

BUSINESS GUIDE



VOLUME III

HOW TO
SET UP A BUSINESS
IN INDONESIA

INTRODUCTION

DURING THE PROJECT IMPLEMENTATION, THE EU-INDONESIA BUSINESS NETWORK (EIBN) HAS COLLECTED A LARGE KNOWLEDGE LIBRARY ABOUT DOING BUSINESS IN INDONESIA. AFTER INTENSIVE MARKET RESEARCH AND COMPILING EXISTING INFORMATION FROM VARIOUS SOURCES AND LOCAL ACTORS, EIBN PRESENTS ITS *BUSINESS GUIDE*.

This publication aims to provide guidance to European Union (EU) small and medium-sized enterprises (SMEs), looking to Indonesia as a possible market, attempting to clarify as easily as possible what doing business Indonesia entails, as well as exporting and importing to and from the country. In addition, these guide books also aim at encouraging those of the European business community that are not familiar with Indonesia's potential, to follow economic developments in the country and identify possible business opportunities in their industries.

EIBN exists to support EU SMEs in discovering and accessing the Indonesian market, supported by an Indonesian and European team of market experts and project officers. The EIBN team works every day to discover and develop knowledge on key sectors in which European companies can bring the much sought added value that a large, emerging market such as Indonesia demands.

The Network's mission is not simply to make more knowledge about business opportunities in Indonesia available, but most importantly to help EU companies on the ground. In order to do this, EIBN provides a set of free-of-charge and useful features on its Web Portal (www.eibn.org) and a fast-responding business enquiry helpdesk. Finally, EIBN offers prospective EU companies business support services at competitive rates, delivering quality business intelligence and privileged contact with actors on the ground, in both the private and the public sector.

EIBN is a truly pan-European business support platform, which stands ready to help all businesses headquartered in any of the 28 EU Members States. Across many sectors the Network enables SMEs to explore and tap into the high potential of the Indonesian market. Mustering the expertise of the most well-established European chambers of commerce in Indonesia, EIBN presents itself as a genuine and smart alternative to purely private business consultancies and is the result of a project initiated and co-funded by the European Union.

The information in this guide book reflects the work and mission of EIBN and is but one of the many publications that we offer as a non-remunerated download to all EU companies who register for free on www.eibn.org.

Due to a dynamic regulatory environment, Indonesian provisions, laws and regulations issued by the different government bodies change frequently, even though some of them may have been issued recently. This, of course, highly depends on the sector. Particularly, regulations which are released by the National Agency of Food and Drug Control (BPOM, *Badan Pengawas Obat dan Makanan*) tend to change quickly, effecting Food & Beverages, Cosmetics or Agribusiness, amongst others.

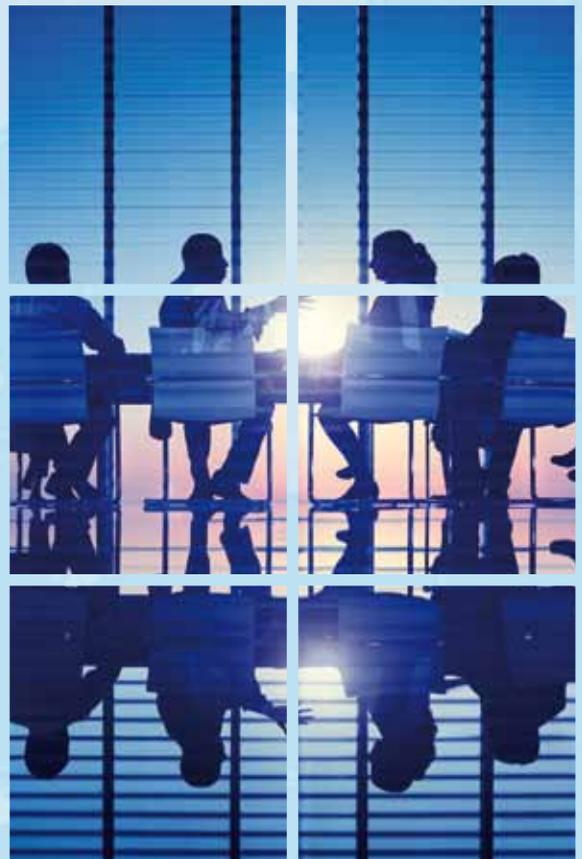
The present volume III *How to SET UP A BUSINESS* is dedicated to market entry procedures and strategies in regards to conducting business in Indonesia. It compiles information from many different sources, including publications, live interviews and case-studies, using the most recently available data in 2015, while reverting to previous years where the most updated information was either not available or inaccessible. This publication is part of the EIBN Business Guide series, which is also comprised of volume II *How to EXPORT & SOURCE* and volume I *Introduction to THE INDONESIAN MARKET*.

TABLE OF CONTENT

INTRODUCTION	1
1. SETTING-UP A BUSINESS IN INDONESIA	7
1.1 Balancing Business Potential and Regulations	7
1.2 Investment Coordinating Board of Indonesia (BKPM)	8
1.3 Establishing a Business	9
1.3.1 Setting up a Representative Office.....	9
1.3.2 Setting up a PT PMA	11
1.3.3 Setting up an Import/Export Company.....	14
1.3.4 Establishing a Factory	16
1.3.5 PT PMA & Representative Office	16
1.4 Market Entry Strategies and Partnerships	17
1.5 Investment Laws and Restricted Industries	21
1.6 Taxation	21
1.7 Human Resources and Employment	22
1.8 Protect Your IPR	23
1.9 The Negative Investment List.....	24
2. LEGAL FRAMEWORK AT A GLANCE	29
2.1 Introduction	29
2.2 Audit and Accounting	30
2.3 Land Rights	30
2.4 Trademark Law	32
2.5 Currency Regulations	33
2.6 Dispute Settlement	33
3. TAXATION SYSTEM	37
3.1 Introduction	37
3.2 Tax Treaties and Double Taxation Agreements	38
3.3 Corporate Income Tax.....	39
3.4 Tax Incentives	40
3.5 Value Added Tax	41
3.6 Reporting Taxes and Fines	44
3.7 Summary of Indonesian Taxation	45
4. LABOUR AND HUMAN RESOURCES	51
4.1 Introduction	51
4.2 Terms of Employment – Legal Requirements and Duration.....	52
4.3 Regulations Influencing Employment	57
4.4 Regulations Regarding Employing Foreign Nationals	59

5. INTELLECTUAL PROPERTY RIGHTS IN INDONESIA	63
5.1 Introduction	63
5.2 How to Protect your Intellectual & Industrial Products.....	64
5.3 IPR Statistics in Indonesia.....	66
6. CONCLUSION	71
CONTACTS	73
REFERENCES	76
ABBREVIATIONS	79

SETTING-UP A BUSINESS IN INDONESIA



1. SETTING-UP A BUSINESS IN INDONESIA

1.1 BALANCING BUSINESS POTENTIAL AND REGULATIONS

LIKE MOST DEVELOPING AND EMERGING COUNTRIES, INDONESIA CONTINUOUSLY SEEKS TO FIND A BALANCE BETWEEN ENSURING THE MAXIMUM BENEFIT FROM FOREIGN INVESTMENT FOR THE LOCAL ECONOMY, ATTRACTING CAPITAL AND EXPERTISE, AND PROTECTING LOCAL COMPANIES AGAINST FOREIGN COMPETITION. DRIVEN BY POLITICAL PRESSURES, THE REGULATIONS ON FOREIGN INVESTMENT OCCASIONALLY CHANGE.

Indonesia's consumer market, abundant workforce, growing economy, changing society and strategic position as a potential hub for ASEAN, places the nation among Asia's top investment destinations. In recent years, various administrations have recognised Indonesia's potential for foreign investment, while simultaneously being cautious of opening up the market. Overall, recent policy strategies indicate that Indonesia is not ready to give up on, or reduce, the burden of its complex foreign investment regulations. In fact, foreign companies are not allowed to invest in certain business sectors and in most cases the procedure of licensing products and services remains a complex matter. Nevertheless, measures have been taken to facilitate procedures related to foreign-owned businesses and investment. This has been witnessed in the re-structuring of the Investment Coordination Board's mandate (BKPM, *Badan Koordinasi Penanaman Modal*) and in the progressive deregulation and liberalisation of some sectors of the economy.

These are signs that Indonesia is taking a strong stance towards fulfilling its long-term goals, namely to establish itself as Southeast Asia's leading economic powerhouse and to become the 7th largest world economy by 2030¹

Business Entities for Foreign Investors

According to expert's experience, the easiest way for a foreign company to establish an economic presence, or to do business in Indonesia, is by direct investment in the form of a legal entity incorporated under Indonesian law.

This legal entity can be either established as a legally independent subsidiary of the foreign company, in the form of a Representative Office if the branch is merely an extension of its foreign mother company, or a limited liability company (PT PMA, *Perseroan Terbatas Penanaman Modal Asing*). Any plans by foreign (and domestic) investors need to be approved by BKPM, the government agency that has been given authority by most of the ministries to review and approve investment. Moreover, BKPM is able to facilitate meetings with representatives of the ministries and to ensure that companies can gather the necessary information to be ready for a face-to-face conversation.

1.2 INVESTMENT COORDINATING BOARD OF INDONESIA (BKPM)

BKPM is a non-departmental government institution commissioned to formulate government policy in the field of both domestic and foreign investment in a wide range of sectors. BKPM was established by the Investment Law of 2007. Previously, investment plans in the financial, energy and mining sectors have been reviewed separately by other entities, but now they are being gradually transferred and integrated within BKPM authority.

The service and speed of the approval process have generally improved in recent years. Some of the ministries are, however, trying to regain some control over the investment procedures in their sector by instructing the BKPM to incorporate additional requirements. These requirements sometimes include a consultation with a ministry before an approval can be issued. As a result, these additional administrative hurdles can complicate the procedure and result in delays.

In order to simplify Indonesia's investment procedures BKPM has launched a one-stop-shop integrated service and an electronic automation platform for investment licenses and non-investment licenses (SPIPISE-NSWi, *Sistem Pelayanan Informasi dan Perizinan Investasi Secara Elektronik-National Single Window*). Please refer to our contacts section.



To learn more about BKPM, please refer to Business Guide Volume I *Introduction to THE INDONESIAN MARKET*, Chapter 3 "Indonesia's Special Economic Zones and Industrial Estates".

¹ McKinsey Global Institute, *The Archipelago Economy: Unleashing Indonesia's Potential*, 2012, preface

1.3 ESTABLISHING A BUSINESS

The following paragraphs provide an overview of the procedures and regulations in terms of registering your business, licensing, as well as other essential benefits and challenges, to be considered before conducting business in Indonesia.

1.3.1 SETTING UP A REPRESENTATIVE OFFICE

The fastest procedure to obtain a legal presence in Indonesia is to establish a Foreign Company Representative Office, which is easier than setting up a limited liability company.²

As clearly stated in Indonesian legislation; *“a foreign company or a group of foreign companies may open a Rep. Office in Indonesia to represent and manage its / their interests, or to prepare the establishment and development of their business in Indonesia.”*³

The Representative Office is **not** allowed to:

- Participate in managing a foreign company's operations in Indonesia
- Generate any revenue in the country
- Engage in any agreement or transaction for the sale or purchase of goods and services with an Indonesian company or Indonesian national. As such, the main foreign company is the only one through which all transactions can be handled.

Representative Office's activities are limited to:

Supervising, coordinating, managing and acting as an intermediary for the foreign company's business interests in Indonesia. This can be related to preparation operations towards establishing a PT PMA in the future.⁴

There are three types of representative office in Indonesia: a general Foreign Representative Office (KPPA, *Kantor Perwakilan Perusahaan Asing*), and a Representative Office of a Foreign Trade Company (K3PA, *Kantor Perwakilan Perusahaan Perdagangan Asing*) and a Representative Office of a Foreign Construction Company (BUJKA, *Badan Usaha Jasa Konstruksi Asing*).

² Indosight, *Opening a Representative Office in Indonesia*. 2014

³ Presidential Decree No. 90/2000, Art. 1 Decree of the Chairman of BKPM No. 2001

⁴ Indosight, *Opening a Representative Office in Indonesia – Roles and limitations of a Representative Office*, 2014

Representative Office (KPPA), Registration Procedures, Operations, and Benefits



A Representative Office License is only valid for 3 years with the possibility of a 2-year extension (one year per extension). At the end of the 5 year period, the Representative Office is permitted to continue its operations, under the expectation that the Representative Office be will transferred into a PT PMA, bringing real investment into the country.⁵

The KPPA provides a certain time frame in which to register for a PT PMA, or until the volume of business reaches the requested threshold⁶. This is because Representative Offices are allowed to engage in sales and products, as well as service delivery on behalf of the mother company. However, every payment has to be made through the latter (no taxable income can be generated⁷).

In addition, it is worth mentioning that KPPAs can be launched in order to operate in sectors and industries where foreign direct investment would be otherwise restricted by the Negative Investment List. Moreover, the Representative Office is eligible to apply for temporary stay permits (KITAS, *Kartu Izin Tinggal Terbatas*) and to hire foreign experts.⁸

⁵ Indosight, *Company Registration in Indonesia*, 2015. step 2

⁶ Indosight, *Opening a Representative Office in Indonesia – Benefits of Opening a Representative Office*. 2014

⁷ Indosight, *Opening a Representative Office in Indonesia – What is a Representative Office*. 2014

⁸ Indosight, *Opening a Representative Office in Indonesia – Shareholders and Corporate Structure*, 2014

Representative Office for Trading Purposes (K3PA)

- Suited to trading companies that can handle their transactions without an Indonesian branch and only need low level of legal presence in the country.
- Establishment procedures and operational requirements are equally applicable as KPPA.
- K3PA is neither allowed to generate revenue, nor eligible to participate in tenders or to sign any contract on behalf of the mother company.
- Time limit of five years
- License is valid for three years. Renewable two times for one year.

Representative Office for Construction Services (BUJKA)

- Available for companies conducting activities in the construction area
- May engage in business agreements, projects and tenders
- License of the Representative Office is valid for three years and can be extended
- A recommendation from the supervisory team of the Ministry is necessary for the re-registration with the National Construction Agency (LPJK, *Lembaga Pengembangan Jasa Konstruksi*)
- No limitations for this kind of Representative Office when bidding in public tenders
- Representative Office must establish a partnership with an Indonesian construction company and may only execute a project categorised as a large project



Construction Consultant

Fee of US\$5000 to be paid for a construction consultant

Construction Contractor

Fee of US\$10,000 to be paid for a construction contractor

1.3.2 SETTING UP A PT PMA

The legal entity that enables foreign investors to have a stable presence in Indonesia is the PT PMA. The acronym PT (*Perseroan Terbatas*) categorizes the company as a limited liability company, while PMA shows that it is specifically funded by foreign investment (*Penanaman Modal Asing*).

