Doing business in Indonesia

by ***Ira A Eddymurthy, Founding Partner*** and ***Revaldi N Wirabuana, Associate***, SSEK Indonesian Legal Consultants

Country Q&A | Law stated as at 01-Aug-2018 | Indonesia

A Q&A guide to doing business in Indonesia.

This Q&A gives an overview of the legal system; foreign investment, including restrictions, currency regulations and incentives; and business vehicles and their relevant restrictions and liabilities. The article also summarises the laws regulating employment relationships, including redundancies and mass layoffs, and provides short overviews on competition law; data protection; and product liability and safety. In addition, there are comprehensive summaries on taxation and tax residency; and intellectual property rights over patents, trade marks, registered and unregistered designs.

To compare answers across multiple jurisdictions, visit the *Doing business In... Country Q&A tool*.

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

Overview

1. What are the key recent developments affecting doing business in your jurisdiction?

The Indonesia Government recently issued a new regulation, Government Regulation No. 24 of 2018 regarding Electronically Integrated Business Licensing Service (*GR 24/2018*), which introduced a number of changes. These include the introduction of the Online Single Submission (OSS) system managed by the Co-ordinating Ministry for Economic Affairs (CMEA). Companies must register with the OSS system, which will then issue a business registration number (*Nomor Induk Berusaha*) (NIB) and a business licence. For certain lines of business, companies can immediately begin commercial activities after obtaining a business licence. Companies in other business sectors including industrial, natural resource management, and energy must also obtain a commercial/operational licence before beginning commercial activity. The commercial/operational licence is issued once the company has:

- Fulfilled the applicable standards.
- Obtained the required certificates and/or licences.
- Completed the necessary registrations of goods/services according to the type of product and/or service being commercialised.

Legal system

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

The legal system in Indonesia is based on civil law.

Foreign investment

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Restrictions on foreign shareholders are set out in the Negative Investment List (*Daftar Negatif Investasi*) (DNI). The newest DNI is contained in Presidential Regulation No. 44 of 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). PR 44/2016 lists the areas in which investment by Indonesians and foreign nationals is prohibited or restricted.

In addition to PR 44/2016, the laws and regulations governing certain business areas must be reviewed to determine whether an area is open to foreign investment and, if so, whether a foreign investment company (*Perusahaan Penanaman Modal Asing*) (PT PMA) established to conduct that kind of business can be wholly or partially foreign owned. If a particular business is not listed in PR 44/2016, then it is open to 100% foreign investment without any conditions.

The DNI also stipulates foreign ownership restrictions such as setting out a maximum foreign shareholding or a requirement to partner with a small or medium-scale enterprise, and so on. In practice, investors must confirm with the BKPM whether a certain business area is open for 100% foreign investment without any such conditions.

The DNI is organised by reference to the business activities described in the Indonesian Business Fields Classification (*Klasifikasi Baku Lapangan Usaha Indonesia*) (KBLI) issued by Indonesia's Central Statistics Body (*Badan Pusat Statistik*). A PT PMA can have more than one KBLI number as its business activity, unless the relevant laws and regulations provide otherwise.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on doing business with any countries or jurisdictions.

5. 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 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 to this rule apply only to:

- Transactions for the implementation of the state budget.
- Sending or receiving grants to or from abroad.
- International trade.
- Bank savings accounts in foreign currency.
- International financing.

PBI 17/2015 stipulates that sanctions are applicable for violations of the regulation, including written warnings, fines, prohibition from participation in payment transactions and a maximum of one-year of imprisonment. To date, the enforcement of such sanctions has not been seen in practice.

In addition, Indonesian banks can only accept an order for the outgoing transfer of any foreign currency above USD100,000 if the customer submits the required related supporting documents under the Circular Letter of Bank Indonesia No. 18/23/DSta 2016 regarding the Supervision of Foreign Exchange Traffic of Banks and Customers (SEBI 18/2016).

Under SEBI 18/2016, banks must also report the details of the outgoing transfer of any foreign currency above USD10,000 to Bank Indonesia. If the value of the outgoing transfer exceeds USD100,000, the bank must also report the supporting documents provided by the customer to Bank Indonesia.

