Joint ventures in Indonesia: overview

Ira A Eddymurthy and Nico A Mooduto
SSEK Indonesian Legal Consultants

global.practicallaw.com/5-617-3624

DOMESTIC COMPANY JOINT VENTURES (JVS)

Regulation

1. Are JVs expressly regulated?

There are various laws and regulations that regulate the terms that can be included in JV agreements, including Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007) and the Indonesian Civil Code.

There are additional regulations for JVs operating in certain industries. For example, Law No. 2 of 2017 regarding Construction Service (12 January 2017) (Construction Law) regulates certain JVs in the construction industry. The Construction Law allows the formation of a joint operation, which is a legal arrangement that resembles a JV. A joint operation is an agreement between a foreign construction representative office and a local construction company for the completion of a specific construction project.

Types

2. Which types of JV are allowed?

There are two types of JVs: corporate JVs and contractual JVs.

Corporate JVs

Corporate JVs are divided into incorporated JVs and partnerships.

An incorporated JV is a legal entity that has limited liability status, commonly referred to as a limited liability company (*perseroan terbatas*) (PT). PTs are organised under Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007) (Company Law).

A partnership is a business entity that does not have limited liability status. Common forms of partnerships in Indonesia include:

- A firm (*firma* or *venootschap onder firma*).
- A komanditer partnership/association (*commanditaire vennotschap*) (CV).

The main difference between a firm and a CV lies in the contribution of the partners. In a CV, there are two types of partners, namely active partners, who manage the business of the CV, and passive partners, who merely make capital contributions to the CV. The liability of a CV's passive partners is limited to the amount of their capital contribution. In contrast, there are no distinct categories of partners in a firm.

Contractual JVs

A contractual JV is formed by agreement between the JV partners, and does not require the establishment of a legal or business entity.

3. What are the principal corporate/company laws governing corporate JVs?

The principal corporate/company laws governing corporate JVs are the Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007) and the Indonesian Civil Code.

There are also additional regulations governing JVs operating in certain industries.

Formation and registration

4. What are the typical JV founding documents for a corporate JV?

The typical JV founding documents for a corporate JV are the:

- JV/shareholders' agreement entered into by the JV partners, which is a private agreement documenting the relationship between the JV partners.
- Deed of establishment, which contains the entity's articles of association and:
  - a list of the members of the board of directors and board of commissioners, for a limited liability company (*perseroan terbatas*) (PT); or
  - a list of the partners, for a partnership.
- The deed of establishment must be executed in the form of a notarial deed.
- Decree from the Ministry of Law and Human Rights (MOLHR) approving the establishment of the PT (MOLHR decree). A PT is granted limited liability status on issuance of the MOLHR decree.

5. Is the use of foreign language in a JV's founding documents (both corporate and contractual) restricted?

Under Law No. 24 of 2009 regarding the Indonesian National Flag, Language, Emblem and Anthem (9 July 2009), Bahasa Indonesia (the official state language) must be used in:

- Official communications between the state and private entities.
- Official documents issued by the state.

- Agreements involving the Indonesian Government, Indonesian private companies or Indonesian individuals.

Therefore, a JV's founding documents, which comprise the JV agreement and/or the deed of establishment, must be prepared in Bahasa Indonesia if one of the parties is Indonesian. If one of the parties to the JV agreement is a foreign party, the agreement can be drafted in the language of that foreign party in addition to Bahasa Indonesia. In the vast majority of agreements with a foreign party, the parties typically agree that the foreign language version will prevail. However, the deed of establishment, which must be prepared in the form of a notarial deed, must always be in Bahasa Indonesia.

6. Are public officers (for example, public notaries) involved in a JV's formation procedure?

A public notary is involved in the formation of a corporate JV. The role of the public notary includes the preparation and execution of the deed of establishment in the form of a notarial deed. In the case of a limited liability company, the notary handles the submission of the deed of establishment to the Ministry of Law and Human Rights (MOLHR) to obtain the MOLHR Decree (*see Question 4*).

The formation of a contractual JV does not involve any public officers.

