not restricted.
	Primary clinics (*klinik pratama*)	Required 100 percent domestic investment	Reserved for MSMEs.
Medical Laboratory Clinics	Clinics of health laboratory	Not restricted, however, there was 67 percent foreign ownership limit under MOH and BPOM, unwritten policies apply in certain circumstances.	MSMEs partnership is required.
Trade, Distribution (Wholesale)	Affiliated manufacturing distributors	Not restricted.	Not restricted.
	Non-affiliated manufacturing distributors	Foreign shareholding maximum 67 percent.	Not restricted.
	Warehousing		
Retail and Self-Service Stores (*Toko Swalayan*)	Minimarkets with an area of fewer than 400 sqm	Required 100 percent domestic investment.	Reserved for MSMEs.
	Supermarkets	• Supermarkets with an area of at least 1,200 sqm do not have any restriction • Supermarkets with an area of fewer than 1,200 sqm should be owned by 100 percent domestic shareholders.	Not restricted, however additional sectoral standards under GR 29/2021 apply.
	Department store	• Department stores with an area of more than 2,000 sqm do not have any restriction • Department stores with an area between 400 sqm to 2,000 sqm could have foreign ownership at maximum of 67 percent • Additional sectoral standards apply.	Not restricted, however additional sectoral standards under GR 29/2021 apply.
	Selling products outside the department stores under one management which the main products sold are not food, beverage or cigarette products (e.g., cosmetics, household items, jewelry, toys, clothing)	Required 100 percent domestic investment.	Reserved for MSMEs.
	Selling certain types of these products: • Vehicles, their spare parts and accessories • Textiles (e.g., household items which are made from textiles) • Water transportation tools and equipment • Cosmetics • Antiques, jewelry • Toys • Electronics	Required 100 percent domestic investment.	Not restricted.
	Retail trading (including sidewalk vendor) of iquor or Alcoholic Beverages	Must have business license certificate of liquor business ("SIUP-MB") and distribution network.	Allowed with a designated distribution network and place.
	Selling certain types of these products: • Non-alcoholic drinks • Bread, cookies, cakes, coffee, fermented beans and oncoms, processed meat and fish, rice, refined sugar, red sugar, tofu, tempeh, other foods • Footwear	Required 100 percent domestic investment.	Reserved for MSMEs.

List of business fields that are fully open to foreign ownership, open with certain requirements, reserved MSMEs and cooperatives or requires partnership with MSMEs			
SECTOR	**SUB-SECTOR**	**2016 NEGATIVE LIST**	**2021 NEW INVESTMENT LIST**
Logistics	National or universal postal service	Foreign shareholding maximum 49 percent.	• Foreign shareholding maximum 49 percent • Additional standards of ownership and supplementary sectoral requirements under Postal Law (as amended) and GR No. 46/2021 may apply.
	Courier agents	Foreign shareholding maximum 49 percent.	• Not restricted • MSMEs partnership is required • Additional standards of ownership and supplementary sectoral requirements under Postal Law (as amended) and GR 46/2021 may apply.
	Courier services	Not restricted, however additional standards of ownership and supplementary sectoral requirements under Postal Law apply.	• Not restricted • Additional standards of ownership and supplementary sectoral requirements under Postal Law (as amended) and GR No. 46/2021 may apply.
	Freight forwarding services	Foreign shareholding maximum 67 percent or 70 percent maximum for ASEAN investors.	Not restricted.
	Warehousing	Foreign shareholding maximum 67 percent.	Not restricted.
Hospitality and Tourism	Broker service for property	Required 100 percent domestic investment.	Not restricted.
	Ecotourism	Foreign shareholding maximum 51 percent or 70 percent maximum for ASEAN investors.	Not restricted.
	Golf course	Foreign shareholding maximum 67 percent or 70 percent maximum for ASEAN investors.	Not restricted.
	Travel bureau activities for umrah and special hajj	This line of business was not included in the 2016 Negative List.	Requires 100 percent domestic investment and the religion must be Islam.
	Travel agent	Required 100 percent domestic investment and reserved for MSMEs.	Not restricted.
Plantations and Agriculture	Plantations of palm oil seed	Maximum 95 percent foreign shareholding.	Not restricted.
	Plantation (e.g., sugar cane, tobacco, beverage plants (e.g., coffee, cocoa), rubber plants, coconut and palm oil plantation)	Maximum 95 percent foreign shareholding, with a 20 percent plasma requirement.	Open for 100 foreign investment (above 25 Ha), subject to technical regulations being amended.
	Staple food agriculture (i.e., rice, corn, sweet potato, and beans)	Maximum 49 percent foreign shareholding.	Open for 100 percent foreign investment, subject to technical regulations being amended.
	Certain fruit and agriculture	Maximum 30 percent foreign shareholding.	Open for 100 percent foreign investment, subject to technical regulations being amended.