6. What grants or incentives are available to investors?

Investors are eligible for incentive facilities if they meet one of the criteria set out in the Investment Law, such as:

- Utilising many workers.
- Being classified as high-priority.
- Being classified as infrastructure development.
- Undertaking the transfer of technology.
- Undertaking a pioneer industry.
- Being located in a remote, undeveloped or border area, or another area determined to be relevant.
- Preserving the environment.
- Undertaking research, expansion and innovation.
- Being associated with micro, small-scale or medium-scale businesses or co-operatives.
- Being in an industry that uses domestic capital goods, machinery, or equipment.

The available facilities are set out in the Investment Law, and include:

- Reduction of net income in accordance with the amount of capital investment conducted for a certain period of time.
- Exemption or relief from import duty on the import of capital goods, machinery, or other production equipment that cannot be produced domestically.
- Exemption or relief from import duty for raw materials or supporting materials for production for a certain period of time and subject to certain requirements.
- Exemption from or suspension of VAT for a certain period of time on the import of capital goods, machinery or production equipment that cannot be produced domestically.
- Accelerated depreciation or amortisation.
- Reduction in land tax, particularly in certain sectors and certain areas, regions or zones.

Tax allowances

Tax allowances are set out under Law No. 7 of 1983, as amended by Law No. 36 of 2008 regarding Income Tax (Income Tax Law), which provides investors with the following facilities:

- Additional net income reduction, up to a maximum of 30% of the amount of investment in fixed assets, including land, used for main business activities, which are charged at 5% per annum for six years from the commencement of commercial production.

- Accelerated depreciation of tangible assets and accelerated amortisation of intangible assets.
- A loss carry-forward period of between five and ten years.
- Tax on dividends at 10%, unless the relevant tax treaty stipulates a lower rate.

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

Tax holidays

Government Regulation No. 94 of 2010 regarding Calculation of Taxable Income and Redemption of Income Tax in the Current Tax Year (GR 24/2010) provides that taxpayers conducting new investments in certain pioneer industries that do not receive a tax allowance (*see above*) can be granted corporate income tax exemption or reduction facilities known as tax holidays under the Investment Law. The corporate income tax facility reduction starts at 10% and goes up to a maximum 100%. This reduction can be given at least for five years and at the most for ten years.

Import duty facilities

Import duty exemptions exist for the importation of machines, defined as any machine, machinery, factory installation apparatus, equipment or appliance, both in installed and un-installed, used in industrial construction or expansion. The facility is available if the company is:

- An industrial company producing goods.
- A service company (in the sectors of tourism and culture, public transportation, public health service, mining, construction, telecommunications and ports).

In addition, there is another facility for the import of goods and materials, defined as all goods or materials, without considering types and composition, used as materials or components to produce finished goods. The facility can only be granted if the goods or materials are:

- Not yet produced in Indonesia.
- Produced in Indonesia but without meeting the required specification.
- Produced in Indonesia but not in sufficient quantities to meet the industrial needs in Indonesia.

The Indonesia Government is currently in discussions on additional tax holidays and tax allowances to attract more foreign investors. The new tax incentives are yet to be announced and it remains to be seen what form they will take.

Business vehicles

7. What are the most common forms of business vehicle used in your jurisdiction?

The main business vehicles in Indonesia are either legal or business entities. 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 entities, while establishing a business entity only requires registering the entity with the government.

Examples of a legal entities include:

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

Business entities include:

- Civil partnerships.
- Firms.
- Representative offices.
- Permanent establishments.
- Limited partnerships (*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 and which must be established by at least two shareholders. A PT is the most common form of business vehicle because of its limited liability and clearer capitalisation regime. A PT can take the form of a publicly listed company or a privately-owned company.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

The main registration requirements to establish a corporate business vehicle (that is, a PT PMA) are:

- The PT PMA must comply with any shareholding limitation requirement set out in the Negative Investment List (*see Question 3*).
- Companies in some business sectors are required under BKPM Reg 13/2017 to obtain a Capital Investment Registration from the BKPM. Otherwise, a Capital Investment Registration is not required, and the foreign investor can proceed to the next step.

