SSEK Indonesian Legal Consultants

Belt and Road - Indonesia

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Indonesia has the largest economy in Southeast Asia, predicted to be the fifth-largest economy in the world by 2030, and is the fourth-most populous country in the world, with a young, energetic workforce and a large and growing middle class. Indonesia has made deregulating its economy a focus and the country jumped 19 places to 72 in the World Bank's 2018 Ease of Doing Business index.

Belt & Road: The natural resource-rich island nation of Indonesia is located between the Indian and Pacific oceans and is a vital sea transport hub on the 21st Century Maritime Silk Road. China was among the top five sources of FDI in Indonesia in 2017 and the country's investment service agency has established a China Desk.

Entering the Market

Regulations

The Capital Investment Coordinating Board (BKPM) is responsible for regulating, approving, and supervising the implementation of foreign and domestic investment in Indonesia. It is, in essence, the gatekeeper for companies investing in Indonesia and is likely the main institution investors will deal with. Investment licensing and investment facilities in Indonesia are regulated under BKPM Regulation No. 13 of 2017.

Foreign direct investment in Indonesia must be in the form of a foreign investment limited liability company, or PT PMA, in most industries. Upstream oil and gas activities are a notable exception.

The Company Law (Law No. 40 of 2007) is one of the main pieces of legislation for foreign investment in Indonesia. It recognizes three types of capital for an Indonesian company: authorized, issued and paid-up. Authorized capital may be up to four times greater than issued capital, and all issued capital must be fully paid-up. The Company Law provides that the minimum authorized capital of a limited liability company is IDR 50 million.

In practice, the BKPM requires that total investment be reasonably sufficient for the intended business to achieve commercial production. BKPM Regulation No. 13 of 2017 stipulates that the total investment of a PT PMA must be more than IDR 10 billion and that the issued and paid-up capital for a PT PMA shall be at least IDR 2.5 billion. Certain business sectors might have higher minimum share capital requirements.

Sector Restrictions

Foreign investment is restricted in various sectors. These restrictions are contained in what is known as the Negative Investment List, or DNI, which is updated periodically in the form of a presidential regulation. The current DNI is contained in Presidential Regulation No. 44 of 2016 (PR 44/2016), which lists those business sectors in which investment by both Indonesians and foreigners is prohibited or restricted.

If a particular line of business is not included in the DNI it should be open to 100% foreign investment without condition, though in practice, investors should confirm that with the BKPM. The DNI also stipulates any foreign ownership restrictions, such as maximum foreign shareholding, the requirement to partner with a small or medium-scale enterprise, etc. The DNI is organized by reference to the business activities described in the Indonesian Business Fields Classification (KBLI) issued by the Central Statistics Body. A PT PMA may have more than one KBLI number as its line of business unless the relevant laws and regulations provide otherwise.

In addition to the DNI, the laws and regulations governing the conduct of a certain line of business, such as upstream oil and gas activities, must be reviewed to determine whether that line of business is open to foreign investment and, if so, whether a PT PMA established to engage in that line of business may be wholly or only partially foreign owned.

Corporate Structures

The main business structures in Indonesia are in the form of a legal entity or a business entity. A legal entity recognizes 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 entities, while establishing a business entity only requires registering the entity with the government.

Examples of a legal entity include limited liability company (PT), cooperative and pension fund. Business entities may be in the form of a civil partnership, firma, representative office, permanent establishment or limited partnership (CV).

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

Local Content Requirements

There is no general local content requirement that applies to all sectors in Indonesia. However, there are local content requirements that apply to specific industries including automotive, electronics, telecommunications, power, mining, oil and gas, construction, retail, and pharmaceutical. The required local content differs from industry to industry.

Incentives for Infrastructure Projects

BKPM Regulation No. 13 of 2017 provides fiscal and non-fiscal incentives to encourage foreign investment in projects. The incentives available to investors in infrastructure projects are:

- **Import Duty Exemption:** Foreign investment limited liability companies that initiate development and expansion projects can benefit from an import duty exemption for machinery (either new or used, excluding spare parts) and goods. This facility is granted by the BKPM for a two-year period and can be according to the project timeline stipulated in the investment approval. To obtain the facility, the company must submit an application to the BKPM within three years of the investment approval being granted.

  There is another import duty exemption for the import of capital goods. Project companies that carry out electricity supply activities for the public, including electricity generation, can benefit from this facility. The exemption is granted by the BKPM to project companies holding an electricity supply business permit for a two-year period, which can be extended by 12 months. The project company must apply to the BKPM for the facility.

- **Tax Allowance:** Tax allowances can be granted to a new project company or any existing project company that is expanding its business in certain sectors or regions. Under Government Regulation No. 18 of 2015 on Income Tax Allowance in Certain Business Sectors and/or Regions, tax allowances can be granted in the form of:
  a. reduction in net taxable income up to 30% of the amount invested;
  b. accelerated depreciation and/or amortisation deductions;
  c. 10% income tax on dividends paid to foreigners, unless the relevant tax treaty stipulates a lower rate;
  d. compensation for losses of more than five years, but less than 10 years; and
  e. exemption on the collection of income tax on goods in the form of machinery and equipment.

A company must apply to the BKPM to obtain a tax allowance.

- **VAT Facility:** Project companies in the mining sector with a cooperation agreement with the Indonesian government can obtain an import duty and/or VAT exemption for the import of goods under the relevant contract. This facility is granted by the BKPM to the project company for a period as stipulated in the contract. A company must apply to the BKPM to obtain this facility.

Protecting your investment in infrastructure projects

Investment treaties and trade agreements

Indonesia has signed Bilateral Investment Treaties (BITs) with 50 countries and is a member of the ASEAN Free Trade Area (AFTA). Under the ASEAN Free Trade Agreement, duties on imports from ASEAN countries generally range from 0 to 5 percent, except for products specified on exclusion lists. Indonesia provides preferential market access to Australia, China, India, Japan, Korea, New Zealand and Pakistan under regional ASEAN agreements, and to Japan under a bilateral agreement. Indonesia is participating in negotiations on the Regional Comprehensive Economic Partnership (RCEP), which includes the 10 ASEAN member states and Australia, China, India, Japan, Korea and New Zealand.

New York Arbitration Convention

Indonesia is party to the New York Arbitration Convention, which applies to the recognition and enforcement of foreign arbitral awards and the referral by court to arbitration.

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