A PT can be established either in the form of a “closed” company (PT, *Perseroan Tertutup*) or in the form of a publicly-listed company (TBK, *Perseroan Terbuka*).

The legal status of a PT PMA is the same as a PT entirely owned by Indonesians, thus a PT PMA should be treated equally under Indonesian law. In reality however, there is a tendency to give companies that are fully or majority owned by Indonesians preference in government contracts.⁹

⁹ In the oil and gas industry, for instance, government contracts (based on the PTK 007 2nd revision) will be given preferentially to companies where more than 51% shares are held (directly or indirectly) by Indonesian shareholders, when applying for a government tender.

A foreign investor may decide to establish a fully self-funded PT PMA, or to incorporate it in a partnership with an Indonesian investor, aiming to circumvent some restrictions found in the Negative Investment List.

PT PMA Registration Procedures, Business Licences and Permits

Under Article 7(1) of the Company Law (Law of the Republic of Indonesia No. 40/2007), companies should be established by two or more shareholders (they can be both individuals and/or corporate entities), based on a notarial deed drawn up in Indonesian. The new legal entity is mandated to appoint at least one commissioner and one director.

PRIOR

- Determine the business plans and area of operation in investment plan
- Check whether Negative Investment List applies
- Prepare the deed for the Articles of Association in the notary
- Submit the investment plan & apply for Principle License at BKPM

DURING

- Submit the Deed of Establishment to the Ministry of Laws and Human Rights for approval
- Obtain Certificate of Domicile Letter from the local government
- Obtain Tax Identification Number, Taxable Entrepreneur Number
- Obtain Registration in the Company Registry
- At this stage investment activity has to be reported to BKPM every 3 months

AFTER

- PT PMA should apply for a Permanent Business License (IUT) with the BKPM after fulfilling 80 % of the Investment Plan. IUT enables the company to receive additional licenses, such as the Import License (API) and Construction License.
- After the principle and business licenses are granted, the company is allowed to produce commercial goods or provide services in Indonesia
- At this stage investment activity has to be reported to BKPM every 6 months

Principle License

After the initial process is completed and BKPM has approved the company's Investment Plan, the company will have its Principal License and will be able to begin operations. The Principle License has a maximum validity of 3 years for manufacturing companies and only one year for services and trading companies. However, the latter could vary, depending on the scope of commodities that are reviewed by BPKM on a case-by-case basis.

The Principle License enables the Company to:

- Open a corporate bank account in Indonesia
- Buy assets
- Hire staff and proceed with applying for temporary visa permits for foreign workers

Capital Requirements

PT PMAs in all industries are required, by legislation, to set a minimum capital investment in order to obtain approval of their operations from BKPM.

This amount currently stands at IDR 10 billion or its equivalent amount in US\$, according to the exchange rate at the time. The relatively high threshold is set to protect local small businesses from foreign competitors. The value of the assets stated in the investment plan, in so far as it reaches the minimum capital threshold for the company to be eligible for incorporation under Indonesian Law, may also include assets such as financed equipment and machinery, but excludes land and buildings.

However, 25% of the minimum capital is the only part of the total sum that needs to be delivered as an “initial” capital payment. In order to finalise the incorporation process, the PT is only required to produce proof of the aforementioned investment amount. Given that companies originating in another country are not permitted to open an Indonesian bank account, the only guarantee necessary is a notarial statement that certifies that the investor effectively holds the funds which are required to support the future investment plan.¹⁰

If an established company makes changes in its shareholder structure, an official approval (subject to BKPM and the Ministry of Human Rights) of the entire restructuring is required.¹¹

Structure of PT PMA

General Meeting of Shareholders

Highest authority which is not given to Board of Commissioners and Directors to elect Board of Directors and approve its annual report. Shareholders are “the owners” of the company.

Board of Directors

Has the authority and full responsibility of running daily operations, as well as its legal representation, in accordance with the provisions and articles regarding rules of association.

Board of Commissioner

Has the responsibility to conduct a general and/or specific supervision, in accordance with the articles of association, as well as providing counsel to the Board of Directors.

Corporate Compliance

Every PT PMA is obliged to report its investment activities by submitting an Investment Activity Report (LKPM, *Laporan Kegiatan Penanaman Modal*) to BKPM.

The LKPM is to be submitted every 3 months if the PT PMA has not completed its incorporation process. After this stage, the LKPM is due every 6 months. The objective of this report is to facilitate the monitoring of BKPM, keeping track of foreign investment activities and solving problems reported by companies while doing business in the country.

¹⁰ Indosight, *Foreign Owned Company Registration In Indonesia - Minimum Capital and Investment Plan*, 2014

¹¹ Indosight, *Company Restructuring in Indonesia - Getting Approval to the shareholder changes*, 2015

LKPM should include:

- Company's description (Name, deed of establishment, tax registration number (NPWP, *Nomor Pakok Wajib Pajak*), line of business, location and contacts)
- Licensing and "investment non perizinan"¹²
- Realisation of investment (realised value, expenditures, source of funding)
- Labour force employed.

Companies for which capital investment activities cover more than one municipality/city must submit one LKPM for each location in which they conduct business. The same applies to each business field in which they operate, so a number of separate LKPMs must be submitted. A copy must also be sent to the BKPM Deputy for Control of Capital Investment Implementation.¹³

In the particular case where a company has undergone a merger, the surviving entity should submit the LKPM for all capital investment activities resulting after the merger.¹⁴

BKPM requires that companies appoint a designated person to be responsible for making and submitting the LKPM.

The periodical payment of tax liabilities to the State Treasury must be made through a tax-payment bank designated by the State Treasury, while relevant tax returns have to be filed through a tax office. Depending on the tax obligation, the filing of tax returns must be undertaken monthly and/or annually.¹⁵



To learn more about regulations governing taxation, please consult the section "Taxation System" in chapter 3 below.

1.3.3 SETTING UP AN IMPORT/EXPORT COMPANY

In order to protect the local market and entrepreneurs, the Indonesian government has set forth a limitation that obliges foreign import companies to trade in only one category of goods, as classified in the 21 sections of the official coding system.¹⁶

To be operational, an import company has to go through the same registration process as any PT PMA. The only differences are:

- When applying for the Principal License, a documentation on the location of the warehouse must be attached.
- While applying for the Permanent Business License (IUT, *Izin Usaha Tetap*), a copy of the warehouse agreement must be provided.

¹² Literally investments which don't require a specific authorization, BKPM Regulation of the Republic of Indonesia No.5 of 2013 on Guidelines and Procedures for Licensing and Investment Allowance.

¹³ Indosight, *Investment Activity Report To Investment Coordinating Board*, 2013

¹⁴ Ibid.

¹⁵ PWC, *Indonesian Pocket Tax Book*, 2015

¹⁶ Indosight, *Setting Up An Import Company In Indonesia*, 2013

A foreign import company must apply for the following documents before being operational:

- Permanent Business License (IUT)
- Importer Identification Number (API, *Angka Pengenal Impor*)
- Recommendation letter from the Ministry of Law and Human Rights
- Approval from the Ministry of Trade
- Approval from the National Agency of Drug and Food Control (under certain circumstances).

Business Licenses

Each company can obtain an import license for only one product category. To begin operations, the company must obtain an Importer Identification Number (API), according to the MOT regulation No.45/M-DAG/PER/9/2009.

There are several types of API. The main ones are:

- API-U (*Umum*) for importers involved in trading activities only
- API-P (*Produsen*) for importers that act as producers in industrial or manufacturing activities
- API-T (*Terbatas*) for importers that require incoming goods for production supported by a BKPM facility
- API-K (*Khusus*) for importers acting as contractors

API licenses are to be renewed every 5 years. Importation without an API can only be done after obtaining a permission from the Directorate of Import at the Ministry of Trade (MOT), granted only for certain goods, temporary importation, promotional goods, self-consumed goods, and goods for research and development purposes.¹⁷

Any company that wants to import or export its products to or from Indonesia must also obtain a Customs Registration Number (NIK, *Nomor Identitas Kepabeanan*) from the Directorate General of Customs and Excise (DGCE).¹⁸

Companies that import commodities such as rice, electronic products, sugar, corn, soybeans, toys, footwear, and textiles, should obtain a Special Importer Identification Number (NPIK, *Nomor Pengenal Importir Khusus*).¹⁹

Companies that import electronic products, ready-made garments, toys, footwear, food & beverage products, cosmetics, and traditional and herbal medicines are required to have a Registered Importer Number (ITPT, *Importir Terdaftar Produk Tertentu*).²⁰

For a specific set of goods, special ministry recommendation letters or certificates are requested in order to import.

¹⁷ Indosight, *Setting Up An Import Company In Indonesia*, 2013

¹⁸ The NIK can be put on hold (resulting in the inability to import) by the DGCE in cases where: no customs activity is performed for 12 consecutive months; data is misreported to the DGCE; the importer is under investigation; the business license has expired.

¹⁹ Indosight, *Setting Up An Import Company In Indonesia*, 2013

²⁰ Ibid.

1.3.4 ESTABLISHING A FACTORY

When attempting to set up a factory for manufacturing purposes, it is advisable that the following elements are taken into careful consideration:

- Different types of land title
- Lease Agreement
- Purchase of property
- Infrastructure
- Conversion of land title
- Permits
- Work Force



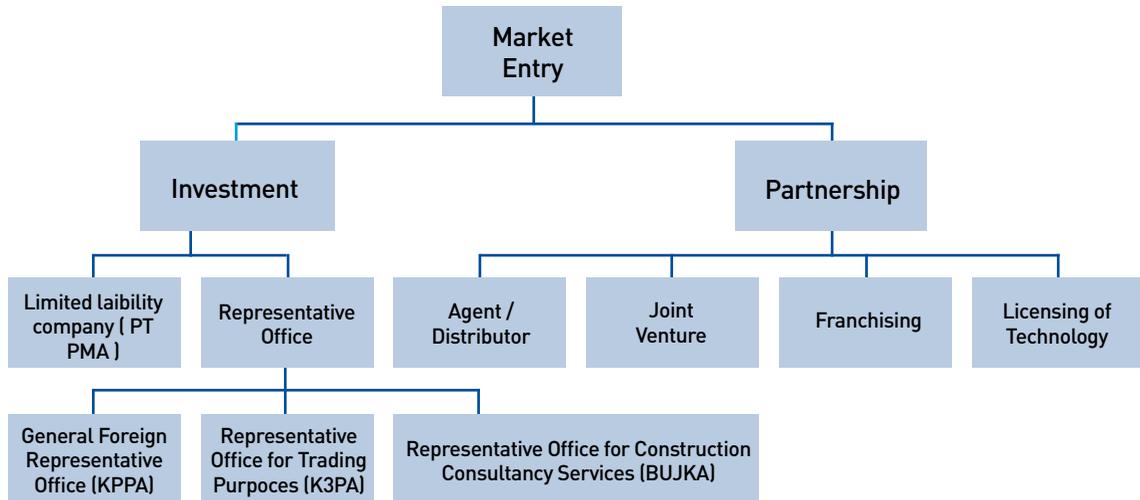
A detailed dissertation about Special Economic Zones and Industrial Estates in Indonesia can be found in Business Guide Volume I, *Introduction to THE INDONESIAN MARKET*, Chapter 3 “Indonesia’s Special Economic Zones and Industrial Estates”.

1.3.5 PT PMA & REPRESENTATIVE OFFICE

In order to set up a PT PMA & Representative Office there are certain requirements to be met.

REQUIREMENT	PT PMA	Representative Office
Capital	Minimum total capital investment US\$1 mn	No minimum capital requirement
Entity	Stand alone business entity	Representative office of the main company
Establishment	Minimum two stakeholders	No shareholders required
Revenue	Generating revenue	Not generating revenue
Business Activity	Activity as any other local company operating in Indonesia	Limited activities to marketing, research, promoting
Business License	Permanent business license	License limited to 5 years
Procedure Facility	Requires different stages, estimated timeframe is around 6-8 months	Estimated time needed is 3-4 months
Investment Area	Restricted in some areas based on Negative Investment List	Open in sectors where the foreign direct investment is restricted

1.4 MARKET ENTRY STRATEGIES AND PARTNERSHIPS



Agents and Distributors

Directly selling final products to end-users without the intervention of any external distributor is called a Multi-Level Marketing Structure and is limited to certain types of products. It also requires the importer to be in possession of a distributor license. For all other products, establishing a partnership with a reliable Indonesian distributor, or agent, that understands the complexities and modus operandi of doing business in Indonesia is of crucial importance to expand sales in the country and reduce the time required to understand local market conditions.²¹ A good distribution partner can also ease the burden during importation procedures and customs clearance.

Many Indonesian importers represent multiple foreign manufacturers and product lines. Generally, a European company should select an agent that handles products complimentary to its own business, in order to enable the agency to tap into its existing customer base.²² In this respect, especially for industrial equipment and machinery, the competencies and the distributor/agent's staff are fundamental in ensuring a certain degree of after-sales technical support.

With some exceptions, foreign companies wishing to sell their products in Indonesia are required to appoint an Indonesian agent or distributor in accordance to the Ministry of Trade (MOT) Regulation No.30/1977.

MOT Regulation No. 11/M-DAG/PER/3/2006 on Guidelines and Procedures for the Issuance of Registration Certificates for Agents/Distributors of Goods/Services sets out procedures and guidelines for registering agencies and distributors handling goods and services in Indonesia.

²¹ U.S. Department of Commerce, *Doing Business in Indonesia: 2013 Country Commercial Guide for U.S. Companies*, 2013

²² Ibid.

Upon registration, the MOT will issue a registration certificate (STP, *Surat Tanda Pendaftaran*) to the registered agent/distributor. The STP will be valid for two years from the date of issuance, unless the agency/distribution agreement determines a shorter appointment period.

There is a clear distinction between agents and distributors. An agent is an intermediary of the foreign principal, while a distributor acts for itself in marketing and selling the principal's goods and services. Amongst others, the agency/distributorship agreement (notarised by a public notary), and a statement letter from the Attaché of Trade of the Indonesian Diplomatic Representation in the principal's country of origin, have to be submitted to the MOT.²³

Please note that the appointment of an Indonesian agent/distributor requires diligence, as it is difficult for a foreign company to annul an ineffective relationship.²⁴

In the case of a sole distributorship or agency agreement, if the principal terminates the contract prior to the expiration of an STP and seeks to appoint a new distributor for the same territory, "the MOT will not issue an STP to the new distributor until a clean break is achieved"²⁵. This requires that any agency contract be terminated by mutual consent only, unless a clause permitting the severance was inserted in the original agency agreement.

It is advisable to establish a trial period of at least six months, given that termination upon the will of only one party usually involves a reimbursement for the remaining length of the contract to the other party.