- Executing a deed of establishment in the Indonesian language before a public notary.
- Obtaining approval from the Ministry of Law and Human Rights (MOLHR) for the establishment of the PT PMA.
- Obtaining a certificate of domicile (*Surat Keterangan Domisili Perusahaan*) (SKDP) from the Sub-District Head (*Lurah*).
- Obtaining a taxpayer registration number (*Nomor Pokok Wajiba Pajak*) (NPWP) from the tax office.
- Opening a bank account in Indonesia.

The company must then obtain the appropriate business licence before it commences production/operation.

Reporting requirements

A PT PMA is normally required to submit the following reports:

- Capital Investment Activity Report (*Laporan Kegiatan Penanaman Modal*) (LKPM) quarterly before it obtains a business licence, and every semester once it has obtained a business licence.
- Audited Annual Financial Statement to the Ministry of Trade (MOT).
- Mandatory Manpower Report to the local manpower office.

Companies engaged in the financial services sector must submit a monthly report and audited annual financial statement, as well as an annual business plan and implementation of good corporate governance report, to the Financial Services Authority (*Otoritas Jasa Keuangan*) (OJK).

Share capital

A PT PMA must have a total investment value (excluding land and buildings) of more than IDR10 billion. The minimum paid-up capital of the PT PMA must be IDR2.5 billion, and each shareholder must have at least IDR10 million participation in the PT PMA. Certain business sectors have higher minimum share capital requirements.

Non-cash consideration

Non-cash consideration or in-kind contributions can be used to pay up shares in a company, but such consideration must be appraised by a non-affiliated appraiser.

Rights attaching to shares

Restrictions on rights attaching to shares. The rights attached to shares are restricted in as far as the shareholder must not act in bad faith and potentially cause the company to suffer losses.

Automatic rights attaching to shares. Every shareholder is entitled to:

- Attend and vote at the general meeting of shareholders. Each share constitutes one vote in the general meeting of shareholders.
- Receive dividends and liquidation proceeds.
- Call for a general meeting of shareholders.
- File a lawsuit against the board of directors and/or commissioners for losses due to negligence.

Shares owned directly or indirectly by the company itself, or shares controlled by its own subsidiary, do not have voting rights.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

The management of a company is comprised of a board of directors (BOD) and board of commissioners (BOC). The BOD represents the company and is responsible for its daily management, while the BOC acts as an advisory and/or supervisory organ to the BOD.

Management restrictions

Under the Company Law, all individuals capable of performing legal actions can be appointed as directors, unless they have been:

- Declared bankrupt in the five years before their appointment.
- Members of a BOD or BOC 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.

A relevant technical institution in the related business sector may impose additional requirements on becoming a director.

Foreign nationals are prohibited from serving as human resources directors and there are a number of other directorship positions that foreign nationals are prohibited from holding under the employment laws and regulations.

There is no general requirement for a director to reside in Indonesia. However, the Minister of Manpower Decree No. 40 of 2012 regarding Certain Positions Should Not be Taken by Foreign Manpower (MOM Dec 40/2012) sets out various company positions related to personnel and industrial relations that cannot be taken by foreign nationals.

Directors' and officers' liability

The BOD and its members are not liable for the acts taken for and on behalf of the company, but the member(s) of the BOD and BOC can be personally liable for the losses of the company if it can be proven that the loss resulted from the fault or negligence of the BOD or BOC.

Parent company liability

A parent company, in its role as a shareholder for its subsidiary, is not personally liable for the actions or losses of the subsidiary beyond its investment into the subsidiary. However, the parent company can be liable if either the:

- Subsidiary no longer fulfils the requirements to be a legal entity.
- Parent company used the subsidiary for its own interests in bad faith.
- Parent company is directly involved in an unlawful act committed by the subsidiary.

Employment

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

Employment relationships in Indonesia are governed by:

- Law No. 13 of 2003 regarding Manpower (Manpower Law).
- Law No. 2 of 2004 regarding Industrial Relations Dispute Settlement.
- Law No. 21 of 2000 regarding Labour Unions.