List of business fields that are fully open to foreign ownership, open with certain requirements, reserved MSMEs and cooperatives or requires partnership with MSMEs			
SECTOR	**SUB-SECTOR**	**2016 NEGATIVE LIST**	**2021 NEW INVESTMENT LIST**
Other Industry	Commission agents	Required 100 percent domestic investment.	Not restricted.
	Pest control/fumigation service	Maximum 67 percent foreign shareholding.	Not restricted.
	Traditional cosmetics	This line of business was not included in the 2016 Negative List.	Requires 100 percent domestic investment.
	Industry of batik (hand-painted batik, printed batik, combination of hand-painted and printed batik)		
	Ship industry (phinisi, outriggers, ships made of timber with distinctive traditional designs)		
	Coffee processing, rendang*, crackers, flakes, peyek (factory made and non-factory made)		
	Industry of wooden building products, wood carving (not mebeller), including sculptures, reliefs, masks, and wayang puppet	Reserved for MSMEs.	Requires 100 percent domestic investment.

Sources:
1) Law No. 11/2020 on Job Creation Law
2) Presidential Regulation No. 44/2016 on List of Business Fields that are Closed to and Business Fields that are Open with Conditions to Investment
3) Presidential Regulation No. 10/2021 on Investment Business Field

Appendix 2

51 Implementing Regulations to Omnibus Law

No	Implementing regulations of Law No. 11 of 2020 on Job Creation	Sectors/topics
1	GR No. 73 of 2020 on Initial Capital for Investment Management Institutions	Ease of doing business
2	GR No .74 of 2020 on Investment Management Institutions	
3	GR No. 5 of 2021 on Organization of Risk-Based Business Licensing	
4	GR No. 6 of 2021 on Organization of Business Licensing at the Regional Level	
5	PR No. 10 of 2021 on Investment Business Field	
6	GR No. 9 of 2021 on Tax Treatment to Support Ease of Doing Business	
7	GR No. 10 of 2021 on Regional Taxes and Regional Levies in the Framework of Supporting Ease of Doing Business and Regional Services	
8	GR No. 49 of 2021 on Tax Treatment of Transactions Involving Investment Management Institutions and / or the Entities They Own	
9	GR No. 11 of 2021 on Village-Owned Enterprises	
10	GR No. 42 of 2021 on the Ease of National Strategic Projects	
11	GR No. 44 of 2021 on Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition	
12	GR No. 48 of 2021 on Third Amendment to GR No. 31 of 2013 on Implementing Regulations of Law No. 6 of 2011 on Immigration	
13	GR No. 7 of 2021 on Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises	Cooperatives, MSMEs
14	GR No. 8 of 2021 on Authorized Capital of the Company and Registration of Establishment, Amendment and Disbursement of Companies that Meet the Criteria for Micro and Small Enterprises	
15	GR No. 12 of 2021 on Amendments to GR No. 14 of 2016 on Implementation of Housing and Settlement Areas	Public works and public housing
16	GR No. 13 of 2021 on Implementation of Flats	
17	PR No. 9 of 2021 on the Acceleration of Housing Management	
18	GR No. 17 of 2021 on Fourth Amendment to GR No. 15 of 2005 on Toll Roads	
19	GR No. 30 of 2021 on Implementation of Road Traffic and Transportation	