7. Are JVs registered with any local registries? Are public sector bodies' authorisations required for a JV's establishment?

Local registries

Corporate JVs must be registered with the following bodies (among others):

- Company Registry of the Ministry of Law and Human Rights (MOLHR) (for limited liability companies (*perseroan terbatas*) (PTs)).
- Local government of the area where the corporate JV is domiciled (domicile registration).
- Local tax office (*Nomor Pokok Wajib Pajak*) (tax identification registration).
- Local office of the Ministry of Trade (company registration).
- Local office of the Ministry of Manpower (labour and employment registrations).

Contractual JVs are not subject to registration requirements.

Public sector bodies

Corporate JVs in the form of a PT must be authorised by the MOLHR. To this end, the deed of establishment of the corporate JV must be filed with the MOLHR. The MOLHR will approve the formation of the PT by issuing an MOLHR decree.

Corporate JVs in the form of a partnership must file a deed of establishment with the competent local district court. The district court will legalise the partnership's deed of establishment.

Contractual JVs do not normally require authorisations from public sector bodies, unless otherwise required by specific regulations in certain industries. For example, in the case of a joint operation (*see Question 1*), the foreign construction representative office must be licensed by the Indonesian Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal*), which derives its authority from the Ministry of Public Works.

8. What other formal requirements must be complied with to validly constitute a JV?

The formal requirements that must be complied with to validly constitute a JV include the following:

- **Characterisation of business activities.** The JV must set out the business(es) that it engages in accordance with the Indonesian Business Fields Classification (*Klasifikasi Baku Lapangan Usaha Indonesia*) (KBLI) issued by Indonesia's Central Statistics Body (*Badan Pusat Statistik*). The KBLI is represented by five-digit codes. The most recent KBLI is set out in Regulation of the Chairman of the Central Statistics Body No. 95 of 2015 (29 October 2015) regarding the KBLI, as amended by Regulation No. 19 of 2017 (21 February 2017).
- **Minimum number of shareholders.** A limited liability company (*perseroan terbatas*) (PT) must have at least two shareholders (*Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007)* (Company Law)).
- **Board of directors (BOD).** A PT must have at least one member in its BOD (*Company Law*). The duties and responsibilities of the BOD consist of managing the day-to-day operations of the PT.
- **Board of commissioners (BOC).** A PT must have at least one member in its BOC, the duty of which is to supervise the functions of the BOD (*Company Law*).
- **Capitalisation.** A PT has three types of share capital: authorised, issued and paid up. The aggregate issued and paid-up share capital must be no less than 25% of the PT's authorised share capital. All issued share capital must be fully paid up on issuance of the decree of the Ministry of Law and Human Rights (MOLHR) approving the incorporation of the PT. The minimum authorised share capital for a PT is IDR50 million (*Company Law*). There is an exception for micro, small and medium enterprises, which can have an authorised share capital below IDR50 million (*Government Regulation No. 29 of 2016 regarding Change of Authorised Capital of Limited Liability Company (14 July 2016)*). Payment for shares can be made in cash or in kind, but any in-kind payment must be valued by an independent appraisal company.
- **Publication requirements.** The articles of association of a corporate JV must be submitted to the State Printing Office for publication in the Supplement to the *State Gazette*.

Permitted markets

9. Can the JV structure be used in every industry sector? Are there any restrictions to be considered and carefully assessed before investing in a JV?

Presidential Regulation No. 44 of 2016 regarding List of the Business Fields that Are Closed and Business Fields that Are Open With Requirements for Capital Investment (18 May 2016) (*Daftar Negatif Investasi*) (DNI) lists the areas in which investment by both Indonesians and foreign nationals is either prohibited or restricted. The lines of business that are closed to investments are as follows (*Attachment 1, DNI*):

- Cultivation of marijuana.

