# Establishing a business in Indonesia

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A Q&A guide to establishing a business in Indonesia.

This Q&A gives an overview of the key issues in establishing a business in Indonesia, including an introduction to the legal system; the available business vehicles and their applicable formalities; corporate governance structures and requirements; foreign investment incentives and restrictions; currency regulations; and tax and employment issues.

To compare answers across multiple jurisdictions, visit the *Establishing a business in... Country Q&A Tool*.

This article is part of the global guide to establishing a business worldwide. For a full list of contents, please visit *www.practicallaw.com/ebi-mjg*.

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## Legal system

**1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?**

The legal system in Indonesia is based on civil law.

## Business vehicles

**2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?**

The main business vehicles in Indonesia are either in the form of a legal entity or a business entity. A legal entity recognises the separation of the assets of the founder and the established entity, while a business entity does not. Establishing a legal entity requires the approval of several government institutions, while establishing a business entity only requires registration with the government.

Examples of legal entities include a limited liability company (*Perseroan Terbatas* (PT)), a co-operative and a pension fund. Business entities may be in the form of a civil partnership, firma, representative office, permanent establishment and limited partnership (*Comanditer Venootschap* (CV)).

The main form of business vehicle used in Indonesia is a legal entity in the form of a PT. A PT is a legal entity comprised of shares, which must be established by at least two shareholders. A PT is the most common form of business vehicle because of its limited liability nature and clearer capitalisation regime. A PT may take the form of a publicly listed company or a privately owned company.

## Establishing a presence from abroad

**3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?**

The most common option for an overseas company as a foreign investor to establish a presence in Indonesia is by setting up a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA). The first step in establishing a PT PMA is to determine whether the PT PMA can be wholly foreign owned or only partially foreign owned. This involves what is known as the Negative Investment List. The current Negative Investment List is contained in Presidential Regulation No. 39 of 2014 outlining the list of business fields that are closed and business fields that are open with requirements for investment (PR 39).

To establish a PT PMA, a foreign investor must submit an application to the Capital Investment Co-ordinating Board to obtain a principle licence (*izin prinsip)*. Once the principle licence is issued by the Capital Investment Co-ordinating Board, the founding shareholders or their proxies need to execute the deed of establishment containing the PT PMA's articles of association, which must be signed before a notary public and filed with the Ministry of Law and Human Rights for its approval. The filing process is handled by the notary. Once the Ministry of Law and Human Rights approves the articles of association, the PT PMA must then register with the Ministry of Trade.

Another common option for an overseas company to establish a presence in Indonesia is by acquiring an existing PT PMA. Such an acquisition is also subject to approval by the Capital Investment Co-ordinating Board and the Ministry of Law and Human Rights and registration with the Ministry of Trade.

There are advantages and disadvantages both to establishing a new PT PMA and to acquiring an existing PT PMA.

### Establishing a new limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA)

The advantage is that the foreign investor has immediate control once the PT PMA is established and the management can be set up to suit the investor's preferences.

The disadvantage is that establishing a new PT PMA requires permits, setting up a physical presence (office) and hiring employees, which is time consuming compared to acquiring an existing PT PMA. Setting up a new PT PMA also requires completing an administrative process with government institutions/agencies related to the technical licences of that PT PMA.

### Acquiring an existing limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA)

The advantage is that there is pre-existing brand recognition in the market if the existing PT PMA is already widely known and in good standing. Also, the existing PT PMA will have licences, an office and employees.

The disadvantage is that before acquiring an existing PT PMA an investor is recommended to conduct a legal due diligence on the PT PMA's documents to ensure the soundness of the PT PMA, specifically with regard to its outstanding taxes and financial obligations and whether the PT PMA is involved in any disputes with other parties. The legal due diligence may incur legal costs and require time before the foreign investor can proceed to the next steps. In addition the administrative procedures that must be followed, such as notification/registration with government institutions/agencies, are time consuming.

### Representative offices

Foreign companies can also establish a representative office, specifically a Foreign Company Representative Office (*Kantor Perwakilan Perusahaan Asing* (KPPA)) or a Foreign Trade Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing* (KP3A)) , by submitting an application to the chairman of the Capital Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal* (BKPM)). A KPPA is established by foreign companies engaging in a service business, while foreign companies involved in the trading of goods will establish a KP3A. A KPPA and KP3A are limited to acting as a liaison between their principal and potential customers (for example, marketing and promotional activities) and are prohibited from generating revenue in Indonesia.

**4. How can an overseas company trade directly in your jurisdiction?**

An overseas company can trade directly in Indonesia by appointing an agent/distributor/franchisee (that is, an existing Indonesian company) in Indonesia. To do so, the overseas company must enter into a distribution or franchise agreement with the existing Indonesian company. Within this structure, the overseas company does not need to establish a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA).

Foreign companies can establish a KPPA or KP3A to carry out promotional and marketing activities in Indonesia (*see Question 3*). KPPA and KP3A are subject to tax obligations under Indonesian law, including the obligation to file an annual tax report with the local tax office.

