

Construction and Projects in Indonesia: Overview

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A Q&A guide to construction and projects in Indonesia.

The Q&A is part of the global guide to construction and projects. Areas covered include trends and significant deals, the main parties, procurement arrangements, transaction structures and corporate vehicles, financing projects, security and contractual protections required by funders, standard forms of contract, risk allocation, exclusion of liability, caps and force majeure. Also covered are material delays and variations, appointing and paying contractors, subcontractors, licences and consents, project insurance, labour laws, health and safety, environmental issues, corrupt business practices and bribery, bankruptcy and insolvency, public private partnerships (PPPs), dispute resolution, tax, the main construction organisations, and proposals for reform.

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Overview of the Construction and Projects Sector

1. What are the main trends in the local construction and projects market? What are the most significant deals?

Main Trends

As with many other countries, the development of infrastructure in Indonesia has slowed down markedly since 2020 due to the 2019 novel coronavirus disease (COVID-19) pandemic, which has disrupted the economy since the first quarter of 2020. The re-allocation of funds originally earmarked for infrastructure and the implementation of large-scale social distancing policies in several of the country's larger cities have interrupted the expected development of infrastructure projects.

According to reports on the websites of the *LPJK* and the *Ministry of Public Works and Public Housing*, an estimated IDR44 trillion (about USD3 billion), or about one-third of the total budget allocated for infrastructure projects in 2020, has been reallocated to fight COVID-19.

While construction was largely stagnant in 2020 the construction industry was expected to recover in 2021, given the current pace of economic development.

For public construction projects, the government is set to pick up where it left off in 2020 with its National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional 2020-2024*), under which it committed USD412 billion for the development of public infrastructure including airports, toll roads, mass transportation and so on.

To further boost economic development, the government in late 2020 introduced a major law, Law No.11 of 2020 regarding Job Creation (Job Creation Law), which amended 79 laws and regulations across most sectors of the economy. The Job Creation Law was enacted with the stated aim to improve the ease of doing business in Indonesia by eliminating administrative inefficiencies and simplifying the licensing process in a wide range of business sectors in Indonesia, including construction sector.

In the private sector, infrastructure projects are still dominated by the development of residential and commercial real estate in highly populated regions such as Jakarta and Bali.

Major Projects

All the current major infrastructure projects are government-sponsored infrastructure projects, as follows:

- Land transportation: Mass Rapid Transit (MRT) East to West Corridor and Phase II Light Rail Transit (LRT) (Kelapa Gading – JIS) projects in DKI Jakarta.
- Toll roads: The Trans-Sumatra toll road in Sumatra, the Balikpapan-Samarinda toll road in East Kalimantan, and the Serang-Panimbang and Semanan – Balaraja toll roads in Banten (Java Island).
- Seaports: Sorong-Seget Port in West Papua and the Cikarang-Bekasi-Laut Jawa Inland Waterways in West Java.
- Energy: Jambaran Tiung Biru gas processing facility in East Java, steam power plant in Lombok, Nusa Tenggara Barat, Bontang oil refinery in East Kalimantan and the Tuban oil refinery in East Java.

Procurement Arrangements

2. Which are the most common procurement arrangements if the main parties are local? Are these arrangements different if some or all of the main parties are international contractors or consultants?

Under Law No. 2 of 2017 regarding Construction Services, as amended by the Job Creation Law (Construction Law) and its implementing regulation, Government Regulation No. 22 of 2020 regarding Implementing Regulation of the Construction Law, as amended by Government Regulation No.14 of 2021 (*GR 14/2021*). Procurement arrangements are made through the execution of a construction work contract between the project owner/employer and the service provider/contractor. The Construction Law sets out various types of construction work contracts that are typically used, including contracts based on:

- Delivery systems, including:
 - design-bid-build;
 - design-build;
 - engineering-procurement-construction;
 - construction management at risk;
 - construction management as service users; and
 - partnership contracts.
- Service payments, including:
 - advance payment;
 - progress payment;
 - milestone; and
 - turnkey contracts.

- Work calculation systems, including:
 - lump sum;
 - unit pricing;
 - combination lump sum and unit pricing;
 - cost reimbursable;
 - percentage value; and
 - target cost contracts.

International construction contractors or consultants must establish a local presence (*see Question 3*) and face certain additional requirements compared to domestic contractors. For example, foreign construction contractors are only allowed to perform large-scale projects with high risk, high technology and high costs (*see Question 3 and Question 19*).

Procurement arrangements cannot be generalised, as certain business sectors have their own particular procedures and regulations. For example, procurement arrangements for construction related to upstream oil and gas infrastructure are regulated by the Second Book of PTK-007/SKKMA0000/2017/SO as amended, issued by SKK Migas, a special government work unit overseeing the upstream oil and gas sector.

When a project involves a state-owned enterprise or direct co-operation with government bodies, specific regulations governing those procurement arrangements, along with the internal policies of the state-owned enterprise or government bodies involved, must also be observed.

The Construction Law and GR 14/2021 state that construction work using state funds must be carried out through:

- Tender or selection.
- Electronic procurement.
- Direct appointment.
- Direct procurement.

Transaction Structures

3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

In both local projects and international projects involving foreign parties/investors, transaction structures typically depend on the project's business sector, for example:

- The development of public land transportation or toll-road projects typically uses a build-operate-transfer (BOT) scheme between the government and the contractor.
- For projects related to energy, the build-own-operate-transfer (BOOT) model is common.

- The development of an airport or seaport requires the signing of certain concession agreements with designated government units under the Ministry of Transportation.
- When a public-private partnership (PPP) scheme is used for developing infrastructure projects, the transaction structure may involve the establishment of a consortium of contractors for the project or the creation of a special purpose vehicle (SPV) in the form of a limited liability company.