No	Implementing regulations of Law No. 11 of 2020 on Job Creation	Sectors/topics
20	GR No. 14 of 2021 on Amendments to GR No. 22 of 2020 on Implementing Regulations of Law No. 2 of 2017 on Construction Services	Construction
21	GR No. 15 of 2021 on Implementing Regulations of Law No. 6 of 2017 on Architects	
22	GR No. 16 of 2021 on Implementing Regulations of Law No. 28 of 2002 on Buildings	
23	GR No. 18 of 2021 on Right-to-Manage, Land Rights and Land Registrations	Land use and spatial planning
24	GR No. 19 of 2021 on Implementation of Land Procurement for Public-Interest Developments	
25	GR No. 20 of 2021 on Control of Neglected Areas and Lands	
26	GR No. 21 of 2021 on the Implementation of Spatial Planning	
27	GR No. 43 of 2021 on Settlement of Incompatibilities Relating to Spatial Planning, Forest Areas, Licenses and/or Land Rights	
28	GR No. 45 of 2021 of the Implementation of Geospatial Information	
29	PR No. 11 of 2021 on Cooperation between the Central Government and State-Owned Enterprises in the Implementation of Basic Geospatial	
30	GR No. 22 of 2021 on Implementation of Environmental Protection and Management	Environmental and forestry
31	GR No. 23 of 2021 on Forestry Implementation	
32	GR No. 24 of 2021 on Procedures for Imposing Administrative Sanctions and Procedures for Non-Tax State Revenues Derived from Administrative Fines in the Forestry Sector	
33	GR No. 25 of 2021 on the Organization of the Energy and Mineral Resources Sector	Energy and mineral resources
34	GR No. 26 of 2021 on Implementation of the Agricultural Sector	Agriculture
35	GR No. 27 of 2021 on Implementation of the Marine and Fisheries Sector	Marine and fisheries
36	GR No. 28 of 2021 on Organization of the Industrial Sector	Industry
37	GR No. 29 of 2021 on Organization of the Trade Sector	Trade
38	GR No. 39 of 2021 on Organization of Halal Product Guarantees	
39	GR No. 31 of 2021 on the Implementation of the Shipping Sector	Transportation
40	GR No. 32 of 2021 on the Implementation of the Aviation Sector	
41	GR No. 33 of 2021 on Implementation of the Railway Sector	
42	GR No. 34 of 2021 on the Utilization of Foreign Workers	Labor and employment
43	GR No. 35 of 2021 on Work Agreements for Specific Timeframes, Outsourcing, Working Hours and Breaks, and Employment Terminations	
44	GR No. 36 of 2021 on Wages	
45	GR No. 37 of 2021 on the Implementation of Unemployment Insurance Program	

No	Implementing regulations of Law No. 11 of 2020 on Job Creation	Sectors/topics
46	GR No. 40 of 2021 on The Organization of Special Economic Zones	Economic zone
47	GR No. 41 of 2021 on the Implementation of Free Trade Zones and Free Ports	
48	GR No. 46 of 2021 on Postal, Telecommunications and Broadcasting	Postal, telecommunications and broadcasting
49	GR No. 47 of 2021 on Implementation of Hospitalization	Health
50	PR No. 12 of 2021 on Amendments to PR No. 16 of 2018 on Government Procurement of Goods/ Services	Government administration
51	GR No. 38 of 2021 on Accompanying Accounts for Umrah Travel Expenses	Religious

Sources:

