

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 global.practicallaw.com/ebi-guide.

Legal system

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

Indonesia has a civil law system.

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 legal entities and business entities. In a legal entity, there is a separation between the assets of the founder(s) and that of the established entity, which is not the case in a business entity. Establishing a legal entity requires the approval of several government entities, while establishing a business entity only requires registration with government entities.

Examples of legal entities include:

- Limited liability companies (*Perseroan Terbatas* (PTs)).
- Co-operatives.
- Pension funds.

Business entities include civil partnerships, firms (a type of partnership), representative offices, permanent establishments, and limited partnerships (*Comanditer Venootschap* (CVs)).

The main form of business vehicle used in Indonesia is the PT. A PT is a legal entity comprised of shares that must be established by at least two shareholders. The PT is the most common form of business vehicle because of the limited liability of shareholders and a clear capitalisation regime. A PT can be a publicly listed company or a privately-owned company.

A PT is the most common form of business entity used in Indonesia and is generally preferred because the liability of shareholders is limited to their capital contribution. Additionally, the boards of directors and commissioners of a PT cannot be held liable for any corporate decision adopted in good faith, therefore affording greater protection to the parties involved.

Establishing a presence from abroad

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

Establishing a new PT PMA

The most common option for an overseas company establishing a presence in Indonesia is to set up a limited liability company with foreign ownership (PT PMA). The first step in establishing a PT PMA is to determine whether the PT PMA can be wholly owned or only partially owned by foreign shareholders. This involves consulting the Negative Investment List (DNI). The most recent DNI is included in Presidential Regulation No. 44 dated 12 May 2016 regarding the List of Business Fields that Are Closed and Business Fields that Are Open with Requirements for Investment (PR 44/2016).

To establish a PT PMA, the founding shareholders or their proxies must execute a deed of establishment containing the PT PMA's articles of association (AOA), which must be signed before a notary public and filed for approval with the Ministry of Law and Human Rights (MOLHR). The filing process at the MOLHR will be handled by the notary. Once the MOLHR approves the AOA, the PT PMA must register with the Online Single Submission (OSS) system managed by the Coordinating Ministry for Economic Affairs (CMEA). The OSS system will issue a business registration number (*Nomor Induk Berusaha* or NIB) and business licence. For some lines of business, companies can immediately start commercial activities after obtaining the business licence. After they obtain a business licence, companies in certain business sectors (such as industry, natural resource management, or energy) must secure a commercial/operational licence before starting commercial activities. The commercial/operational licence will only be issued after a company has met or obtained all the standards, certificates, licences, and/or registrations required for the product and/or service being sold.

The advantages of establishing a new PT PMA are as follows:

- Foreign investors have immediate control over the PT PMA once it is established.
- Management can be set up to suit the investors' preferences.

The disadvantages are 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.
- Going through an administrative process with government institutions and agencies.

Acquiring an existing PT PMA

Another common option for an overseas company establishing a presence in Indonesia is to acquire an existing PT PMA. Such an acquisition is also subject to MOLHR approval and OSS registration (*see above, [Establishing a new PT PMA](#)*).

The advantages of acquiring an existing PT PMA are as follows:

- Pre-existing brand recognition in the market if the existing PT PMA is already widely known and in good standing.
- The existing PT PMA already has the required licences/authorisations, an office and employees.

The disadvantages of acquiring an existing PT PMA are as follows:

- Before acquiring an existing PT PMA, an investor should conduct legal due diligence on the PT PMA to ascertain the soundness of the company, specifically with regard to its outstanding taxes

and financial obligations and whether the PT PMA is involved in any disputes with third parties. Legal due diligence can incur legal costs and require time before the foreign investor can proceed to the next steps.

- Certain administrative procedures must be followed, such as notification to/registration with government institutions and agencies.

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

An overseas company can trade directly in Indonesia through appointing an Indonesian agent, distributor, or franchisee. To do so, an overseas company must enter into a distribution, agency or franchise agreement with an existing Indonesian company. With this structure, the overseas company does not need to establish a limited liability company with foreign ownership (PT PMA) (see [Question 3](#)).

An overseas company can also establish a representative office in Indonesia in the form of a:

- Foreign company representative office (*Kantor Perwakilan Perusahaan Asing* (KPPA)).
- Foreign trade representative office (*Kantor Perwakilan Perusahaan Perdagangan Asing* (KP3A)).