**5. What are the formalities for setting up a partnership?**

### Types of partnership

In Indonesia, partnerships are regulated under the Civil Code (CC) and Commercial Code. There are three types of partnership recognised in Indonesia, namely:

- Civil partnership (*Maatschap* or *Persekutuan Perdata*).
- Firma.
- Limited partnership (*Comanditer Venootschap* (CV)).

No government approval is required for the establishment of a partnership. Foreign parties cannot establish partnerships in Indonesia.

### Civil partnership (*Maatschap* or *Persekutuan Perdata*)

A *maatschap* is the basic partnership form. The CC defines a *maatschap* as a contract where two or more persons agree to contribute property together or to conduct business together, in order to share the profits accruing from their common assets. It can be formed through a simple contractual agreement and no formal filing or governmental approval is required.

A *maatschap* generally acts under the names of the partners, even though this is not a legal requirement. Under the CC, an agreement on two matters is required to constitute a *maatschap* contract:

- The contribution to be made by each party, which can take the form of money, goods or particular skills or efforts.
- The intention to share in the profit as co-owners.

The partners of a *maatschap* may by specific agreement appoint one of their members or a third person as manager of the partnership. The CC provides that a manager is entitled to perform all acts of management that he considers necessary, even if some or all of the partners disagree, provided that the manager acts in good faith. The manager is therefore able to act in the partnership's name and bind the partners of the *maatschap*. The partners, of course, remain free to remove and change managers. If a manager has been duly appointed, non-manager partners do not have the authority to act in the partnership's name and cannot bind the other partners to third parties.

With regards to the distribution of profits among partners of the *maatschap*, the CC provides that if the partners cannot agree among themselves, then the matter of distribution of the profits of the partnership is delegated to one of the partners or to a third party. An agreement among partners to give all of the profits of the *maatschap* to one of the partners is prohibited. However, partners can agree that only one of them is to bear the losses of the *maatschap*.

### Firma

A firma is a form of partnership generally used for trading and service enterprises. The same provisions that apply to a *maatschap* contained in the CC also apply to a firma The features distinguishing a firma from a *maatschap* are:

- The business it does.
- Common name. A firma does business under a common trade name, whereas in a *maatschap* the partners act under their own names.
- Property of the partnership. A firma is a legal entity capable of owning property in its own name, separate from the personal property of each individual partner.
- Relationship between partners and third parties. In the *maatschap*, a partner cannot bind the other partners unless he has been given power of attorney or the partnership has accepted the benefits of the transaction. In a firma, each partner has the right to act in the name of the firma within the scope of its activities and bind the firma to third parties, unless he has been expressly denied this right. Under the Commercial Code, each partner is jointly and severally liable for the acts to third parties of the firma.

A firma can be formed through a written or oral contract. However, in practice, a written agreement or an authentic deed may be needed as evidence of the existence of the firma.

After a firma has been established by an authentic deed, the partners must:

- Register the deed with the district court.
- Publish the deed in the state gazette.

Failure to comply with both of these obligations may have adverse consequences for the partners. Based on the Commercial Code, an unregistered firma is regarded as having unlimited business purposes, the partners have unlimited liability for business acts they did not contemplate and the firma has an indefinite period of existence.

### CV

A CV is a limited partnership. Foreign persons and foreign entities cannot form a CV. The provisions dealing with a CV are found in the Commercial Code. The Commercial Code states that a CV is a partnership consisting of one or more ordinary partners and one or more silent partners. A CV is regarded as a separate legal entity that may have its own assets that are separate from the private assets of the partners. The obligations for registration with the district court and publication in the state gazette also apply to a CV in order to obtain legal entity status.

There are several differences between an ordinary partner and a silent partner:

- An ordinary partner has the right to manage the CV, whereas a silent partner does not.
- An ordinary partner is personally liable for all debts of the CV, whereas a silent partner is only responsible for the transactions of the CV up to the amount of his contribution. In this respect, a silent partner is in the same position as a shareholder of a PT.

The presence of silent partners is the essential feature of a CV or limited partnership. The status of a silent partner is significantly different from that of a creditor. A silent partner shares in the losses as well as the profits of the partnership, but in either case, his losses are only to the extent of his contribution.

**6. What are the formalities for setting up a joint venture?**

The joint venture form is very common in Indonesia. Generally, a joint venture between a foreign company and a local business involves the establishment of a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA). See *Question 3*.

It is common to prepare and sign a joint venture agreement to safeguard and secure the rights and obligations of the foreign company and the local business.

**7. Are trusts available in your jurisdiction?**

Indonesian laws and regulations do not recognise the concept of a trust.

**The answers to the following questions relate to private limited liability companies (or their equivalent).**

## Forming a private company

**8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?**

### Regulatory framework

A limited liability company (*Perseroan Terbatas* (PT)) is governed by Law No. 40 of 2007 regarding limited liability companies (Company Law). The other applicable laws and regulations include Law No. 3 of 1982 regarding mandatory company registry. A limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA) must also observe Law No. 25 of 2007 regarding capital investment.

The procedure for establishing a PT PMA is governed under Capital Investment Co-ordinating Board Regulation No. 5 of 2013 as amended by Regulation No. 12 of 2013 regarding the guidelines and procedures for investment licensing and non-licensing. The relevant authorities involved in establishing a business are the Ministry of Law and Human Rights and the Capital Investment Co-ordinating Board. The Capital Investment Co-ordinating Board is a regulatory body and the centre for the administration of foreign investment.