For domestic investors, Indonesian law recognises various corporate vehicles, including those with:

- Non-legal entity status, such as a:
 - civil partnership (*maatschap*);
 - firm; and
 - limited partnership (*comanditer vennootschape*) (CV).
- Legal entity status, such as a:
 - limited liability company (*perseroan terbatas*) (PT); or
 - co-operative.

Small to middle-scale businesses usually use a CV or PT as their corporate vehicle, while large-scale businesses normally use a PT.

For foreign investors, under Law No. 25 of 2007 regarding Capital Investment (Investment Law), direct investment in Indonesia is implemented through the establishment of a limited liability company for foreign capital investment (*perseroan terbatas penanaman modal asing*) (PT PMA), or other forms allowed under relevant Indonesian laws and regulations. For construction services, the Construction Law allows foreign investment in the forms of a:

- PT PMA.
- Foreign construction services company (*Badan Usaha Jasa Konstruksi Asing*) (BUJKA) representative office.

In a PT PMA structure, the foreign investor acts as a joint shareholder with a wholly-owned Indonesian construction company that holds the necessary licences (*see Question 19*) and has qualified as a large-scale contractor. Its share ownership in the PT PMA is subject to the newly-issued Presidential Regulation No. 10 of 2021 Capital Investment Business Fields (*PR 10/2021*), which sets out business fields in Indonesia that are either open, open with certain restrictions, or closed for foreign investment. Construction businesses are not included in the list of business fields that are open with limitations (*Appendix III of PR 10/21*) and therefore are fully open to foreign investment without any limitation, subject to the joint shareholders requirement mentioned above.

A BUJKA (*see above*) representative office must form a joint operation consortium with a wholly-owned Indonesian construction company that owns the necessary licences (*see Question 19*) and has qualified as a large-scale contractor.

Finance

4. How are projects financed? How do arrangements differ for major international projects?

Financing arrangements for a construction project typically depend on whether the project is a private or public project, regardless of whether it is a local or international project.

Private sector projects, especially real estate development, usually use internal funding (such as paid-up capital or retained earnings) as their main source of financing. Local bank loans are another alternative source of funding for private sector projects.

It is also common for project owners to get funding by listing part of their shares on the Indonesia Stock Exchange or through the issuance of bonds.

For major public infrastructure projects, funding is typically secured through project financing involving international lenders. State funds may also be allocated to finance these kinds of projects.

Security and Contractual Protections

5. What forms of security and contractual protections do funders typically require to protect their investments?

Security

Funders typically require one or more of the following securities:

- Fiduciary security (*jaminan fidusia*) for tangible or intangible moveable objects, and certain immovable objects that cannot be secured by mortgage, under Law No. 42 of 1999 regarding Fiduciary Security.
- Pledges (*gadai*) for tangible or intangible moveable objects, under the Indonesian Civil Code (Civil Code).
- Mortgages (*jaminan hak tanggungan*) for land and fixtures on the land, under Law No. 4 of 1996 regarding mortgages.
- Personal or corporate guarantees made by persons or legal entities, for example by the shareholders or owner of the contractor. For infrastructure projects under a PPP scheme, additional guarantees can be provided by the state and/or the Indonesia Infrastructure Guarantee Fund (*PT Penjaminan Infrastruktur Indonesia (Perseo)*), a state-owned enterprise established to provide guarantees to infrastructure projects.

Contractual

Contractual protections required by funders are typically in the form of step-in rights, assignments of rights, and warranties.

Standard Forms of Contracts

6. What standard forms of contracts are used for both local and international projects? Which

organisations publish them?

Local Projects

Projects involving locally owned private construction service companies rarely refer to a particular contract model. Indonesian law does not require the use of a particular standard form of contract issued by a particular organisation.

In general, Indonesian law recognises the principle of freedom of contract. This principle is explicitly stated in Article 1338 of the Civil Code. Article 1338 provides that parties to a contract are free to include any provisions they wish, subject only to mandatory provisions of Indonesian law. The mandatory provisions of Indonesian law that a contract must not violate derive from Indonesian statutory laws and regulations, public policy and the public order. The Construction Law further provides that a construction agreement must include provisions on:

- The clear identity of the parties.
- The scope of work, containing a clear description and details of the scope of work, the value of the work (unit price and lump sum) and time limit for the work.
- The coverage period, containing the period of work and maintenance which are the responsibility of the contractor.
- Mutual rights and obligations, including the:
 - right of the employer to obtain the results of the construction services, and its obligation to comply with the agreed conditions; and
 - the rights of the contractor to obtain information and receive service fees, and its obligation to perform the construction services.
- The use of construction workers, including the obligation to employ certified construction workers.
- The method of payment, including the obligation of the employer to complete the payments for the construction services, along with guarantees of the payment.
- Default, including liability if one of the parties does not meet its agreed obligations.
- Dispute resolution procedures in case of a dispute.
- Contract termination on non-compliance by one of the parties with its obligations.
- Force majeure.
- Building failure, containing provisions on the obligations of the contractor and/or employer on a building failure, as well as the period of responsibility for building failure.
- Worker protection, containing provisions on the obligations of the parties in implementing worker health and safety, as well as worker social security obligations.
- Protection against third parties other than the contract parties and their workers, including the obligation of both parties on an event that causes losses, or injury and/or death.
- Environmental aspects, including the obligation of the parties to comply with environmental requirements.

- Guarantees for risks that arise and legal responsibilities to other parties in the implementation of the construction work or from building failure.