A KPPA engages in the provision of business services, while a KP3A engages in the trade of goods. KPPAs and KP3A are not subject to disclosure obligations, but they are periodically required to submit activities reports to the Capital Investment Co-ordinating Board (BKPM). KPPAs and KP3As are also subject to tax obligations under Indonesian law (for example, they must file an annual tax report with the local tax office).

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

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

- Civil partnership (*Maatschap* or *Persekutuan Perdata*).
- Firms (*Firma*).

- Limited partnership (CV).

The establishment of a partnership does not require government approval. Foreign parties cannot establish partnerships in Indonesia. A partnership can be established by agreement between the parties. Under the Indonesian Civil Code (ICC), an agreement is valid if it is consensual, entered into by legally capable persons, concerns a certain subject matter, and does not contravene public order.

Under the ICC, partners in a civil partnership are personally liable for actions taken in the interest of the partnership. A partner cannot bind other partners, unless they are properly authorised to do so. In addition, all partners in a civil partnership are liable for any actions taken in the name of the partnership.

Under the Indonesian Commercial Code, all partners in a firm can act on behalf of the firm and bind the firm towards any third party within the scope of the firm's purpose. All partners in the firm are jointly liable for the actions taken by the firm.

The nature of a limited partnership is similar to that of a firm. In a limited partnership, there are partners and limited partners. A limited partner only injects capital into the limited partnership and does not undertake any business activity on behalf of the partnership. The Indonesian Commercial Code provides that limited partners are only liable to the extent of the amount of capital they injected into the partnership.

Partnerships are taxed similarly to companies. This is because the Income Tax Law classifies both partnerships and companies as business entities with the same tax rate.

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

Joint ventures are very common in Indonesia. There is no clear definition of joint venture under Indonesian law. Generally, a joint venture between a foreign company and a local business involves the establishment of a limited liability company with foreign ownership (PT PMA) (see [Question 3](#)).

A joint venture can also be unincorporated. Examples of unincorporated joint ventures include contractual co-operations and consortia.

It is common to prepare and sign a joint venture agreement to protect and secure the rights and obligations of the parties to the venture.

7. Are trusts available in your jurisdiction?

Indonesian law does not recognise the concept of trust.

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

Limited liability companies (PTs) are governed by Law No. 40 of 2007 dated 16 August 2007 regarding Limited Liability Companies (Company Law). Other applicable laws and regulations include:

- Law No. 3 of 1982 dated 1 February 1982 regarding Mandatory Company Registry.
- Law No. 25 of 2007 dated 26 April 2007 regarding Capital Investment (Investment Law).

The procedure for establishing a PT with foreign ownership (PT PMA) is governed by the Capital Investment Co-ordinating Board Regulation No. 13 of 2017 dated 4 December 2017 regarding the Procedures and Facilities for Capital Investment.

The procedure to register a PT and obtain the necessary licences is governed by Government Regulation No. 24 of 2018 dated 21 June 2018 regarding Electronically Integrated Business Licensing Service.

The authorities involved in the establishment of a PT are the Ministry of Law and Human Rights (MOLHR), Capital Investment Co-ordinating Board (BKPM), and Coordinating Ministry for Economic Affairs (CMEA). The BKPM is a regulatory body responsible for overseeing foreign investment, while

the CMEA is responsible for the registration and licensing of PTs through the Online Single Submission (OSS) system.

Tailor-made or shelf companies

Shelf companies (understood as companies that have no activity and no assets, but are ready to be sold to another party) are not allowed in Indonesia, especially in the context of foreign investment. The BKPM, as supervisory authority for PT PMAs, will reject an application for a principal licence if a company either:

- Cannot show that it will implement its investment.
- Only has a virtual office.

A PT PMA must also submit regular activities reports to the BKPM. If the PT PMA does not conduct any activity, the BKPM can revoke the PT PMA's licence.

