



GUIDEBOOK

Doing business in Indonesia

In collaboration with

**ASSEGAF HAMZAH
& PARTNERS**



FOREWORD



I would like to take this opportunity to congratulate and thank UOB as well as Assegaf Hamzah & Partners (AHP) Law firm for the collaboration in this “*Doing Business in Indonesia Guidebook*”.

This guidebook contains elaborated and updated information on various matters related to investment in Indonesia. It is presented in a simple manner, and very easy to understand, yet beneficial for investors interested in investing in Indonesia. It provides potentials and perspectives to expedite the decision-making process to invest in Indonesia, and furthermore may support in the achievement of the investment realization target, which, in 2023, is set at IDR1,400 trillion.

As shown in the contents of this guidebook, four main breakthroughs in the Indonesia’s investment climate have been set up. First, the investment licensing process in Indonesia is now simpler and more transparent, through the Online Single Submission Risk-Based Approach (“OSS-RBA”) portal. Investment opportunities in Indonesia are also increasingly open and accessible. The Investment Opportunity Map is one of the references.

Second, the development of the New Capital City / *Ibu Kota Negara* (IKN), located in East Kalimantan, with smart and green concept will also open up many investment opportunities. The Indonesian Government has prepared generous incentives for investors investing in IKN.

Third, downstream Industry, which is also one of the focuses of President Joko Widodo, as stated in many occasions, has been heavily developed. Based on the downstream investment roadmap prepared by the Ministry of Investment/BKPM and reported to the President, there are 21 downstream investment map commodities from eight priority sectors, namely: the mineral and coal, oil and gas, plantation, marine, fisheries, and forestry sectors.

And lastly, to achieve these investment targets, we also emphasize the importance of partnerships with local business players. Hence, we are, not only aiming to advance the regional economy, but also giving the investors chain of supporting industries for their respective sectors.

Finally, I hope that UOB, together with AHP, can continue to be our strategic partner, especially in order to attract investment and contribute to Indonesia's development.

Nurul Ichwan

Deputy Minister for Investment Promotion
Ministry of Investment / BKPM



Foreign investors across industries are playing closer attention to the investment opportunities in Indonesia due to the size and growth of the economy. As the largest economy in Asia, we have seen how the country's GDP increased from USD931.88 billion in 2016 to USD1,186.09 billion in 2021 based on the World Bank data. Indonesia has a population of over 280 million with a forecast to grow to 380 million by 2039.

As a rapidly industrialised country, Indonesia's current investment offers strong opportunities for foreign investors through major industry groups, ranging from energy, manufacturing, infrastructure, technology, telecommunications, and tourism. Inward foreign direct investment (FDI) into Indonesia rose within the second quarter of 2022, reaching up to a remarkable USD10.89 billion. This is the largest rise in Indonesian FDI inflows within the past decade.

For more than 80 years, UOB has been committed to building a better future of ASEAN. Through our extensive network and suite of capabilities, we are uniquely positioned to offer financial solutions to the people living in, as well as businesses that connect with and operate within the region.

At UOB, we also believe that connectivity is a key enabler to our region's economic development. We believe in working closely with the government and ecosystem partners to promote and enable market entry across the region. Through our FDI Advisory, we have supported many foreign companies in their cross borders expansion to Indonesia, creating investment values and job opportunities.

We hope that through our collaboration with Assegaf Hamzah & Partners in producing an investor guidebook will provide a useful resource towards Indonesia's business landscape, as well as assist companies who are keen to invest in Indonesia.

Harapman Kasan

Wholesale Banking Director

UOB Indonesia

ASSEGAF HAMZAH & PARTNERS

Last year, the theme for Indonesia's 77th Independence Day is "*Pulih Lebih Cepat, Bangkit Lebih Kuat*", or in English, "Recover Faster, Grow Stronger". We thought this theme was fitting considering that despite the turbulence in the recent past, Indonesia is slowly returning to its pre-pandemic growth rates. This growth is fuelled largely by three factors that also drove the dramatic shift in Indonesia's economy in the past few decades or so, namely, favourable government's policy and a young and growing labour force.

Between 2020 to 2022, the Indonesian government took several drastic measures, one of which being the enactment of Law No. 11 of 2020 on Job Creation or commonly known as the Omnibus Law. This law, by far, the most ambitious and monumental piece of legislation in Indonesia and it amended numerous laws at once, including those pertaining to investment and employment. In 2021, the Constitutional Court declared the Omnibus Law as "conditionally unconstitutional", and in response to this decision, the government issued Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, which amended several laws that were originally amended under the Omnibus Law. It is important to highlight that the implementing regulations under the Omnibus Law will remain in force as long as they are in line with the Government Regulation.

As with other parts of the world, in recent years, Indonesia also saw the rise of e-commerce and the surge of digital revolution, both of which were kick started by COVID-19. In light of the above, Assegaf Hamzah & Partners and UOB have prepared this collaborative guide to provide an overview of doing business in Indonesia. We hope that this guide is helpful not only for new foreign investors looking to invest in Indonesia, but also for more "seasoned" investors. *Selamat datang di Indonesia!*

Eko Basyuni

Head of Corporate/M&A Practice Group
Assegaf Hamzah & Partners

Table of Contents

Foreword	2
Table of Contents	6
Indonesia at a Glance	7
Government and Legal System	7
Investing in Indonesia	8
Classification of Business Sectors	8
Establishing a Company	9
Business Licenses	9
Company Organs	11
Opening a Representative Office	12
Banking in Indonesia	13
Opening a Bank Account	13
Currency Law Compliance	13
Offshore Loan Requirement	14
Property in Indonesia	16
Immigration and Employment Law	16
Key Employment Law	17
Contracting with Third Party	19
Taxation Overview	20
Corporate Income Tax	20
Individual Income Tax	21
Withholding Tax	21
Value-Added Tax (VAT)	22
Other taxes	22
Intellectual Property Overview	22

Indonesia at a Glance

Capital city	Jakarta
Other major cities	Surabaya, Medan, Semarang, and Makassar
Government	An Independent republic, with President as the head of state. The current president is President Joko Widodo
Currency	Rupiah
Memberships	A member state of the Association of Southeast Asian Nations (ASEAN) The only southeast Asian country in G20
Population	Currently estimated at over 250 million
Language	Bahasa Indonesia English is commonly spoken in business context and major cities

Government and Legal System

Indonesia was a Dutch colony until it gained its independence on 17 August 1945. As a result, Indonesia's legal system is generally modelled on the Dutch legal system. The government is based on the 1945 Constitution, as amended, which structured Indonesia as a unitary republic. The power to create laws and regulations is held by the People's Representative Council (*Dewan Perwakilan Rakyat* or "DPR") and the President at a national scale, and the Regional People's Representatives Council (*Dewan Perwakilan Rakyat Daerah* or "DPRD") and the governor on a regional scale. This means that a business in Indonesia is subject to both national and regional rules and regulations based on its business locations and assets' domicile.