- Fishing of fish species listed in Appendix 1 to the Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973.
- Salvage of valuable artefacts from shipwrecks.
- Gathering (retrieval) of coral for construction materials, lime, calcium and souvenirs/jewellery, as well as gathering of living or recently dead coral from nature.
- Manufacture of chloro-alkali with mercury.
- Manufacture of active ingredients of pesticides.
- Manufacture of industrial chemicals and ozone-depleting substances.
- Manufacture of chemicals listed in Schedule 1 to the Chemical Weapons Convention (*Attachment I, Law No. 9 of 2008 regarding Use of Chemicals and Prohibition on Use of Chemicals as Chemical Weapons (10 March 2008)*).
- Manufacture of alcoholic liquor.
- Manufacture of alcoholic beverages.
- Manufacture of malt beverages.
- Provision and operation of terminals for land transport of passengers.
- Provision and operation of motor vehicle weighing stations.
- Telecommunications/aids for shipping navigation and vessel traffic information system.
- Provision of flight navigation services.
- Performance testing of certain types of motor vehicles.
- Management and operation of radio frequency spectrum and satellite orbit monitoring stations.
- Governmental museums.
- Historical and archaeological remains (such as temples, sultans' palaces, inscriptions, ruins, ancient buildings, and so on).
- Gambling/casinos.

However, a person can enter into a closed line of business for non-commercial purposes (such as research and development), subject to approval from the agency in charge of the relevant line of business (*DNI*).

In addition to the DNI, the laws and regulations governing specific business sectors should be reviewed, to determine whether the line of business in question is open for investment and, if so, whether a JV would be subject to foreign investment restrictions or other special requirements.

Purpose

10. Can a JV be established with any purpose?

The Indonesian Civil Code recognises the principle of freedom of contract, provided that a contract does not violate any prevailing laws and regulations or the rules of public order. In this regard, parties to both contractual and corporate JVs are free to establish a JV with any purpose, provided that this purpose does not fall under a restricted or prohibited line of business (*see Question 9*).

Share capital and participation

11. What possible forms of participation are there in a JV's share capital? How can a JV member contribute and are there statutory limits on the possibility to make contributions in kind?

Forms of participation

Participation in a limited liability company's (*perseroan terbatas*) (PT) share capital is by way of issuance and subscription of shares in the PT (*Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007)* (Company Law)).

Participation in a partnership's share capital is by making a contribution to the capital of the partnership (*Indonesian Civil Code*).

Contributions

In the case of a PT, share capital contributions can be made in cash or in kind (*Company Law*). The valuation of contributions in kind must be determined on the basis of their fair value or by an expert who is not affiliated with the PT. Contributions in kind must be announced in one or more daily newspapers within 14 days after the deed of establishment is executed.

Participation in a partnership's share capital can take the form of contributions in cash, goods, or labour.

12. Can a corporate JV's share capital be denominated in a foreign currency?

A JV's share capital must be denominated in Indonesian rupiah.

However, a limited liability company (*perseroan terbatas*) (PT) can denominate its share capital in a foreign currency in addition to Indonesian rupiah, provided that both currencies in equal value are referenced in the PT's deed of establishment. For the purposes of foreign capital investment, the Capital Investment Co-ordinating Board allows the use of foreign currencies (for example, US dollars).

Duration and limits on membership

13. Are there statutory limits on a JV's duration?

There are no statutory limits on a JV's duration. For both corporate and contractual JVs, the existence or duration of a JV depends on the agreement between the JV partners.

14. Are there statutory limits on the number of members participating in a JV?

There are no statutory limits on the number of members participating in a JV, for either corporate or contractual JVs.

Public sector bodies

15. Can a public sector body enter into a JV agreement? Subject to what conditions? In particular, do public private partnerships (PPP) laws and regulations apply?

A public sector body can enter into a JV agreement subject to the following conditions.

Corporate JV

A corporate JV that is set up with capital derived from the state budget is a state-owned company (*badan usaha milik negara*) (BUMN). A BUMN takes the form of a limited liability company (*perseroan terbatas*) (PT) and is established under a government regulation. The state must own at least 51% of the shares in a BUMN.

The state can only participate in the capital of existing corporate JVs in certain circumstances, to rescue the state's economy.