Formation process

The formation process of a PT is as follows:

- **Reserving the name of the PT with the MOLHR.** This is usually handled by a notary. The name of the PT must be in Indonesian. Other statutory requirements are set out in Government Regulation No. 43 of 2011 dated 4 October 2011 regarding the Procedure for the Submission and Usage of Name of PT.
- **Executing and obtaining approval for the PT's articles of association (AOA).** Filing of the AOA with the MOHLR must be made electronically by a notary. The notary must complete the prescribed electronic form prescribed with the required information and supporting documents and submit them to the MOLHR at the latest 60 days after the date of execution of the deed of establishment containing the AOA. The AOA are prepared in the form of a notarial deed in Indonesian. The MOLHR will issue electronically its signed decision to approve the PT as a legal entity at the latest 14 days after it receives the complete application and supporting documents.
- **Obtaining the PT's certificate of domicile.** This is obtained from the competent local sub-district office.
- **Obtaining a taxpayer registration number (*Nomor Pokok Wajib Pajak (NPWP)*) and a taxable entrepreneur registration number (PKP number).** These are obtained from the competent local tax office.
- **Registration of the PT with the MOLHR.** The application to register the company with the MOLHR is submitted by a notary acting as proxy for the founding shareholders.
- **Registration of the AOA with the Ministry of Trade (MOT).** Following approval of the PT's AOA by

the MOLHR, the PT must be registered in the Company Registry at the relevant MOT regional office within three months of starting business. A company registration certificate (*Tanda Daftar Perusahaan* (TDP)) will be issued on filing and is valid for five years. The first MOT registration will be handled by a notary.

- **Publication of the AOA in the State Gazette.** Following MOLHR approval and MOT registration, the AOA 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. The Company Law requires the MOLHR to announce the deed of establishment of the PT along with MOLHR's approval of the deed in the Supplement to the State Gazette within 14 days from approval.

The average timeline to establish a non-PMA PT is one month, while the establishment of a PT PMA may take six to eight weeks. The establishment of a PT involves payment of notary fees, which vary from one notary to another.

Company constitution

The AOA of a PT must comply with the requirements of the Company Law. While the Company Law does not provide model AOA, it lists the minimum contents that must be incorporated in AOA. These include the:

- Name and domicile of the company.
- Purposes, objectives and business activities of the company.
- Period of incorporation of the company.
- Amount of authorised share capital, issued share capital and paid-up share capital.
- Number of shares, share classes (if any), including the number of shares in each class, rights attached to each share, and nominal value of each share.
- Title or position and number of members of the board of directors (BOD) and board of commissioners (BOC).
- Place and procedures for holding general meetings of shareholders.
- Procedures for the appointment, replacement and dismissal of members of the BOD and BOC.
- Procedure for the use of profits and distribution of dividends.

Financial reporting

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

A limited liability company with foreign ownership (PT PMA) must submit its audited annual financial report to the Ministry of Trade (*Government Regulation No. 24 of 1998 dated 14 February 1998, as amended by Government Regulation No. 64 of 1999 dated 9 July 1999 regarding Company Annual Financial Information*).

There are no financial reporting obligations for branches and representative offices (that is, KPPAs and KP3As). The accounts of KPPAs and KP3As must comply with Indonesian law. KPPAs and KP3As must submit periodical reports on their activities to the Capital Investment Co-ordinating Board (BKPM) and an annual tax report 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 the Company Law, any correspondence and announcements by a company must specify the name and address of the company. Every limited liability company (PT) must have “*Perseroan Terbatas*” or PT before its name. A publicly listed company must have “Tbk” (the abbreviation of *Terbuka*) after its name.

11. How do companies execute contracts or deeds?

In a limited liability company (PT), the board of directors (BOD) can sign contracts on behalf of the company. Under the Company Law, each member of the BOD must be authorised to represent the PT, unless the company's articles of association (AOA) provide otherwise.

However, several actions of the BOD require prior approval at a general meeting of shareholders (GMS) or by the board of commissioners (BOC). For most company actions, approval requirements are governed by the company's AOA. However, the Company Law specifically requires that certain actions be approved at a GMS, including the following:

- Amendments of the company's AOA.
- Buy-back and transfer of shares.
- Increase or decrease of capital.
- Company restructuring.
- Security rights over the company's assets, if they cover 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?

A limited liability company (PT) must have at least two shareholders (members) (*Company Law*). There are no restrictions on the maximum number of members.