The Indonesian government consists of three branches: (i) the executive body; (ii) the legislative body; and (iii) the judicial body. The executive body consists of the president and vice president, both of whom are appointed by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR). The legislative body consists of the DPR and the DPRD. Lastly, the judicial body consists of the Supreme Court, various lower courts, and the Constitutional Court.

Constitutionally, the Indonesian judicial system is independent, and courts must exercise its judicial authority free from the influence of non-judicial power. The courts below the Supreme Court are organised by subject matter and include general, religious, military, and administrative courts. The general district courts have jurisdiction over criminal and civil cases that do not fall within the limited jurisdiction of the special courts. These special courts are as follows:

- The commercial courts, which have jurisdiction over bankruptcy cases, intellectual property rights cases (except trade secrets), and objections against decisions of the Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha* or "KPPU");
- The juvenile courts, which have jurisdiction over cases involving children;
- The religious courts, which have jurisdiction over cases such as family law among Muslims;
- The military courts, which have jurisdiction over cases involving military personnel;
- The human rights courts, which have jurisdiction over extreme violations of human rights;
- The administrative courts, which have jurisdiction over actions involving government decisions;
- The corruption courts, which have jurisdiction over corruption cases;
- The labour courts, which have jurisdiction over industrial relations cases;
- The fishery courts, which have jurisdiction over criminal fishery cases; and
- The tax courts, which have jurisdiction over tax disputes.

The Supreme Court may also issue an opinion on legal matters to various government authorities and officials, order a court to adjudicate a particular matter, or set aside an unlawful decision. Meanwhile, the Constitutional Court has the exclusive jurisdiction on adjudicate questions on, among others, the constitutionality of laws and regulations. Starting from 2019, the Supreme Court has begun implementing the e-court system and online cases information system in administering cases, which includes electronic filing and notification, and with consent of the parties, remote hearing. Before going to court, disputing parties must participate in a court-annexed mediation, which can also be conducted online with the parties' consent.

Indonesian law also recognises alternative dispute resolution forums, among others, the Indonesian National Arbitration Board (*Badan Arbitrase Nasional Indonesia* or "BANI") and the Alternative Dispute Resolution Body in the Financial Services Sector (*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan* or LAPS JK). Pursuant to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, BANI has jurisdiction over trade-related disputes. Moreover, as

Indonesia is a member state of the 1959 New York Convention, Indonesia allows the enforcement of an international arbitration award rendered in other member states in Indonesia as long as such award has been registered at the Central Jakarta District Court.

Investing in Indonesia

Generally, a foreign investor intending to establish presence in Indonesia can either establish an Indonesian company or open a representative office.

A foreign investor intending to establish a company in Indonesia should first confirm that its proposed business activity is open to foreign investment. Foreign investment is primarily regulated in Presidential Regulation No. 10 of 2021 on Investment Business Activities, as amended by Presidential Regulation No. 49 of 2021 ("**Priority Investment List**").

Classification of business sectors

Generally, all business sectors listed in the Priority Investment List are open for foreign investment unless stated otherwise. The business sectors that are open for investment can generally be divided into:

- *Prioritised business sectors*

These sectors are generally open for foreign investment and businesses investing in these sectors are eligible to receive fiscal and non-fiscal incentives. Prioritised sectors are usually those that have a national strategic significance, is a capital or labour-intensive project, requires sophisticated technology, is a pioneering industry, or is concerned with export or research, development, and innovation.

Fiscal incentives are tax allowances, reduction of corporate income tax, and import duty exemptions for the import of machinery, goods, and materials. Meanwhile, non-fiscal incentives are simplified licensing procedure, and provision of supporting infrastructure.

- *Business sectors allocated for or requiring partnership with cooperatives or micro, small and medium enterprises*

These business sectors can either be conducted by a cooperative or a micro, small and medium enterprises, or an entity that has entered into a cooperation with those entities.

- *Business sectors with specific requirements*

These business sectors are open for foreign investment with certain requirements such as limited foreign ownership or special licensing requirements.

- *Others*

These are all the other business sectors that are not included in any of the foregoing categories, which in theory are open for investment. Notwithstanding, some business sectors are regulated by sector-specific laws and regulations, some of which limit foreign ownership or prescribe additional licences.

Thus, a foreign investor should also check the relevant sectoral regulations as these may affect the proposed investment.

Meanwhile, business sectors that are closed for foreign investment are:

- *Closed business sectors*

These business sectors are the cultivation and industry of class I narcotics, chemical weapons manufacturing industry, all forms of gambling and/or casino activities, industrial chemical and ozone depleting substances industries, the capture of any fish species as listed in the Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora, the utilisation and collection of coral and utilisation and collection of corals from nature for building materials/limestone/calcium, aquarium and souvenirs/jewellery and live and dead coral, and alcohol, wine, and malt beverages industry.

- *Business sectors reserved for the government*

These are business sectors that relate to public services or fall under the category of strategic national defence and security.

Assuming that the proposed business sector is open for foreign investment, the next step for the foreign investor is to check the applicable Indonesian Business Sector Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* or “**KBLI**”) codes. The Priority Investment List assigns a KBLI code to all business sectors, which contains a description of the various business activities that can be undertaken pursuant to such KBLI code.

Establishing a company

Generally, a foreign business that wishes to commence operations in Indonesia can either establish its presence in Indonesia by forming an Indonesian company or opening a representative office. On forming an Indonesian company, Law No. 25 of 2007 on Investment, as amended by Government Regulation in line of Law No. 2 of 2022 on Job Creation requires a foreign direct investment into Indonesia to be in the form of a limited liability company established under Indonesian law and domiciled within Indonesia.