Certain types of construction work contracts must also include the following provisions:

- For planning and design services construction work, a provision regarding intellectual property rights.
- For construction implementation services, a provision regarding sub-contractors, material suppliers, building components and/or equipment that must comply with the applicable standards.
- If the work involves a foreign party, a provision regarding the obligation for the transfer of technology.

Under the Construction Law, construction work contracts must be in Indonesian. When a construction work contract involves foreign parties, the contract must be in English and Indonesian, with Indonesian as the prevailing language.

GR 14/2021 also provides that a construction agreement must at least contain the following:

- Letter of agreement signed by the parties, covering;
 - description of the parties;
 - considerations;
 - scope of work;
 - terms of the agreement, fees; and
 - list of binding documents.
- Special terms of the agreement setting out information on the work and permitted amendments based on the characteristics of agreement.
- General terms of the agreement setting out general provisions of the engagement based on the management system, scope of work, payment method and work calculation system.
- Documents of the project owner/employer setting out the scope of work and its requirements for the work including work specifications, images, expenses and fees.
- Proposal prepared by the service provider/contractor setting out the methods, fee quotation, timeline and resources for the work.
- Minutes on the agreement.
- Statement letter from the project owner/employer approving the proposal from the service provider/contractor.
- Statement letter from the service provider/contractor undertaking the implementation of the work.
- However, when a construction project is funded by the government, a government standardised contract must be used. This type of contract will be regulated by a ministerial regulation, which at the time of writing was yet to be issued.

International Projects

When projects involve foreign parties (for example, where the lender is an international finance institution), there is a trend to use international standard forms of contract, such as those issued by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs - Conseils*) (FIDIC). While international standard forms of contract are used,

adjustments must still be made to ensure that the contract is consistent with the minimum requirements under the Construction Law.

Contractual Issues

Contractors' Risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

The following risks are typically allocated to the contractor:

- Defects in the contractor's work.
- Injury, loss of life, damage to or loss of property of any party as a result of the contractor's work.
- Physical condition of location/work area.
- Faults or defects by appointed subcontractors.

In some contracts, the contractor can be released from liability for these risks when they result from the employer's gross negligence or wilful misconduct. The freedom of contract principle (*see Question 6*) allows parties to agree on the allocation of risks among themselves.

The Construction Law and GR 14/2021 provide that the contractor is responsible for any building failure that occurred within up to ten years of the completion of construction.

Excluding Liability

8. How can liability be excluded or restricted under local law?

Exclusion, restriction or limitation of liability can be done on a contractual basis, where the parties agree to exclude or restrict certain liabilities in their contract. The freedom of contract principle under the Civil Code (*see Question 6*), allows the parties of an agreement to freely agree to exclude, restrict or limit the liabilities of the parties, including liabilities for indirect and consequential damages and loss of business or profits. However, the Indonesian courts can refuse to enforce a limitation of liability provision:

- For damages that result from gross negligence or wilful misconduct. An Indonesian court may consider such a limitation of liability contrary to public policy.

- If the party enforcing the limitation of liability did not negotiate or implement the contract in good faith. In its analysis, the court may consider the nature of the agreement, the parties, their expertise and their relationship, among other factors.
- If the provision is inconsistent with the principle of fairness (*keadilan*), common practice (*kebiasaan*) and other laws and regulations, under Article 1339 of the Civil Code.

Caps on Liability

9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

It is typical for the parties to put a limitation of liability clause in their contracts. The limitation of liability is usually set based on the contract value. The implementation of a limitation of liability clause may be subject to a court ruling (*see Question 8*).

In some cases, provisions in a contract stipulate that any liability arising from gross negligence or wilful misconduct will not be capped.

Force Majeure

10. Are force majeure exclusions available and enforceable?

A force majeure clause is included as a mandatory provision that must be inserted in a construction work contract under the Construction Law (*see Question 6*). Even if not required by the Construction Law, it is common to find a force majeure clause in Indonesian contracts. In addition, the Civil Code, in Articles 1244 and 1245, recognises the concept of force majeure.

Material Delays and Variations

11. What contractual provisions are typically negotiated to cover material delays to the project?

The following provisions are typically negotiated in relation to project delays:

- Cause of delay. Delays are most commonly caused by:
 - the contractor's act or omission;
 - the employer's act or omission; and
 - events outside the control of the parties (such as force majeure events or change of law). Parties should set out possible causes and consequences for such delays.
- Delay damages. Parties negotiate the amount and cap for delay damages. Delay damages are also related to the cause of delay. For example, the contractor should not be subject to delay damages if the delay was due to force majeure events.
- Extension of time for completion. For certain delays (such as the delay being caused by the employer's request to suspend work), the contractor would normally be entitled to an extension of time to continue its work without being subjected to delay damages or being held in default of the contract.
- Step-in rights. The employer would usually negotiate a provision allowing it to step in and take all necessary actions to end the delay, at the contractor's cost.
- Termination. Parties can also agree that certain degrees of delay by the contractor may result in the termination of the contract.

12. What contractual provisions are typically negotiated to cover variations to the works?

Parties typically negotiate the:

- Right to vary. Commonly, the employer has the right to request variations of the works. Contractors are usually granted the right to propose variations, subject to the employer's approval.
- Variation procedure. Parties lay down specific mechanisms to commence with variations of the works, including having the contractor submit a proposal, generally containing technical descriptions related to the variations and an estimate of the required expenses.
- Adjustments to contract price. Parties also negotiate how to modify the contract price in light of the variations of works.