These laws apply to foreign employees working in Indonesia. An employment contract must be in Indonesian. If the parties execute the employment contract in Indonesian and another language, the Indonesian version prevails in construing the contract.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

Indonesian law recognises two types of employment contract:

- Permanent employment contracts (without an expiration date).
- Non-permanent employment contracts (with an expiration date).

Under the Manpower Law, a permanent employment contract can be either in writing or verbal form. However, a non-permanent contract must be in writing, or it will be deemed to be a permanent employment contract.

A written contract of employment should at least contain the following provisions:

- Identity of the employer (name, address, business area).
- Identity of the employee (name, sex, age, address).
- Position or description of work.
- Work location.
- Amount of wage and method of payment.
- Terms of employment, containing the rights and obligations of the employer and employee.
- Duration of the agreement.
- Date and place where the contract is executed.
- Signatures of the parties.

12. Do foreign employees require work permits and/or residency permits?

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 IMPTA, the employer must prepare a Plan for the Utilisation of Foreign Workers (*Rencana Penggunaan Tenaga Asing*) (RPTKA) 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 directors and other positions set out by Ministry of Manpower and Transmigration decree are closed to foreign nationals. The MOM is currently revising the regulations on the procedure for obtaining a work permit and it is possible an Indonesian-language test will be introduced as a requirement for foreign nationals.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

There is no requirement for employee representation on the management board.

14. How is the termination of individual employment contracts regulated?

Termination of individual employment is regulated under the Manpower Law. The employer cannot unilaterally terminate employees. The employer's options are to either:

- Suspend the employee on full salary and go through a mandatory non-binding mediation process with the Ministry of Manpower (MOM), followed by a Labour Court trial for approval of the proposed termination.
- Successfully negotiate and settle a separation benefits package, with the employee signing a Mutual Termination Agreement (MTA).

Terminated employees are entitled to receive a severance package, which may include some or all of:

- Severance pay.
- Service pay.
- Compensation of rights.

15. Are redundancies and mass layoffs regulated?

Redundancies are regulated under the Manpower Law. A company can terminate an employee due to redundancy. However, the terminated employee is then entitled to receive a severance package consisting of:

- Double amount of severance pay.
- Single amount of service pay.
- Single amount of compensation of rights.

Mass layoffs are regulated under the Manpower Law. A company can conduct mass layoffs if it has suffered a loss for two consecutive years or due to force majeure. However, the employees are entitled to a redundancy severance package as above.

Tax

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

The Income Tax Law defines a tax resident as any individual who either:

- Resides in Indonesia.
- Lives in Indonesia for more than 183 days in a period of 12 months.
- Lives in Indonesia at any time during the relevant fiscal year and has the intention to reside in Indonesia.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees
Tax resident employees are subject to the following taxes:

- Income tax applied progressively from 5% to 30% based on the employee's income.
- Social security in the form of:
  - old age insurance (*Jaminan Hari Tua*) (JHT) of 2% of monthly salary;
  - pension insurance (*Jaminan Pensiun*) (JP) of 1% of monthly salary; and
  - healthcare contribution of 1% of monthly salary (capped at IDR4,725,000).

  There may be additional charges for additional family members.

Non-tax resident employees
Non-tax resident employees are subject to a flat-rate of 20% of income tax, unless otherwise regulated by the relevant tax treaty between Indonesia and the non-tax resident employee's country of origin. In addition, there is a 5% final tax on the proceeds of the sale of certain assets and/or shares of an Indonesian company owned by a non-tax resident.

Employers

Employers must withhold the income tax of tax resident and non-tax resident employees. They must also make the following social security contributions for their employees:

- JHT of 3.7% of the employee's monthly salary.
- JP of 2% of the employee's monthly salary.
- Healthcare contribution of 4% of the employee's monthly salary (capped at IDR4,725,000).

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

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

Non-tax resident business

Non-tax resident businesses are:

- 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 other than from carrying on business or conducting activities through a permanent establishment in Indonesia.