Alternatively, a foreign investor may also choose to acquire shares of an existing Indonesian limited liability company. In this case, if the target company is a domestic investment company (*perusahaan penanaman modal dalam negeri* or commonly referred to as a PMDN company), which is a company that has no foreign capital, or an ordinary limited liability company (PT Biasa), the target company will be converted into a foreign direct investment company (*perusahaan penanaman modal asing* or commonly referred to as a PMA company) once the foreign investor holds shares in such company.

A company may carry out several business activities under different KBLI codes as long as these business activities are captured in the company’s articles of association and the company has obtained the required licences.

The general steps to establish a PMA company can be summarised as follows:

- (1) The shareholders of the company execute a deed of establishment containing the company’s articles of association before a public notary;
- (2) If a shareholder cannot physically attend and sign the deed of the establishment before the notary, such a shareholder may be represented by a proxy through a power of attorney. If the shareholder signs a power of attorney outside of Indonesia, such power of attorney must be legalised by a notary having jurisdiction over the signing location and subsequently legalised by the nearest Indonesian consulate office;
- (3) After the shareholders have executed the deed of establishment, the notary files the deed of establishment to the Ministry of Law and Human Rights (“**MOLHR**”) to obtain the MOLHR’s ratification of the company’s establishment; and
- (4) After the MOLHR issues its ratification, which typically takes three business days from the receipt of a complete application, the PMA company is deemed to be legally established and obtained its legal entity status.

Business licences

Once legally established, the PMA company must obtain a Tax Registration Certificate (*Nomor Pokok Wajib Pajak* or “**NPWP**”) from the tax office, and, if required, the Domicile Certificate (*Surat Keterangan Domisili Perusahaan* or “**SKDP**”) from the relevant sub-district office.

After obtaining the NPWP and SKDP, a PMA company can begin applying for various licences required for its business through the Online Single Submission (“**OSS**”) portal by first creating an OSS account. The most recent version of the OSS is called the Risk-Based Approach OSS (“**OSS-RBA**”). The OSS RBA portal is controlled by the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”), who is responsible for receiving applications for various licences.

The OSS RBA system divides the risk levels for businesses into four: low, medium-low, medium-high, and high, and each risk level has its own licensing requirement. The risk level is determined based on the potential impact of the business activity on health, safety, environment, and natural resources utilisation, as well as other hazard factors.

Most business sectors in Indonesia are included in the OSS RBA system, except specific sectors such as banking, insurance, and finance, which fall under the control of the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) and/or the Indonesian central bank, Bank Indonesia (“**BI**”).

The risk levels and licensing requirements are detailed below:

Risk Level	Licences Required			Notes
	NIB	Standard Certificate	Licence	
Low risk	✓			<p>Unless required otherwise by sectoral regulations, a company engaging in low-risk business is only required to obtain a Business Identification Number (<i>Nomor Induk Berusaha</i> or “NIB”), which is a 13-digit code accompanied by a unique electronic signature.</p> <p>NIB is a prerequisite licence, and all companies must obtain a NIB before it can apply for other licences through the OSS RBA portal.</p> <p>Under the current regime, the NIB consolidates and serves as the Importer Identification Number (<i>Angka Pengenal Importir</i> or API), Customs Access Right (<i>Hak Akses Kepabeanan</i>), Indonesia National Standard (<i>Standar Nasional Indonesia</i> or SNI) (for low-risk small and medium enterprises), Halal Guarantee Statement (for low-risk small and medium enterprises), and Environmental Management and Monitoring Capability Statement Letter (<i>Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup</i> or SPPL) (only for low-risk businesses).</p> <p>Companies who have obtained their NIBs are simultaneously registered as participants in the health and manpower social security programs and are deemed to have submitted their mandatory manpower report for the first period.</p>
Medium-low risk	✓	✓		<p>A Standard Certificate is a statement and/or evidence of the fulfilment of certain business implementation standard.</p> <p>Specifically, for medium-low risk business, the Standard Certificate is in the form of a self-statement.</p>
Medium-high risk	✓	✓		<p>A Standard Certificate for a company engaging in medium-high risk business is an unverified Standard Certificate, which the company must obtain to commence their business preparation stage.</p> <p>In this stage, a company can procure land, construct building, purchase equipment, hire employees, fulfil specific business standards and/or conduct feasibility study.</p> <p>After the company completes the business preparation stage, the relevant government authority will verify the fulfilment of the applicable business standards and issue a verified Standard Certificate, which will allow the company to commence its operational/commercial activities.</p>

Risk Level	Licences Required			Notes
	NIB	Standard Certificate	Licence	
High risk	✓	✓	✓	<p>A company engaging in high risk business can use its NIB to commence its business preparation stage. However, the company must obtain a licence before commencing operational/commercial activities.</p> <p>The relevant government authority will issue a licence after it verifies that the business has fulfilled the required conditions.</p> <p>Certain business activities may also require an additional Standard Certificate from the central or regional government.</p> <p>A company in this risk level must also assess whether it requires specific facility/infrastructure (e.g. building, factory, waste processing unit, or land) to perform its business activities. If yes, the company must also fulfil the requirements for the required facility/infrastructure.</p>

Company organs

An Indonesian company consists of three organs:

- ***Board of Directors***

An Indonesian company must have at least one director. Generally, one director should reside in Indonesia as the board of directors is responsible to conduct the day-to-day management of the company. The appointment, replacement or dismissal of a director must be resolved in a general meeting of shareholders (“GMS”) and notified to the MOLHR within 30 days from the date of the GMS that resolves such appointment, replacement, or dismissal (as applicable).

Commonly, whether pursuant to Law No. 40 of 2007 on Limited Liability Companies (“**Companies Law**”) as amended by Government Regulation in lieu of Law No. 2 of 2022 on Job Creation, or a company’s articles of association, certain actions by the board of directors require the approval of the shareholders or board of commissioners (via a GMS or board of commissioners’ meeting, as applicable). These types of action usually include the transfer or pledge of the company’s assets that exceed a certain threshold.

- ***Board of Commissioners***

An Indonesian company must have at least one commissioner. The board of commissioners is the organ responsible to supervise the management of the company by the board of directors.