Joint Venture

There is no single legal definition of a Joint Venture (JV). However, a JV is often explained as partnership of two or more parties (from separate jurisdictions) to "exchange resources, share risks and divide rewards from a joint enterprise".²⁶

A local partner is essential for success when entering a joint venture in Indonesia.²⁷ A local partner would possess the knowledge and contacts, as well as a more realistic assessment of the risks involved, which may be indispensable for the success of the venture.

A detailed written legal agreement of the parties engaging in a JV is fundamental, notwithstanding the weakness of the Indonesian law enforcement. A typical JV agreement in Indonesia is supposed to include:²⁸

- The governing law of the contract (which may not necessarily be Indonesian Law)
- Provisions regarding optional amendments of the contract
- Matters regarding the transferability of shares and control of the company
- Description of management decision procedures, obligations of the parties, number of directors, and the right of the founders to appoint those directors

23 Atradius, *Trade Successfully with Indonesia*, 2013

24 U.S. Department of Commerce, *Doing Business in Indonesia: 2013 Country Commercial Guide for U.S. Companies*, 2013

25 Elsevier Business Intelligence, *Insider Analysis From Baker & McKenzie on Terminating Distribution Agreements in Indonesia*, Pharma Asia News, November 11 2013

26 Stewart M.R. & Maughn R. D., *International Joint Ventures, A Practical Approach*, Davis Wright Tremaine, 2011

27 U.S. Department of Commerce, *Doing Business in Indonesia: 2013 Country Commercial Guide for U.S. Companies*, 2013

28 Eddtmurthy I & Smith D., *A Legal Primer on Joint Venture Agreements in Indonesia*, UP.DATE Journal of BritCham, 2013, p.22

- Dividend policy and the percentage of profits to be claimed
- Confidentiality of know-how and intellectual property issues
- Arbitration clauses
- The conditions for terminating the JV, a waiver of Articles 1266 and 1267 of the Indonesian Civil Code.

Franchises

Franchising is intended as an arrangement where one party (the franchiser) grants another party (the franchisee) the right to use its trademark or trade-name, as well as certain business systems and processes to produce and market a good or service, according to certain specifications. The franchisee usually pays a one-time franchise fee and a percentage of the sales revenue as royalties. The concession holder's essential benefits include:

- Immediate name recognition
- Tried and tested products
- Standard building design and décor
- Detailed techniques in running and promoting the business
- Employee training
- Ongoing support in promoting and upgrading products.

The franchiser, on the other hand, gains rapid expansion of business and earnings at minimum capital outlay.²⁹

Franchise partnerships transmit know-how and managerial expertise to the franchisee, while at the same time allowing the franchiser to quickly establish a presence in the country to push name recognition and strengthen its marketing.³⁰

According to the latest regulations every franchise business is required to obtain a Registration Certificate (STPW, *Surat Tanda Pendaftaran Waralaba*) from the Ministry of Trade, stating its business activities. More importantly, franchise businesses are obliged to use local components for a minimum of 80% of their raw ingredients, business facilities and merchandise. Additionally, Indonesia also constrains the net number of company-owned outlets established in the country.³¹

A Steering Committee for Franchises and Licenses (WALI, *Perhimpunan Waralaba dan Lisensi Indonesia*) has been established to facilitate the access of foreign franchisors to the domestic market.

In Indonesia, the most relevant regulations are:

Government Regulation No.42/2007 on Franchising and its Implementation Procedures

Decree of the Director General of Domestic Trade No.138/PDN/KEP/10/2008 on Technical Guidelines for the Implementation

²⁹ IFA Educational Foundation, *An Introduction to Franchise*, 2010, p. 10

³⁰ U.S. Department of Commerce, *Doing Business in Indonesia: 2013 Country Commercial Guide for U.S. Companies*, 2013

³¹ Ibid.

Ministry of Trade Regulation No.53/M-DAG/PER/8/2012 on Franchise Organization

Ministry of Trade Regulation No.68/M-DAG/PER/10/2012 on Franchises for Modern Store Business on Restaurant and Café Businesses

Regulation Number 07/M-DAG/PER/2/2013 on Development of Partnerships in Franchising Food and Beverages Services

Licensing

A licensing agreement is a written contract which entitles the owner of a copyright, know-how, patent, trademark, or other intellectual property, to permit the licensee to make commercial use of the owner's products or services. Such agreements usually specify the scope or field of the licensee and limit whether the license is exclusive or non-exclusive, as well as whether the licensee should provide royalties to the original owner in exchange.³²

In Indonesia, trademark license agreements are regulated by Trade Mark Law no. 15/2001. A license agreement has to be submitted to the Directorate General of Intellectual Property Rights. This is a mandatory protection measure for businesses, as a missing record makes the agreement null and void before court.

Electronic Commerce

There is strong potential for growth in e-commerce because Indonesians – especially young people – are avid users of social media and the internet. This conjuncture has motivated the emergence of a growing number of online businesses, as the market offers a broad range of opportunities in e-commerce technology, applications, products and services.³³

While the potential of this sector is undeniable, there are still unresolved issues in getting the ordered goods delivered, as remote areas lack clear addresses and maps are not as detailed as they are supposed to be, which creates risk for the investor.

Additionally, the comprehensive regulatory framework is not sufficient to govern online transactions. Its growth has been somewhat conditioned by law No. 11/2008 on Electronic Information and Transactions. The regulation's intention was only to promote open and fair electronic activities and commerce in a broader sense and does elaborate more specifically in the area of e-commerce.

Under Presidential Decree No. 39/2014, the government included e-commerce among the industries closed to foreign investment, requiring e-commerce businesses to be wholly owned by local parties. However, this does not affect online marketplaces, due to their role as an intermediary connecting the buyer and seller.

A new law in Trade No.7, launched in 2014, has included e-commerce as an issue to be regulated as an integral part of Indonesian trade policy. However, further specific regulation has not yet been put in place. This "legal grey zone" could also be a reason why Sequoia and Softbank were able to invest US\$ 100 million in Tokopedia at end of 2014.³⁴ Apparently there is a somewhat obvious gap in the legislation which allows smart investors to circumvent the closed investment regulation.

32 Cameron D. M. & Borenstein R., *Key Aspects of IP License Agreements*, 2013

33 Financial Times, *Indonesia's Ecommerce Awakens*, Feb 21 2014

34 Tech in Asia, *How foreign VCs are sneaking past Indonesia's ecommerce laws*, September 22 2015

1.5 INVESTMENT LAWS AND RESTRICTED INDUSTRIES

Indonesia's Coordinating Investment Board (BKPM) is the main implementing agency with consulting and policy formulating functions in the area of investment.

Even though Indonesia has formally replaced its investment approval system with an investment notification system, notaries in the country will not establish companies with a foreign share if there is no approval from BKPM. Therefore, practice dictates that every foreign investment requires the approval of BKPM. Approvals are issued in the form of a Principle License.

Foreign ownership restrictions are regulated by the Investment Law No. 25/2007 and the Presidential Decree No. 39/2014.

Indonesia's Negative Investment List, determines a large number of sectors that are either wholly or partially banned to foreign investment, but with some exceptions for SMEs and cooperatives. If the business activity is not mentioned in the list, 100% foreign ownership is allowed. The Codes for Standard Classification of Indonesia Business Sectors (KBLI, *Klasifikasi Baku Lapangan Usaha Indonesia*) are the crucial indicator to determine the categorisation and possible foreign ownership restriction that applies to a proposed investment.

Regarding changes made to the shareholder's structure, BKPM and the Ministry of Human Rights has the right to interfere, in order to ensure foreign ownerships are ruled out in accordance to the Negativ Investment List (DNI, *Daftar Negatif Investasi*).³⁵



To learn which sectors are restricted to foreign investment, please consult the table in section 1.9 below.

Investment in Indonesia is regulated mainly by the Investment Law No.25/2007 and its implementing regulations:

Presidential Decree No. 39/2014 (Negative Investment List)

Minister of Trade Regulation Number 01/M-DAG/PER/1/2012 concerning Delegating Authority to Issue Investment Permits to the Head of the Indonesia Investment Coordinating Board Under the One-Stop Integrated Services Framework for Investment ("MR No. 1/2012")

Head of BKPM Regulation No. 5/2013, in conjunction with No. 12/2013 ("Head of BKPM Regulation"), concerning the Guidelines and Procedures on Investment License and Non-licensing

1.6 TAXATION

Taxable business profits are calculated on the basis of normal accounting principles and modified by certain tax adjustments. Since 2010, a flat rate of 25% applies for the purposes of corporate income tax.

³⁵ Indosight, *Company Restructuring in Indonesia – Getting Approval to the Shareholder Changes*, 2015

Permanent establishments are subject to a branch profits' tax of 20%, or a lower rate under a tax treaty on net after-tax profits, in addition to corporate income tax.

Most expenses incurred in deriving business income may be deducted, including wages, fees, interest, rent, royalties, travel expenses, bad debts, insurance premiums, administration costs and levies, depreciation and amortization, operating losses and contributions, and approved pension funds. Non-deductible items include the payment of dividends, unapproved reserves, fringe benefits, charitable contributions and the income tax itself.

Losses can only be carried forward for five years, although it may be extended to 10 years in certain sectors and regions. However, the carry-back of losses is not permitted. For investments in certain sectors and regions, as well as in Integrated Economic Development Zones (KAPET, *Kawasan Pengembangan Terpadu*), BKPM may also recommend that the tax office provide additional tax incentives to an investing company, such as a deduction of 30% of the invested amount from the taxable profit over a period of six years, as well as accelerated depreciation schemes.³⁶

As mentioned above, the periodic payment of tax liabilities to the State Treasury must be made through a designated tax-payment bank (*bank persepsi*), and relevant tax returns must be filed through a tax office. Depending on which tax obligation, the payments and tax returns filing for a particular tax must be undertaken monthly and/or annually. These payments and filing obligations can also be conducted electronically.³⁷



To gain a deeper understanding about regulations governing taxation please refer to chapter 3 "Taxation System" below.

1.7 HUMAN RESOURCES AND EMPLOYMENT

All shareholders, directors and commissioners of a PT PMA are eligible to receive work and residence permits (usually referred to as a KITAS, *Kartu Izin Tinggal Terbatas*) in Indonesia. Once the PT has its Permanent Business License, it can issue work permits to foreign experts working in the company.³⁸

There is a legal option that allows foreign nationals that frequently come to Indonesia to do business without the need of permanent employment; the business visa. Most nationalities are eligible to apply for a multiple entry business visa after three visits, and are allowed to stay in Indonesia for the duration of 60 days per visit. The same visa can be extended for up to one year.

There are a few mandatory personnel costs that companies operating in Indonesia necessarily have to comply with.

³⁶ Indosight, *Company Restructuring in Indonesia – Getting Approval to the Shareholder Changes*, 2015

³⁷ Deloitte., *Taxation and Investment in Indonesia 2014, Reach, relevance and reliability*, 2014. pp. 8-9

³⁸ Indosight, *Company Registration In Indonesia – Visas and Work Permits*, 2013

Expense	Based on yearly salary	Compliance Necessary	Remarks
Tax	0-30%	Yes	Progressive tax bear by the employer
Health insurance	3-6%	No	Not strictly required by law, but expected by employees
Pension	5%	No	Private serviced, not mandatory for employers
13 th month	8%	Yes	Due every year, actual period depends on the religious calendar of the employee



More information regarding legal requirements in the area of employment are available in chapter 4 “Labour and Human Resources”.

1.8 PROTECT YOUR IP

Indonesian regulation on Intellectual Property (IP) is comprehensive and in accordance with international standards. However, trust on legal decisions of existing rights is not high. This phenomenon is frequently pointed out as one of the main factors discouraging foreign investment in Indonesia, particularly in relation to technology development. This is becomes immediately understandable with a glance at the software piracy rate in Indonesia, which was 84% in 2013, with an estimated commercial value of unlicensed software of US\$ 1,4 billion³⁹. Among the products which are most affected by the inconsistencies in the IPR system in Indonesia are audio and video, various software products, pharmaceuticals and original clothing and apparel, which are often copied by local parties.

Therefore, when operating in Indonesia, depending on the sector in which they operate, foreign investors commonly resort to self-protection strategies. These include working with local law firms and consultancies that can bridge the gap between the company and the authorities to organise action against piracy, and also awareness-raising activities, such as conferences on the negative economic and business impacts of Intellectual Property Right (IPR) infringements. In Indonesia, another protection measure that businesses should take into account is early registration. This will speed up the enacting of any possible IP protection laws in force in Indonesia, thus improving legal protection when the product comes into the market from the outset. However, companies have to take into account the fragility of the Indonesian judicial system and do the utmost to protect their IP through self-initiative. The ASEAN IPR SME Helpdesk can serve as a first step to provide appropriate information, materials, training and recommendations and to consult on companies’ IPR strategies. European SMEs may additionally use Helpdesk’s Enquiry Service by submitting IPR related questions in order to receive written, free of charge, personalised advice from an IP expert.

³⁹ BSA, *The Compliance Gap, BSA Global Software Survey*, 2014. P. 8

Again, an advisable step would be to find a reliable business partner with a network that can bring Indonesian legal expertise into the venture and to help create legally safe contractual and implementation mechanisms to ensure that IPs are effectively protected.



For more information on Intellectual Property Rights, please consult chapter 5 “Intellectual Property Rights in Indonesia”

1.9 THE NEGATIVE INVESTMENT LIST

The Negative Investment List, which is usually updated every three to four years, is the result of extensive negotiations between the various ministries. The ministries have delegated the power of approval in their respective areas, such as agriculture, construction, industry and telecommunications, to BKPM. The ministries try to control foreign investment, not only by setting maximum percentages of foreign ownership in the Negative List, but also by occasionally sending additional instructions to BKPM.

In April 2014, the Government of Indonesia issued a new decree as an amendment of a previous regulation, which permits higher foreign ownership, especially in projects related to public-private partnerships (PPP) with the government. Some sectors are adversely affected for its foreign capital ownership.