For more information on the Ministry of Law and Human Rights and the Capital Investment Co-ordinating Board see box: *The regulatory authorities*.

### Tailor-made or shelf company

On the understanding that a shelf company is a company that has no activity and no assets, but is ready to be sold to another party, such companies are not allowed in Indonesia, particularly in the context of foreign investment. The Capital Investment Co-ordinating Board, as the supervisory authority for a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA), will reject an application for a principle licence if:

- The company cannot substantiate that it will implement its investment.
- The company only has a virtual office.

A PT PMA must also submit an activities report to the Capital Investment Co-ordinating Board, and if that PT PMA does not conduct any activities the Capital Investment Co-ordinating Board has the authority to revoke the PT PMA's licence.

### Formation process

The step-by-step formation process of a limited liability company (*Perseroan Terbatas* (PT)) is as follows:

- **Reserve the PT's name with the Ministry of Law and Human Rights.** This reservation is usually handled by a notary. The PT's name must be in the Indonesian language. Other statutory requirements for the company's name are found in Government Regulation No. 43 of 2011 regarding the procedure for the submission and usage of name of a PT.
- **Execute and obtain approval for the PT's articles of association.** Filing is done by the notary public electronically. The notary completes the electronic form prescribed by the Ministry of Law and Human Rights with the required information and supporting documents and submits them to the ministry, at the latest, 60 days after the date the deed of establishment containing the articles of association is executed. The articles of association are prepared in notarial deed form in the Indonesian language. Within a maximum of 14 days after the complete application letter and supporting documents are received by the Ministry of Law and Human Rights, the ministry will electronically issue its signed decision to approve the company as a legal entity.

  Obtain a certificate of domicile.

  Obtain a taxpayer registration number and a taxable entrepreneur registration number.
- **Register the PT with the Ministry of Law and Human Rights.** The application to register the PT with the Ministry of Law and Human Rights is submitted by a notary as the proxy for the founding shareholders.
- **Register the articles of association with the Ministry of Trade.** Following the Ministry of Law and Human Rights' approval of the PT's articles of association, the PT must be registered in the company registry at the relevant regional office of the Ministry of Trade within three months of starting business. A company registration certificate will be issued on filing and is valid for five years. The first Ministry of Trade registration is handled by a notary.
- **Publish the articles of association in the state gazette.** Following the Ministry of Law and Human Rights' approval and Ministry of Trade registration, the articles of association must be submitted to the state printing office for publication in the supplement to the *state gazette*. This step is traditionally handled by a notary. Article 30 of Law No. 40 of 2007 regarding limited liability companies (Company Law) requires the Ministry of Law and Human Rights to announce the deed of establishment of the PT along with the ministry's approval in the supplement to the *state gazette* within 14 days of that approval.

The average timeline to establish a PT is a month, while the establishment of a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA) may take six to eight weeks. The fee involved in the establishment of a PT is the notary fee, which varies from one notary to another.

### Company constitution

A limited liability company (*Perseroan Terbatas* (PT)) must have articles of association as required by Law No. 40 of 2007 regarding limited liability companies (Company Law). While the Company Law does not provide model articles of association it enumerates the minimum contents that must be incorporated in the articles of association. These include:

- The name and domicile of the company.
- The purposes, objectives and business activities of the company.
- The period of incorporation of the company.

- The amount of authorised capital, issued capital and paid-up capital.
- The number of shares, shares classification, if any, including the number of shares for each classification, the rights attached to each share and the nominal value of each share.
- The name of the title or position and the number of members of the board of directors and board of commissioners.
- The determination of the place and procedures for holding a general meeting of shareholders.
- The procedures for the appointment, replacement and dismissal of members of the board of directors and board of commissioners.
- The procedure for profit utilisation and the distribution of dividends.

The articles of association of a limited liability company are available by request at the Ministry of Law and Human Rights. Shareholders' agreements are commonly used in addition to the articles of association.

## Financial reporting

**9. What financial reports must the company submit each year?**

Under Indonesian Company Law, the board of directors of a PT must submit an annual report during the General Meeting of Shareholders. This annual report must contain, among other items, the PT's financial report. Publicly listed companies (PT Tbk) must submit a financial report to the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)). And Minister of Industry and Trade Decree No. 121/MPP/Kep/2/2002 regarding Submission Procedures for a Company's Annual Financial Report, the following must submit audited annual financial statements (*Laporan Keuangan Tahunan Perusahaan* (LKTP)) to the Minister of Trade:

- Publicly listed companies.
- Companies involved in the collection of/and or management of funds from the public (for example, banks and insurance companies).
- Companies issuing debt instruments.
- Companies with assets of IDR25 billion or more.
- Bank debtors whose financial statements are required for auditing by the bank.

There is no financial reporting obligation for branch/representative offices (that is, KPPA, a representative office of a foreign company that engages in providing business services, or KP3A, the representative office of a foreign company that engages in trading goods). The accounts of KPPA or KP3A must comply with Indonesian law. KPPA and KP3A must submit periodic reports on their activities to the Capital Investment Co-ordinating Board and a monthly and annual tax return to the local tax office.