Like the board of directors, the appointment, replacement or dismissal of a commissioner must be resolved in a GMS and notified to the MOLHR within 30 days from the date of the GMS that resolves such appointment, replacement, or dismissal (as applicable).

Some sectoral regulations prescribe the minimum number of members of the board of commissioners, and companies engaging in these sectors must comply with those requirements.

- ***General Meeting of Shareholders***

The GMS is the highest organ in a company. Generally, an Indonesian company must have at least two shareholders, except if the company satisfies the criteria of a micro and small business.

Under the Companies Law, the GMS hold authorities that are not given to the board of directors or the board of commissioners, including allotment of net profits of the company and distribution of dividends.

Shareholders must meet at least annually at the annual GMS, and if required, can hold an extraordinary GMS to resolve any corporate action. Moreover, a GMS resolution can be made at a physical meeting or by way of a circular resolution.

Opening a Representative Office

A foreign company may establish a place of business in Indonesia without forming a new subsidiary company by opening a representative office (*kantor perwakilan perusahaan asing* or “**KPPA**”) or a foreign trade representative office (*kantor perwakilan perusahaan perdagangan asing* or “**KP3A**”).

Thus, a foreign investor can open a KPPA or KP3A in any industry. However, it should be aware that the types of activity that a KPPA or KP3A can undertake is limited by the laws and regulations in Indonesia:

	KPPA	KP3A
Permitted activities	A KPPA can: <ol style="list-style-type: none"> (1) manage the interest of the foreign company and its affiliates; and/or (2) prepare for the establishment and development of a business in Indonesia by such foreign company or its affiliate. 	A KP3A can: <ol style="list-style-type: none"> (1) introduce, promote, and enhance the sales of goods and provide explanation or guidance for its utilisation and importation to local users or companies; (2) conduct market research and supervise sales in Indonesia in relation to the marketing of the goods; (3) conduct market research on demand for the goods and liaise and provide explanation and guidance on export conditions to local companies; and (4) enter into contracts as an agent of the appointing foreign company with local companies in relation to export.
Role	Limited to acting as a supervisor or coordinator of the foreign company or its affiliate in Indonesia.	Commonly established to promote goods that will be sold in Indonesia.
Restriction	<ol style="list-style-type: none"> (1) Cannot act as the foreign company's subsidiary in Indonesia, and thus it cannot generate revenue in Indonesia (e.g. by carrying out activities or entering into any sale or purchase of goods or services); and (2) Cannot participate in the management of any company in Indonesia. 	Cannot engage in any form of trade or sales transactions along the entire length of the business chain, such as participating in tenders, executing agreements under its own name, and settling claims.
Licence	A KPPA licence obtained from the OSS-RBA portal.	A KP3A licence from the OSS-RBA portal.

Specific industries like construction have their own form of representative office. A foreign investor intending to conduct complex construction projects in Indonesia must open a representative office of a foreign construction service business entity (*kantor perwakilan badan usaha jasa konstruksi asing* or BUJKA) and enter into a cooperation with a local construction services company.

Banking in Indonesia

On incorporation, a PMA company must have:

- a minimum investment value of more than IDR10 billion for each line of business;
- a minimum issued and paid-up capital of more than IDR10 billion; and
- a debt-to-equity ratio of 4:1.

If a PMA company has two lines of business, the minimum investment value of IDR10 billion will be doubled. This minimum investment value can be accumulated from the PMA company's fixed capital and working capital.

Opening a Bank Account

All companies in Indonesia, including PMA companies, must have their own bank account(s). In practice, banks normally request for copies of the deed of establishment of the company (including the MOLHR's ratification), NPWP, SKDP, NIB, and relevant business licence (as applicable) before an account can be opened.

Currency Law Compliance

Law No. 7 of 2011 on Currency requires all transactions conducted within the territory of the Republic of Indonesia to use Rupiah, including for any payment transaction, the settlement of other obligations that must be discharged using money, and/or other financial transactions. Exemptions apply to:

- transactions related to the national budget;
- grants/donations given by or to a foreign party;
- international trade transactions;
- bank deposits denominated in foreign currency; and
- international financing transactions

An implementing regulation issued by BI reaffirms that the requirement applies to both cash and non-cash transactions and further explains that the international trade transactions exemption covers:

- the import/export of goods (to/from Indonesia);
- a cross-border trade transaction in the form of a cross-border supply of goods, such as goods purchased online from another country; or
- across-border trade transactions in the form of a cross-border supply of services (referred to in the regulation as 'consumption abroad'), such as payments for services provided in another country, as in the case of an Indonesian studying or receiving medical treatment abroad; and clarifies the exemption on international financing transactions to mean that either the provider or recipient of the financing must be domiciled in Indonesia.

The exemption to use Rupiah also apply to:

- banking activities in foreign currencies, such as foreign currencies account, transfer of funds, and letter of credit; and
- foreign denominated-securities transaction issued by the government.

Further, BI has confirmed on its published FAQ that intra-group loan activities are also exempted from the obligation to use Rupiah.

While the law allows Indonesian banks to extend forex-denominated loans to Indonesian-domiciled borrowers for export purposes, the law does not specify if non-bank/financial institutions can lend in foreign currency.

Moreover, BI regulates the conversion of a foreign exchange into Rupiah and a transaction exceeding the following thresholds require an underlying documentation:

- Foreign exchange cash transaction (up to SPOT) of buying foreign exchange/Rupiah – USD100,000/month/client.
This threshold is calculated for all types of up to SPOT altogether.
- Foreign exchange derivative transaction (FORWARD)
 - Buying foreign exchange/Rupiah – USD100,000/month/client
 - Selling foreign exchange/Rupiah – USD5,000,000/transaction
- Foreign exchange derivative transaction other than FORWARD
 - Buying foreign exchange/Rupiah – USD100,000/month/client
 - Selling foreign exchange/Rupiah – USD1,000,000/transaction

The threshold will be calculated for each type of transaction.