A permanent establishment can be used to carry on business or conduct activities in Indonesia by:

- Individuals that do not reside in Indonesia.
- Individuals that live in Indonesia for not more than 183 days for a period of 12 months.
- Entities that are not established and have no domicile 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 as if the income was generated by an Indonesian tax subject.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

The following taxes apply to business:

- **Income tax.** Income tax is imposed on income received or obtained in a fiscal year. The corporate tax rate is generally 25%. A 5% reduction is applicable for publicly listed companies that fulfil certain requirements.
- **VAT.** VAT is imposed on the delivery of goods and services. The rate is 10%.
- **Luxury goods sales tax.** Taxes are imposed on the import and/or delivery of luxury goods and services in addition to VAT. Government Regulation No. 145 of 2000 regarding Goods Subject to Luxury Tax (*GR 145/2000*) stipulates the goods that are considered as luxury goods and the rate of sales tax on them. Under GR 145/2000, six types of goods are subject to luxury sales tax at rates ranging between 10% and 75%.
- **Land and building tax.** Land and building tax is imposed annually on property, buildings, and land in Indonesia. The rate of land and building tax depends on the region where the land and/or building is located.
- **Duty on Acquisition of Rights to Land and Building (BPHTP).**BPHTB taxes are imposed on individuals or entities that obtain the rights to land and/or building. The rate of BPHTB depends on the region where the land and/or building is located.
- **Stamp duty.** Stamp duty of IDR6,000 is imposed on documents to be used in court and documents that have a value.
- **Local government tax.** Depending on an entity's domicile, there are various taxes, charges, and duties imposed by the local government, such as vehicle tax, restaurant tax and hotel tax.

Dividends, interest and IP royalties

20. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid
Dividends paid to a non-resident taxpayer are subject to 20% withholding tax, unless otherwise reduced by an applicable tax treaty.

Dividends received

Dividends received from foreign companies are subject to tax if at least 50% of the shares of the foreign company are owned by one or more resident taxpayers. If so, income tax (*see Question 19*) applies to the dividends received by the resident taxpayer.

Interest paid

Interest paid to a non-resident taxpayer is subject to 20% withholding tax, unless otherwise reduced by an applicable tax treaty.

IP royalties paid

IP royalties paid to a non-resident taxpayer are subject to 20% withholding tax, unless otherwise reduced by an applicable tax treaty.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

There is no express regulation restricting loans from foreign affiliates. However, there is a regulation on the maximum debt-to-equity ratio in a company. Minister of Finance (MOF) Regulation No. 169/PMK.010/2015 regarding the Stipulation of Debt-to-Equity Ratio for Income Tax Purpose states that companies' debt-to-equity ratio must be equal to or under 4:1.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

A foreign subsidiary's profit would be imputed to a tax resident parent company. If an Indonesian company owns at least 50% of a foreign company's shares, or the Indonesian company together with another Indonesian company owns at least 50% of a foreign company's shares, dividends on the shares of the foreign company are considered to be taxable income (*see Question 20*).

23. Are there any transfer pricing rules?

Transfer pricing occurs when a taxpayer transfers income and/or costs to another taxpayer with which it has a special relationship under an arrangement that reduces the total outstanding amount of the tax imposed. 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, for parties where such a special relationship exists. Taxable income would then be calculated according to fairness and ordinary business conditions that are not influenced by such a special relationship.

The DGT has issued guidelines on transfer pricing under DGT Regulation No Per-43/PJ/2010 as amended by DGT Regulation No Per-32/PJ/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, a special relationship is deemed to exist where either:

- A taxpayer possesses a direct or indirect capital participation of at least 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 between individuals either through bloodline or marriage of one degree of direct or indirect linkage.

Customs duties

24. How are imports and exports taxed?

Imports of goods are subject to:

- VAT of 10%.
- Sales tax on luxury goods.
- Income tax of 7.5% if imported without an Importer Identification Number (*Angka Pengenal Importir*) (API), or 2.5% if imported with API.

Double tax treaties

25. Is there a wide network of double tax treaties?

Indonesia has entered into tax treaties with 60 countries.

Competition

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

Competition issues in Indonesia are supervised by the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha*) (KPPU).