Sector	Expanded Foreign Ownership	
	Previous	New
Energy and Mineral Resources		
Electricity Generation > 10MW	Maximum 95%	Maximum 100% through PPPs during concession period.
Transportation		
i. Provision of Port Facilities	Maximum 49%	Maximum 95% through PPPs.
ii. Organization of periodic testing of motor vehicles, terminal development	Closed to FDI	Maximum 45%
Healthcare		
Pharmaceuticals Industry	Maximum 75%	Maximum 85%
Creative Economy		
Production of Films	Close to FDI	Maximum 51% for investors from ASEAN
Finance		
Venture Capital	Maximum 80%	Maximum 85%

Sector	Reduced Foreign Ownership	
	Previous	New
Energy and Mineral Resources		
Electricity Generation 1-10MW	Maximum 100% through PPP	Maximum 49%
Drilling Services on land	Maximum 95%	Closed to FDI
Drilling Services in sea	Maximum 95%	Maximum 75%
Oil and Gas support services	Maximum 95%	Closed to FDI
Installation of electric power utilization	Maximum 95%	Closed to FDI
Communication and Information		
Operation of Telecommunications	Maximum 100%	Maximum 49%
Services		
Data Communications Systems Service	Maximum 95%	Maximum 49%
Internet Services	Maximum 65%	Maximum 49%

The new Presidential Regulation No. 39/2014 defines the business areas regulated for foreign investment.⁴⁰ There are 3 different labels:

- Closed : Prohibited from conducting any investment activities
- Open with conditions: Business fields open with certain requirement in terms of capital ownership, specific location and specific licensing since the sectors are mostly reserved for SME's
- Others: Open to foreign investment without conditions.

The KBLI-codes determine the (sub) sector by which an investment has to be categorized. There are hundreds of KBLI-codes, and therefore hundreds of (sub) sectors. Nevertheless, it may be a matter of negotiation between BKPM and the investor what KBLI-code applies to a particular investment. This may depend on the specific combination of activities that the investing company plans to carry out.

Any sector not included in the DNI is to be considered fully open to foreign investment.

According to the Negative Investment List, the relationship between investments and the different fields in the Indonesian economy are generally arranged in the following categories:

- Fields closed to domestic or foreign investment
- Fields reserved for small-medium sized enterprises (SMEs)
- Fields allowed to partnerships with SMEs
- Fields allowed to limited foreign ownership
- Fields allowed in specific regions
- Fields requiring special permits
- Fields reserved for full domestic investments

⁴⁰ Presidential Regulation 39/2014 also provides a list of business fields closed, open and partly open to foreign investment.

- Fields allowed to foreign investments in specific regions
- Fields allowed to foreign investments with special permits
- Fields allowed to full domestic investments with special permits
- Fields allowed to foreign investments in specific regions, with special privileges to investors from ASEAN countries. Companies with a registered subsidiary in an ASEAN-member country can benefit from fewer negative list restrictions, as those subsidiaries are treated as an ASEAN entity by BKPM

Foreign companies that were approved under the previous Negative Investment List are not requested to comply with future less favourable DNIs and therefore will not have to divest or sell their shares.⁴¹

⁴¹ Indosight, *Foreign ownership restrictions and Negative Investment List – Grandfathering Principle*, 2014

LEGAL FRAMEWORK AT A GLANCE



2. LEGAL FRAMEWORK AT A GLANCE

2.1 INTRODUCTION

ALL COMPANIES (PTS) MUST COMPLY WITH THE INDONESIAN COMPANY LAW NO. 40/2007 ON LIMITED LIABILITY COMPANIES.

The Company Law regulates:

- The company establishment procedure
- Capital and shares
- The work plan, the annual report and the use of profits
- The General Meeting of Shareholders
- The Board of Directors and Board of Commissioners
- Merger, consolidation, acquisition, and corporate split
- Inspection of the company
- Social and environmental responsibilities (a mandatory obligation for a company having business activities in the field of and/or related to natural resources), and dissolution, liquidation, and termination of the company's status as a legal entity.

The Company Law is considered as a general legal “umbrella” for every company that runs its business in Indonesia. Other important sets of provisions and regulations binding European companies in their business activities are explained below.

Law No. 25/2007 on Investment
Law No. 19/2003 on State Owned Enterprise
Law No 40 of 2007 on Limited Liability Companies
Law No.32/2009 on Environment
Law No. 13 of 2003 on Employment
Law No. 8 of 1999 on Consumer Protection

2.2 AUDIT AND ACCOUNTING

The five types of limited liability companies (banks and financial institutions, publicly listed companies, companies issuing debt, state-owned companies and companies with assets of at least IDR 50 billion) must publish audited financial statements that have been approved by their general meeting of shareholders. Annual reports should be prepared in accordance with Indonesia's Generally Accepted Accounting Principles (PSAK, *Pernyataan Standar Akuntansi Keuangan*). Indonesia is in the process of adapting these rules to the International Financial Reporting Standards (IFRS).

The report must contain at least the following:

- A balance sheet and profit and loss statement for the preceding financial year with comparable figures from the previous year
- A report on the condition and performance of the company.

A company must maintain a register of shareholders, as well as a special register of members of the board of directors and board of commissioners, detailing the ownership of the company's shares. Changes in share ownership must be recorded in the register of shareholders and approved in the general meeting. The board of directors must submit an annual report to the general meeting of shareholders within six months of the closing of the company's books.

For tax purposes, foreign investment companies (PMA), permanent establishments, certain entities with foreign affiliations and companies that prepare their financial statements using the US dollar as the functional currency in accordance with PSAK 10, may maintain English language and US dollar bookkeeping, provided that an approval from the Minister of Finance is obtained. Contractors of oil and gas Production Sharing Agreement (PSA) and companies operating under Mining Contracts of Work need only to provide notification. A change in the method of bookkeeping is possible, but subject to approval from the DGT (Directorate General of Tax).

2.3 LAND RIGHTS

Land matters are under the jurisdiction of the National Land Agency (BPN, *Badan Pertanahan Nasional*) for all industries, except for mining and forestry. The agency was formed to administer all matters relating to the Basic Agrarian Law of 1960, such as the registration of land rights, the granting of rights and various permits to use the land. Other relevant laws and regulations are:

Spatial Planning Law No 24 of 1992

MPR Decree No IX of 2001 on Agrarian Reform and Natural Resource Management

Spatial Planning Law No 26 of 2007

Indonesian Land, which under the Constitution is owned by Indonesian people, can be categorised into two types. The first is 'adat' land (customary land), which is not registered with the relevant land office and for which all rights held will eventually be converted to certified land titles. The second category is 'certified' land, for which titles are registered at the local land office. There are six principle types of land rights held under this category:

- Right Of Ownership (HM, *Hak Milik*)
- Right Of Exploitation (HGU, *Hak Guna Usaha*)
- Right To Use A Building (HGB, *Hak Guna Bangunan*)
- Right To Use (HP, *Hak Pakai*)
- Right To Lease (HS, *Hak Sewa*)
- Right To Clear Land And Collect Forest Products – *Hak Membuka Tanah dan Memungut Hasil Hutan*

Renewal or extension of rights on expiry of the initial term is made via an application to the National Land Agency and is subject to the payment of a fee. An application must be submitted one year before the expiry of the term. Although the law is silent in regards to the period after the expiry of the extended term(s), consensus indicates that a land right can be extended if there has been no infringement of the conditions attached to its usage.

All transactions concerning the transfer of land rights must be done via deeds executed before the land deed registrar (PPAT, *Pejabat Pembuat Akta Tanah*) administering the concerned territory. In addition, the transfer must be registered in the regional office of BPN.

A land title deed is known in Indonesia as a *Sertifikat Tanah* and is always accompanied by a survey certificate known as *Surat Ukur*, which documents the location and dimensions of the land. Land transfers and land title deeds are drafted by the PPATs, who are very commonly also notaries. PPATs are easy to find even in the smallest towns in Indonesia. Most of a PPAT's work involves land transfers (in the case of sale or inheritance), land registration and land disputes.

Although there is no regulation stating that contracts have to be drawn up in Indonesian, it is recommended to use Bahasa Indonesia in contracts and agreements to prevent later arguments that the local partner did not fully understand the content.

The vast majority of land in Indonesia is, in fact, not registered at the BPN and is held under traditional title (*Hak Adat*). Occasionally, provincial governments will carry out publicity campaigns urging people, especially those in non-urban areas, to survey and register their land. However, this can be very problematic, as lands are often "owned" by big families, resulting in disputes over ownership.

Most land in areas of interest to foreigners and PMA companies will already have some form of clear land title.

2.4 TRADEMARK LAW

The trademark regime in Indonesia has been established under the Trademark Law No. 15/2001. The aforementioned regulation is in line with the general standards set by the international treaties which have been ratified by the Indonesian government, namely:

- The Trademark Law Treaty
- The Paris Convention for the Protection of Industrial Property
- The World Intellectual Property Organization Convention
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Indonesia recognizes “well-known” trademarks (on a case-by-case basis), but only to the extent that they may be used to prevent a third party from registering a similar trademark, at least in theory. It is not rare that “bad-faith” (intentional registration of pre-existing intellectual property) registrations occur. Legal remedies are not easily available for these situations, which often result in expensive procedures for the rightful proprietors, in order to cancel these bad-faith registrations in the commercial court.

In addition, Indonesian legislation does not yet protect non-traditional trademarks such as three-dimensional trademarks, even though new trademark legislation is in the process of being drafted in order to prepare Indonesian IP system for the accession to the Madrid Protocol in 2015.

If looking to enforce IPR in Indonesia it is crucial that IP rights owners are aware of the corruption vulnerabilities of the Indonesian authorities and how to expose violations if faced with such a situation. An Indonesian lawyer may be the best source to obtain a corruption risk assessment when enforcing rights via the authorities.

Because IPR enforcement in Indonesia can still be problematic, it is essential that companies are registered in-country, so that they are entitled to every legal resource available. IPR are territorial in nature, meaning that registrations in one country’s jurisdiction are not automatically enforceable in others. Therefore, registrations in multiple countries are necessary, particularly for businesses looking to internationalise. Indonesia operates under a “first-to-file” system, meaning that the first person to file an IP right in the Indonesian jurisdiction will own that right once the application is granted.⁴²

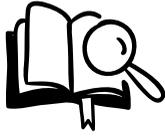
Currently Indonesia has drafted an amendment to the Trademark Law that will cover the following issues:⁴³

- Procedure for trademark applications: the applications will go directly to a publication for progress in 3 months. Third parties are allowed to file an opposition
- Protection of non-traditional trademarks: The new law will also provide protection for non-traditional marks including three-dimensional, hologram, sound and smell marks
- Renewal Period: Provision with respect to the Madrid Protocol, which will become effective in 2015.

The new Trademark Law is expected to be issued by beginning of 2016.

⁴² ASEAN IPR SME Helpdesk, *IP Country Factsheet – Indonesia*, 2014. p.1

⁴³ Asian Legal Business, *Indonesia IP: Moving towards AEC*, 2015 p. 30-32



For more information on Intellectual Property Rights, please consult chapter 5 “Intellectual Property Rights in Indonesia” below.

2.5 CURRENCY REGULATIONS

Starting from 31st March 2015, the Indonesian Central Bank (BI) has imposed a rule that all financial transactions (cash and non-cash) performed by individuals and corporations within Indonesian territory are to use the local currency, Indonesian Rupiah.

In spite of new regulations of using Indonesian Rupiah for transactions, there are exceptions for certain conditions:

- Certain transactions that need to be related to the national budget (APBN, *Anggaran Pendapatan dan Belanja Negara*)
- Receiving and giving grants from overseas
- International trade transactions that cover:
 - Export and Import activities
 - Trade service activities (supply and consumption) that cross country borders
 - Bank deposits in foreign currencies
- International financing transactions
- Business activities in foreign currencies that have been conducted by the bank, based on law and regulations and/or Islamic law banking

2.6 DISPUTE SETTLEMENT

In Indonesia, it is not possible to enforce a foreign court action, despite the possibility for parties to contractually select foreign law as the framework for dispute resolution mechanisms. However, doing this might only prove efficient if the Indonesian party holds assets outside Indonesia, given that assets that are present or registered in the country are within the exclusive jurisdiction of national courts. Indonesian judges, however, can choose to take into account foreign law in their decisions.

Notwithstanding, Indonesian law follows the civil law system, which does not bind judges to precedents and is prone to lengthy processes.

In addition, legal costs during litigation procedures are borne by each party, as courts do not commonly distribute them between the litigants.

A common alternative to litigation in Indonesia is mediation, which has a particularly prominent role in the context of the Indonesian legal system. In fact, before any proceedings are initiated, a judge must recognise that parties have made an effort to resolve the dispute through certified mediation before they engage in legal action. The former, however, always depends on the voluntary participation of the disputing parties.

Conversely, arbitration provides the parties with a more meaningful voice in the process, while being able to choose the arbitrator. Moreover, awards decided in a mediation settlement are binding and cannot be subject to appeal. These elements can make arbitration more efficient than court disputes and mediation. Nonetheless, reaching arbitration agreements can entail more expensive legal costs and procedural time, while preventing parties from resorting to Indonesian courts once the dispute has been settled through this method. Moreover, enforcement must be requested in an application to the competent district court.

International arbitration awards are also enforceable in Indonesia, given that the country has ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In this case, parties can request the district court of Central Jakarta to enforce the international arbitration award.⁴⁴

⁴⁴ Atradius, *Trade Successfully With Indonesia – Resolve any disputes over payment efficiently*, 2013

TAXATION SYSTEM



3. TAXATION SYSTEM

3.1 INTRODUCTION

INDONESIA OCCUPIES THE 160TH POSITION IN PWC'S OVERALL PAYING TAXES RANKING 2015, WHICH INTENDS TO MEASURE THE REGULATORY PERFORMANCE OF ONE ECONOMY RELATIVE TO OTHERS. ALTHOUGH INDONESIA'S TOTAL TAX RATE OF 31.4% IS LOW, A RELATIVELY LARGE NUMBER OF 65.0 PAYMENTS AND A LONG COMPLIANCY TIME OF 254 DAYS CAN BE SEEN AS THE RATIONAL BEHIND THIS RANKING.⁴⁵

On a global scale, tax collection rates are still low in Indonesia, due to a large informal sector and many non-compliant companies. Tax offices around the country are responsible for collecting the taxes in their district. This often creates a sense of unfairness among compliant taxpayers and paradoxically represents another reason for companies to have tight financial and fiscal administration. The local tax offices regard foreign companies as potentially large taxpayers and may be particularly strict towards them. Foreign companies need to anticipate this and ensure the availability of very complete documentation. They are advised to seek local expertise and support regarding this matter. In the experience of several chambers of commerce and consulting firms, companies with very tight financial and fiscal documentation face strict scrutiny, but ultimately receive fair treatment by the tax office.

⁴⁵ In comparison, the US ranks 47 with Total Tax at 43.8%, Number of Payments 10.6 and Time to Comply 175 hours. To understand more about the global ranking on Taxation and its survey method, please consult: PWC, *Paying Taxes 2015*, 2015. p. 151

As in every other country, taxation consists of a large and complex field of different provisions, regulations and laws which corporations and individuals are subject to. The following section provides an orientation on what companies seeking or possessing a permanent establishment in Indonesia have to deal with, when conducting business activities in the country. Tax laws regarding individuals are only partly mentioned.⁴⁶

3.2 TAX TREATIES AND DOUBLE TAXATION AGREEMENTS

Indonesia has a broad tax treaty network, following the OECD treaty model and containing OECD-compliant exchange of information provisions. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country for companies established in another country, while protecting companies resident in one country from discriminatory taxation.