## Trading disclosure

**10. What are the statutory trading disclosure and publication requirements for private companies?**

There is no legal requirement for businesses to display their names or have a sign at their premises. However, it is common practice in Indonesia for marketing and practical purposes. Under Law No. 40 of 2007 regarding limited liability companies (Company Law), any correspondence and announcements by the company must stipulate the name and address of the company. Under the Company Law, every limited liability company (*Perseroan Terbatas* (PT)) must stipulate "*Perseroan Terbatas*" or "PT" before its name, and if it is a publicly listed company, "Tbk" (the abbreviation of "*Terbuka*") must be affixed to the end of the company's name.

**11. How do companies execute contracts or deeds?**

The board of directors is authorised to sign contracts on behalf of limited liability companies (*Perseroan Terbatas* (PTs)). Under Law No. 40 of 2007 regarding limited liability companies (Company Law) each member of the board of directors is authorised to represent the PT, unless the articles of association of the company stipulate otherwise. However, several actions of the board need prior approval of a general meeting of shareholders or the board of commissioners. For most company actions, the requirement for the approval of the board of directors, board of commissioners and general meeting of shareholders is governed under the company's articles of association. However, certain actions are specifically regulated under the Company Law and so must be approved by a general meeting of shareholders, such as:

- The amendment of the company's articles of association.
- The repurchase and transfer of shares.
- The increase or decrease of capital.
- Company restructuring.
- The encumbrance of security rights over the company's assets if it concerns more than 50% of the company's assets in one or more related or unrelated transactions.

## Membership

**12. Are there any restrictions on the minimum and maximum number of members?**

There must be a minimum of two shareholders at the time of establishment of a limited liability company (*Perseroan Terbatas* (PT)). Law No. 40 of 2007 regarding limited liability companies (Company Law) allows a PT that has obtained legal entity status to have only a single shareholder. However, this is conditional on fulfilling certain requirements and is applicable only for six months. Within six months, the single shareholder must transfer part of his shares to another party or the company can issue new shares. If the single shareholder fails to meet this requirement, the shareholder is personally liable for the agreements, undertakings and losses of the company and a third interested party can file a claim with the district court to dissolve the company.

## Minimum capital requirements

**13. Is there a minimum investment amount or minimum share capital requirement for company formation?**

When establishing a limited liability company (*Perseroan Terbatas* (PT)) with shares fully held by Indonesian persons and/or legal entities, the minimum authorised capital is IDR50 million and the minimum issued capital is IDR12.5 million. To establish a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA) the minimum investment is IDR10 billion for each business field, comprising equity capital and indicative loans. The ratio of equity capital to indicative loans can vary from 1:3 to 1:6 depending on the line of business of the company, but the actual ratio for any given PT PMA's project must be negotiated with the Capital Investment Co-ordinating Board. The Capital Investment Co-ordinating Board requires that the total investment made by the foreign investor is sufficient so the intended business can achieve commercial production. It is helpful to consult with the Capital Investment Co-ordinating Board on whether the company requires a larger investment amount taking into account the number of business fields that the foreign investment company engages in. Certain business sectors (sea transportation and insurance, among others) may have a higher minimum share capital requirement.

**14. Are there restrictions on the transfer of shares in private companies?**

Under Law No. 40 of 2007 regarding limited liability companies (Company Law), each shareholder has a pre-emptive right to subscribe to the newly issued shares in proportion to his shareholding in each class of shares. The articles of association of a company can also give shareholders the right of first refusal to purchase the shares of shareholders of a certain class of shares or other shareholders, and/or provide that a shareholder intending to sell his shares first obtain prior approval before selling.

Additionally, the articles of association can detail provisions concerning the requirements for the transfer of rights in shares, namely the obligation to obtain prior approval from the company's organs and/or the obligation to obtain prior approval from the competent authorities in accordance with the applicable laws and regulations.

## Shareholders and voting rights

**15. What protections are there for minority shareholders under local law? Can additional protections be given?**

Under Law No. 40 of 2007 regarding limited liability companies (Company Law), the protections for shareholders and/or minority shareholders are as follows:

- To file claims against the company at the district court if the shareholder suffers losses caused by the company's actions that are considered unfair and unreasonable as a consequence of resolutions of the general meeting of shareholders, the board of directors or the board of commissioners.
- To request that the company purchase its shares at a reasonable price if the relevant shareholder disapproves of the company's actions that have had the effect of the shareholders or the company incurring loss through:
  - amendments to the articles of association;
  - transfer or pledge of the company's assets valued at more than 50% of the company's net assets; or
  - merger, consolidation or acquisition of the company.
- On behalf of the company, shareholders representing at least one-tenth of the total shares with voting rights can file a claim with the district court against a member of the board of directors and board of commissioners who, due to his or her mistakes or negligence, have led to the company incurring losses.
- One or more shareholders representing at least one-tenth of the total shares with voting rights can submit a proposal for the dissolution of the company to the general meeting of shareholders.

There is no prohibition against granting additional protections to minority shareholders, but it is uncommon to grant such additional protections.