BI will accept the following documents as an underlying documentation:

- Current account for export, import, primary/secondary income transfer purposes
- Financial account for direct investment and portfolio investment purposes
- Capital account for capital transfer purposes
- Bank loan/credit agreement between a resident borrower and the lender for trade or investment purposes
- Agreement for goods/services trading
- Any other underlying document as determined by BI

Offshore Loan Requirement

Any company in Indonesia, including a PMA company, that receives an offshore loan must comply with the following reporting obligations:

- *Report on offshore loan plan to BI*

Pursuant to BI Regulation No. 21/2/PBI/2019 on Foreign Exchange Flow Activity Reporting, a non-bank corporation must submit a report to BI on its plans to obtain offshore loans. This report is a general report that states the company's plan to obtain offshore loans, as opposed to details of the company's outstanding debts.

This report must be submitted on or before 15 March of every year, and any change to the report must be submitted on or before 15 June of every year and submitted via BI's online reporting system.

Any correction of the data submitted above must be submitted before 20th day of the month in which the report is submitted.

- *Monthly report on offshore loan plan and realisation to BI*

After the loan agreement is executed, the offshore loan debtor must report the following items to BI no later than the 15th day of every month:

- the offshore loan data
- the offshore loan withdrawal and/or repayment plan
- the offshore loan withdrawal and/or repayment realisation
- the position and changes to the offshore financial assets and offshore financial liabilities

This report must be submitted via BI's online reporting system.

- *Report on prudential offshore loan principles to BI*

If the offshore loan is denominated in non-Rupiah, the offshore loan debtor must also comply with the prudential principles implementation activities (*Kegiatan Penerapan Prinsip Kehati-hatian* or “KPPK”), and satisfy the minimum hedging ratio, liquidity ratio, and credit rating prescribed by BI to mitigate any risk related to exchange rate, liquidity, and over-leverage of offshore loans.

In light of the above, the offshore loan debtor must submit evidence that it has satisfied all of the above ratios and credit rating requirement by submitting a report through BI’s online reporting system.

Please see below for detailed explanation on compliance to KPPK:

- *Hedging ratio*
The offshore loan debtor must comply with a minimum hedging ratio of 25% of:
 - the negative difference between the foreign currency assets and the foreign currency liabilities maturing within three months from the end date of each quarter (i.e. 31 March, 30 June, 30 September, and 31 December); and
 - the negative difference between the foreign currency assets and the foreign currency liabilities maturing between three and six months from the end date of each quarter.
 Any hedging transaction to comply with the hedging ratio must be conducted with an Indonesian bank or a foreign bank having a branch in Indonesia.
- *Liquidity ratio*
The offshore loan debtor must maintain foreign currency assets (including receivables under hedging made on the then current or previous quarter) at a minimum liquidity ratio of 70% of the foreign currency liabilities maturing within three months from the end date of each quarter.
- *Credit rating*
The offshore loan debtor must have a minimum credit rating that is equivalent to “BB-” from a rating agency recognised by BI.¹

Evidence of the fulfilment of the above KPPK obligations must be submitted via the following documents and in accordance with the following timeline:

- a quarterly non-attested KPPK report, to be submitted by the end of the third month after the end of the relevant quarter; and
 - an attested KPPK report (attested by a public accountant), to be submitted by the end of June of the following year;
 - information on the fulfilment of credit ratings, to be submitted by the end of the month following the execution or issuance of the offshore debt; and
 - the financial statements of the offshore loan debtor, consisting of:
 - quarterly unaudited financial statements, to be submitted by the end of the third month after the end of the relevant quarter; and
 - the annual audited financial statements, to be submitted by the end of June of the following year.
- *Report to the Ministry of Finance*

The offshore loan debtor must also submit the following reports to the Ministry of Finance:

- an initial report, to be submitted on the effective date of the loan agreement; and
- quarterly reports, every 3 months after the initial report.

In practice, the MOF seems to only exercise loose supervision over the submission of these quarterly reports.

¹ Local rating agencies recognised by BI are PT Pemeringkat Efek Indonesia and PT Fitch Ratings Indonesia. Offshore rating agencies recognised by BI are Moody’s Investors service, Standard & Poor’s, Fitch Ratings, Japan Credit Rating Agency and Rating and Investment Information Inc.

Property in Indonesia

Utilising office space

Foreign investors, whether foreign individuals residing in Indonesia, foreign legal entities having representative office in Indonesia, or any other types of non-Indonesian entities, are limited from having a direct ownership over property in Indonesia. They can only own:

- landed construction under a right to use (*hak pakai*); and/or
- apartment units, provided that the apartment is built on a land under a right to build (*hak guna bangunan*) or a right to use (*hak pakai*).

In addition, the government also sets the minimum value of property that can be purchased by foreigners.

However, a PMA company is considered as an Indonesian legal entity, which means that it can obtain a right to build (*hak guna bangunan*), right to use (*hak pakai*), and right to cultivate (*hak guna usaha*). Nevertheless, it should be noted that the right to cultivate (*hak guna usaha*) can only be used for agricultural, fishery, and/or animal husbandry purposes.

The interests in land stated above can generally be summarised as follows:

Rights	Initial Period (Maximum)	Extension (Maximum)	Renewal (Maximum)
Right to build (<i>hak guna bangunan</i>)	30 years	20 years	30 years
Right to cultivate (<i>hak guna usaha</i>)	35 years	25 years	35 years
Right to use (<i>hak pakai</i>)	25 years	20 years	30 years

Note that right to use (*hak pakai*) can be granted for an indefinite period for (1) Indonesian central government agencies, (2) regional governments, (3) district governments, and (4) representatives of foreign countries and representatives of international bodies, provided that the land under such right to use continues to be used for or in line with the permitted purposes.

Typically, foreign investors lease office space from an Indonesian landlord under a lease agreement. In recent years, larger cities in Indonesia have seen an increase in the number of service offices. A service office can be leased for a relatively short period (often months rather than years) and is usually already equipped with basic business facilities, such as a reception, telephone line, internet connection, and meeting rooms.

Immigration and Employment Law

Immigration

An Indonesian company can only employ foreigners for certain positions, including as director (except as a director that handles human resources matters) or commissioner.

To employ a foreigner, the company must comply with the following obligations:

Foreign Manpower Utilisation Plan

First, a company that employs foreigners, regardless of their position, must prepare a Foreign Manpower Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing* or “**RPTKA**”), which must be approved by the Ministry of Manpower or an appointed officer.