Under the Company Law, a registered PT can have a single shareholder for a period of six months, subject to meeting certain requirements. Within this six-month period, the single shareholder must transfer a part of its shares to another party or the company can issue new shares. A single shareholder that fails to meet this requirement is personally liable for the agreements, undertakings and losses of the company, and any interested third 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?

To establish a limited liability company (PT) with Indonesian shareholders, the minimum authorised share capital is IDR50 million (about USD3,650) and the minimum issued share capital is IDR12.5 million (about USD910).

To establish a PT with foreign ownership (PT PMA), the minimum investment is IDR10 billion (about USD730,000) in each business field, comprising equity capital and indicative loans.

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

Under the Company Law, each shareholder has a pre-emptive right to subscribe to newly issued shares in proportion to their shareholding in each class of shares. The company's articles of association (AOA) can:

- Give shareholders a right of first refusal to purchase certain classes of shares or all shares generally.
- Provide that a shareholder intending to sell their shares must obtain prior approval before selling.

The AOA can also set out requirements for the transfer of rights in shares, such as the obligation to obtain prior approval from the:

- Company's organs (that is, the general meeting of shareholders, board of directors, and board of commissioners).
- Competent authorities in accordance with applicable laws and regulations.

Shareholders and voting rights

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

Protections for shareholders and/or minority shareholders are as follows (*Company Law*):

- A shareholder can file a claim at the district court against the company if they suffer unfair and unreasonable losses as a consequence of resolutions of the general meeting of shareholders (GMS), board of directors (BOD), or board of commissioners (BOC).
- A shareholder can request the company to purchase its shares at a reasonable price if that shareholder disapproves of the company's actions that cause losses to shareholders or the company. Such actions can take the form of:
 - amendments to the articles of association;
 - a transfer or pledge of the company's assets valued at more than 50% of the company's net assets; or
 - a merger, consolidation or acquisition of the company.
- Shareholders representing at least one-tenth of the total shares with voting rights can file a claim with the district court on behalf of the company against any member of the BOD and BOC who, because of his/her mistakes or negligence, has caused losses to the company.
- 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 GMS.

There are no restrictions on 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? Must quorum or voting rights be proportionate to shareholdings?

There are statutory restrictions on the quorum of general meetings of shareholders (GMS). A GMS can be held and is entitled to adopt resolutions if shareholders representing more than half of the company's shares with voting rights attend or are represented at the meeting, unless the articles of association (AOA) require a higher quorum. If the quorum is not reached, a second GMS can be called and adopt resolutions if shareholders representing not less than one-third of all shares with voting rights attend or are represented at the meeting, unless the AOA require a higher quorum. If a quorum is not reached at the second GMS, a request can be filed with the chairman of the competent district court to determine the quorum requirements for a third GMS. This request must be made by the company's authorised representative as provided in the company's articles of association.

Each share grants its owner the right to attend GMS and cast one vote at GMS. Non-voting shares can be issued, but all share classes must be entitled to dividends.

A GMS resolution must be adopted by consensus. If a consensus cannot be reached, a GMS resolution will be valid if it is approved by more than half of the total votes cast at the GMS, unless otherwise required by the law or the company's articles of association.

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)?

Specific majorities are required for the following corporate actions:

- Increasing and decreasing the company's authorised share capital, which must be approved by at least two-thirds of the votes legally cast at a general meeting of shareholders (GMS) where shareholders holding at least two-thirds of the company's total issued voting shares are present or represented.
- Amending the company's articles of association (AOA) (the quorum and voting requirements are the same as for an increase or decrease of capital).
- The merger, consolidation, acquisition, winding-up, or division of the company, which must be approved by three-quarters of the votes legally cast at a GMS where shareholders holding at least three-quarters of the company's total issued voting shares are present or represented.

- Increasing the company's issued and paid-up share capital within the limit of authorised capital, which must be approved by more than one-half of the total votes cast at a GMS where shareholders with more than one-half of the total voting shares are present or represented.

The company's AOA can impose higher quorum and voting requirements to pass resolutions 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 required by law cannot be disapplied to protect a minority shareholder. See [Question 15](#) on the protections granted to minority shareholders.

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?

Sectoral laws and regulations may impose specific requirements on establishing a business in specific sectors. A number of sectors are only partially open to foreign investment. For example, foreign investment in geothermal power plants with a capacity of up to 10 MW, one- and two-star hotels, and airport services, among other sectors, is capped at 60%.