1) Indonesia Investment Coordinating Board, 3 March 2021: "Omnibus Law Implementing Regulations as Sole Reference for Government and Businesses" https://www.bkpm.go.id/en/publication/detail/news/omnibus-law-implementing-regulations-as-sole-reference-for-government
2) Ministry of Finance, 23 February 2021: "*51 Peraturan Pelaksanaan UU Cipta Kerja Telah Rampung*" https://www.kemenkeu.go.id/publikasi/berita/51-peraturan-pelaksanaan-uu-cipta-kerja-telah-rampung/

Glossary

2016 Negative List	PR No. 44 of 2016
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AEO	Authorized Economic Operator
AHU	*Administrasi Hukum Umum* or administration of general laws
AML	Anti-Money Laundering
AoA	Articles of Association
AP I	Angkasa Pura I
AP II	Angkasa Pura II
APA	Advance Pricing Agreement
APBN	*Anggaran Pendapatan dan Belanja Negara* or state budget
API	*Angka Pengenal Impor* or import identification number
API-P	*Angka Pengenal Importir Produsen* or producer importer identification number
API-U	*Angka Pengenal Importir Umum* or general importer identification number
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business
B2C	Business-to-customer
BAPEPAM-LK	*Badan Pengawas Pasar Modal dan Lembaga Keuangan* or capital market and financial institution supervisory board
BAPPEBTI	*Badan Pengawas Perdagangan Berjangka Komoditi* or commodity futures trading regulatory agency
BAPPENAS	*Badan Perencanaan Pembangunan Nasional* or Indonesian national development agency
BCBS	Basel Committee on Banking Supervision
BEPS	Base Erosion and Profit Shifting
BHI bank	*Bank Berbadan Hukum Indonesia* or legal entity bank
BI	Bank Indonesia or Indonesian central bank
BI Regulation 18	BI Regulation No. 18/40/PBI/2016
BKPM	*Badan Koordinasi Penanaman Modal* or Indonesian investment coordinating board
BOC	Board of Commissioners
BOD	Board of Directors
BOO	Build, Own and Operate
BOOT	Build, Own, Operate and Transfer
BP Migas	*Badan Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi* or executive agency for upstream oil and gas business activities
BPH Migas	*Badan Pengatur Hilir Minyak dan Gas Bumi* or regulatory agency for downstream oil and gas
BPHTB	*Bea Perolehan Hak atas Tanah dan Bangunan* or levy/transfer title tax on tax and building
BPJS	*Badan Penyelenggara Jaminan Sosial* or social security administrative bodies
BPJS *Kesehatan*	Health social security agency
BPJS *Ketenagakerjaan*	Workers social security agency
BPJS *Pensiun*	Social security pension plan
BPJT	*Badan Pengatur Jalan Tol* or toll road regulatory agency
BPLJSKPB	*Balai Pengujian Laik Jalan dan Sertifikasi Kendaraan Bermotor* or vehicle test and certification
BPM	*Badan Pemberdayaan Masyarakat* or investment board
BPN	*Badan Pertahanan Nasional* or national land agency
BPOM	*Badan Pengawas Obat dan Makanan* or food and drug administration
BPP	*Biaya Pokok Penyediaan Pembangkitan* or basic production price
BPS	*Badan Pusat Statistik* or central statistic agency
BRT	Bus Rapid Transit
BUMD	*Badan Usaha Milik Daerah* or regional-owned business entities
CAGR	Compound Annual Growth Rate