The RPTKA sets out the number of foreigners approved to work under such company, together with details of their respective employment.

Please note that a foreigner employed as a director or commissioner who satisfies the share ownership threshold of IDR1 billion is exempted from the RPTKA obligation.

Foreign Manpower Utilisation Compensation Fund

Second, the company must pay the Foreign Manpower Utilisation Compensation (*Dana Kompensasi Penggunaan Tenaga Kerja Asing* or “**DKPTKA**”) for each foreigner employed by it. The Ministry of Manpower will only issue the RPTKA after the company has paid the DKPTKA. The current amount of the DKPTKA is USD100/position/person/month.

There are exemptions from the compensation requirement, namely for foreign government agencies, foreign country representatives, international agencies, social institutions, religious institutions, and certain positions in educational institutions.

BPJS or other insurance

Third, the company must register the foreigners employed by it to the Social Security Administrative Agency for Employment (*Badan Penyelenggara Jaminan Sosial Ketenagakerjaan* or BPJS Ketenagakerjaan) if the foreigners will be employed for more than six months. Alternatively, if the foreigners are employed for less than six months, then the company must register them to a third party insurance company.

Foreign Manpower Utilisation Plan Report

Fourth, the company submit a report on the utilisation of foreign manpower to the Ministry of Manpower or an appointed officer. This report is to be submitted on an annual basis as well as whenever an employment contract for a foreign employee is concluded or terminated before its term.

Residential permit

Last, a foreigner employed in Indonesia must obtain a residential permit. Typically, the company would apply for the residential permit after the Ministry of Manpower or an authorised officer approves the RPTKA.

Key Employment Laws

Manpower protection

The main law on employment is Law No 13 of 2003 on Manpower as amended by Government Regulation in line of Law No. 2 of 2022 on Job Creation (“**Manpower Law**”).

An employee’s employment rights may arise from their contract of employment (including both expressed and implied terms), statute, company regulation (i.e., employees’ handbook) and collective labour agreements made between a labour union and an employer.

Child labour

Indonesian law generally prohibits the employment of children, which is defined as a person below 18 years. However, an exemption exists under very limited circumstances, e.g., if such work is in the best interest of these children, for instance, if it fosters their creativity and does not disturb their physical, mental and social development and health.

Children may not be employed to perform work related to the use of machinery, installation and other equipment including sewing and knitting machines.

Working hours

The Manpower Law prescribes certain maximum working hours in respect of a person’s employment. For instance, an employer must observe the rule on working hours, which are 7 hours a day, 40 hours a week for a 6-day work week, or 8 hours a day, 40 hours a week for a 5-day work week. Any additional working hours or overtime may only be implemented with the employee’s consent.

Pay

Indonesia adheres to a minimum wage system, which is revised annually and set at the municipality/regency level (except for DKI Jakarta, where the minimum wage is set at the provincial level). The law also allows the central government to determine the minimum wage formula in certain circumstances, which are yet to be detailed by the government.

All companies within the relevant municipality/regency must comply to the prevailing minimum wage. For example, the provincial monthly minimum wage for 2023 in DKI Jakarta is IDR4,901,798.

Minimum wage can also be sectorial, and this is typically the case for leading industries in a municipality/regency or province. Minimum sectorial wage must be higher than the applicable minimum regional/provincial wage and it is determined by the governor based on an agreement between the company and the labour union in the relevant sector.

The law prohibits an employer from reducing the monthly wage or benefits after it has been granted.

Union

In Indonesia, every employee has the right to form or join a union, but the union may not force an employee to join the organisation. A union can be established with a minimum of 10 employees. The procedure to establish a union is simple, i.e., by holding a meeting, in which the employees appoint the officers of the union and create the articles of association and by-laws. Once created, the union must be registered with the local office of the Ministry of Manpower and the employer must be notified of its registration in writing. The employer cannot object to or prevent the creation of a union.

If a company has several unions, the law will only recognise one union. In addition, a particular sector can have a federation of unions depending on the prevailing law, although the federation would be for an affiliation purpose only.

Company regulation and collective labour agreement

Under the Manpower Law, an employer that employs at least 10 employees must establish a company regulation (*peraturan perusahaan*).

A company regulation is prepared and finalised by the employer although representatives from the employees can give input and suggestions on the regulation. Afterward, the employer must submit the company regulation for the approval and ratification by the local government manpower office. Once approved and ratified, the company regulation becomes effective.

For companies whose employees are organised in a labour union, instead of the company regulation, a collective labour agreement is prepared jointly by the employer and union representatives.

Transfer of undertakings

If there is a change of control in a company that causes a change in its employment terms, the employees of such company have the right to terminate his/her employment with the company. The target company must announce the proposed change of control to its employees at least 30 days before the date of the notice of the extraordinary general meeting of shareholders of the target company that will approve the proposed change of control. The purpose of the announcement is to inform the employees of the proposed change of control in the company and to give them an option to terminate their employment and receive severance payment. The announcement should be in writing and, in practice, is usually made in the form of an announcement in the bulletin board of the office or workplace.

Contracting with Third Parties

Below is a short guidance on the general contracting principles in Indonesia.