Other Negotiated Provisions

13. What other contractual provisions are usually heavily negotiated by the parties?

Heavily negotiated contractual provisions typically include:

- Insurance coverage. Parties negotiate the type, coverage and amount of insurance to be procured by the contractor for the commencement of work.
- Warranties. Parties negotiate the scope and length of warranties provided by the contractor in relation to the work, equipment, materials and operational capability of a project (fitness for purpose warranties).
- Performance security. Parties negotiate the form, amount and conditions in relation to performance security or bonds required to be obtained by the contractor in relation to the work.
- Dispute resolution. Parties negotiate the mechanism and choice of forum to resolve disputes that may arise in relation to the contract.
- Terms of payment. Parties negotiate the conditions and schedule for payment in relation to the work.
- Liabilities. Parties negotiate limitations on liabilities and the risks allocated to each party and their associated liabilities.

Rights of Third Parties under Contracts

14. Does a third party who has or acquires an interest in the project, such as a funder, have any rights against those responsible for designing and constructing the works? Can a third party enforce the terms of a contract to which it is not a party?

A third party can only acquire contractual rights when the third party is a contracting party in the underlying contract for the design and construction works or is made a beneficiary of it.

The privity of contract principle applies in Indonesian law, which means an agreement only binds the parties to the agreement and does not confer rights or impose obligations on any person who is not a party to the agreement (*Article 1340, Civil Code*). However, the parties to an agreement can specifically provide that an agreement is made for the benefit of a third party (*Article 1317, Civil Code*).

15. How are construction professionals usually selected? Following selection, how are they formally appointed?

The parties in private projects are normally free to determine the mechanism for the procurement/selection of professionals. However, certain business sectors may have their own particular guidelines, procedures and regulations relating to the selection of professionals for the provision of services (*see Question 2*).

For public projects involving state-owned enterprises or governmental bodies, Indonesian law contains a specified guideline and procedure for the procurement/selection of professionals for the provision of services (*see Question 2*).

16. What provisions of construction professionals' appointments are most heavily negotiated? Are liabilities commonly limited or capped in construction professionals' appointments?

Negotiated Provisions

Provisions negotiated for the appointment of professionals are normally similar to those negotiated for a construction contract.

Liability

Liability caps vary on a case-by-case basis, but professionals normally negotiate a capped liability.

Payment for Construction work

17. What are the usual methods of payment for construction work? Are there ways for the contractor and consultants to secure payment or mitigate risks of non-payment under local law?

Methods of Payment

Payment methods for construction works include:

- Advance payment. A portion of payment is paid in advance of the works, typically followed by an advance payment bond issued by banks.
- Progress payment. Payment is made periodically, for example, on a monthly basis.
- Milestone payment. Parties set out milestones to be reached in a project and payments are made on reaching the relevant milestones.
- Turnkey. Payment is made only when the project is completed.

Parties sometimes also agree that certain amounts will be retained and are only payable on the completion of the works and their final acceptance by the contractor.

Specific terms on payment methods can be freely negotiated by the parties to the construction work.

Securing Payment

To secure payment, it is common to require contractors to prepare bonds (such as an advance payment bond, performance bond or maintenance bond) and/or a letter of credit issued by a bank.

Subcontractors

18. How do the parties typically manage their relationships with subcontractors?

Typically, the contractor is responsible to the employer for the acts or defaults of the subcontractors it appoints in a project. The parties are free to agree the particular provisions governing the responsibilities and mechanisms to appoint a subcontractor, subject to the express provisions under the Construction Law.

Under the Construction Law, subcontracting of works can only be done for specialised services such as:

- Technical and scientific consultation.
- Technical testing and analysis.
- Equipment leasing.
- Specialised construction, covering works or construction in specific parts of the project.

This means that, under the Construction Law, subcontracting cannot be undertaken for the whole project. The Construction Law further requires that the appointment of subcontractors must obtain the approval of the employer.

Licensing

19. What licences and other consents must contractors and construction professionals have to carry out local construction work? Are there any specific licensing requirements for international contractors and construction professionals?

Under the current regime, the following licences are required to engage in construction business:

- For Indonesian individuals, an Individual Business Registration Licence (*Tanda Daftar Usaha Perseorangan*) (TDUP) is required. The TDUP is issued by the regency/city government.
- PTs that engage in construction services (including PT PMAs) must hold a:
 - Construction Business Entity Certificate (SBU) issued by a Business Entity Certification Agency (LSBU); and
 - Business Identification Number (NIB) issued by the Indonesian Investment Coordinating Board) (BKPM) through the Online Single Submission (OSS) system.
- In addition, they must register with a construction association.

- A BUJKA representative office must obtain a BUJKA Rep. Office Licence from the BKPM through the OSS system, in addition to an SBU and NIB.
- Construction professionals must obtain a Work Competence Certificate (*Sertifikat Kompetensi Kerja*) (SKK) issued by a professional certification institution (LSP). This SKK serves as official evidence of registration for construction professionals in Indonesia as recorded in the integrated Construction Services Information System.
- Foreign construction professionals must be registered with the Ministry of Public Works before they can provide construction services in Indonesia. This competency registration requirement can be completed either through:
 - a mutual recognition arrangement (by assessing the certificate of competence of the concerned professionals against the required qualification and classification of the intended position); or
 - by submitting an application to the Construction Services Development Agency (LPJK) through the integrated Construction Services Information System.
- Work and safety officers of the construction company must also obtain a work and safety construction certificate from the relevant certification institution.

In conjunction with the issuance of the Job Creation Law and Government Regulation No. 5 of 2021 regarding Risk-Based Business Licensing (*GR 5/2021*), the Ministry of Public Works' Directorate General of Construction issued Letter No. BK.04.01-Dk/349 dated April 19, 2021. This letter provides that PTs are no longer required to obtain a Construction Services Business Licence (*Izin Usaha Jasa Konstruksi*), but do require an NIB and an SBU.