Access to several industries is limited to local companies and partnerships between local and foreign companies, such as the bamboo and rattan forestry business, fish hatchery, and fishery processing. There are several sectors that are closed to private investment, local and foreign, including security, defence, and arms manufacturing.

Foreign investment restrictions

20. Are there any restrictions on foreign shareholders?

Restrictions on foreign shareholders are set out in the Negative Investment List (DNI), as contained in Presidential Regulation (PR) 44/2016. PR 44/2016 lists areas in which investment by both Indonesians and foreign nationals is prohibited or restricted. In addition to PR 44/2016, the laws and regulations governing certain lines of business must be reviewed to determine whether such lines of business are open to foreign investment and, if so, whether a limited liability company with foreign ownership (PT PMA) conducting such business can be wholly foreign-owned or only partially foreign-owned. Examples of lines of business closed to foreign investment include marijuana cultivation, marine salvage, administration of land, passenger terminals, and casinos.

Lines of business that are not listed in PR 44/2016 are open to 100% foreign investment without conditions.

The DNI also specifies foreign ownership restrictions, such as maximum foreign shareholding, 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 (BKPM) whether a certain line of business is open for 100% foreign investment without conditions. The DNI is organised by reference to the business activities described in the Indonesian Business Fields Classification (KBLI) issued by Indonesia's Central Statistics Body (*Badan Pusat Statistik*). A PT PMA can have more than one KBLI number, 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, under Bank Indonesia Regulation No. 17/3/PBI/2015 dated 31 March 2015 regarding the Mandatory Use of Rupiah within the Territory of the Republic of Indonesia (PBI 17/2015), all transactions conducted in Indonesia must use rupiah, including payments, settlements of obligations, and other financial transactions, whether using cash or otherwise. Exemptions are available for:

- Transactions implementing the state budget.
- Sending or receiving grants to or from abroad.
- International trade transactions.
- Bank savings accounts in foreign exchange.
- International financing transactions.

Violations of currency regulations are subject to sanctions under PBI 17/2015. Sanctions include written warnings, fines, prohibition to take part in payment transactions, and/or up to one year's imprisonment. The authors are not aware of the imposition of such sanctions to date.

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 dated 24 September 1960 regarding Basic Agrarian Law, there are two categories of land title comprising a total of nine rights.

The first broad category of land title encompasses five primary rights derived directly from the state:

- Right of ownership (*Hak Milik*).
- Right to cultivate.
- Right to build (*Hak Guna Bangunan* (HGB)).
- Right to use (*Hak Pakai*).
- Right to manage (*Hak Pengelolaan*).

The second broad category of land title encompasses secondary rights, which are granted by holders of primary titles under private agreements and consist of the following:

- Right to lease.
- Right of share cropping.
- Right of land pledge.
- Right of lodging.

A secondary title is obtained based on an agreement under which a primary titleholder grants a legal

interest or secondary title to another party.

An Indonesian individual is entitled to all primary titles/rights as listed above. A limited liability company with foreign ownership (PT PMA) is entitled to HGB and Hak Pakai titles. An individual foreign national is only entitled to a Hak Pakai title, provided that he or she is an Indonesian resident. PT PMAs and individual foreign nationals are entitled to secondary titles.

Directors

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

Under the Company Law, individuals capable of performing legal actions can be appointed as directors, except individuals who in the previous five years have been:

- 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 or a crime related to the finance sector.

The relevant regulatory authority may impose additional requirements on the appointment of directors in specific business sectors. Foreign nationals cannot serve as human resources directors and there are a number of other directorship positions that foreign nationals cannot hold under the applicable employment laws and regulations. Additionally, Minister of Manpower Decree No. 40 of 2012 dated 29 February 2012 regarding Certain Positions that Should Not Be Held by Foreign Nationals lists certain positions that foreign nationals cannot hold in companies, namely those related to personnel and industrial relations.

Generally, a director is not required to reside in Indonesia.

Indonesia does not recognise corporate 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 Company Law does not regulate the structure of the board of directors (BOD) or board of commissioners (BOC), which can be determined by the company's articles of association. However, the laws and regulations relating to specific business sectors may regulate the structure of the BOD and/or BOC (for example, in the insurance and banking sectors).