CBCR	Country-by-Country Reporting
CBD	Central Business District
CBU	Completely Built-Up
CCOW	Coal Contract of Work
CEP	Comprehensive Economic Partnership
CFC	Controlled Foreign Company
CFT	Counter Terrorism Financing
CIF	Cost, Insurance and Freight
Circular 31	OJK Circular Letter No. 31/SEOJK.05/2015
Circular Letter 31	Ministry of Manpower Circular Letter No. B.31/PHIJSK/I/2012
Circular Letter 17	Circular Letter 17/11/DKSP
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CITR	Corporate Income Tax Return
CLA	Collective Labor Agreement
Company Law	Law No.40/2007
COW	Contract of Work
Currency Law	Law No.7/2011
Customs Office	The Indonesian Directorate General of Customs and Excise
CV	*Commanditaire Venootschap* or limited partnership
DDI	Domestic Direct Investment
Decision 27	Constitutional Court Decision No. 27/PUU-IX/2011
Declaration Letter	Assets declaration letter for the application of Tax Amnesty
Decree 228	Ministry of Manpower Decree No. No. 228/2019
DER	Debt-to-Equity Ratio
DGCE	Director General of Customs and Excise
DGT	Directorate General of Taxes
DKP-TKA	*Dana Kompensasi Penggunaan Tenaga Kerja Asing* or compensation for the use of foreign manpower
DPD	*Dewan Perwakilan Daerah or Council* of Regional Representatives
DPR	*Dewan Perwakilan Rakyat or House* of Representatives
DTA	Double Tax Agreement
DWT	Deadweight Tonnage
EDI	Electronic Data Interchange
EPI	English Proficiency Index
ERP	Electronic Road Pricing
ETT	Electronic Transaction Tax
FA	Firma or general partnership
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
Forex	Foreign Exchange
FPA	Free Port Area
FTA	Free Trade Area
FTZ	Free Trade Zone
G20	Group of twenty, a strategic multilateral platform connecting the world's major developed and emerging economies
GATT	General Agreement on Tariffs and Trade
GCG	Good Corporate Governance
GDP	Gross Domestic Product
GESF	General Expenditure Support Fund
GFC	Global Financial Crisis
GMS	General Meeting of Shareholders
GOI	Government of Indonesia

GR	Government Regulation
GR 1/2019	Government Regulation No. 1 of 2019
GRR	Grass Root Refinery
GT	Gross Tonnage
GW	Giga Watt
HGB	*Hak Guna Bangunan* or right to build
HP	*Hak Pakai* or right to use
HR	Human Resources
IBC	Insurance Business Company
ICAAP	Internal Capital Adequacy Assessment Process
IDR	Indonesian Rupiah
IDX	Indonesia Stock Exchange
IFRS	International Financial Reporting Standards
IIF	Indonesia Infrastructure Finance
IIGF	PT Penjaminan Infrastruktur Indonesia or Indonesian Infrastructure Guarantee Fund
IMB	*Izin Mendirikan Bangunan* or building permit
IMD	International Institute of Management Development
IMF	International Monetary Fund
IMTA	*Izin Mempekerjakan Tenaga Kerja Asing* or working permit
INSW	Indonesian National Single Window
Investment Law	Law No.25/2007
IO	*Izin Operasional* or operational license
IPO	Initial Public Offering
IPP	Independent Power Producers
ISCO	International Standard Classification of Occupation
ISRM	Indonesian Single Risk Management
ITAS	*Izin Tinggal Terbatas* or limited stay permit
ITO	Indonesian Tax Office
IUP	*Izin Usaha Pertambangan* or mining business license
IUPK	*Izin Usaha Pertambangan Khusus* or special mining business license
JAMSOSTEK	*Jaminan Sosial Tenaga Kerja* or workers social security
JKN	*Jaminan Kesehatan Nasional* or national healthcare benefits program
JO	Joint Operation
JV	Joint Venture
KAPET	*Kawasan Pengembangan Ekonomi Terpadu* or economic development zones
KBJI	*Klasifikasi Baku Jabatan Indonesia* or Indonesian standard classification of positions
KBLI	*Klasifikasi Baku Lapangan Usaha Indonesia* or Indonesian standard industrial classifications
KBMI	*Kelompok Bank berdasarkan Modal* Inti or bank based on core capital
KITAS	*Kartu Ijin Tinggal Terbatas* or limited stay permit card
KPBU	*Kerjasama Pemerintah dengan Badan Usaha* or PPP joint office
KPPIP	*Komite Percepatan Penyediaan Infrastruktur Prioritas* or committee for acceleration of priority infrastructure delivery
KSBSI	*Konfederasi Serikat Buruh Sejahtera Indonesia* or confederation of Indonesian prosperous labor unions
KSPI	*Konfederasi Serikat Pekerja Indonesia* or confederation of Indonesian labor unions
KSPSI	*Konfederasi Serikat Pekerja Seluruh Indonesia* or all-Indonesian workers union confederation
l/s	Liters per second
Labor Law	Law No.13/2003
Lao PDR	Lao People's Democratic Republic
LF	Local File
LKPP	*Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah* or national public procurement agency
LLL	Legal Lending Limits