20. What licences and other consents must a project obtain?

Before

Licences that must be obtained before construction commences include the following:

- Land Utilisation Permit (*Izin Peruntukan Penggunaan Tanah*).
- Building Approvals (*Persetujuan Bangunan Gedung*) (previously known as *Izin Mendirikan Bangunan*).
- Environmental Approval (*Persetujuan Lingkungan*) (previously known as *Izin Lingkungan*).

Technical approvals and recommendations must also be obtained from the relevant government institutions. These licences, approvals and recommendations are generally obtained from the regional government. There may be small differences in the licences, approvals and/or recommendations required from region to region, due to differences in the provisions of the relevant regional government regulations and adopted policies.

During

During construction works, some of the necessary licences require the licence holder to submit periodical reports to the relevant regional authorities. For example, following the issuance of an NIB or registration through the OSS, a PT PMA must submit a Capital Investment Activities Report (commonly known as an LKPM) through the OSS system every semester on its investment activities. If there is a change in design or construction layout, the licence may need to be updated or revised.

On completion

A Certificate of Worthiness (*Sertifikat Laik Fungsi*) (SLF) is required after the completion of construction. Law No. 28 of 2002 regarding Buildings, as amended by the Job Creation Law, provides that a building can only be used after an SLF is obtained. The regional government, as the issuer of the SLF, can also impose periodical reporting requirements and conduct periodical inspections to monitor the facility/building being constructed.

Projects Insurance

21. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

Compulsory Insurance

The Construction Law does not specify any compulsory insurances for construction works. However, Law No. 13 of 2003 on Manpower, as amended by the Job Creation Law (Employment Law), and Law No. 24 of 2011 on Social Security Agency, as amended by the Job Creation Law (BPJS Law) require an employer to register its employees in the employment social security programme.

Non-Compulsory Insurance

It is common for a construction contract to further require the parties to obtain insurance during the works. Examples of typically required insurance include:

- All-risk insurance for the contractor's works, equipment and materials.
- Insurances against liability for any loss, damage, death or bodily injury to any property or person caused by the contractor's performance of the works.

Employment laws

22. What are the main requirements for hiring local and foreign workers?

The main requirement in employing either local or foreign workers is the execution of an employment agreement between the employer and the workers.

Local Workers

Local workers can be employed on the basis of either a fixed-term employment agreement or an indefinite term employment agreement. For a fixed-term employment agreement, the period of work can be based on either:

- A certain specified time period.
- The completion of certain works.

Foreign Workers

Under Ministry of Manpower (MOM) Regulation No. 34 of 2021 regarding Procedures for the Utilization of Expatriate Manpower, an employer that employs foreign nationals must first prepare a Plan for the Utilisation of Foreign Workers (*Rencana Penggunaan Tenaga Asing*) (RPTKA) and have it approved by the MOM through a process called the RPTKA appropriateness assessment. Once the RPTKA result is issued the employer must pay the foreign worker utilisation compensation fund (DKP-TKA) and provide further documentation for verification purposes. The MOM will then issue the RPTKA approval.

On the RPTKA approval, which basically approves the employment of expatriates in Indonesia, the employer can commence the process to obtain a Limited Stay Visa (VITAS) for working purposes for its foreign employees, which will grant the foreign employees entry to Indonesia. Subsequently, the foreign employee must obtain a Limited Stay Permit (ITAS) on arrival in Indonesia.

Not all work positions are open to foreign nationals. Human resources directors and other positions set out by Ministry of Manpower and Transmigration Decree No. 349 of 2019 regarding Certain Job Positions Closed for Foreign Workers are closed to foreign nationals.

23. Which employment laws are relevant to projects?

All employment matters in Indonesia are governed principally by the Employment Law and its implementing regulations, including regional government regulations on the minimum wage. Other relevant regulations include Law No. 2 of 2004 regarding Industrial Relations Dispute Settlement and Law No. 21 of 2000 regarding Labour Unions, along with their implementing regulations.

24. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

Under the Employment Law, an employer is not required to pay statutory redundancy or other payments at the end of a project. Workers with an indefinite term employment agreement continue to be employees of the company and are entitled to certain remuneration and other benefits following the termination of employment. Employment under a fixed-term employment agreement ceases on the expiry of the time period or the completion of works as set out in the relevant employment agreement.

Health and Safety

25. Which health and safety laws apply to projects?

The Employment Law and the Construction Law contain provisions related to health and safety requirements for workers. Work health and safety requirements can also be found in the following regulations:

- Law No. 1 of 1970 regarding Work Safety.
- Government Regulation No. 50 of 2012 regarding Implementation of Work Safety and Health Management System.

There are also various implementing regulations of these laws that govern in further detail the health and safety requirements and the implementation of the work safety and health management system. These include:

- Ministry of Manpower Regulation No. PER.01/MEN/1980 of 1980 regarding Work Safety and Health in Building Construction.
- Ministry of Public Works and Housing Regulation No. 21/PRT/M/2019 of 2019 regarding Guidelines for Work Safety and Health Management System for Construction Works.

Environmental Issues

26. Which local laws regulate projects' effects on the environment?

Law No. 32 of 2009 regarding Environmental Protection and Management, as amended by the Job Creation Law (Environmental Law) is a general law related to the environment. In addition to the Environmental Law, the following further laws and regulations may also be relevant.

Air

Government Regulation No. 22 of 2021 regarding Implementation of Environmental Protection and Management (*GR 22/2021*).

Water

Law No. 17 of 2019 regarding Water Resources, as amended by the Job Creation Law, and Government Regulation No. 121 of 2015 regarding Water Resources Utilisation.