To claim relief under a tax treaty, the foreign taxpayer must complete and submit a specific document issued by the Indonesian tax office to the Indonesian tax authorities, accompanied by a Certificate of Domicile and form DGT-1 or DGT-2. The Certificate of Domicile must be endorsed by the tax authorities of the tax treaty partner country. If the foreign taxpayer is unable to obtain the endorsement, they can use any form of Certificate of Domicile commonly verified or issued by the tax treaty country's tax authorities, provided certain requirements are met.

This form must be attached to a complete form DGT-1 or form DGT-2. Treaty relief will be denied if the foreign taxpayer fails to fulfil this requirement.

The Indonesian tax office, like the tax authorities in many other countries, has tightened their policy on "treaty shopping", i.e. channelling payments through fictive companies to make use of the lowest available withholding tax rates. The Indonesian tax office has therefore laid down a set of criteria that the recipients of such payments must fulfil, in order to qualify for the lowered withholding tax rates foreseen by the treaty. The criteria are tighter than the internationally common definition of "beneficial ownership", therefore companies making use of tax treaties must verify whether the party to which they transfer payments under a tax treaty fulfils the Indonesian criteria. Most EU member states have a tax treaty with Indonesia.

⁴⁶ Resident taxpayers of Indonesia have to settle their tax liabilities for their worldwide income by direct payments, third party withholdings, or a combination of both. Foreigners or foreign companies without a permanent establishment in Indonesia have to settle their tax liabilities for income originating in Indonesia through tax withholding.

Table 1: Indonesia Tax Treaty Network

Indonesia Tax Treaty Network	
Australia	Italy
Austria	Luxembourg
Belgium	Netherlands
Bulgaria	Poland
Croatia	Portugal
Czech Republic	Romania
Denmark	Slovakia
Finland	Spain
France	Sweden
Germany	United Kingdom

Source: KPMG. Indonesian Tax Treaty Update, 2011

3.3 CORPORATE INCOME TAX

Taxable business profits are calculated on the basis of normal accounting principles, modified by certain tax adjustments.

Since 2010, a flat rate of 25% applies to corporate income tax. Public companies with 40% of publicly owned capital and consisting of a minimum of 300 individual shareholders, each holding less than 5% of the paid in capital, are entitled to an effective tax rate of 20%.

Permanent establishments are subject to a branch profits tax of 20%, but a lower rate is possible under a tax treaty on net after-tax profits. The latter is in addition to corporate income tax.

In particular reference to SMEs, Government Regulation No. 46/2013 Art. 3 (1), effective since 1 July 2013, states that individual taxpayers and corporate taxpayers (except permanent establishments) with certain qualifications and declaring a gross turnover of less than 4.8 billion IDR per fiscal year, are entitled to 1% final tax rate on certain types of business income.

Most expenses incurred in deriving business income may be deducted, including wages, fees, interest, rent, royalties, travel expenses, bad debts, insurance premiums, administration costs and levies, depreciation and amortisation, operating losses and contributions to approved pension funds. Non-deductible items include the payment of dividends, unapproved reserves, fringe benefits, charitable contributions and the income tax itself.

Losses can only be carried forward for five years, although this may be extended to 10 years in certain sectors and regions. However, the carry-back of losses is not permitted. For investments in certain sectors, regions and Integrated Economic Development Zones (KAPET), BKPM may also recommend that the tax office provide additional tax incentives to

an investing company. These can include the deduction of 30% of the invested amount from the taxable profit over a period of six years and accelerated depreciation schemes.

Tax holidays of five to ten years have been granted to businesses in a limited number of “pioneer industries” with strong spin-off effects on the local economy, such as base metals, base organic chemicals, oil and gas, renewable energy, machinery and telecommunication.

Article 25 Income Tax states that the first part of tax payments are to be made as a prepayment of corporate income tax liability. This type of tax is a monthly tax installment calculated using the most recent corporate tax return. Other taxes which also constitute prepayments for the current year’s corporate income tax include: Article 23; income tax withheld by third parties on certain income; Article 22; income tax on imports to be paid in advance on certain transactions; and Article 24; income tax paid abroad. If the total amount of prepayment tax through the year is less than the total corporate income tax due, then the shortfall, which is referred to as Article 29 income tax, should be settled before the taxpayer files its corporate income tax return.⁴⁷

3.4 TAX INCENTIVES

New entities may apply for exemption from the income tax payable on the importation of capital goods and raw materials.⁴⁸ Therefore, new enterprises must obtain an exemption certificate from the municipal Indonesian tax office where the new entity is registered. The exemption is granted for capital goods indicated in the BKPM Master List and must be applied for each year.

Income tax relief is also available for investments in 15 selected locations, mostly located outside of Java⁴⁹. Most of them are either Special Economic Zones or Free Trade Areas.



Regarding regional related tax incentives please refer to Business Guide Volume I *Introduction to THE INDONESIAN MARKET*, Section 3 “Indonesia’s Special Economic Zones and Industrial Estates”.

In general, tax incentives are available for companies or cooperatives undertaking new investments, or expanding their current business in different industries and/or provinces in Indonesia.

These tax incentives include

- Accelerated depreciation and amortization
- Extending the time period in relation to the carrying forward of tax losses
- A reduced tax rate of 10% for dividend paid to non-residents
- Investment allowance in the form of a reduction of net income.

⁴⁷ To find more information about preparing, paying and reporting income tax, please refer to PWC, Indonesian Pocket Tax Book, 2015. pp. 2-3

⁴⁸ KPMG, *Investing In Indonesia*, 2013. pp 42-43

⁴⁹ Ernst & Young, *Asia-Pacific R&D Incentives*, 2013. p. 6

Taxpayers seeking to obtain tax incentives will require approval from the Minister of Finance, with a recommendation from the chairman of BKPM⁵⁰.

If a manufacturer imports raw materials intended for the production of final goods that will be exported entirely, an import incentive may be applicable. In order to be entitled to this waiver, the company must present a customs bond or bank guarantee for any imported goods. These guarantees will be withheld by customs until the products are deemed exported, and only then will duties, excise and tax be refunded.⁵¹

Tax holiday for certain types of industries:

Based on Regulation of Ministry of Finance No (PMK) 130 of 2011, tax holidays may be available for significant investments in the following pioneer industries:⁵²

- Metal industry, smelters
- Petroleum refining industry and chemicals
- Industrial machinery
- Renewable resource industry
- Telecommunications equipment

This subsidy is only granted to companies established after August 2010. To qualify, applicants must invest a minimum of IDR 1 trillion and provide a statement of agreement to deposit 10% of this amount in a bank in Indonesia before submitting the application. Successful applicants will be entitled to an exemption from corporate income tax for an initial five to 10 years and a reduction of 50% of corporate tax liability for the following two years after expiry.

3.5 VALUE ADDED TAX

Value Added Tax (VAT) applies to the delivery of taxable goods and services in Indonesia, the import of taxable goods, the use or consumption of intangible goods or services from outside of Indonesia, and the exports of taxable goods and services by a taxable enterprise from Indonesia. The delivery of goods and services is defined very broadly and includes not only the delivery of a title to goods in accordance with a sales agreement, but also:

- The delivery of taxable goods based on a hire-purchase agreement or finance-lease agreement
- Transactions such as the delivery of taxable goods within a company
- The transfer of assets of a company upon liquidation
- The delivery of taxable goods for the individual's own use, or as free gifts

In general, the VAT rate is 10%. For some specifically regulated transactions, it may be 5% or 15%. VAT on the export of goods and a particular service is 0%. The basis of the VAT calculation is the transaction value, although in some specific cases, such as delivery

⁵⁰ Ibid.

⁵¹ KPMG, *Investing In Indonesia*, 2013. pp 42-43

⁵² Ibid. p 43

of goods or asset transfers between related parties, another value is calculated. Specific rates and amounts apply to some transactions, such as the import of films and the private construction of buildings.

Non-taxable goods and services include

- Mining and drilling products extracted directly from their sources;
- Basic food commodities such as rice, corn, salt, soybeans and sago;
- Drinks consumed in hotels and restaurants;
- Gold bars, money and securities;
- Several other services, such as medical, financial and insurance, and education as well as manpower.

Companies have to report and settle their VAT liabilities monthly.

e-Faktur

From 1st July, 2015, the government, through regulation Directorate General of Taxes No. PER 17/PJ/2014, established that a Taxable Entrepreneur (PKP, *Pengusaha Kena Pajak*) is obliged to create e-Faktur or e-invoice.

e-Faktur is a tax invoice made using an application or electronic system, which is provided by the Directorate General of Tax (DGT). The e-Faktur application has to be installed on a computer and will automatically connect with the e-SPT program. The VAT report is easier to create as well as report. A taxable entrepreneur (PKP) has to submit a written request to the tax office and prepare:

- An electronic certificate (it is a requirement to use electronic services, such as e-Faktur and e-Nofa to request a tax invoice electronic serial number)
- An activation code and password (to access e-Nofa)
- A request to activate the account for a taxable entrepreneur (to enable the activation code and password received by the taxable entrepreneur)

The steps to create an e-Faktur are the following:



Source: Online Pajak, 2015

Centralized VAT-Reporting

Each branch of a company has to report to the tax office in its own area. However, companies may apply for centralised VAT reporting so that intra-company deliveries do not need to be reported for VAT. Large and medium-sized taxpayers, foreign investment companies, some foreign companies and individuals and listed companies, have to centralise their VAT reporting at particular tax offices.

VAT liabilities are settled using a VAT input-output mechanism. VAT paid by companies on goods and services that are purchased to run a business may be credited (VAT-input) against the VAT the business received from selling products (VAT-output). If the accumulated VAT-output for a particular month exceeds the accumulated VAT-input for the same period, the said company must settle the difference by the end of the following month and prior to the VAT return filing due date. However, if the accumulated VAT-input for a particular month exceeds the accumulated VAT-output, the overpaid amount may be carried over to the following month, or requested to be returned as an annual refund at the end of the financial year. The tax office should reply to such a request within twelve months after carrying out a VAT audit. In the absence of a VAT audit, the request is deemed approved.

Tax Collector

State-owned companies, production sharing contractors and the treasury are appointed as tax VAT collectors. As such, they have to immediately pass on to the tax office the VAT they are due to pay on delivery of goods and services, instead of paying this VAT to the supplier.

In addition to VAT, a number of products are subject to a Sales Tax on Luxury Goods (STLG), which may vary from 10% to 75% (it may even increase up to 200% in some cases), and which

is applied once, either upon importation of the product, or upon delivery by the domestic producer to another party.

Activities not subject to VAT are as follows:⁵³

- Goods produced by mining or drilling that are taken directly from their source: crude oil, natural gas, geothermal energy, sand and gravel, coal (before being processed into briquettes), and ores (iron, tin, gold, copper, nickel, silver and bauxite)
- Basic necessities needed by the population as a whole: rice, corn, sago, soybeans and salt
- Money, gold ingots and negotiable instruments
- Banking, insurance, leasing services and securities
- Manpower services
- Social, health, religious and education services
- Public transportation, postal services, non-commercial broadcasting
- Entertainment services
- Hotel and catering services
- Government services, e.g. the importation of goods and the use of taxable foreign services related to foreign grants or loans originating in funded government projects
- Strategic Goods: According to Indonesian law products that have been labelled as 'strategic' include some capital goods, water and electricity equipment, and inputs for the agriculture sector.

Bonded Zones (Special Economic Zones, Free Trade Zones, Free Ports)

In Indonesia, exporting manufacturers that base their operations within bonded zones, free trade areas and economic development zones can benefit from the non-application of VAT and duties. More specifically, goods imported into economic development zones are not subject to import duties, VAT or STLG. The currently assigned free trade areas are Batam, Bintan, Karimun and Sabang. Other incentives and allowances are also applicable, namely regarding the manufacture-related transfer of goods between bonded zones and the wider territory.



A more detailed dissertation on Bonded Zones can be found in Business Guide Volume I *Introduction to THE INDONESIAN MARKET*, Chapter 3 "Indonesia's Special Economic Zones and Industrial Estates".

3.6 REPORTING TAXES AND FINES

Tax payments and the filing of tax returns must be made to the State Treasury through a tax payment bank appointed by the authorities. The payment period (either annually, monthly, or both) depends on the regime of tax obligation that a given company must fulfil⁵⁴.

⁵³ KPMG, *Investing In Indonesia*, 2013. p. 48

⁵⁴ PWC, *Indonesian Pocket Tax Book*, 2012

Non-submission of a tax return can result in the delivery of a notice with a deadline of 30 days for the filing to be undertaken. Failure to acknowledge or comply may lead to an ex-officio tax evaluation by the authorities, to which a penalty of 50% of the assessed tax will be added.⁵⁵

Tax audits are not mandatorily conducted, unless the tax authority deems it necessary to investigate a given company. However, they are typically initiated, for instance, when repetitive non-conformities on tax payments and filing are verified, or when an overpayment of tax is filed in a return. A tax audit notice will require the company to submit all requested information and documents within one month from the request date. After a decision is taken, the tax court will accept appeals within 3 months after it is issued. The statute of limitations for tax matters has a duration of five years.⁵⁶

3.7 SUMMARY OF INDONESIAN TAXATION

The tables below provide a non-exhaustive list on current taxation regulations in Indonesia, including periodical tax obligations, as well as tax obligations for individuals and corporations.

Corporate	
Corporate income tax rate	25%
Branch tax rate	20%
Capital gains tax rate	5-25%
Basis	Worldwide
Participation exemption	Yes
Loss relief	
- Carry forward	5 years
- Carry back	No
Double taxation relief	Yes
Tax consolidation	No
Transfer pricing rules	Yes
Thin capitalization rules	No
Controlled foreign company rules	Yes
Tax year	Calendar year
Advance payment of tax	Yes
Return due date	4 months after tax year ends
Withholding tax	
Dividends	20%
Interest	20%
Royalties	20%
Branch remittance tax	20%
Capital tax	No

⁵⁵ Indosight, *Reporting Taxes In Indonesia – Deadlines, Warnings And Recommendations*, 2013

⁵⁶ Ibid.