The primary laws and regulations that govern BUMNs and capital participation in BUMNs are:

- Law No. 17 of 2003 regarding State Finance (28 April 2003).
- Law No. 19 of 2003 regarding State-Owned Enterprise (19 June 2003).
- Law No.1 of 2004 regarding State Treasury (14 January 2004).
- Government Regulation No. 44 of 2005 regarding Procedures of Participation and Management of State Capital in State-Owned Enterprise and Limited Liability Company (25 October 2005).
- Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007).

Public private partnership (PPP) laws and regulations do not apply to the formation and management of corporate JVs.

Contractual JV

The Government of Indonesia (GOI) can enter into JV agreements with private entities for infrastructure projects. The process for entering into such JV agreements is governed byPPP laws and regulations, as well as Presidential Regulation No. 38 of 2015 regarding Co-operation between Government and Business Entity in Infrastructure Development (20 March 2015) (PR 38). Under PR 38, private entities that seek to form a PPP with the GOI must be in the form of a PT, a foreign legal entity, or a co-operative.

Non-competition and anti-trust clauses

16. Are there statutory constraints on the use of non-competition or anti-trust clauses in a JV agreement?

During period of effectiveness

The freedom of contract principle recognised under the Indonesian Civil Code allows contracting parties to include any clauses in their agreement, provided that they do not violate Indonesian laws and regulations. There is no law or regulation that expressly regulates or prohibits non-competition and anti-trust clauses in JV agreements. It is common for JV partners to include a non-competition clause in their JV agreement.

However, Indonesian law prohibits practices that aim to unfairly restrict competition under Law No. 5 of 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition (5 March 1999) (Anti-Monopoly Law). For example, the Anti-Monopoly Law prohibits a market-dominant entity from abusing its position by unfairly restricting its competitor(s)' activities. Therefore, a non-competition clause may not hold up before the Indonesian Competition Supervisory Body if it is entered into by an industry-dominant business player.

Following termination

Under the freedom of contract principle, JV partners are generally free to enter into any agreement. Therefore, a post-termination non-competition clause will in principle be binding on the JV partners.

However, a non-competition clause may be held invalid if it violates the Anti-Monopoly Law (*see above, During period of effectiveness*). Accordingly, a non-competition clause may have no legal effect following termination of the JV agreement.

Additionally, even where a non-competition clause does not violate the Anti-Monopoly Law, the courts will look at the scope of the clause. Specifically, if the scope of a non-competition clause is blatantly unfair (for example, it is for an indefinite period or is subject to a very long duration), such that it may be deemed to restrict competition, the affected JV partner can challenge the validity of the clause before a judicial body. Unfortunately, the dearth of precedent does not provide clear guidance on these issues.

De facto company/partnership

17. Must the contractual JV satisfy any conditions to avoid falling within the definition of de facto company/partnership?

A contractual JV does not need to satisfy any conditions to avoid falling within the definition of de facto company/partnership. The formation of a partnership or a limited liability company (*perseroan terbatas*) (PT) is subject to specific formal requirements, including the execution of a deed of establishment in the form of a notarial deed, obtaining relevant authorisations and filing local registrations (*see Question 4, Question 7 and Question 8*). If these formal requirements are not fulfilled, a contractual JV will not be deemed a de facto company or partnership.

Limiting member liability

18. Can a JV agreement provide that a JV member can participate without incurring any risk, loss or reward?

There are no express restrictions on such a JV agreement.

However, in the case of a limited liability company (*perseroan terbatas*) (PT), the shareholders'/JV partners' liability is limited to the amount of their shares in the PT (*Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007)* (Company Law)). Therefore, the Company Law does not appear to allow transfers of liability between the JV partners that would result in a JV partner bearing liability that exceeds its liability under the Company Law.

In the context of a partnership and contractual JV, the Indonesian Civil Code provides that an agreement cannot provide that benefits (or profits) will be given to only one JV partner to the exclusion of the other JV partners. However, the same provision states that the JV parties can agree that any loss will be borne by one JV member only.