**16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Do quorum or voting rights need to be proportionate to shareholdings?**

There are statutory restrictions on the quorum of the general meeting of shareholders. A general meeting of shareholders can be held and is entitled to adopt resolutions if it is attended or represented by more than one-half of the total shares with valid voting rights, unless a higher quorum is stipulated in the articles of association. In the event that such a quorum for attendance is not reached, a second attempt to call a general meeting of shareholders can be made. The second general meeting of shareholders is valid and entitled to adopt resolutions if attended by shareholders representing not less than one-third of all shareholders with valid voting rights, unless the articles of association stipulate a higher threshold.

If a quorum is not reached for the second general meeting of shareholders a request can be filed with the chairman of the district court whose jurisdiction includes the company's domicile to determine the quorum of a third general meeting of shareholders. Each share grants its owner the right to attend and cast one vote in a general meeting of shareholders. Non-voting shares can be issued but all share classes must be entitled to receive dividends.

**17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?**

An increase and decrease of the authorised capital are considered amendments to the articles of association, and amendments to a company's articles of association must be approved by the company's shareholders at a general meeting of shareholders at which shareholders holding at least two-thirds of the company's total issued shares with valid voting rights are present or represented, and the

relevant resolution must be approved by at least two-thirds of the total votes legally cast. A resolution of the general meeting of shareholders to increase the issued capital and paid-up capital within the limit of authorised capital will be valid if adopted in a quorum of more than one-half of the total shares with valid voting shares and approved by more than one-half of the total votes cast. The articles of association can stipulate a larger quorum for attendance and/or a higher voting threshold to pass a general meeting of shareholders resolution on these matters.

**18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?**

Voting majorities as applied by the law cannot be disapplied to protect a minority shareholder. Classification of shares is permitted under Company Law, such as voting and non-voting shares. However, this classification does not render the non-application of certain voting thresholds as required under Company Law. Protection of minority shareholders is granted through the rights conferred on minority shareholders (*see Question 15*).

## Sectoral restrictions

**19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?**

Specific requirements for a particular sector may be found in sectoral laws and regulations. For example, a foreign investor intending to establish a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership in the banking and insurance industries does not need to go to the Capital Investment Co-ordinating Board, but must go to Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)) to obtain the approval for the establishment of the company and its operational licence.

## Foreign investment restrictions

**20. Are there any restrictions on foreign shareholders?**

Restrictions on foreign shareholders are set out in the Negative Investment List contained in Presidential Regulation No. 39 of 2014 outlining the list of business fields that are closed and business fields that are open with requirements for investment (PR 39). PR 39 lists those areas in which investment by both Indonesians and foreigners is prohibited or restricted. In addition to PR 39, the laws and regulations governing the conduct of a certain line of business must be reviewed to determine whether that line of business is open to foreign investment and, if so, whether a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA) established to conduct that line of business can be wholly foreign owned or only partially foreign owned. If a particular line of business is not listed in PR 39, then it is open to 100% foreign investment without condition. The Negative Investment List also stipulates any foreign ownership restrictions, for instance, the maximum foreign shareholding, the requirement to partner with a small or medium-scale enterprise and so on. In practice, investors still need to confirm with the Capital Investment Co-ordinating Board whether a certain line of business is open for 100% foreign investment without any condition. The Negative Investment List is organised by reference to the business activities described in the Indonesian business fields classification issued by Indonesia's central statistics body. A PT PMA may have more than one business fields classification number as its line of business unless the relevant laws and regulations provide otherwise.

**21. Are there any exchange control or currency regulations?**

There are no foreign exchange controls in Indonesia. The Indonesian rupiah is freely convertible into any currency and vice versa. However, Bank Indonesia Regulation No. 16/26/PBI/2014 regarding foreign currency transactions against the rupiah by banks with local parties prohibits the purchase of foreign exchange against the rupiah from the commercial banking system in Indonesia by any person in an amount in excess of US$100,000 per month in the absence of an underlying transaction. This regulation provides that Indonesian nationals and legal entities purchasing foreign currencies in excess of US$100,000 or the equivalent in the Indonesian banking system must provide certain documents to Bank Indonesia including the underlying transaction documentation. Bank Indonesia Regulation No. 17/3/PBI/2015 regarding Mandatory Use of Rupiah within the Republic of Indonesia (BI Reg 17) stipulates the mandatory use of rupiah for:

- Transactions in Indonesia that are for the purpose of payment.
- Transactions in Indonesia that are for the settlement of other obligations that must be fulfilled with money.
- Other financial transactions in Indonesia.

The obligation to use rupiah for the foregoing applies to cash transaction made as of 31 March 2015 and non-cash transaction made as of 1 July 2015. Certain transactions are exempted from the mandatory use of rupiah as set out under BI Reg 17.

**22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?**

Under Law No. 5 of 1960 regarding land, there are two categories of land title comprising a total of nine rights.

The first broad category of land titles encompasses five primary titles derived directly from the state. These are:

- The right of ownership.
- The right to cultivate.
- The right to build.
- The right to use.
- The right to manage.