Waste

Law No. 18 of 2008 regarding Waste/Garbage Management and Government Regulation No. 101 of 2014 regarding

Hazardous and Poisonous Waste Management, specifically if the waste is hazardous or poisonous.

Environmental Impact Assessments (EIAs)

GR 22/2021 and Minister of Environment Regulation No. P.38/MENLHK/SETJEN/KUM.1/7/2019 regarding Type of Businesses and/or Activities that Require an Environmental Impact Assessment (*Analisis Mengenai Dampak Lingkungan Hidup*) (AMDAL).

Sustainable Development

Presidential Regulation No. 59 of 2017 regarding Implementation of Sustainable Development Goals.

27. Do new buildings need to meet carbon emissions or climate change targets?

Depending on the complexity, area and height of the building, a new and existing building may be subject to the mandatory technical requirement of meeting the “green building” standards as specified in Ministry of Public Works and Housing Regulation No. 02/PRT/M/2015 regarding Green Buildings. The green building standards include various sustainability criteria that aim to reduce the carbon emissions of the building. These criteria include air quality control, efficient energy usage, green areas, use of environmentally friendly material, waste management and so on.

In addition, a building can be certified as environmentally friendly if it meets certain requirements under Minister of Environment Regulation No. 8 of 2010 regarding Criteria and Certification for Environmentally Friendly Buildings.

Prohibiting Corrupt Practices

28. Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Rules

The Indonesian anti-corruption regime is set out in Law No. 31 of 1999 regarding Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001 (together, Anti-Corruption Law). The Anti-Corruption Law specifies seven types of corruption crimes:

- Corruption that causes loss to the state’s finances.
- Corruption related to bribery.
- Corruption related to malfeasance.
- Corruption related to extortion.

- Corruption related to torts.
- Corruption related to conflict of interest in procurement.
- Corruption related to gratuities.

In addition, Law No. 11 of 1980 regarding Bribery (Anti-Bribery Law) imposes punishments for bribing a public official.

Penalties

Corruption is criminally sanctioned under Indonesian law. Perpetrators of corrupt acts are brought before the Corruption Court under Law No. 46 of 2009 regarding the Corruption Court. The Corruption Court is a special court with jurisdiction over corruption crimes in Indonesia and has extraterritorial reach. Sanctions are in the forms of:

- Primary sanctions, including:
 - fines ranging from IDR50 million to IDR1 billion;
 - prison sentences ranging from one year up to life in prison; and
 - capital punishment, if the criminal act of corruption involves funds intended for the eradication of a dangerous situation, a national disaster, riots or an economic or monetary crisis, or for repeated criminal acts of corruption.
- Additional sanctions include:
 - confiscation of tangible or intangible movable or immovable goods used for or obtained from criminal acts of corruption, including any company owned by the accused where a criminal act was perpetrated, and goods that replace those movable or immovable goods;
 - payment of compensation up to an amount equal to the assets obtained from the criminal acts of corruption;
 - whole or partial closure of the company for a maximum period of one year; and
 - revocation of all or certain rights or the abolishment of all or certain profits that have been or can be given by the government to the perpetrator.

Bankruptcy or Insolvency

29. What rights do the various parties involved in the project have on the contractor's bankruptcy or insolvency?

An agreement with a contractor normally contains provisions on the contractor's bankruptcy. It is common to provide that an employer has the right to immediately terminate the contract on the contractor being declared bankrupt.

If a funder holds securities recognised under Indonesian law (*see Question 5*), it can immediately execute the securities as if the bankruptcy has not occurred. In addition, funders have the right to be acknowledged as a creditor and to have their receivables verified by the receiver (a person appointed to manage the entity held bankrupt and to settle all its duties), and partake in creditor meetings with an aim to settlement of the debts. Provisions on bankruptcy are governed under Law No. 37

of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law).

The Bankruptcy Law also provides creditors and debtors with an option to avoid bankruptcy proceedings that are intended to result in the liquidation of the debtor, through a process known as Suspension of Debt Payment (*Penundaan Kewajiban Pembayaran Utang*) (PKPU). A PKPU proceeding gives a debtor the opportunity to prepare, negotiate and submit a composition plan to its creditors for their approval. The composition plan details how outstanding debts are to be restructured and typically provides, among other things, for:

- Rescheduled and extended payment terms, perhaps with a grace period.
- Reduced interest rates.
- Waiver of penalties and overdue interest.

For more sophisticated restructurings, the inclusion of debt buybacks and equity conversions is also possible.

Public Private Partnerships

30. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

The Indonesian government has had a policy of using PPP schemes for the development of infrastructure projects for some time. However, the actual implementation of PPP projects is still far from satisfactory, with some PPP projects being halted or experiencing substantial delays. Common causes for such delays include:

- Land procurement problems.
- Poor co-ordination among governmental bodies (such as between central and regional governments).
- Regulatory overlap, especially in terms of licensing processes.

Presidential Regulation No. 38 of 2015 regarding Public Private Partnership for Infrastructure Development (Presidential Regulation 38/2015) states that PPP schemes can be used for infrastructure projects related to:

- Transportation.
- Roads.
- Water sources and irrigation.
- Drinking water facilities.
- Centralised wastewater management.
- Local wastewater management.
- Waste treatment systems.
- Telecommunications and information.

- Power plants.
- Oil and gas, and renewable energies.
- Energy conservation.
- City facilities.
- Education facilities.
- Sports and art facilities.
- Estates, such as industrial estates.
- Tourism.
- Health.
- Correctional facilities.
- Public housing.