Anti-trust

19. Do any anti-trust rules, guidelines or policies apply to a JV agreement?

JV agreements are subject to the anti-trust rules set out in the Law No. 5 of 1999 regarding Prohibition of Monopolistic Practices and Unfair Business Competition (5 March 1999) (Anti-Monopoly Law). However, the Anti-Monopoly Law does not apply to research and development JV agreements that aim to increase the standard of living of the general public.

Governance and limits on directors

20. Can the parties to a JV freely regulate the JV or are they subject to certain restrictions?

Under the Indonesian Civil Code, which recognises the principle of freedom of contract, the parties to a JV can freely regulate the JV, subject to certain restrictions set out in the applicable laws and regulations.

Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007) (Company Law) places certain restrictions on the operation of limited liability companies (*perseroan terbatas*) (PTs) (for example, in relation to voting and quorum requirements, shareholders' rights, appointment of the board of directors (BOD) and board of commissioners (BOC), and so on). For example, PTs are subject to the following votingand quorum requirements (*Company Law*):

- **Simple majority.** Certain corporate matters are delegated to the general meeting of shareholders, which typically requires a quorum of more than one half of the total shares with valid voting rights and a voting threshold of more than one half of the shares in attendance. These matters include the:
  - appointment, replacement or dismissal of members of the BOD and BOC;
  - determination of the term of the BOD and BOC;
  - determination of the salary and allowance of members of the BOD and BOC;
  - ratification of the PT's audited financial statement, if the PT is required to prepare an audited financial statement (publicly listed companies and companies with assets or revenue of more than IDR50 billion, among others, must prepare audited financial statements);
  - ratification of the PT's annual report;
  - increase of the PT's issued share capital and paid-up capital within the limit of the authorised capital;
  - utilisation of net profits, including the determination of the amount to be allocated to the reserve fund and the amount and distribution of dividends;
  - approval of work plan, as required by the PT's articles of association or the laws and regulations.
- **Super majority.** The following matters are subject to higher majority and quorum requirements:
  - amendments to the articles of association: these must be approved at a general meeting of shareholders at which at least two-thirds of the company's voting shares are represented, by at least two-thirds of the shares in attendance;
  - merger, consolidation, acquisition, bankruptcy and/or dissolution of the company, and transfer or pledge of the PT's assets as security for a loan, which comprise more than 50% of the PT's net assets in one or more related or unrelated transactions: these must be approved at a general meeting of shareholders at which at least three-quarters of the PT's voting shares are represented, and at least three-quarters of the shares in attendance must approve the resolution.

A PT's articles of association cannot provide for lower quorum and voting requirements. However, articles of association can impose higher quorum and voting requirements (including unanimity requirements) for the approval of resolutions relating to any or all of the above matters (*Company Law*).

Additionally, shareholders of a PT (that is, the JV partners) have the right to receive dividends issued by the PT (*Company Law*). Therefore, a JV agreement cannot exclude a shareholder's right to dividends.

There are also restrictions that apply to partnerships and contractual JVs (*see Question 18*).

In addition, specific sectoral laws and regulations may need to be consulted to assess other potential restrictions.

21. Are there limits or restrictions on the eligibility of an individual as a member of the board of directors/statutory auditor?

There are limits and restrictions on the eligibility of an individual as a member of the board of directors (BOD) and statutory auditor under the Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007) (Company Law).

BOD

To be eligible for appointment to the BOD, an individual must be qualified to undertake legal actions and, within a period of five years before their appointment, must not have:

- Been declared bankrupt.
- Assumed a position as a member of a company's BOD or board of commissioners (BOC) and been declared responsible for the bankruptcy of that company.
- Been punished for criminal acts causing losses to state finances and/or relating to the financial sector.

Statutory auditor

Expert(s) or independent appraisers must be appointed for:

- The valuation of contributions in kind.
- Investigations into a limited liability company (*perseroan terbatas*) (PT).

The following requirements must be met.

Valuation of contributions in kind. Contributions in kind must be valued on the basis of a fair value or by an independent appraiser. The independent appraiser must not:

- Have a family relationship either by marriage or lineage up to the second degree, horizontally or vertically, with an employee, a member of the BOD or BOC, or a shareholder of the PT.
- Share one or more members of the PT's BOD or BOC.
- Control the PT, directly or indirectly.
- Have 20% or more of shares in the PT.