Number of directors or members

The Company Law does not impose a minimum number of directors or commissioners. However, a company whose business is related to the collection or management of funds from the public (such as banks and insurance companies) must have at least two directors.

Employees' representation

There is no requirement for employee representation on the BOD under Indonesian law.

Reregistering as a public company

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

Membership

A public company is a company that satisfies the requirements on the minimum number of shareholders and paid-up share capital under the Capital Markets Law, but which has not conducted a public offering. A publicly listed company is a company that has made a public offering and is listed on the stock exchange.

The minimum number of shareholders for a public limited liability company with foreign ownership (PT PMA) is 300. For a PT PMA to be listed on the main board, it must have at least 1,000 shareholders who have securities accounts at the stock exchange, as follows:

- For a company conducting an initial public offering (IPO), 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 shareholders one month before the submission of the listing application.

To be listed on the development board, a PT PMA must have at least 500 shareholders who have securities accounts at the stock exchange.

Share capital

The minimum issued share capital for both a public company and publicly listed company is IDR3 billion. A public company listed on the main board must have at least IDR100 billion (about USD7.3 million) of net tangible assets, while a public company listed on the development board must have at least IDR50 billion (about USD3.65 million).

A company listed on the main board must have at least 300 million shares held by the public (free float shares). These must be owned by non-controlling and non-majority shareholders five days before the listing application. Free float shares must represent at least:

- 20% of the company's issued and paid-up share capital for companies with pre-IPO equity below IDR500 billion (about USD36.5 million).
- 15% of the company's issued and paid-up share capital for companies with pre-IPO equity between IDR500 billion and IDR2 trillion (about USD36.5 million and USD146 million).
- 10% of the company's issued and paid-up share capital for companies with pre-IPO equity exceeding IDR2 trillion.

A company listed on the development board must have at least 150 million free float shares owned by non-controlling and non-majority shareholders five days before the listing application. The same requirements apply to free float shares as for listing on the main board (*see above*).

Tax

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

Income tax

Income tax is imposed on income received or obtained in one fiscal year. The corporate income tax rate is generally 25%. A 5% reduction applies to publicly listed companies that meet certain requirements.

Value added tax (VAT)

VAT is imposed on the delivery of goods and services. The rate of VAT is 10%.

Luxury goods sales tax

In addition to VAT, a special tax is imposed on the import and/or delivery of luxury goods and services. Government Regulation No. 145/2000 dated 22 December 2000 specifies the types of goods that are considered as luxury goods and the rate of sales tax on those luxury goods. There are six types of goods subject to luxury sales tax at rates ranging from 10% to 75%.

Land and building tax

Land and building tax is imposed annually on property, buildings and land in Indonesia. The rate varies depending on the location of the land or building.

Duty on acquisition of rights in land and buildings (BPHTP)

BPHTB is imposed on individuals and entities that acquire rights in land and/or building. The rate of BPHTB varies depending on the location of the land or building.

Stamp duty

Stamp duty of IDR6,000 is levied on documents that are used in court and documents that have a monetary value.

Local government tax

Depending on an entity's domicile, various taxes, charges and duties will be imposed by the local government, such as vehicle tax, restaurant tax, hotel tax, and so on.

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

Tax resident

A business entity is tax resident when it 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 form of enterprise used by an individual who does not reside in Indonesia for more than 183 days in a 12-months period, or an entity that is not established or domiciled in Indonesia, to carry on business or conduct activities in Indonesia. A permanent establishment has the same tax obligations as a tax resident. Therefore, any income generated by a permanent establishment in Indonesia is taxable in Indonesia.

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

Profits or dividends that are transferred to an entity or individual abroad are subject to a 20% withholding tax. The rate can vary depending on the applicable tax treaty (if any).

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

There are no express restrictions on loans to foreign affiliates. However, a company's debt-to-equity ratio must be 4:1 (*Minister of Finance Regulation No. 169/PMK.010/2015 dated 9 September 2015 regarding the Stipulation of Debt-to-Equity Ratio for Income Tax Purpose*).