Principle	Notes
Freedom of contract	Generally, the Indonesian Civil Code recognises the concept of freedom of contract, subject to certain limitations on public policy, lawfulness, and morality.
Good faith	A contract constitutes a binding law that governs the relationship between the contracting parties. Therefore, the parties must honour their obligations in such contract in good faith.
Validity	A valid contract satisfies the following four requirements: (i) there is consent between the contracting parties, (ii) the contracting parties have the capacity to enter into the contract, (iii) the contract deals with a specific subject matter, and (iv) the object of the contract is lawful.
Authority	<p>A contract may be voidable if it is made by a person who lacks authority. Therefore, one should always check the authority of a contracting party, particularly where they are contracting on behalf of another person or entity, in which case a power of attorney will be required.</p> <p>In Indonesia, typically one or more director(s) is authorised to represent a company, subject to certain approvals from the board of commissioners or general meeting of shareholders as provided in the articles of association of the company or the Companies Law. While the articles of association of a company is a public document, it is not always accessible. Thus, before signing a contract, one should conduct some due diligence to ascertain the authority and identity of the person (i.e. the director) that is purporting to represent a company.</p>
Capacity	<p>A person or entity's capacity to enter into a contract may be limited by the law. Generally, a person must be 21 years old (if below 21 years old, such person must have been married, regardless of whether they are still married or is not under any guardianship).</p> <p>Moreover, if a person is married without a prenuptial or postnuptial agreement, then one should obtain a spousal consent from his/her spouse for any contract that impacts such person's marital assets (e.g. asset disposal, any debt).</p>
Formation	<p>Contracts may be written, oral or a mixture of both. Some contracts must be in writing or in notarial deed form to be legally enforceable, such as an agreement to establish a company, to transfer land or shares in a company where the share transfer results in a change of control, or certain security documents.</p> <p>In addition, some contracts may also require approval from, or registration/notification to, relevant authorities to ensure its enforceability. For example, an intellectual property licensing agreement must be registered to the Directorate General of Intellectual Property ("DGIP"), while a franchise agreement must be registered to the Ministry of Trade.</p>
Language clause	<p>Law No. 24 of 2009 on National Flag, Language, Coat of Arms and Anthem ("Language Law") requires a contract that involves an Indonesian individual or legal entity as a party to also be signed in Indonesian language, in addition to the foreign language version. Failure to comply may render the contract as invalid or unenforceable if challenged successfully by a party.</p> <p>For the sake of completeness, the prevailing language for the contract entered by and between Indonesian entities should be Indonesian language. However, if any of the other parties is a foreign entity, then the parties are free to choose the prevailing language for such contract.</p>

Implied Terms

Courts in Indonesia have a wide discretion and among others, they may imply terms into a contract if it is necessary to assist with the proper interpretation of the contract, e.g., where a term of a contract is unclear, or if such terms are provided for in the Indonesian Civil Code and have not been expressly waived by the parties. However, the Indonesian Civil Code does limit the courts' discretion in interpreting a term of a contract that is unclear, for example, the courts should try to determine the parties' intentions or objectives in good faith rather than adopting a strictly literal interpretation.

Moreover, terms can also be implied into contracts by the law. For instance, under the Indonesian Civil Code, sellers are responsible for any hidden defects, notwithstanding that they may be unaware of such defects themselves, unless they expressly exclude all warranties in relation to the product (although such exclusion is in itself limited under the consumer protection law, which limits standard exclusion of liability clauses).

Penalty Clauses

The Indonesian Civil Code recognises the penalty clause, in that a contract can provide for a fixed or pre-determined amount to be payable by a party if that party breaches a term of the contract. However, as a general principle, the Indonesian Civil Code also provides that a contractual penalty may be revised by the court if a material portion of the obligation has been performed and thus, the court may reduce the penalty to an amount that reflects the actual losses incurred by the injured party. It remains to be tested if agreed penalty provisions that expressly exclude any intervention by the court in assessing actual damage are enforceable.

Limitations of Liability

A contract may limit liabilities in several ways, the most common of which are:

- limiting the time a party has for bringing a claim;
- putting a cap on the amount of liability;
- restricting the types of loss recoverable for a breach of contract; and
- excluding certain types of liability

Language Law Compliance

Pursuant to the Language Law, a contract signed by an Indonesian individual, legal entity, government institution or an agency of the state must be made in Indonesian language. If any of the other parties is a foreign entity or individual, then the contract can also be prepared in the language of such foreign party and/or English.

While the Language Law does not specify the consequences of non-compliance with the above, parties to a contract must sign an Indonesian language version of the relevant agreement (which is not in Indonesian language), simultaneously or immediately after the execution of its non-Indonesian language version, to comply with the Language Law.

In 2019, the government enacted a presidential regulation as the implementing regulation to the Language Law. The regulation regulates that in an agreement involving a foreign party, the native language of the foreign party and/or English is used as an **equivalent** or **translation** of the Indonesian language version in order for the parties to achieve a common understanding regarding the agreement. A strict reading of this provision would mean that the Indonesian version of the agreement must be prepared first, with a non-Indonesian or English version to follow. In practice, this would be impractical as negotiations are often conducted in English with last minute changes to an agreement being not uncommon.

In light of the above, it would seem that a prudent approach would be to sign the Indonesian version of the agreement simultaneously, or at least on the same day, as the signing of the non-Indonesian or English version as failure to do so may be deemed as a violation of the regulation.

The regulation also affirms the parties' right, which right has been widely accepted since the enactment of the Language Law, to agree on the governing language in an agreement, which does not have to be the Indonesian language.

Taxation Overview

Below is an overview on some of the more common taxes in Indonesia.

1. Corporate Income Tax

A company established or domiciled in Indonesia is regarded as an Indonesian tax resident. Likewise, a foreign company performing business activities through a permanent establishment in Indonesia will be deemed as an Indonesian tax resident.

Meanwhile, representative offices of foreign companies in Indonesia without a permanent establishment are still required to obtain an NPWP as they are still required to withhold taxes from payments made to employees and vendors, pay taxes to the State Treasury, and file withholding tax returns. Generally, a flat corporate income tax rate of 22% applies on taxable business profit. However, eligible public companies may be eligible for a tax cut of 3% from the standard rate (so that the effective tax rate will be 19%). To be eligible, a public company must ensure that, among others:

- at least 40% of its paid-up shares are traded in the Indonesia Stock Exchange (IDX); and
- the public shareholders of such companies consist of at least 300 individuals, each holding less than 5% of the paid-up shares.

Small-scale enterprises with an annual gross turnover up to IDR50 billion are entitled to 50% tax cut or the effective tax rate will be 11%, which is imposed proportionally to the taxable income on the part of gross turnover up to IDR4.8 billion. A final income tax at 0.5% of gross turnover is also available for certain enterprises with annual gross turnover below IDR4.8 billion.

2. Individual Income Tax

An individual, whether an Indonesian citizen or not, is regarded as an Indonesian tax resident if they fulfil any of the following conditions:

- they reside in Indonesia;
- they are present in Indonesia for more than 183 days in any 12-month period; or
- they are present in Indonesia during a tax year and intends to reside in Indonesia.

A foreign citizen regarded as a tax resident will be subject to income tax in Indonesia only for income that is received or obtained in Indonesia, provided that:

- the individual possesses certain skills; and
- this facility is only available for the first four years from the date when the individual is regarded as a tax resident.