Investigation into a PT. An application can be filed with the court to conduct an investigation into alleged unlawful acts committed by a PT. The court will appoint experts that will conduct the investigation. Court-appointed experts must not include any of the following:

- Members of the PT's BOD or BOC.
- PT's employees.

- Consultants or public accountants that have been appointed by the PT at any time.

The above provisions are without prejudice to specific sectoral regulations.

Termination

22. What legal regime applies to a JV's termination? Can a JV be terminated for just cause on request of one party?

The JV's termination is governed by the JV agreement. The JV parties can mutually agree on the grounds of termination of the JV in their agreement. Default is normally included as a ground for termination. Other grounds for termination of a JV include the legal incapacitation or bankruptcy of one of the JV partners.

23. Is the termination of a JV agreement subject to any public sector body's approval?

Unilateral termination of an agreement must be approved by the court (*Article 1266, Indonesian Civil Code*). In practice, it is common for JV parties to agree to waive this requirement, in which case court approval will not be required for unilateral termination.

The above provision is without prejudice to specific sectoral regulations. In certain sectors, the termination of a JV agreement may require the approval of the Government of Indonesia.

Choice of law and jurisdiction

24. Are there constraints on the choice of the law and the jurisdiction applicable to a JV?

Generally, a choice of law must have a sufficient link with the subject matter of a JV agreement. This rule aims to limit the use of, and reference to, a foreign law that is egregiously irrelevant to the subject matter of an agreement. Additionally, it is recommended that certain JV agreements refer to Indonesian law due to their object. The application of Indonesian law may also be required, for example, for JV agreements relating to:

- The management of assets located in Indonesia, such as land or buildings.
- Construction services provided in Indonesia.
- The exploitation and exploration of oil and gas fields.

The JV partners can freely make a choice of jurisdiction. However, the Indonesian courts do not recognise foreign court judgments. Therefore, a foreign court judgment relating to a dispute arising from a JV agreement will not be recognised and enforceable in Indonesia.

Arbitration is a common choice of dispute resolution mechanism. A choice of foreign arbitration is valid and enforceable, provided that the country of arbitration is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Many JV agreements refer to arbitration in Singapore or Hong Kong. JVs with state-owned enterprises most often refer to domestic arbitration in Indonesia, or to litigation in the Indonesian courts.

JVS WITH FOREIGN MEMBERS

__Validity and authorisation__

25. What are the rules relating to validity and authorisation of JVs with foreign parties?

Validity

JVs with foreign parties are allowed in Indonesia. The rules relating to the validity and authorisation of JVs with foreign parties are mainly set out in Law No. 25 of 2007 regarding Capital Investment (26 April 2007) (Investment Law).

Additionally, specific regulations issued by the Indonesian Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal*) (BKPM) relate to JVs with foreign parties, including:

- Regulation of the Chairman of BKPM No. 14 of 2015 regarding Guidelines and Procedures for Capital Investment (29 September 2015), as amended.
- Regulation of the Chairman of BKPM No. 15 of 2015 regarding Guidelines and Procedures for Investment Licensing and Non-Licensing (8 October 2015).

Limits

Foreign parties/investors are only allowed to form a limited liability company (*perseroan terbatas*) (PT), unless otherwise permitted under other regulations (*Investment Law*). A PT that is formed by a foreign party is known as a foreign investment company (*Perseroan Terbatas Penanaman Modal Asing*) (PMA). The formation of a PMA is also governed by Law No. 40 of 2007 regarding Limited Liability Company (16 August 2007) (Company Law). One example of law that permits a JV with a foreign party in a form other than a PT is Law No. 2 of 2017 regarding Construction Service (12 January 2017) (Construction Law). The Construction Law allows the formation of a joint operation between a foreign construction representative office and a local construction company.

Additionally, areas of business in which foreign participation is prohibited or restricted are listed in Presidential Regulation No. 44 of 2016 regarding List of the Business Fields that Are Closed and Business Fields that Are Open With Requirements for Capital Investment (18 May 2016) (*Daftar Negatif Investasi*) (DNI) (*see Question 9*).