The second broad category of land titles encompasses secondary titles, which are titles granted by holders of primary titles on the basis of private agreements, which consist of:

- The right to lease.
- The right of share cropping.
- The right to pledge land.
- The right of lodging.

A secondary title is obtained by an investor based on an agreement whereby a primary titleholder grants a legal interest or secondary title to another party.

An Indonesian individual is entitled to all primary titles as listed above. A limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA) is entitled to a right to build or a right of use title. An individual foreigner is only entitled to a right of use title as long as he is a resident of Indonesia.

## Directors

**23. Are there any general restrictions or requirements on the appointment of directors?**

Under Law No. 40 of 2007 regarding limited liability companies (Company Law) persons who can be appointed as directors are individuals capable of performing legal actions, excluding persons who in the five years before their appointment were:

- Declared bankrupt.
- Members of a board of directors or board of commissioners found to be at fault in causing a company to be declared bankrupt.
- Sentenced for a crime that caused losses to the state and/or a crime related to the finance sector.

The technical institution in the related business sector can impose additional requirements for directorships. Foreign nationals are prohibited from serving as human resources director and there are a number of other directorship positions that foreigners are prohibited from holding under the applicable employment laws and regulations. Generally, there is no requirement that a director must reside in Indonesia.

There is also no regulation that imposes gender quotas on directorship positions. Directors are appointed by the general meeting of shareholders for a certain term. The appointment of a company's initial directors must be incorporated in the company's deed of establishment. The company's articles of association will govern the procedure for the appointment, replacement and termination of directors and can govern the procedure for nominating candidates for the board of directors.

## Board composition

**24. What are the legal requirements for the composition of a company's board of directors?**

### Structure

Indonesia recognises a two-tiered board structure. The structure of the board of directors is not regulated under Law No. 40 of 2007 regarding limited liability companies (Company Law) but the articles of association can determine the structure. The laws and regulations for specific business sectors can regulate the structure of the board of directors (for example, insurance, banking).

### Number of directors or members

As a general rule, Law No. 40 of 2007 regarding limited liability companies (Company Law) does not set a minimum number of directors or commissioners. However, a company whose business is related to the collection of/and or management of funds from the public (for example, banks and insurance companies), a company issuing promissory notes and a publicly listed company must have at least two directors.

### Employees' representation

There is no requirement under Indonesian law for employee representation on the board of directors.

## Reregistering as a public company

**25. What are the requirements for a business to reregister as a public company?**

### Membership

It is important to clarify the distinction between a public company and a publicly listed company before elaborating on the requirements to reregister as a public company. A public company is a company that has satisfied the requirements for the minimum number of shareholders and paid-up capital under the Capital Markets Law, but which has not conducted a public offering.

A publicly listed company is a company that has had a public offering and has been listed on the stock exchange.

The minimum number of shareholders for a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA) to be considered as a public company is 300, but for a PT PMA to become a publicly listed company on the main board, the total number of shareholders must be at least 1,000 who have securities accounts at the stock exchange, with the following provisions:

- For a company conducting a public offering, the total number of shareholders will be the shareholders after the IPO.
- For a company that is already a public company, the total number of shareholders will be the latest number of shareholders at least one month before the submission of the listing application.

To become a publicly listed company on the development board, the total number of shareholders must be at least 500 who have securities accounts at the stock exchange.

### Share capital

The minimum issued capital for both a public company and a publicly listed company is IDR3 billion. A publicly listed company on the main board must have at least IDR100 billion net tangible assets, while a publicly listed company on the development board must have at least IDR50 billion. For a publicly listed company on the main board, the minimum number of shares that must be held by the public (free-float shares) is 300 million shares owned by non-controlling and minority shareholders five days before the listing application. That is a minimum of 20% of the issued and paid-up capital for companies with a pre-IPO equity amount of more than IDR500 billion, a minimum 15% of the issued and paid-up capital for companies with a pre-IPO equity amount between IDR500 billion and IDR2 trillion and a minimum of 10% of the issued and paid-up capital for companies with a pre-IPO equity of more than IDR2 trillion.

For a publicly listed company on the development board, the minimum number of shares that must be held by the public (free-float shares) is 150 million shares owned by non-controlling and minority shareholders five days before the listing application. That is a minimum of 20% of the issued and paid-up capital for companies with a pre-IPO equity of less than IDR500 billion, a minimum 15% of the issued and paid-up capital for companies with a pre-IPO equity between IDR500 billion and IDR2 trillion and a minimum of 10% of the issued and paid-up capital for companies with a pre-IPO equity of more than IDR2 trillion.