Restrictive agreements and practices

Restrictive agreements and practices are illegal under Law No. 5 of 1999 regarding Prohibition on Act of Monopoly and Unhealthy Competition (Anti-Monopoly Law). The following agreements are considered to be illegal if they result in unfair competition or monopoly:

- Cartels/trust arrangements.
- Vertical integration.
- Oligopolies.
- Price discrimination.
- Area distribution.

The following agreements are considered illegal in themselves:

- Price fixing.
- Predatory pricing.
- Boycotts.
- Closed agreements.

Unilateral conduct

Companies are not allowed to use their dominant position, whether directly or indirectly, to stipulate terms of trade to:

- Impede consumers from obtaining goods at a competitive price and quality.

- Limit the market and technological development.
- Impede other business actors entering the market.

The Anti-Monopoly Law defines a dominant position as a business actor controlling 50% of the market share, or two or three business actors who collectively control 75% of the market share.

27. Are mergers and acquisitions subject to merger control?

Mergers and acquisitions must be reported to the KPPU if the transaction will result in:

- A joint asset value exceeding IDR2.5 trillion.
- Joint sales exceeding IDR5 trillion (or IDR20 trillion for banks).

The KPPU must be notified within 30 days of the transaction being concluded. A transaction performed by foreign entities must also be reported to the KPPU if the value exceeds these thresholds, as well as if it is performed abroad between non-affiliated parties and could affect Indonesia's market competition.

Intellectual property

28. Outline the main IP rights in your jurisdiction.

Patents
Definition and legal requirements. Under Law No. 13 of 2016 regarding Patents (Patent Law), patents are classified as either patents or simple patents. Patents are granted for new inventions that are applicable in industry and contain inventive steps, whereas a simple patent is for the development of an existing product or process. A simple patent is only granted to one invention. Patents and simple patents are not granted to:

- Processes or products whose announcement, use or implementation is contrary to laws and regulations, religions, social norms or decency.
- Methods of examination, maintenance, medication and/or dissection that are implemented on humans and/or animals.
- Theories and methods in the fields of science and mathematics.

- Living creatures, except for microorganisms.
- Biological processes that are essential for the production of plants or animals, other than non-biological processes or microbiological processes.

Registration. The application for registering a patent is filed by the applicant or their proxy to the MOLHR in writing in Indonesian, along with a fee. The registration can be made online through the website of the Directorate General of Intellectual Property Rights (DGIP) (*www.efiling.dgip.go.id/efiling*).

Enforcement and remedies. Violations of the Patent Law are subject to criminal sanction. The lawful holder of the patent or simple patent can also submit a claim for compensation to the Commercial Court.

Length of protection. Protection lasts for 20 years from the date of receipt for a patent, and ten years from the date of receipt for a simple patent.

Trade marks

Definition and legal requirements. Under Law No. 20 of 2016 regarding Trade Marks and Geographical Indications (Trade Marks Law), trade marks can be displayed graphically in the form of a drawing, logo, name, words, letters, numbers or composition of colours, in the form of two and/or three dimensions, voice, hologram or a combination of two or more elements to distinguish goods and/or services that are produced in trade activities.

Protection. A trade mark constitutes an exclusive right granted by the state to the registered owner for a certain period of time for its own purposes or for licensing to other parties for their use. Trade mark rights are obtained after the trade mark is registered.

Enforcement and remedies. Violations of the Trade Mark Law are subject to criminal sanction. In addition, the lawful holder of the trade mark can submit a claim for compensation and/or termination of use to the Commercial Court.

Length of protection and renewability. Registered trade marks obtain legal protection for ten years from the date of receipt. This can be extended for the same period.

Registered designs

Definition. Under Law No. 31 of 2000 regarding Industrial Design (Industrial Design Law), an industrial design is a creation in the shape, configuration, or the composition of lines or colours, or lines and colours, or the combination thereof in a two or three-dimensional form that gives an aesthetic impression and can be realised in a two- or three-dimensional pattern and used to produce a product, good, industrial commodity or handicraft. Industrial designs must not contradict prevailing laws, public order, religion or moral values.

Registration. Registration is conducted by filing an application to the MOLHR and is subject to fees. The application can be submitted online through the DGIP website.