31. What local laws apply to PPPs?

Presidential Regulation 38/2015 is the principal regulation related to PPPs. PPPs are further governed under the implementing regulations of Presidential Regulation 38/2015:

- Minister of National Development Planning/Head of National Development Planning Agency Regulation No. 4 of 2015 regarding Procedure on the Implementation of Public Private Partnerships for Infrastructure Development, as amended by Minister of National Development Planning/Head of National Development Planning Agency Regulation No. 2 of 2020.
- Head of National Procurement Agency Regulation No. 29 of 2018 regarding Procedure for Procurement in Public Private Partnerships for Infrastructure Development Initiated by Ministers/Heads of Agencies/Heads of Regions (LKPP Regulation 29/2018).

In addition to these regulations, there are sectoral regulations that further govern infrastructure PPPs in specific business sectors.

32. What is the typical procurement or tender process in a PPP transaction? Does the government or another body publish standard forms of PPP project agreements and related contracts?

Typical Procurement or Tender Process

Under Presidential Regulation 38/2015 and LKPP Regulation 29/2018, the procurement process in a PPP project involves the following stages:

- Prequalification. Prequalification Documents and a Request for Proposal are prepared by the person in charge of the co-operation project or the Government Contracting Agency (*Penanggung Jawab Kerja Sama*) (PJPK). In a PPP project the PJPK may be:
 - central government;
 - regional government;
 - a state-owned enterprise; or
 - regional-owned enterprise.
- In the prequalification stage, the administrative requirements, technical and financial abilities of the bidders will be assessed to determine if they advance to the tender/direct appointment stage.
- Tender or direct appointment. If more than one business entity passes the prequalification stage, procurement is conducted through a tender process. There are two types of tender:
 - one-step tender: the bidders concurrently submit envelope I (containing administrative and technical offering documents) and envelope II (containing financial offering documents). The PJPK evaluates the envelopes and subsequently announces the tender winner; and
 - two-step tender: the bidders are required to submit the offering document. The PJPK then evaluates the submissions and announces the results, followed by a discussion to optimise the offering document based on the evaluation. The bidders then submit the optimised offering document. The PJPK again evaluates the submissions and subsequently announces the tender winner.
- If only one business entity passes the tender prequalification stage, procurement is conducted by direct appointment. A direct appointment can also be made in a PPP project if:
 - it relates to infrastructure the business entity previously developed;
 - the work can only be done using new technology that only one business entity is able to apply; or
 - the business entity possesses the majority or all of the land required for the PPP project.

Standard Forms of PPP Project Agreements/Related Contracts

PPP project agreements are prepared by the PJPK.

Dispute Resolution

33. Is your jurisdiction subject to any specific laws on how construction disputes are resolved?

Disputes over a construction project or a construction work contract are characterised as civil disputes. To the extent that there is no arbitration clause in the construction work contract under which such dispute arises, the dispute will be settled through the courts (*see Question 34*). As such, the rules on civil procedural law under the following regulations apply:

- *Het Herzien Inlandsch Reglement (HIR)* (The Revised Indonesian Regulation).
- *Rechtreglement voor de Buitengewesten / Reglement Tot Regeling Van Het Rechtswezen In De Gewesten Buiten Java En Madura (RBg)* (Regulation for the Outer Regions/Legislative Regulation for the Regions Outside Java and Madura).
- *Wetboek op de Burgerlijke Rechtvordering (Rv)* (Code of Civil Procedure). Rv is still frequently used to provide guidance in situations where the HIR or RBg do not provide sufficient regulation for a certain matter, despite the Rv is no longer being applicable.
- The above are usually referred to by their Dutch names but we have provided English translations.
- Law No. 48 of 2009 regarding Judicial Power.
- Law No. 2 of 1986 regarding General Judiciary, as lastly amended by Law No. 49 of 2009.

34. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

Formal Dispute Resolution Methods

Typically, a dispute resolution clause requires the parties to first negotiate in good faith to reach an amicable settlement. If an amicable settlement cannot be reached, the dispute resolution process usually escalates to the submission of the dispute to arbitration or a state court. In some cases, before referring the dispute to a tribunal/panel of judges empowered to issue binding awards, the parties can agree to use alternative dispute resolution methods, such as mediation, conciliation or reference to an expert's opinion.

Courts and Arbitration Organisations

Indonesia does not have a specific court that handles construction disputes. Instead, construction disputes are characterised as civil disputes, either in the form of a breach of contract or tort.

The relevant court institutions are:

- District courts as the court of first instance, located in the relevant regency or city.
- High courts, which receive appeals, domiciled in the relevant province.
- The Supreme Court, which receives cassation or judicial reviews, domiciled in the Indonesian capital, Jakarta.

Another way to settle construction disputes is through arbitration. There are several arbitration organisations that are commonly referred to in Indonesia, including the:

- Indonesian National Board of Arbitration (*Badan Arbitrase Nasional Indonesia*) (BANI).
- Indonesian Construction Arbitration and Alternative Dispute Resolution Board (*Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia*) (BADAPSKI).
- Singapore International Arbitration Centre (SIAC).
- International Chamber of Commerce (ICC).

35. What are the most commonly used alternative dispute resolution (ADR) methods?

No official information is available, but arbitration is considered to be the most commonly used alternative dispute resolution method for construction disputes.

Tax

36. What are the main tax issues arising on projects?

Tax issues can arise in relation to calculation and reporting. For projects, applicable taxes include:

- Income tax.
- Value added tax (VAT).
- Import duty (when imports are conducted).

37. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

Mitigating tax

Contractors normally hire a tax advisor to mitigate tax liability.