The DGT has issued guidelines on transfer pricing in DGT Regulation No. Per-43/PJ/2010 dated 6 September 2010, as amended by DGT Regulation No. Per-32/PJ/2011 dated 11 November 2011 regarding the Implementation of the Arm's Length Principle in a Transaction between Taxpayers and Parties Having a Special Relationship (DGT Reg 43/2010). Under DGT Reg 43/2010, transfer pricing is defined as the determination of the price in transactions among parties having a special relationship. A special relationship exists where any of the following applies:

- A taxpayer, directly or indirectly, participates in 25% or more of the capital of another taxpayer.
- A taxpayer has control over another taxpayer or two or more taxpayers are under common control, whether directly or indirectly.

- There is a family relationship between taxpayers through blood or marriage of one degree of direct or indirect linkage.

The Director General of Taxes (DGT)] can adjust the amount of income and deductions and re-characterise debt as capital in related-party transactions in accordance with the arm's length principle.

Grants and tax incentives

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

Tax incentives are usually available to investors engaged in any of the following activities:

- Activities that use many workers.
- Activities classified as high-priority.
- Activities classified as infrastructural development.
- Transfers of technology.
- Investment in a pioneer industry.
- Activities located in a remote area, an undeveloped area, a border area, or any another relevant area.
- Preservation of the environment.
- Research, expansion and innovation.
- Association with micro, small-scale or medium-scale businesses or co-operatives.
- Investment in an industry that uses domestic capital goods, machinery or equipment.

Tax allowances

Tax allowances are regulated by Article 31A of Law No. 7 of 1983 dated 31 December 1983, as last amended by Law No. 36 of 2008 dated 23 September 2008 regarding Income Tax Law, which provides investors with the following allowances:

- Additional net income reduction up to a maximum of 30% of the amount invested in fixed assets, including land used for main business activities, which applies at 5% per year for six years from the commencement of commercial production.
- Accelerated depreciation of tangible assets and accelerated amortisation of intangible assets.
- Period of loss carry-forward of between five and ten years.
- Tax on dividends at 10%, unless the applicable tax treaty provides for a lower rate.

Not all business sectors are entitled to these tax allowances. The list of business sectors and regions that can be granted tax allowances is set out in Government Regulation No. 18 of 2015 dated 6 April 2015, as amended by Government Regulation No. 9 of 2016 dated 22 April 2016 regarding Income Tax Facilities for Capital Investment in Certain Business Fields and/or in Certain Regions.

Tax holiday

Taxpayers investing in certain pioneer industries that do not benefit from a tax allowance can be granted corporate income tax exemption or reduction facilities, which are known as a tax holiday (*Government Regulation No. 94 of 2010 dated 30 December 2010 regarding Calculation of Taxable Income and Redemption of Income Tax in the Current Tax Year*). The reduction can range from 10% to 100%. A must be granted for at least five years and up to ten years.

Import duty exemptions

Exemption from import duty is available on the importation of machinery, apparatus for factory installation, equipment or appliance, both in installed and uninstalled condition, used in industrial construction or expansion. Exemption is available for both:

- Industrial companies producing goods.
- Service companies in the sectors of tourism and culture, public transportation, public health, mining, construction, telecommunications, and ports.

Additionally, an exemption from import duty is available on the import of goods or materials used to produce finished goods that are:

- Not produced in Indonesia.
- Produced in Indonesia but do not meet the required specifications.
- Produced in Indonesia but not in amount sufficient to meet industrial needs in Indonesia.

Employment

31. What are the main laws regulating employment relationships?

Employment relationships in Indonesia are governed by:

- Law No. 13 of 2003 dated 25 March 2003 regarding Manpower.
- Law No. 2 of 2004 dated 14 January 2004 regarding Industrial Relations Dispute Settlement.
- Law No. 21 of 2000 dated 4 August 2000 regarding Labour Unions.

These laws apply to foreign employees working in Indonesia. An employment contract must be drafted in Indonesian. If the parties execute the employment contract in Indonesian and another language, the Indonesian version will prevail when construing 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 (*Izin Menggunakan Tenaga Kerja Asing (IMTA)*) from the Ministry of Manpower (MOM). To obtain an IMTA, the employer must prepare a Plan for the Utilisation of Foreign Workers (*Rencana Penggunaan Tenaga Asing (RPTKA)*) that is endorsed by the MOM.