Social security contributions	Yes
Land and building acquisition duty	5%
Transfer tax	0.1% for the transfer of shares listed on Indonesian stock exchange; 5% for the transfer of non-listed resident company's shares by a non resident; 5% for the sale of land and/or buildings
Tax on founder shares at initial public offering	0.5%
Stamp duty	Varies
VAT	10%

Individuals

Income tax rates	5-30%
Capital gains tax rates	5-30%
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	31 March
Withholding tax	
Dividends	10% resident; 20% non resident
Interest	20%
Royalties	20%
Net wealth tax	No
Social security	2%
Inheritance tax	No
Land and building acquisition duty	5%
Transfer tax	0.1% for the transfer of shares listed on Indonesian stock exchange 5% for the transfer of non-listed resident company's shares by a non resident 5% for the sale of land and/or buildings
Tax on founder shares at initial public offering	0.5%
VAT	10%

Periodical tax obligations

Monthly Tax Obligations

Type of tax	Tax payment deadline	Tax return filing deadline
Employee withholding tax (Art. 21-26)	10 th of the following month	20 th of the following month
Other withholding tax	10 th of the following month	
Corporate Income Tax	15 th of the following month	
VAT and Tax on luxury sales	Prior to the tax return filing deadline	End of following month

Annual Tax Obligations

Type of tax	Tax payment deadline	Tax return filing deadline
Corporate income tax	4 th month after the book year end before filing the tax return	4 th month after the book year ends
Individual income tax	3 rd month after the end of the year before filing the tax return	3 rd month after the year ends
Land and building tax	6 th months after due receipt of a Tax Due Notification Letter (SPPT) from the Tax office	n/a

LABOUR AND HUMAN RESOURCES



4. LABOUR AND HUMAN RESOURCES

4.1 INTRODUCTION

INDONESIA HAS A LARGE LABOUR FORCE, WHICH IN 2014 COMPRISED 124.3.9 MILLION PEOPLE.⁵⁷ THE POTENTIAL WORKFORCE IS GROWING AT A RATE OF ALMOST 2 MILLION PER YEAR. MORE THAN 60% OF THE INDONESIAN WORKFORCE IS LOCATED IN JAVA AND BALI, WHERE MOST OF THE TERTIARY SECTOR HAS DEVELOPED. THE MAIN REGULATORY AUTHORITY IS THE MINISTRY OF MANPOWER (MOM).

Over the last decade the productivity of Indonesia's workforce has increased significantly. However, the US is 10 times more efficient and even Malaysia is deemed three times more efficient in comparison. Still, the GDP per worker in Indonesia has shown more growth than the Philippines, Thailand, Malaysia, and even Singapore since 2010.⁵⁸

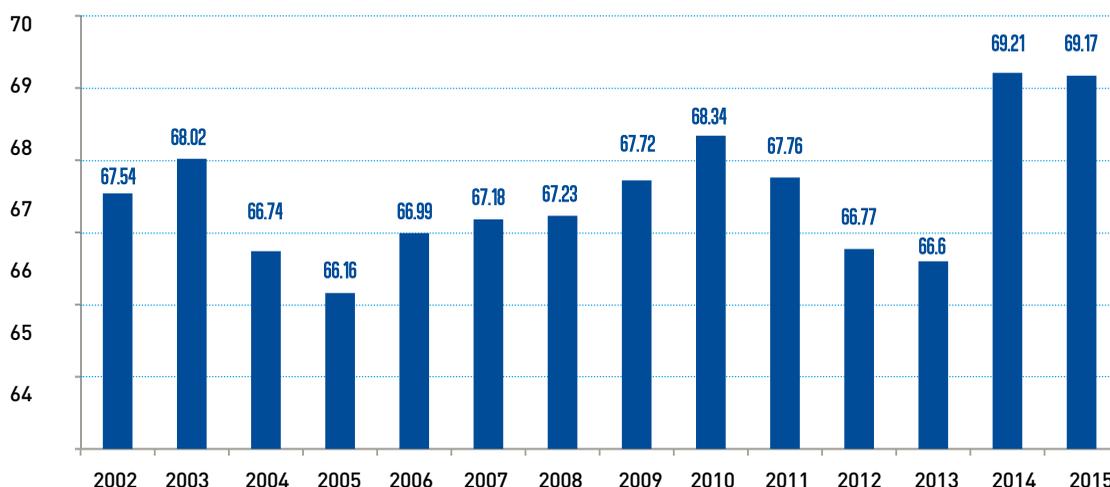
⁵⁷ CIA, *The World Factbook*, 2015

⁵⁸ The Financialist, *Indonesia's Winning Demographic Hand*, June 2015

The most relevant laws regarding employment in Indonesia are:

Law No. 3 of 1992 on Workers Social Security
 Law No. 13 of 2003 on Manpower (Labor Law)
 Law No. 2 of 2004 on Industrial Relations Dispute Settlement
 Law No. 21 of 2009 on Labor Unions
 Ministry of Manpower and Transmigration Decision No. 40 of 2012 on Certain Positions that are Prohibited to be held by Foreign Workers
 Ministry of Manpower & Transmigration Regulation No.16 of 2015 on the Utilization of Foreign Manpower

Indonesia Labor Force Participation Rate



4.2 TERMS OF EMPLOYMENT – LEGAL REQUIREMENTS AND DURATION

Under Law No. 13 of 2003, Art. 1(14) 14 of Labour Law, an (individual) employment agreement shall be defined as an agreement made between an employee and an entrepreneur, or employer. The agreement specifies the work requirements, rights and obligations of both sides. Usually it regulates minimum wages, maximum working hours, minimum paid leave and regulations on dismissal. Under Art.56 (1) of Labour Law, an employment agreement may be made for either a definite or an indefinite period of time.

A definite employment agreement is:

- An employment agreement for a definite period of time (PKWT, *Perjanjian Kerja Waktu Tidak*), made for the specific nature of the task to be covered, or for the completion of a particular job limited in time

- A working agreement for a specified period, that can only be made for certain jobs, namely: work to be performed and completed at once, or work which is temporary by nature; jobs expected to be completed in less than three years; seasonal jobs; or jobs related to new products, activities or additional products, which are still on trial, or in an exploration phase
- Valid for a period of no longer than two years and may only be extended once for up to one year
- Written in Indonesian language.

An indefinite employment agreement (Permanent Employment):

- Is an employment agreement for an indefinite period of time (PKWTT, *Perjanjian Kerja Waktu Tidak Tertentu*) and is a contract made between an employee and an entrepreneur, or an employer, regarding a permanent job
- Can include a probation period of no longer than three months. During the probation period the employer is obliged to pay wages, which cannot be less than the applicable minimum wage
- Is made in writing or verbally agreed upon. A work agreement is not compulsory to obtain recognition from a related labour institution. In the event that PKWTT is made verbally, then the clauses that are applicable between worker and employer are clauses that are regulated by law.

Wages and Labour Costs

Under the same law Art.88 (1), every worker is entitled to obtain an income which enables them to sustain an adequate level of livelihood.

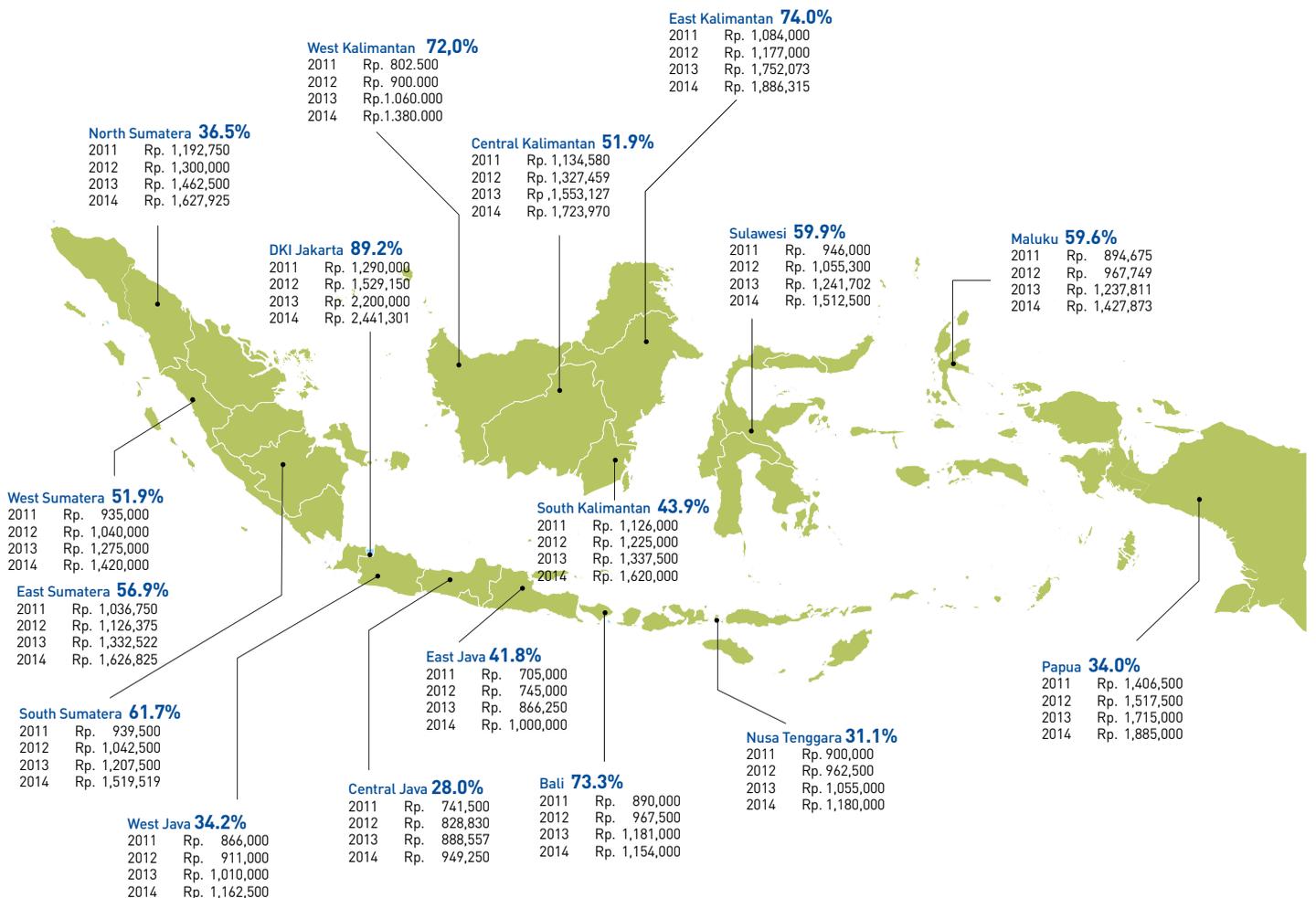
The current minimum wage in Indonesia depends on the region where the business or work is conducted, not where the company is based. According to Art.89, each province and regency of Indonesia has the power to frame their own provincial minimum wage (UMP, *Upah Minimum Provinsi*) which is reviewed and set annually by the governor of each province, on the basis of an agreement between corporations, employers' organisations and labour unions.⁵⁹

In 2013, 25 provinces, regencies and cities have agreed to raise their regional minimum wage by an average of 30%, with a few increasing minimum wages by 50%. Currently Greater Jakarta, which accounts for the majority of Indonesia's manufacturing and services, has a minimum wage of IDR 2.7 million (US\$ 187) a month.⁶⁰

⁵⁹ KPMG, *Investing In Indonesia*, 2013

⁶⁰ Indonesia Invests, *What are the Minimum Wages in Indonesia in 2015?*, 2014

Map of Provincial Minimum Wages and Their Growth between 2011 and 2015



Source: Jakarta Globe, 2014

Indonesia has an abundant low-skilled workforce. Entry-level salaries for the local workforce often start between IDR 2 - 3 million, depending on the profession. Mid-level local professionals usually expect to make between IDR 8 - 20 million.⁶¹

According to the law, employers are responsible for the calculation of any taxes that need to be withheld from salaries, as well as the monthly payment of these taxes to the tax authorities and the provision of annual numbers to the employee. The employee must then file an annual income tax return for the year in question.⁶²



For more information on taxation in Indonesia and relevant provisions, regulations and laws, please refer to chapter 3 "Taxation System" above.

⁶¹ Indosight, *Labour Costs And Employment Culture In Indonesia – General Income Levels*, Nov 2013

⁶² Indosight, *Labour Costs And Employment Culture In Indonesia – Income Tax*, Nov 2013

Welfare and Social Security Program

Under Law No. 13/2003, Art.99, every worker shall be entitled to obtain manpower social insurance.

Under Law No.3 of 1992 or the Jamsostek Law, companies with a payroll exceeding IDR 1 million per month, or employing 10 or more staff, must enrol their employees in the Jamsostek program. In 2014, Jamsostek changed its name to *Badan Penjamin Jaminan Sosial* (BPJS) as regulated by Law No. 40 of 2004 on the National Social Security System.

As mentioned above, the BPJS program is a public social security scheme, mandatory by law, to which employees and employers must make monthly contributions, based on a percentage of basic salary for:

- Employee work accident insurance
- Retirement benefit funds
- Life insurance
- Healthcare benefit coverage.

The first three are mandatory under BPJS *Ketenagakerjaan*. Healthcare benefit contributions are mandatory for all companies as of 1st January 2015 and it will cover all citizens by 2019.⁶³

Working Hours and Leave

Under the same law Art.77, an employee can work a maximum of 40 hours per week, allocated in one of the following ways:

- Seven hours per day/six days per week
- Eight hours per day/five days per week.

Please note that it is prohibited to employ the following employees between 11pm and 7am (Art 68):

- Female employees aged less than 18 years
- Pregnant employees who, as stated by a doctor's statement, are at risk of damaging their health, or risking their own safety, or the safety of their unborn child, if they work.

In general, employers who require an employee to work outside the normal working hours must pay overtime wages to the employee.

Overtime can only be performed for a maximum period of three hours per day and 14 hours per week. The overtime pay rate for one hour is 1/13 of the monthly wage, plus fixed allowances.⁶⁴

Employees are entitled to annual leave for a minimum of 12 days per year. Other leave must be granted for certain occasions such maternity, death and birth of relatives, or marriage.

⁶³ Ernst & Young, *Indonesian Social Security System Changes require Expatriate Participation*, 2014

⁶⁴ PLC, *Employment And Employee Benefits In Indonesia: Overview*, 2015

Corporate Rule

Art.108 states that every entrepreneur employing at least ten people must create a corporate rule, which comes into force after the minister or the appointed official ratifies it. According to Art.111, the corporate rule shall contain: rights and obligations of entrepreneurs and workers; working requirements; corporate disciplinary-rule and its duration. Provisions contained in the corporate rule cannot contravene provisions of laws already in force.

Termination of Employment and Settlement of Labour Disputes

According to Art.61, the employment agreement can be terminated only if:

- The worker passes away
- The term of the contract expires
- The court or the industrial relations disputes institution issues a verdict or a decision on a certain dispute between the employer and the employee
- The occurrence of conditions mentioned in the working agreement, corporate rule or collective working agreements, can cause working relations to terminate.

In the event of a change in a company's ownership, the new owner shall bear the responsibility of fulfilling the rights of the employees, unless otherwise stated in the transfer agreement, which must not reduce the rights of the employees.