Enforcement and remedies. Violations of the Industrial Design Law are subject to criminal sanction. In addition, the lawful holder of the industrial design can submit a claim for compensation and/or termination of use to the Commercial Court.

Length of protection and renewability. A registered industrial design obtains protection for ten years from the date of filing.

Unregistered designs
Indonesia does not provide protection for unregistered industrial designs.

Copyright
Definition and legal requirements. Copyright is defined in Law No. 28 of 2014 regarding Copyrights (Copyright Law) as an exclusive right of a creator arising automatically on creation in a tangible form. Such creation can be in the fields of science, art and literature.

Protection. Copyright is comprised of moral and economic rights. Moral rights (to use a name or pseudonym, to change the creation or its title and so on) are attached permanently to the creator and cannot be transferred. Economic rights (to publish, duplicate, distribute the creation, and so on) can be licensed to other parties. Copyrights can be registered to prove the owner of the copyrights, but this is not required for the rights to accrue.

Enforcement and remedies. Violations of the Copyright Law are subject to criminal sanction. In addition, the lawful holder of the copyright can submit a claim for compensation to the Commercial Court.

Length of protection and renewability. The length of protection of copyrights differs based on the type of creation:

- Copyrights in literature, drama, music, and arts are protected until 70 years after the death of the creator, or for 50 years from the date of announcement (if the holder of the copyright is a company).
- Copyrights in photography, cinematography, video games, computer programs, portraits, adaptations or translations of other creations are protected for 50 years from the date of announcement.
- Copyrights in applied arts are valid for 25 years from the date of announcement.
- Copyrights in traditional culture held by the state are protected indefinitely.
- Copyrights in creations whose creator is unknown are held by the state for 50 years from the date of announcement.

Other
Indonesia also recognises the following intellectual property rights:

- Integrated circuit layout designs.
- Trade secrets.
- Geographical indications.

Marketing agreements

29. Are marketing agreements regulated?

Agency

Agency is regulated by the Ministry of Trade (MOT) under MOT Regulation No. 11/M-DAG/PER/2006 regarding the Guideline and Procedure to Issue Registration Certificate of Agent or Distributor of Goods and/or Services (MOT Reg 11/2006). An agent must be registered and obtain a Registration Certificate (*Surat Tanda Pendaftaran*) (STP), which is valid for up to two years and can be extended.

A foreign entity (or principal) must appoint a local agent or distributor to market its goods and services in Indonesia. An agency agreement between the principal and an agent must be notarised in the principal's origin country and legalised by an Indonesian trade attaché or an equivalent authorised representative from the Indonesian embassy of the principal's origin country.

Distribution

Distribution is regulated by the MOT under MOT Reg 11/2006. A distributor must be registered and obtain an STP, which is valid for up to two years and can be extended.

A foreign entity (or principal) must appoint a local agent or distributor to market its goods and services in Indonesia. A distribution agreement between the principal and a distributor must be notarised in the principal's origin country and legalised by an Indonesian trade attaché or an equivalent authorised representative from the Indonesian embassy of the principal's origin country.

Franchising

Franchising is regulated under Law No. 42 of 2007 regarding Franchise (Franchise Law). A franchising agreement must be registered with the MOT to obtain a Franchise Registration Certificate (*Surat Tanda Pendaftaran Waralaba*) (STPW). An STPW is valid for five years and can be extended.

E-commerce

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

In general, e-commerce is regulated under Law No. 11 of 2008 regarding Electronic Information and Transactions. The government has also issued Presidential Regulation No. 74 of 2017 regarding E-Commerce Roadmap.

Advertising

31. Outline the regulation of advertising in your jurisdiction.

Advertising is regulated under various regulations and guidelines including, among others:

- Indonesian Advertising Code of Ethics (*Etika Pariwara Indonesia*).
- Law No. 32 of 2002 regarding Broadcasting.
- Law No. 40 of 1999 regarding the Press.
- Law No. 11 of 2008 regarding Electronic Information and Transactions.
- Law No. 8 of 1999 regarding Consumer Protection (Consumer Protection Law).