LMAN	*Lembaga Manajemen Aset Negara* or national asset management agency
LPI	Logistics Performance Index
LRT	Light Rail Transit
M&A	Merger & Acquisition
MAP	Mutual Agreement Procedure
MDBs	Multilateral Development Banks
MEMR	Ministry of Energy and Mineral Resources
MF	Master File
MINT	Mexico, Indonesia, Nigeria and Turkey
MITA	Mitra Utama or main partner priority
MLI	Multilateral Instrument
MOF	Ministry of Finance
MOH	Ministry of Health
MOLHR	Ministry of Law and Human Right
MOM	Ministry of Manpower (formerly known as Ministry of Manpower and Transmigration or "MOMT" or Manpower Affairs)
MOT	Ministry of Trade
MPBI	*Majelis Pekerja Buruh Indonesia* or Indonesian labor movement council
MPR	*Majelis Permusyawaratan Rakyat* or People's Consultative Assembly
MRT	Mass Rapid Transit
MSME	Micro Small and Medium-scale Enterprise
New Insurance Law	UU No. 40/2014
NIA/INA	Nusantara Investment Authority or Indonesia Investment Authority
NIB	*Nomor Induk Berusaha* or single business number
Non-PDAM	Non-regional water supply companies
NPWP	*Nomor Pokok Wajib Pajak* or taxpayer identification number
NRE	New Renewable Energy
OECD	Organization for Economic Cooperation and Development
Oil & Gas Law	Law No.22/2001
OJK	Otoritas Jasa Keuangan or Indonesia financial services authority
Omnibus Law	Law No. 11 of 2020
OSS	Online Single Submission
PBAS	Performance Based Annuity Schemes
PBI 17/2015	BI regulation No. 17/3/PBI/2015
PDAM	Perusahaan Daerah Air Minum or regional water supply companies
PE	Permanent Establishment
PEB	*Pemberitahuan Ekspor Barang* or declaration of goods exported
PERTAMINA	PT Pertamina (Persero) or state-owned oil & gas company
PIB	*Pemberitahuan Import Barang* or customs import declaration
PIP	Priority Infrastructure Projects
PLN	PT Perusahaan Listrik Negara (Persero) or state-owned power company
PMA	*Penanaman Modal Asing* or foreign investment
PMDN	*Penanaman Modal Dalam Negeri* or domestic investment
PMK-213	Minister of Finance regulation No.213/PMK.03/2016
POJK 45	*Peraturan Otoritas Jasa Keuangan* (POJK) or OJK regulation No. 45/POJK.03/2020
POJK 67	OJK regulation No. 67/POJK.05/2016
PP	*Peraturan Perusahaan* or company rules
PPA	Power Purchase Agreement
PPP	Public Private Partnerships
PPU	Private Power Utility
PR	Presidential Regulation