Under Art.62 of the Labour Law, the party terminating the working relationship before the expiration period stipulated in the contract, shall pay compensation to the other party equal to the amount due, until the expiration of the working agreement. This rule applies a principle of fairness, applicable to both employers and workers, and an enforcement rule towards compliance of the employment agreement that has been made and signed.

Employers can terminate working relations with their employees if an agreement is reached between the parties (Art. 158). In the event that the worker is not willing to accept the dismissal, the case is usually brought to an industrial relations disputes settlement institution (Art. 159). If such an event occurs, the employer has to demonstrate that:

- The company announced to the employee their intention to dismiss him/her in writing with 30 days notice
- The reasons of the dismissal are not religious, political or health-related
- The employee committed wrongdoings or contractual breaches
- The company admonished the employee three times within a definite period of time.

Upon dismissal compensation must be paid, dependent on the time the employee has been working for the company.

Severance Pay

Indonesia has one of the most expensive severance package regimes in the world. Making up for the lack of a comprehensive social security system, Indonesian lawmakers established a regime requiring employers to pay a comparatively large amount in compensation to

dismissed employees.⁶⁵ Usually, minimum severance pay is based on the monthly wage, up to a maximum of nine months wages.

Outsourcing

According to Art.64, companies can give up some of their job positions to other companies through an agreement of service in writing.

The agreement has to be reported to the local MOM office. The jobs that can be put under the responsibility of other companies must meet the following requirements: being executed separately from the main activities; being executed by direct or indirect order of job providers; serving as supporting activities for the companies as whole; and not discouraging production directly.

Manpower Report

Companies are obliged to submit a Manpower Report annually. This report consists of working conditions such as the minimum/maximum and average wage, as well as the number and education level of both local and foreign employees.⁶⁶

4.3 REGULATIONS INFLUENCING EMPLOYMENT

Besides the actual employment contract, including its attached regulatory framework, other aspects need to be considered when employing people in Indonesia. The basic rights of workers and trade unions to strike and protest should not be underestimated.

Trade Unions

The definition of a trade union is found in Art.1 no.17 of the Labour Law. Trade unions shall be recorded and registered to the responsible agency for employment, namely the Ministry of Manpower.

The most representative confederations of unions are:

- KSPSI (*Konfederasi Serikat Pekerja Seluruh Indonesia*)
- KSPI (*Konfederasi Serikat Pekerja Indonesia*)
- KSBSI (*Konfederasi Serikat Buruh Sejahtera Indonesia*)

Although it is important to note that the majority of Indonesian workers are not unionised.⁶⁷

In 2011, the government enacted the Ministerial Regulation No.PER.16/MEN/XI/2011 concerning procedures for the making and ratification of company rules and the making and registration of Collective Labour Agreements (CLA). A company that employs at least 10 workers must register a document, which states a company's working policies and requirements. A CLA is a bipartite agreement, covering working rules, wage payments, health-and-safety benefits and systems, as well as regulations on violations and sanctions

⁶⁵ AmCham Indonesia, *Labour Unrest In Indonesia: An Overview*, 2013

⁶⁶ Price Waterhouse Coopers, *Doing Business In Indonesia*, 2011

⁶⁷ KPMG, *Investing In Indonesia*, 2013. p.36

for workers, the employer and the unions.

Collective Working Agreement

According to Art.116 of the same law, a collective working agreement shall be entered into by a trade union that is adequately registered at the MOM, or another designated institution, and the employer. A collective working agreement shall be valid for a maximum of two years. The agreement can be extended for one year on the basis of a written agreement between the two parties. In the case where a singular working contract does not observe the provisions regulated in an existing collective working agreement, the provisions of the latter shall prevail (Art.128).

Strikes

According to Art.137, labour strikes are a basic right of workers and labour unions. Strikes shall be held as a result of the failure of negotiations and are to be conducted in a legal, peaceful and orderly manner. Within a period of at least seven days before the strike is performed, the employees and the employees' trade union must notify the employer in writing. In addition, the concerned government institution governing the specific employment affairs must also be informed. Under Art.141, this institution shall settle the dispute that triggered the labour strike by organising meetings and negotiating with the opposing parties, both before and during the strike. If an agreement is reached among the parties, it must be made formal and signed by both sides. If the negotiation fails to achieve an agreement, the question has to be submitted to the designated industrial disputes settlement institution.

A strike performed without fulfilling the provisions of the Labour Law is considered illegal.

Unions are concerned about the "casualisation" of labour through the widespread use of outsourcing. The practice weakens the unions' bargaining position and creates job insecurity, because outsourced workers are not regular employees. Conversely, employers avoid legal obligations such as paying severance to dismissed workers. Outsourcing discourages workers from joining or forming a union and wages are often lower than those paid to permanent workers.⁶⁸

4.4 REGULATIONS REGARDING EMPLOYING FOREIGN NATIONALS

The regulations to be followed when employing expatriates in Indonesia establish a preference towards national workers, binding the recruitment of foreign employees to certain conditions, in terms of positions that can be awarded, the nature of the work activities and the duration of employment.

Business Visa

The process of obtaining a business visa is easier than for a residency permit and is intended for foreign nationals who want to conduct business in Indonesia temporarily. This type of visa can be valid for up to two months and can be extended up to four times in one month periods (in Jakarta only) and can be applied for at the Indonesian Embassy of a foreign national's

⁶⁸ AmCham Indonesia, *Labour Unrest In Indonesia: An Overview*. 2013

country of origin or domicile.⁶⁹

However, with Regulation of the Minister of Manpower No.16 of 2015 Art. 16 in force, it is stipulated that business people traveling for the following purposes may not use the business visa and must obtain a temporary expatriate manpower plan (RPTKA, *Rencana Penggunaan Tenaga Kerja Asing*), as well as a working permit (IMTA, *Ijin Mempekerjakan Tenaga kerja Asingon*), instead:

- To give a briefing or training for the implementation and innovation of industrial technology to develop the quality and the design of industrial products and foreign marketing for Indonesia
- Shooting for a commercial movie, having obtained the required licenses (if any) from the state authority
- To convey lectures
- Foreign company executives attending a meeting with the principal or representative office that is located in Indonesia
- Carrying out audits, production quality control or branch office inspections in Indonesia
- Foreign manpower in probation period
- Projects on a one-off basis
- Projects related to mechanical or electrical installation, after sales service, or testing out new projects.

Obtaining a business visa requires a letter of sponsorship from a company registered in Indonesia. It is mainly directed at foreigners who need to conduct business activities in the country that do not entail permanent employment. It is possible to apply for a one year multiple entry business visa, which is most likely the best option for a foreign national who visits Indonesia on a regular basis.

Permanent Stay Permit Card (KITAP, *Kartu Izin Tinggal Tetap*)

The KITAP is valid for five years and is easily renewable. It is usually attributed to eligible investors, CEOs, retired foreigners, children of Indonesian citizens, or, in other cases, to foreigners who have stayed for a long period in Indonesia and who fulfil certain criteria.

Foreign nationals who have obtained the KITAP as employers or top-level managers should ensure that all employees under their supervision have their employment situation legalised, as their KITAP might be cancelled if an illegal situation is found.

Spouses are automatically entitled to a KITAP after two years of marriage (provided there is government certification) and also after divorce, provided that the union lasted for at least 10 years. Retirees are eligible to apply for a KITAP if they are over 55 years of age.

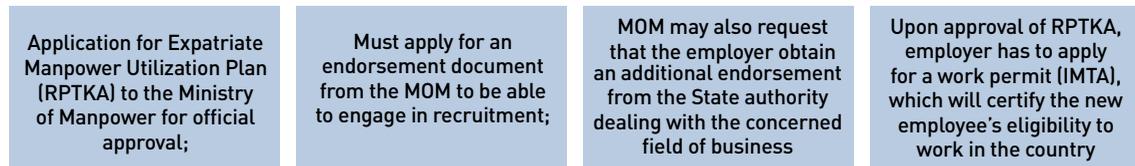
Temporary Residency Permit Card (KITAS, *Kartu Izin Tinggal Terbatas*)

The KITAS, also known as limited stay permit, is given to foreigners, who enter the Indonesian territory for the following purposes: as investors, experts or clerics, to enroll for education or training, to conduct scientific research or reunite with spouses. It is valid between six months

⁶⁹ PLC, *Employment And Employee Benefits In Indonesia: Overview*, 2015

and one year. A KITAS visa is the most common visa for foreign residents and requires an Indonesian sponsor, who can be an Indonesian citizen, a company owned and operated by Indonesians, an Indonesian public or private institution or a foreign-owned company with a license to operate in Indonesia (e.g. KPPA or PT PMA). It can be extended every 12 months for a period of up to five years in total.

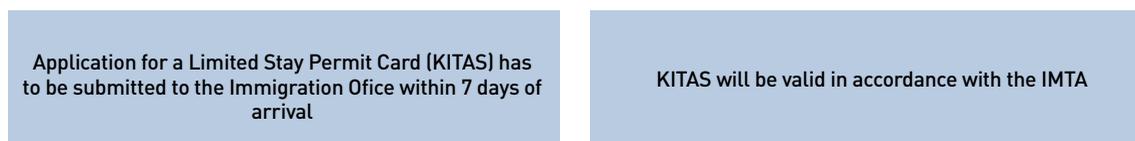
Prior Procedure



Approval for Hiring



Employee Arrival in Indonesia



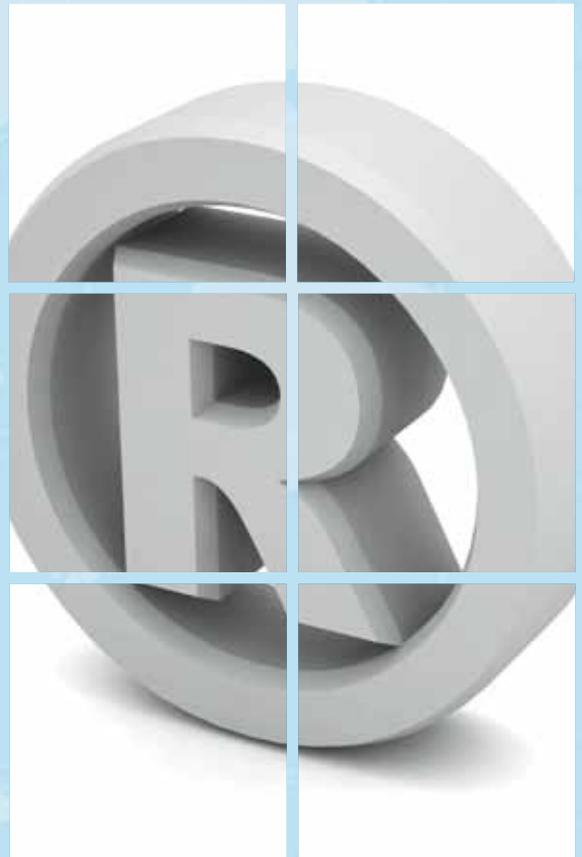
Tourist Visa

This type of visa is easily obtainable for most nationalities. In fact, most visitors are eligible to obtain a tourist visa on arrival, payable in US dollars and valid between seven and 30 days, depending on conditions set by the immigration office. Visas offering longer periods (up to 60 days) can be provided through an application at the Embassy of Indonesia of the visitor's country of origin. In most cases, tourist visas are extendable for up to one month, more than once. As of October 2015, 92 countries are eligible for this Visa On Arrival, which will gradually be upgraded as part of a campaign to boost the economy through international tourism.

It is illegal to work in Indonesia on a tourist visa. As such, for screening purposes, foreign nationals entering Indonesia with a tourist visa should hold a valid return ticket and be prepared to provide information about their travel plans to immigration officers.

Overstaying the duration of a visa is penalised at US\$ 20 (IDR 300,000) per day. Periods surpassing 60 days can lead to legal prosecution, future access restrictions, or even deportation.

INTELLECTUAL PROPERTY RIGHTS IN INDONESIA



5. INTELLECTUAL PROPERTY RIGHTS IN INDONESIA

5.1 INTRODUCTION

FOLLOWING ITS 1994 RATIFICATION OF THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT, INDONESIA HAS TAKEN STEPS TO DEVELOP AND ISSUE IP LAWS TO CREATE A BETTER FRAMEWORK FOR INTELLECTUAL PROPERTY PROTECTION (IPR) AND PROVIDE A BETTER ENVIRONMENT FOR THE DEVELOPMENT OF INTELLECTUAL PROPERTY (IP). INDONESIA IS A MEMBER OF THE WTO AND WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO), AND IT IS PARTY TO THE MAIN WIPO TREATIES. INDONESIAN LEGISLATION WAS SUBSTANTIALLY REVISED IN RECENT YEARS TO BRING IT IN LINE WITH REGIONAL AND INTERNATIONAL IPR STANDARDS.

Law No. 17 of 2006 concerning the Amendment of Law No. 10 of 1995 concerning Customs

Law No. 19 of 2002 concerning Copyright

Law No. 15 of 2001 concerning Trade Marks

Law No. 14 of 2001 concerning Patent

Law No. 32 of 2000 concerning Layout of Integrated Circuits

Law No. 31 of 2000 concerning Industrial Design

Law No. 8 of 1999 concerning Consumer Protection
 Law No. 5 of 1999 concerning Anti-Monopoly and Unfair Competition
 The Supreme Court Directive No. 4 of 2012 concerning Temporary Seizure 11. --+
 The Supreme Court Directive No. 5 of 2012 concerning Temporary Injunction

5.2 HOW TO PROTECT YOUR INTELLECTUAL & INDUSTRIAL PRODUCTS

Industrial Property
 Trade Marks
 Patents
 Industrial Designs

Artistic Work
 Copyright

Soft IP
 Trade Secrets

Trademarks

A trademark is a sign (picture, name, word, letters, figures, or a combination of these elements), used by companies to distinguish their goods and services from those of others. In Indonesia signs with three-dimensional shapes are not yet recognised and it is therefore recommended that they be registered under the Industrial Design Law in order to be protected. Sound and smell are not included in the current Indonesian concept of trademarks.

The Indonesian trademark process is generally understood to adopt the 'first-to-file' system. The period where a registered trademark is protected is 10 years from the date of issuing. A renewal of the registration is possible for subsequent periods of 10 years without limit. Applications for renewal may be submitted up to 12 months prior to expiry of the current period, but not after this period. Trademarks are to be registered with the Directorate General of Intellectual Property Rights (DGIPR).⁷⁰

Patents

A patent is understood as a right granted and reserved to a designer or inventor to utilize his or her invention commercially and exclusively. It can be obtained for either an innovative, or improved, machine or process, as well as for a manufactured article, or a chemical composition.