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 listed in MOM Decree No. 40 of 2012 are closed to foreign nationals. The MOM is currently revising the procedure for obtaining a work permit. An Indonesian-language test may be introduced as a pre-requisite for foreign nationals seeking a work permit.

Proposals for reform

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

The Government of Indonesia is currently discussing the introduction of additional tax incentives to attract more foreign investors. These new tax incentives are yet to be announced.

The regulatory authorities

Capital Investment Coordinating Board (BKPM)

Main activities. Foreign investment licensing authority.

W www.bkpm.go.id

Ministry of Law and Human Rights

Main activities. Registration and establishment of limited liability companies.

W www.kemenkumham.go.id

Ministry of Manpower

Main activities. Supervision of employment and industrial relations.

W www.naker.go.id

Bank Indonesia

Main activities. Supervision of monetary activities, payment systems and financial stability.

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

Financial Services Authority

Main activities. Supervision of the banking, insurance and capital market sectors.

W www.ojk.go.id

Business Competition Supervisory Commission

Main activities. Supervision of business competition in Indonesia.

W www.kppu.go.id

Online Single Submission system

Main activities. Integrated company registration and licensing system.

W www.oss.go.id

Online resources

Capital Investment Coordinating Board (BKPM)

W www.bkpm.go.id

Description. Official website of the BKPM.

SSEK Blog

W <http://blog.ssek.com>

Description. Blog of SSEK Indonesian Legal Consultants, with news and analysis of the latest regulations in Indonesia.

Contributor profiles

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Professional qualifications. Indonesia, Advocate; Capital Market Legal Consultant

Areas of practice. Corporate law; mergers and acquisitions; foreign investment; banking and finance; insurance law; tax law.

Non-professional qualifications. LL.B., University of Indonesia, 1984

Recent transactions/activities

- Lead attorney in the merger of PT Sanofi-Aventis Indonesia and PT Aventis Pharma.
- Advised on Alibaba's USD1 billion purchase of a controlling stake in online retailer Lazada.
- Acted for Pertamina, the Indonesian state-owned oil and natural gas company, in the

purchase of an additional stake in PT Trans Pacific Petrochemical Indotama (TPPI), as part of PT TPPI's restructuring.

- Advised GlaxoSmithKline on the Indonesian aspects of its global transaction with Novartis that saw the companies complete a series of asset swaps.
- Acted for Dai-ichi Life Insurance in its USD337 million acquisition of a stake in Indonesia's PT Panin Life, the first M&A transaction involving an Indonesian insurance company to be examined by OJK, Indonesia's financial services regulator.
- Advising on all Indonesian aspects of the USD430 million global acquisition by Enerflex of the international contract compression, processing and after-market services business of Axiom Energy Services.
- Represented GlaxoSmithKline on a three-part deal that saw the pharmaceutical company take full control of its Indonesian consumer health care business, while divesting a non-core brand and a manufacturing facility in the country.

Languages. English, Indonesian

Publications

- *Joint Ventures with Foreign Members in Indonesia*, SSEK blog, 14 December 2017 <http://blog.ssek.com/index.php/2017/12/joint-ventures-with-foreign-members-in-indonesia>.
- *Insurance and Reinsurance Contracts in Indonesia*, SSEK blog, 8 December 2017 <http://blog.ssek.com/index.php/2017/12/insurance-and-reinsurance-contracts-in-indonesia>.
- *Indonesian Financial Services Authority Re-Regulates Rights Issues*, SSEK blog, 10 February 2016 <http://blog.ssek.com/index.php/2016/02/indonesian-financial-services-authority-re-regulates-rights-issues>.
- *Fiduciary Security Registration in Indonesia*, SSEK blog, 27 January 2016 <http://blog.ssek.com/index.php/2016/01/fiduciary-security-registration-in-indonesia>.
- *Shareholders' rights in private and public companies in Indonesia: overview*, Practical Law (2015).
- *Insurance and reinsurance in Indonesia: overview*, Practical Law (2015/16).

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Non-professional qualifications. LLB, University of Indonesia, 2016

Languages. English, Indonesian

Publications. *Indonesia Launches New Economic Policy Package*, SSEK blog, 18 September 2017

<http://blog.ssek.com/index.php/2017/09/indonesia-launches-new-economic-policy-package>.

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