The income received by the foreign citizen includes income in connection to a job, service, or activity performed in Indonesia under any name and form, which are paid outside of Indonesia. The Minister of Finance regulates the criteria on skills and procedures for the treatment of such income.

The annual taxable income of individual tax residents is subject to the following progressive tax rates:

- 5% for taxable income up to IDR60 million;
- 15% for any taxable income over IDR60 million and up to IDR250 million;
- 25% for any taxable income over IDR250 million and up to IDR500 million;
- 30% for any taxable income over IDR500 million and up to IDR5 billion; and
- 35% capped rate for any taxable income over IDR5 billion.

3. Withholding Taxes

Different rates of withholding taxes apply to income paid/payable to resident and non-resident taxpayers.

The withholding tax rates applicable to resident taxpayers are 15% for interest, royalties, and prizes and awards, and 2% for most service fees. Rental of land and/or buildings is subject to a final withholding tax of 10%. Taxpayers without an NPWP will be subject to a surcharge of 100% in addition to the applicable withholding tax rates.

Dividends received from an Indonesian company is regarded as non-taxable income if it is received or earned by:

- a resident individual taxpayer who reinvests the dividends in Indonesia within a certain period; or
- a resident corporate taxpayer.

However, if the resident individual taxpayer does not meet the reinvestment requirement, the dividends will be subject to a final income tax at a maximum rate of 10%.

In general, withholding tax rate of 20% is applied to a non-resident who receives income sourced from Indonesia. However, tax treaties may provide a reduced rate or an exemption. In order to qualify for the tax treaty benefits, a non-resident taxpayer must provide the Indonesian paying party with original or official proof of having a certificate of tax domicile in the Directorate General of Tax's form and/or standard form issued by a competent tax authority in their country of residence that contains a statement of anti-tax treaty abuse and/or beneficial owner test.

4. Value-Added Tax (VAT)

Typical VAT rate of 11% (or 12% at the latest starting from 1 January 2025) is applied to deliveries of taxable goods or provisions of taxable services in the Indonesian customs area. The VAT on export of taxable goods and certain services are set at a rate of 0%.

5. Other Taxes

Other taxes, such as luxury-goods sales tax, land and buildings tax, tax on land and buildings transfer, duty on the acquisition of land and buildings rights, import duties, excise duties and stamp duties, may apply.

Intellectual Property Overview

There are several intellectual property rights that may apply under Indonesian law. These rights generally seek to provide protection to the creator or owner of the underlying intellectual property. Some of these rights require prior registration in order to be effective, but others will apply automatically.

Below is a guidance of the key intellectual property rights.

Right	Registration required?	Brief description
Patent	Yes	<p>Protects a novel invention that involves a non-obvious inventive step that is capable of industrial application. A patent generally lasts for 20 years from the date of filing of the application. The inventor also may protect its invention with a simple patent that protects a novel invention that is capable of industrial application. A simple patent registration generally lasts for ten years from the date of filing of the application. In addition, the patent as an intangible asset could be made as an object of fiduciary security.</p> <p>Patent protection requires prior registration in order to be effective by way of submitting an application for patent registration to the DGIP. Theoretically, the registration of patent protection can take up to 68 months, but in practice it may take up to six years. For a simple patent, it can take up to seven months to process the registration, but in practice, it may take up to two years.</p>
Trademark	Yes	<p>Protects a distinctive sign or mark that is capable of being represented graphically, such as a picture, name, word, letters, figures, composition of colours in the form of two or three-dimensional forms, sounds, and holograms, or a combination of said elements, which is not confusingly similar to another mark. A trademark registration initially lasts for ten years from the date of filing of the application, which may be extended.</p> <p>The trademark protection requires prior registration in order to be effective by way of submitting an application for trademark registration to the DGIP. Theoretically, it should take up to five months to process the registration, but in practice, it may take between 10 to 12 months. If any party files an objection to the trademark application during this period, the registration may take an even longer time.</p>
Copyright	No	<p>Arises automatically to protect the owner of a published work (which can include musical, artistic literary and dramatic works) from an unauthorised copying or use. However, recordation of copyright at the DGIP can be used as initial evidence of ownership of a creation in case of a dispute. Theoretically, it could take up to nine months to process the recordation of a creation, but in practice the DGIP has installed a new filing system that enables copyright recordation to be completed within seven days.</p> <p>Copyright generally lasts for 70 years from the end of the year in which the author dies, depending on the type of creation and the subject of the copyright holder (individual or entity)</p>

Right	Registration required?	Brief description
Industrial Design	Yes	<p>Protects a novel design that is not similar to any existing design and that does not simply contain features that are required by the product's technical application. A registered design right initially lasts for ten years from the date of filing of the application.</p> <p>The industrial design protection requires prior registration in order to be effective by way of submitting an application for industrial design registration to the DGIP. Theoretically, it should take up to four months to process the registration, but in practice, it may take up to one year.</p>
Trade Secret	No	<p>Protects undisclosed information in the technology and/or business sector, having an economic value because of its utilisation in business, and its confidentiality is protected by the owner of the trade secret.</p>
Layout Design of Integrated Circuits	Yes	<p>Protects a three-dimensional placement of various electronic elements, of which at least one element is an active element and that are interconnected partly or wholly in an integrated circuit. A registered layout design initially lasts for ten years from the date when the application for registration is accepted, or from the date the design is exploited commercially for the first time anywhere in the world, whichever is earlier.</p> <p>The layout design of integrated circuits protection requires prior registration in order to be effective by way of submitting an application for layout design of integrated circuits registration to the DGIP. Theoretically, it should take up to two months to process the registration, but in practice, it may take a longer time.</p>

Disclaimer:

An exclusive right over the above-mentioned intellectual property rights could be assigned to another party, among others by way of inheritance, written agreement, and any other legally permissible arrangements, and could also be licensed to any other party. The assignment and/or licence of an intellectual property right must be followed with an application for recordation to the DGIP.



Right By You

PT Bank UOB Indonesia

Head Office
UOB Plaza
Jl. M.H. Thamrin No. 10
Jakarta 10230
Tel. (62) 21 2350 6000
Fax. (62) 21 2993 6632

www.uob.co.id