## Tax

#### 26. What main taxes are businesses subject to in your jurisdiction?

The main taxes business are subject to are:

- **Income tax.** This tax is imposed on the income received, whether domestically or abroad, in one fiscal year. If the income from abroad is already taxed by the relevant tax authorities in the foreign jurisdiction, then the tax treatment will be different depending on the tax treaty between Indonesia and the relevant foreign country. The corporate tax rate in Indonesia is generally 25%. A 5% reduction is applicable for a publicly listed company that fulfils certain requirements.
- **VAT.** This tax is imposed on the delivery of goods and services. The rate is 10%.
- **Luxury goods sales tax.** In addition to VAT, taxes are imposed on the import and/or delivery of luxury goods and services. Government Regulation No. 145/2000 stipulates the types of goods that are considered luxury goods and the rate of sales tax on those goods. Under Government Regulation No. 145/2000, there are six types of goods that are subject to a luxury sales tax at a rate of 10% to 75%.
- **Land and building tax.** This is imposed annually on property, buildings and land in Indonesia. The rate is 0.5%.
- **Duty on acquisition of rights to land and buildings.** Taxes are imposed on individuals or entities that obtain the rights to land and/or buildings. The rate of tax is 5% of the acquisition value.
- **Stamp duty.** Stamp duty of IDR6,000 is imposed on documents that will be used in court and documents that have a value.
- **Local government tax.** Depending on an entity's domicile, there will be various taxes, charges and duties imposed by the local government, such as vehicle tax, restaurant tax and hotel tax.

### Reporting obligation

Indonesia employs a self-assessment tax system by which taxpayers assess and report their tax obligations for the tax period in question to the Indonesian Tax Office through a tax return. The Directorate General of Taxation (DGT) can assess tax returns to determine whether taxpayers have appropriately applied tax laws and regulations.

#### 27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

A business will become liable to pay tax in Indonesia when such business is deemed a tax subject. Tax subjects are classified as either tax resident or non-tax resident.

### Tax resident

A business entity is tax resident when that entity is established or is domiciled in Indonesia.

### Non-tax resident

A non-tax resident is:

- Any entity that is not established and has no domicile in Indonesia that carries on business or conducts activities through a permanent establishment in Indonesia.
- Any entity that is not established and has no domicile in Indonesia that receives or earns income from Indonesia without carrying on business or conducting activities through a permanent establishment in Indonesia.

A permanent establishment is a business form that is used by:

- An individual who does not reside in Indonesia.
- An individual who lives in Indonesia for not more than 183 days over a period of 12 months.
- An entity that is not established and has no domicile in Indonesia to carry on business or conduct activities in Indonesia.

A permanent establishment will have the same tax obligation as a tax resident. Therefore, any income generated by a permanent establishment in Indonesia will be taxable in Indonesia as if such income was generated by an Indonesian tax subject.

**28. What is the tax position when profits are remitted abroad?**

Any profits or dividends that are transferred to an entity or individual abroad that is not deemed a permanent establishment is subject to 20% withholding tax. The rate can change if there is a relevant tax treaty.

**29. What thin-capitalisation rules and transfer pricing rules apply?**

Transfer pricing occurs when a taxpayer transfers income and/or costs to other taxpayers under an arrangement that reduces the total outstanding amount of the tax imposed on the taxpayers having a special relationship. The Directorate General of Taxation (DGT) has the authority to re-determine the amount of income and deductions, and to re-characterise debt as capital of the parties, where such a special relationship exists, on the basis of calculating the taxable income according to fairness and ordinary business conditions that are not influenced by such a special relationship.

The DGT has issued guidelines on transfer pricing as stipulated in DGT Regulation No. Per-43/PJ/2010 regarding the implementation of the arm's length principle in a transaction between taxpayers and parties having a special relationship, as amended by DGT Regulation Per-32/PJ/2011 (Regulation 43). Under Regulation 43, transfer pricing is defined as a determination of price in a transaction among parties having a special relationship.

A "special relationship" is deemed to exist where:

- A taxpayer possesses a direct or indirect capital participation at a minimum amount of 25% in two or more taxpayers.
- A taxpayer has control over another taxpayer or two or more taxpayers are under the same control, whether directly or indirectly.
- There exists a family relationship either through bloodline or through marriage of one degree of direct or indirect linkage.

For more information on taxes on corporate transactions see: *Tax on Transactions Global Guide.*

## Grants and tax incentives

**30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?**

The Income Tax Law stipulates that taxpayers investing capital in certain business fields and/or in certain regions enjoying national priority can be provided with tax facilities including the imposition of income tax on dividends amounting to 10%, unless an applicable tax agreement stipulates a lower rate.

The Investment Law provides that an income tax exemption or reduction for a certain amount and period may be given to new investors in any pioneer industry, which is defined as any industry that:

- Possesses extensive connectivity.
- Provides increased added value.
- Introduces new technology.
- Possesses strategic value for the national economy.

The Investment Law further provides that the facilities will not apply to a foreign capital investor in any form other than a limited liability company (*Perseroan Terbatas* (PT)).

Government Regulation No. 1 of 2007 regarding income tax facilities for capital investment in certain business sectors and/or regions, as amended (GR 1/2007) states that domestic corporate taxpayers in the form of a PT or co-operative that invest in certain business sectors as defined in the regulation can be given income tax facilities.

## Employment

**31. What are the main laws regulating employment relationships?**

The main laws regulating employment relationships in Indonesia are:

- Law No. 13 of 2003 regarding manpower.
- Law No. 2 of 2004 regarding industrial relations dispute settlement.
- Law No. 21 of 2009 regarding labour unions.

These laws apply to foreign employees working in Indonesia. An employment contract must use the Indonesian language, and even if the parties execute the employment contract in the Indonesian language and another language, the Indonesian language version will prevail in interpreting the contract.