Data protection

32.Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Indonesia regulates the protection of personal data. Minister of Communication and Informatics Regulation No. 20 of 2016 regarding Protection of Personal Data in Electronic Systems (MOCI Reg 20/2016) requires any entity engaging in the transfer of private data to:

- Obtain written consent from the private data owner, unless stipulated otherwise by law.
- Verify the accuracy and conformity with the purpose of the collection of the private data.

Under MOCI Reg 20/2016, violation of these provisions can result in administrative sanctions in the form of:

- Verbal warnings.
- Written warnings.
- Temporary suspensions of activity.

- Having the name of the company published in the list of non-compliant companies on the Minister of Communication and Informatics website.

Product liability

33. How is product liability and product safety regulated?

Generally, product liability is regulated under the Consumer Protection Law. Products and services must:

- Fulfil certain required standards.
- Conform with the information stated in their packaging.
- Not be falsely marketed or advertised.

Several products, such as foods and drugs, are subject to additional regulatory requirements as regulated by, among other things:

- Law No. 36 of 2009 regarding Health.
- Law No. 18 of 2012 regarding Food.
- Various regulations enacted by relevant authorities, such as the Food and Drug Supervisory Agency (*Badan Pengawas Obat dan Makanan*) (BPOM)).

Main business organisations

Capital Investment Co-ordinating Board (BKPM)
W www.bkpm.go.id
Main activities. Regulatory body and licensing administrator for foreign investment.

Ministry of Law and Human Rights
W www.kemenkumham.go.id
Main activities. Administers the establishment of limited liability companies.

Ministry of Manpower
W www.naker.go.id
Main activities. Regulatory body for supervision of employment and industrial relations.

Bank Indonesia

W www.bi.go.id/id

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

Financial Services Authority

W www.ojk.go.id

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

Business Competition Supervisory Commission (KPPU)

W www.kppu.go.id

Main activities. Regulatory body for supervision of business competition in Indonesia.

Online resources

Capital Investment Co-ordinating Board (BKPM)

W www.bkpm.go.id

Description. Official BKPM website.

SSEK Blog

W www.blog.ssek.com

Description. Blog of SSEK Indonesian Legal Consultants containing information on the latest regulations in Indonesia. Maintained by SSEK.

Contributor profiles

Ira A Eddymurthy, Founding Partner

SSEK Indonesian Legal Consultants

T +62 21 521 2038

F +62 21 521 2039

E iraeddymurthy@ssek.com

W www.ssek.com

Professional qualifications. Indonesia, Advocate; Capital Market Legal Consultant

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

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

Recent transactions/activities

- Advising GlaxoSmithKline on its business operations in Indonesia.
- 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, 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 go before the 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 Axip Energy Services.
- 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.

Languages. English, Indonesian

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

Publications

- *Joint Ventures with Foreign Members in Indonesia, SSEK blog, December 14, 2017 http://blog.ssek.com/index.php/2017/12/joint-ventures-with-foreign-members-in-indonesia*
- *Insurance and Reinsurance Contracts in Indonesia, SSEK blog, December 8, 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, February 10, 2016 http://blog.ssek.com/index.php/2016/02/indonesian-financial-services-authority-re-regulates-rights-issues*
- *Fiduciary Security Registration in Indonesia, SSEK blog, January 26, 2016 http://blog.ssek.com/index.php/2016/01/fiduciary-security-registration-in-indonesia*
- *Shareholders' Rights in Private and Public Companies: A Global Guide from Practical Law (2015)*
- *Insurance and Reinsurance in Indonesia: Overview, Practical Law (2015/16)*

Revaldi N Wirabuana, Associate

SSEK Indonesian Legal Consultants

T +62 21 521 2038

F +62 21 521 2039

E revaldiwirabuana@ssek.com

W www.ssek.com

Areas of practice. Corporate; foreign investment; banking and finance; insurance.

Non-professional qualifications. LL.B., University of Indonesia Faculty of Law, 2016

Languages. English, Indonesian

Publications. *Indonesia Launches New Economic Policy Package, SSEK blog, September 18, 2017, http://blog.ssek.com/index.php/2017/09/indonesia-launches-new-economic-policy-package*

END OF DOCUMENT