In addition to the DNI, specific sectoral laws and regulations should be reviewed to determine whether a particular line of business is open for investment and, if so, whether a JV will be subject to foreign investment restrictions or other special requirements.

Authorisation

The formation of a PMA must be pre-approved by the BKPM, which is evidenced by BKPM's in-principle approval.

In the construction industry, a foreign construction representative office must be licensed by the BKPM before it can form a joint operation with a local construction company.

Effect of foreign membership

26. Are any of the rules relating to domestic company JVs (*see Questions 1 to 24*) different for JVs with members

incorporated under, or governed by, the laws of a foreign country?

The rules relating to domestic company JVs are different for JVs with members incorporated under, or governed by, the laws of a foreign country (*see Question 25*).

Economic or financial incentives

27. Are there economic or financial incentives for foreign direct investments in a JV?

There are various economic and financial incentives for foreign direct investments in a JV, including tax facilities and import duty exemptions.

Minimum investments/contributions

28. Are there mandatory minimum equity investments or contributions in kind thresholds for a foreign JV member?

For foreign investment companies (*Perseroan Terbatas Penanaman Modal Asing*) (PMA), the Indonesian Investment Co-ordinating Board currently requires a minimum total equity investment of more than IDR10 billion. Each shareholder of a PMA must invest no less than IDR10 million in the PMA.

Additionally, certain industry sectors (such as construction) require foreign JV members to make a minimum total investment of IDR50 billion.

THE REGULATORY AUTHORITIES

Ministry of Law and Human Rights (MOLHR)

Main activities. The MOLHR is responsible for approving the establishment of limited liability companies and foreign investment companies (*Perseroan Terbatas Penanaman Modal Asing*) (PMAs), and for registering them in the Company Register.

W *www.kemenkumham.go.id*

Indonesian Capital Investment Co-ordinating Board (*Badan Koordinasi Penanaman Modal*) (BKPM)

Main activities. The BKPM is authorised, among other things, to approve the establishment of PMAs and foreign representative offices, issue business licences in certain industries, and approve foreign investment incentives.

W *www.bkpm.go.id*

ONLINE RESOURCES

State Secretary of the Republic of Indonesia

W *www.setneg.go.id/index.php*

Description. This is the official website of the State Secretary of the Republic of Indonesia. The State Secretary is responsible for maintaining national archives. The website contains references and pdf copies of Indonesian main laws and regulations. The website is generally up to date.

Practical Law Contributor profiles

Ira A Eddymurthy, Senior Partner

SSEK Indonesian Legal Consultants

T +62 21 5212038 / 2953 2000
F +62 21 5212039
E iraeddymurthy@ssek.com
W www.ssek.com

Professional qualifications. Advocate, Capital Market Legal Consultant (HKHPM), Indonesia

Areas of practice. M&A; capital markets; insurance; foreign investment.

Recent transactions

- Acted as Indonesian counsel to Alibaba Group in its US$1 billion acquisition of online retailer Lazada.
- Acted as Indonesian counsel to Akastor AS and KOP Surface Products Singapore Pte. Ltd. in its acquisition by the Weir Group PLC, a transaction valued at approximately US$115 million.
- Advised Thai Containers Group, part of Siam Cement Group, on its acquisition of an Indonesian packaging company.
- Acted as Indonesian counsel for BlueScope Steel Limited in a US$1.3 billion joint venture with Nippon Steel Corporation to establish a new coated products business in Southeast Asia and North America.

Languages. Indonesian, English

Professional associations/memberships. International Bar Association; Inter-Pacific Bar Association; Indonesian Advocates Association; Indonesian Capital Market Legal Consultants.

Nico A Mooduto, Associate

SSEK Indonesian Legal Consultants

T +62 21 5212038 / 2953 2000
F +62 21 5212039
E nicomooduto@ssek.com
W www.ssek.com

Professional qualifications. Advocate, Indonesia

Areas of practice. General corporate law; investment; construction; dispute resolution.

Languages. English, Indonesian