**32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?**

An employer who employs foreign nationals must obtain a work permit from the Ministry of Manpower. To obtain a work permit, the employer must prepare a plan for the utilisation of foreign workers that is endorsed by the Ministry of Manpower. Foreign nationals must obtain a work visa and a residency permit. Not all work positions are open to foreign nationals. Human resources director and other positions enumerated by the Ministry of Manpower and transmigration decree are closed to foreign nationals. The Ministry of Manpower is currently revising the regulations concerning the procedure for obtaining a work permit and it is possible an Indonesian language test will be introduced as a prerequisite for foreign nationals seeking a work permit.

## Proposals for reform

**33. Are there any impending developments or proposals for reform?**

One reform currently under development is a more integrated service under the Capital Investment Co-ordinating Board for business licences that were previously administered by the relevant ministries.

## The regulatory authorities

### Capital Investment Co-ordinating Board

**Main activities.** Regulatory body and licensing administrator for foreign investment.

**W** http://bkpm.go.id

### Ministry of Law and Human Rights

**Main activities.** Administration of the establishment of limited liability companies.

**W** http://kemenkumham.go.id

### Ministry of Manpower

**Main activities.** Regulatory body, supervision of employment and industrial relations.

**W** http://depankertrans.go.id

### Bank Indonesia

**Main activities.** Regulatory body, supervision of monetary activity, payment systems and financial stability.

**W** www.bi.go.id/id/Default.aspx

### Financial Services Authority

**Main activities.** Regulatory body, supervision of the banking, insurance and capital market sectors.

**W** www.ojk.go.id

## Online resources

### Capital Investment Co-ordinating Board

**W** http://bkpm.go.id

**Description.** This website is maintained by the Capital Investment Co-ordinating Board and provides recent news regarding investment in Indonesia. The website provide rules and regulations and a document checklist regarding foreign investment in Indonesia. The regulations on the website are generally up to date but there are no English translations.

### Ministry of Law and Human Rights

**W** http://kemenkumham.go.id

**Description.** This website is maintained by the Ministry of Law and Human Rights and provides rules and regulations regarding immigration, general law and so on. There are no English translations for the rules and regulations, and the rules and regulations are not always up-to-date.

### Ministry of Manpower

**W** http://depankertrans.go.id

**Description.** This website is maintained by the Ministry of Manpower and provides rules and regulations regarding employment and industrial relations. There are no English translations for the rules and regulations, and the rules and regulations are not always up-to-date.

### Bank Indonesia

**W** www.bi.go.id/id/Default.aspx

**Description.** This website is maintained by Indonesia's central bank, Bank Indonesia, and provides rules and regulations regarding monetary activity, payment systems and financial stability. There are English translations of a number of the regulations, however, the English versions may be out of date.

### Financial Services Authority

**W** www.ojk.go.id

**Description.** This website is maintained by the Financial Services Authority and provides rules and regulations regarding supervision of the banking, insurance and capital market sectors. The rules and regulation are generally kept up-to-date. There are no English translations for the rules and regulations.

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**Recent transactions**

- Acting for Rolls-Royce on all Indonesian aspects of its US$1.2 billion global sale of its energy gas turbine and compressor business to Siemens.
- Advising on all Indonesian aspects of the US$430 million global acquisition by Enerflex of the international contract compression, processing and after-market services business of Axip Energy Services.

- Advising on all Indonesian aspects of a US$635 million revolving credit facility for Enerflex.
- Represented GlaxoSmithKline on a three-part deal that saw the pharmaceutical company take full control of its Indonesian consumer healthcare business, while divesting a non-core brand and a manufacturing facility in the country.
- Advised US-based private equity firm SK Capital Partners on all Indonesian aspects of its global acquisition of the textile chemicals, paper specialties, and emulsions businesses of Clariant Corporation, the Swiss-based specialty chemicals company.

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**Recent transactions**

- Acting as Indonesian counsel to Daewoo International Corporation in connection with a US$210 million funding for the expansion of Australia-listed Finders Resources' copper cathode plants in Indonesia's Maluku Province.
- Representing KT&G, South Korea's largest tobacco manufacturer, as Indonesian counsel in the US$132 million purchase of a majority stake in Trisakti Group.
- Advising Thai Containers Group as Indonesian counsel in acquiring 90% of the shares in PT Primacorr Mandiri, an Indonesian maker of corrugated paper and box containers, in a deal worth US$12.4 million.
- Acting for Minor International Ltd. in its acquisition of the now-named Anantara Vacation Club Seminyak, a boutique villa development in Bali.
- Representing Standard Chartered and Adani Group in a US$90 million ISDA financing transaction to provide a macro hedge to PT Lamindo Inter Multikon, which is involved in coal production in Indonesia.

**Languages.** English, Indonesian

**Professional associations/memberships.** International Bar Association, Inter-Pacific Bar Association, Indonesian Advocates Association.

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### Related content

#### Topics

Cross-border: Company Law and Corporate Governance (http://uk.practicallaw.com/topic8-200-1621)

#### Article

Establishing a private limited liability company in... (http://uk.practicallaw.comtopic2-553-5166)