PSC	Production-Sharing Contract
PSIP	Payment System Infrastructure Providers
PSN	*Proyek Strategis Nasional* or national strategic projects
PSP	Payment Service Providers
PSSPs	Payment System Services Providers
PT	*Perseroan Terbatas* or limited liability company
PUPR	*Pekerjaan Umum dan Penataan Ruang* or Minister of Public Works and Public Housing
RBC	Risk-Based Capital
RCEP	Regional Comprehensive Economic Partnership
RDTR	*Rencana Detail Tata Ruang* or detailed spatial plan
Reg 21/2019	BI Regulation No. 21/1/PBI/2019
Reg. No. 16/20	BI Regulation No. 16/20/PBI/2014
Reg. No. 16/21	BI Regulation No. 16/21/PB/2014
Reg No. 16/22	BI Regulation No. 16/22/PBI/2014
Reg. No. 5/2019	Ministerial Regulation No. 5/2019
Regulation 10	Presidential Regulation No. 10 of 2021
Regulation 12	BKPM Regulation No. 12/2013
Regulation 19	Regulation No.19/2012
Regulation 4	Regulation No. PER-04/MEN/1994
Regulation 41	Government Regulation No. 41 of 2021
Regulation 85	Government Regulation No. 85 of 2015
Regulation No. 23/2020	BI Regulation No. 22/23/PBI/2020
RITJ	*Rencana Induk Transportasi Jabodetabek* or greater Jakarta transportation plan
RMDP	Refinery Development Master Plan
RPJMN	*Rencana Pembangunan Jangka Menengah Nasional* or national medium-term plan
RPTKA	*Rencana Penggunaan Tenaga Kerja Asing* or expatriate manpower utilization plan
RUEN	*Rencana Umum Energi Nasional* or national energy general plan
RWA	Risk-Weighted Assets
SAFE FoS	Safe Framework of Standard to Secure and Facilitate Global Trade
SAK	*Standar Akuntansi Keuangan* or Indonesia financial accounting standard
SEZ	Special Economic Zones
SIPB	*Surat Izin Penambangan Batuan* or rock mining license letter
SIPT	*Sistem Informasi Perizinan Terpadu* or licensing information system
SIUP-MB	*Surat Izin Usaha Perdagangan Minuman Beralkohol* or business license certificate of liquor business
SJSN	*Sistem Jaminan Sosial Nasional* or national social security system
SKK Migas	*Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi* or special task force for upstream oil and gas business activities
SKSP Migas	*Satuan Kerja Sementara Pelaksana Kegiatan Hulu Minyak dan Gas Bumi* or temporary working unit for upstream oil and gas activities
SME	Small and Medium-scale Enterprise
SMI	PT Sarana Multi Infrastruktur
SOEs	*Badan Usaha Milik Negara* (BUMN) or State-Owned Enterprises
SREP	Supervisory Review and Evaluation Process
STLG	Sales Tax on Luxury Goods
Supporting Providers	Parties who support PSP and PSIP to organize payment system services
TA Law	Tax Amnesty Law No. 11 of 2016, effective during the period from 1 July 2016 until 31 March 2017
Taxable Entrepreneur	A person or body, in whatever form, which in the course of its operations, produces, imports or exports taxable goods, conducts trading activities or renders taxable services
TDP	*Tanda Daftar Perusahaan* or company registration certificate
TEU	Twenty-foot Equivalent Units
THR	*Tunjangan Hari Raya* or religious festivity allowance
UK	The United Kingdom

UKBA	UK Anti-Bribery Act
UMK	*Upah Minimum Kabupaten/Kota* or regency minimum wage
UMP	*Upah Minimum Provinsi* or provincial minimum wage
UNCTAD	United Nations Conference on Trade and Development
UPPKB	*Unit Pelaksanaan Penimbangan Kendaraan Bermotor* or motor vehicle weighing implementation unit
USA/US	The United States of America
USD	United States Dollar
VAT	Value-Added Tax
VITAS	*Visa Izin Tinggal Terbatas* or limited stay visa
WG4	Working Group Four
WHT	Withholding Tax
WIUP	*Wilayah Izin Usaha Pertambangan* or mining business license area
WIUPK	*Wilayah Ijin Usaha Pertambangan Khusus* or or special mining business license area
Work Contract	Working agreement for a specified period
WtE	Waste-to-Energy

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