Tax Incentives

Under the Investment Law, the government can provide fiscal facilities for capital investments that:

- Employ many workers.
- Are a high priority.
- Are in infrastructure construction.
- Conduct technology transfers.
- Are in a pioneer industry.
- Are in a remote, less-developed, contiguous or another deprived area.
- Are related to environmental sustainability.
- Are related to research, development and innovation activities.
- Are in partnership with micro, small and medium enterprises or co-operatives.
- Are in an industry that uses domestically produced capital goods, machines or equipment.

These fiscal facilities can be in the form of:

- Income tax relief through a reduction of net income to a specified extent of the total investments made within a definite period.
- Exemptions or relief from import duty on production capital goods, machines or equipment not produced in Indonesia.
- Exemptions or relief from import duty on production raw materials or components for a definite period and with specified requirements.
- Exemptions or deferment of value added tax for a definite period on imports of production capital goods or machines or equipment not yet produced in Indonesia.
- Accelerated depreciation or amortisation.
- Relief on land and building tax, particularly for specified business sectors in specified regions, areas or zones.

Other Requirements for International Contractors

38. Are there any specific requirements that international contractors or construction professionals must comply with?

See [Question 3](#) and [Question 19](#).

Developments and Reform

39. Are there any significant developments or proposals for reform that may have an impact on construction projects in the future?

The issuance of the Job Creation Law was a massive step by the Government of Indonesia to stimulate the economy by reforming existing laws and regulations that have long hindered business actors, both domestic and foreign, and their investment in Indonesia. The Job Creation Law is designed to eliminate administrative inefficiencies and unnecessary licensing requirements in Indonesia. It amends 79 regulations in total, including the Construction Law.

The simplification of licensing requirements under the Construction Law is one of the major changes introduced by the Job Creation Law and has been warmly received by business actors. However, there are still a handful of regulations referred to in the amended Construction Law and GR 14/2021 that have not yet been issued. Those regulations include regulations on:

- Standardised contracts for government-funded projects.
- Guidance on risk assessment.
- Technology and fees criteria.
- Construction safety management systems.

There are also several new agencies/institutions introduced by the Job Creation Law that are expected to have a positive impact on future construction projects. These include a:

- Sovereign wealth fund (*Lembaga Pengelola Investasi*) (LPI). The LPI was established to manage domestic assets and raise funds from local and foreign investors to finance development programmes in Indonesia, with infrastructure projects being the priority.
- Land Bank. The Land Bank was established to purchase and manage unused land and redistribute it to guarantee that lands for public interests are sufficiently available.

The above developments were only recently introduced and therefore it remains to be seen how they will shape and influence construction projects in Indonesia in the future.

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Areas of practice. Project finance and infrastructure; construction and real estate; banking and finance; mergers and acquisitions; cross-border debt restructurings; IT and telecommunications.

Recent transactions/activities

- Assisting MNC Land, a leading Indonesian property company, in its collaboration with Trump Organization on the Trump Residences Indonesia, two ultra-luxury integrated developments in Bali and Lido, Bogor.
- Representing China Fortune Land Development (CFLD) in forming a joint venture with an Indonesian company, PT Alam Sutera Tbk, to develop a satellite city on the outskirts of Indonesia's capital, Jakarta.
- Representing Pacific Century Premium Developments (PCPD) as Indonesian counsel in its first property development in Indonesia, consisting of a premium office tower next to The Equity in the Sudirman Business District.
- Representing PT Risland Sutera Property, an Indonesian subsidiary of Country Garden, one of the largest developers in China, in the acquisition of land located on the outskirts of Jakarta and the development of a large residential project.
- Acting as Indonesian counsel to GIC, Singapore's sovereign wealth fund, on its partnership with PT Mega Manunggal Property Tbk, an Indonesian publicly listed logistics developer and one of Indonesia's leading modern logistics companies, along with its subsidiaries, to develop logistics warehouses in Indonesia. This is GIC's first investment in Indonesia's logistics sector.
- Advising a Sampoerna Group subsidiary on the construction of a palm oil mill in Indonesia.
- Acting for LOGOS, a warehouse development company, in relation to the construction of a warehouse in West Java.

Languages. English, Indonesian

Professional associations/memberships. Inter Pacific Bar Association (IPBA); Association of Indonesian Legal Consultants; Indonesian Advocates Association (Peradi).

Publications

- *Practical Law Restructuring and Insolvency in Indonesia (2020).*
- *Global Legal Insights to: Bribery & Corruption (2020).*
- *Chambers Global Practice Guide: Real Estate (2019).*
- *Chambers Global Practice Guide: Data Protection & Cybersecurity (2019).*
- *Data Protection in Indonesia (Practical Law, 2017).*
- *Privacy in Indonesia: Overview (Practical Law, 2017).*
- *Anti-Corruption Developments in Indonesia (2017).*
- *Foreign Investment in Indonesian Real Estate (2016).*
- *Recent Developments in the Indonesian Real Estate Sector (2016).*

- *Real Estate Disputes in Indonesia (2016).*
- *Establishing a Business in Indonesia (Practical Law, 2015).*

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Areas of practice. Project finance and infrastructure; construction and real estate; banking and finance; mergers and acquisitions; financial technology.

Recent transactions/activities

- Acting as Indonesian counsel to Alibaba Group in its USD1 billion purchase of a controlling stake in Southeast Asian online retailer Lazada Group.
- Representing the Indonesian Ministry of Finance and Ministry of State-Owned Enterprises and PT Pertamina, the state-owned oil and natural gas company, in the establishment of an Oil and Gas Holding State-Owned Enterprise.
- Representing PT Pertamina Gas in the formation of a joint operation with a publicly listed company for the construction and operation of a petroleum pipeline.

Languages. English, Indonesian

Professional associations / memberships. Indonesian Advocates Association (Peradi).

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