Indonesia's jurisdiction differs between two types of patents:

- Standard Patents (for products and processes)
- Simple Patents (for products only)

As the name suggests, the process for obtaining a simple patent is usually shorter. However, the level of protection afforded is lower, as discussed below. Applicants need to specify the scope of the protection sought and to provide the invention's technical description. While a standard patent is reserved for 20 years, a simple patent lasts for 10 years from the filing date. The Directorate General of Intellectual Property Rights is the institution to register

with. Simple patents may need two to three years to process. Standard patents are more likely to take longer, about three to five years from the application date.⁷¹

Industrial Designs

A registered design is a right exclusively accorded to the owner of a design, to stop others using it commercially, without permission. According to Art. 1(1) of the Indonesian Design Act, industrial design is meant as: “a creation on the shape, configuration, or the composition of lines or colour, or lines and colours, or the combination thereof in a three or two dimensional forms which gives aesthetic impression and can be realized in a three or two dimensional pattern and used to produce a product, goods or an industrial commodity and a handy craft.”

Similar to other IP rights, a ‘first-to-file’ system is in place for industrial designs. Thus the first person to file a right in the Indonesian jurisdiction is granted ownership. Industrial designs protecting the external appearance of an article are to be filed with the Directorate General of Intellectual Property Rights. The registration procedure requires the product or design to be new and previously unpublished. Multiple design filings are not accepted.

The protection is usually granted for 10 years. Industrial design applications in Indonesia should be registered with the Directorate General of Intellectual Property Rights. An application takes about 24 months to 36 months to be granted.⁷²

Copyrights

A Copyright exclusively entitles its authors, artists and other creators to publish or reproduce their work.

In Indonesia copyrights are protected for the following items:

- Books, computer programs, pamphlets, visual aids made for educational and scientific purposes, typographical arrangements, lectures, addresses, and all other written or spoken works
- Songs or music with or without lyrics, dramas, musical dramas, dances, choreographic works, puppet shows, pantomimes
- All forms of art, such as paintings, drawings, engravings, calligraphy, carvings, sculptures, collage, and applied arts, as well as architecture and maps
- Photography and cinematographic works
- Translations, interpretations, adaptations, anthologies, databases and other similar works.

Similar rights that are related to the copyright are rights in performances, phonographic works, sound recordings and broadcast. The results of such work may not be reproduced or showcased in public without permission.⁷³

Trade Secrets

Trade Secrets are information related to technology and/or business that is publicly

71 Ibid. pp 3-4

72 Ibid. p. 5

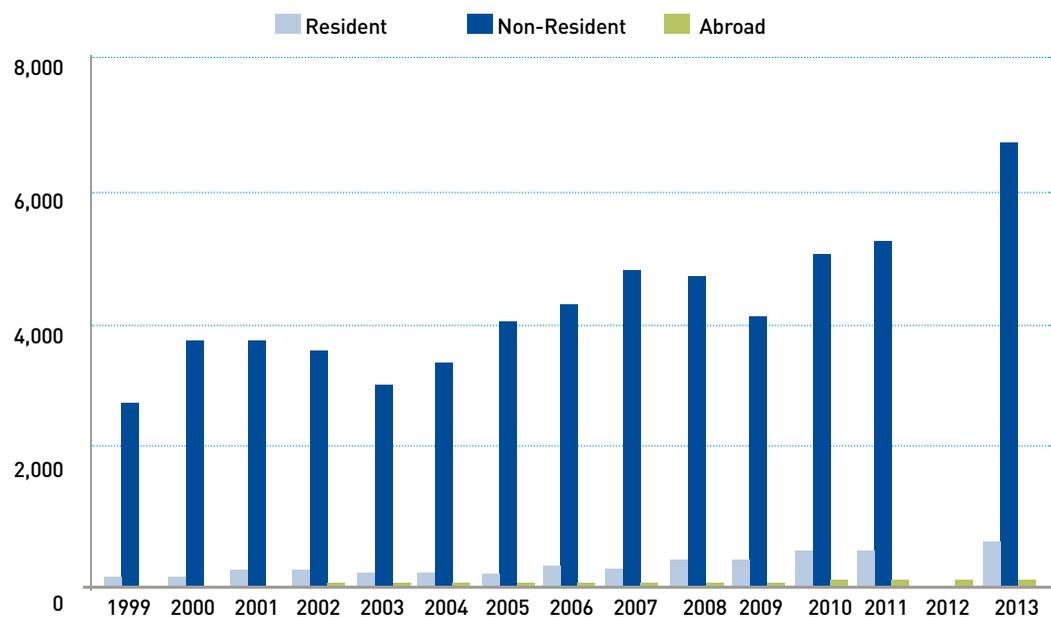
73 Ibid. p. 2

unknown and are deemed to be of economic value. Their level of protection in Indonesia include methods of production, methods of processing (preparation), methods of selling, or other information alike. Different to other IP rights, a time limit of the legal protection is not existent with the restriction that the information qualifies as such.⁷⁴

5.3 IPR STATISTICS IN INDONESIA

The number of trademarks, patents and industrial designs submitted by non-resident (foreign) applicants increased recently.

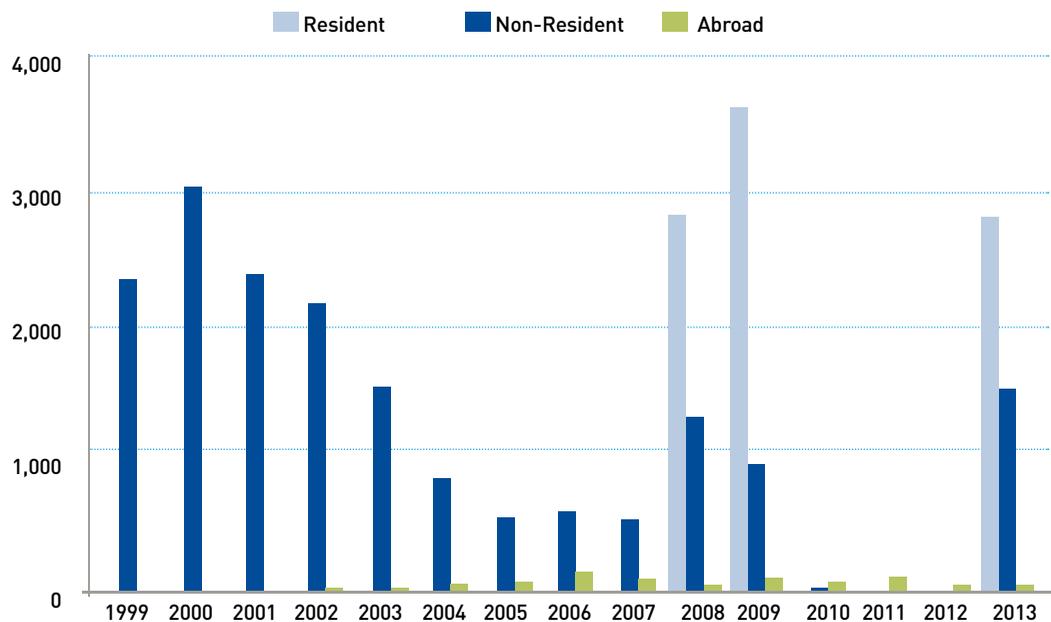
Patent Applications



Source: WIPO Statistics Database, last update: 12/2014

While foreign patents' registrations have been rising constantly since the millennium, Industrial designs are recovering again after they dropped dramatically from 2,400 in 2002 to 500 in 2005.

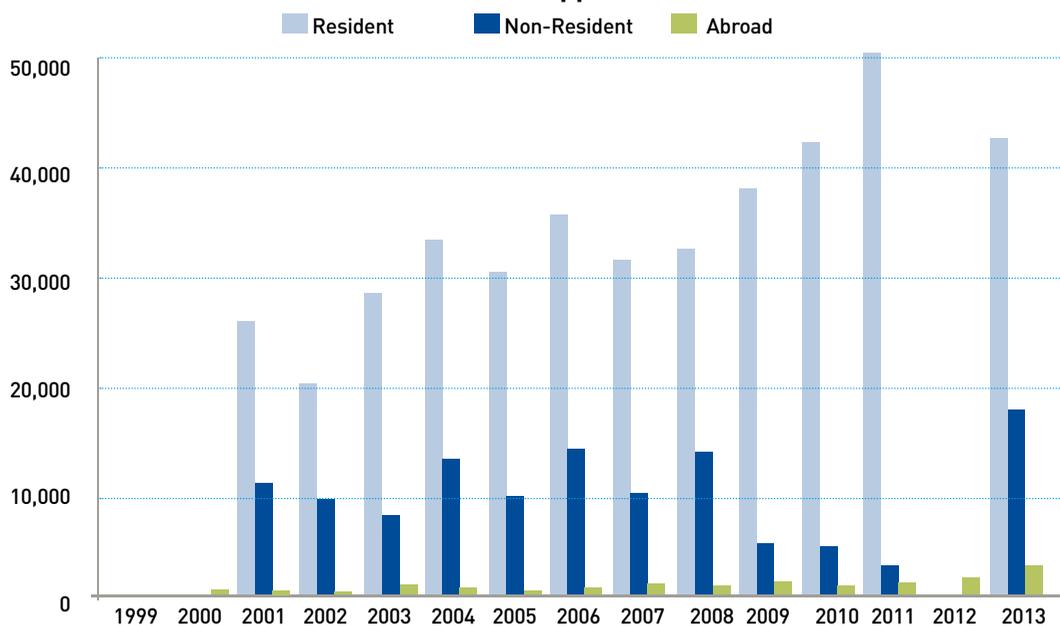
Industrial Design Applications



Source: WIPO Statistics Database, last update: 12/2014

A more unstable picture is displayed within trademarks, where a up and down development reflects the uncertainty foreign companies faced the recent years. As initially mentioned however, IPR environment for foreign players in Indonesia shows a positive performance over all.⁷⁵

Trademark Applications



Source: WIPO Statistics Database, last update: 12/2014

5 Data available at WIPO: www.wipo.int

CONCLUSION



6. CONCLUSION

THE INFORMATION PRESENTED ABOVE PROVIDES ESSENTIAL INSIGHTS ON THE PROCEDURES, REGULATIONS AND REQUIREMENTS TO BE CONSIDERED BY EUROPEAN COMPANIES SEEKING TO SET UP, AS WELL AS CONDUCT, BUSINESS IN INDONESIA. THIS HAS BEEN ILLUSTRATED THROUGH GENERAL INFORMATION, SPECIFIC DETAILS ON THE LEGAL FRAMEWORKS AND ALSO EXTERNAL INFLUENCES RELEVANT FOR ESTABLISHING A BUSINESS, SUCH AS THE INDONESIAN TAXATION SYSTEM, LABOUR AND HUMAN RESOURCES AND IPR. EU TRADE POLICY FACILITATES TRADE AND INVESTMENT RELATIONS WITH INDONESIA AND OTHER NON-MEMBER COUNTRIES BY ELIMINATING PROTECTIVE TRADE BARRIERS, BUT ALSO BY OFFERING HANDS-ON BUSINESS SUPPORT THROUGH PROJECTS SUCH AS THE EIBN.

While obstacles remain, the Indonesian market is becoming more accessible and profitable than ever before. Many environmentally friendly, innovative and high-quality products and services created by EU SMEs provide solutions to the ecological, industrial and social challenges and opportunities that Indonesia faces. The EIBN is perfectly prepared to support EU business activities here in Indonesia and to help to identify what EU businesses stand to gain by entering the Indonesian market, the likely risks and how to manage those potential risks.

The prospects for future trade between the European Union and the Republic of Indonesia are very promising. Although the GSP regime, which entitles Indonesia to privileged access to the markets of the EU, will ultimately be suspended as Indonesia's economic wealth grows, negotiations are currently underway with the aim of bringing bilateral relations to another level. The signing of a Comprehensive Economic Partnership Agreement (CEPA) aims to create a win-win situation for both parties in order to strengthen trade. The potential impact includes a recovery in EU-FDI-flowing into Indonesia, as well a potential increase in exports from Indonesia to Europe of 5.4%. More than one-third of this growth would derive from traditional products, while the rest would be generated by diversifying trade with new products.

CONTACTS

The following contacts are a non-exhaustive list about relevant government agencies to be consulted about relevant frame conditions of setting up a business in Indonesia.

Indonesia Investment Coordinating Board (BKPM)

Jl. Jend. Gatot Subroto No. 44, Jakarta 12190
P.O. Box 3186, Indonesia
Phone : +62 21 5252 008 / 0807 1000 2576
Fax : +62 21 520 2050
Website : <http://www.bkpm.go.id/>

BKPM's Investor Relations Unit (IRU)

Phone : +62 21 5292 1329-30
E-mail : info@bkpm.go.id

Ministry of Trade

Gedung Utama Lt. 5 Jl. M. I. Ridwan Rais No. 5 Jakarta Pusat 10110
Phone : (021) 23528404, (021) 3858171 Pes. 31070, 31004
Fax : (021) 3846106
Website : <http://www.kemendag.go.id/>

Ministry of Finance

Gedung Juanda I Lantai 4
Jl. Dr.Wahidin Raya Nomor 1 Jakarta 10710
Phone : (021) 344.9230
Fax. : (021) 3844784
Email : portalkemenkeu@depkeu.go.id
Website : <http://www.kemenkeu.go.id/en>

Financial Services Authority (OJK)

Radius Prawiro Tower, 2nd floor
Bank Indonesia office complex
Jalan M.H. Thamrin No. 2, Jakarta
Phone : +62 21 500 655/+62 21 386 6032
E-mail : konsumen@ojk.go.id
Website : <http://www.ojk.go.id/en>

Ministry of National Development Planning (BAPPENAS)

Jl. Taman Suropati No. 2, Jakarta 10310
Phone : 021-390 5650
Fax : 021-334 779
Website : www.bappenas.go.id

Badan Pusat Statistik Republik Indonesia (Center for Statistics of Indonesia)

Jl. Dr. Sutomo 6-8 Jakarta 10710 Indonesia
Phone : (62-21) 3841195, 3842508, 3810291
Fax : (62-21) 3857046
E-mail : bpshq@bps.go.id
Website : <http://www.bps.go.id/eng/index.php>

ASEAN IPR SME Helpdesk

Phone : +62 21 5711810
E-mail : question@asean-iprhelpdesk.eu
Website : www.asean-iprhelpdesk.eu

Minister of Finance - Manajemen Portal Kemenkeu

Gedung Djuanda I Lt. 12 Jl. Dr.Wahidin
Raya Nomor 1 Jakarta 10710
Phone : +62 21 3849605
Fax : +62 21 3500847
E-mail : portalkemenkeu@depkeu.go.id
Website : <http://www.pajak.go.id/>

Directorate General of Taxes – Ministry of Finance

Direktorat Penyuluhan, Pelayanan dan Hubungan Masyarakat
Gedung Utama, Lantai 16, Kantor Pusat Direktorat Jenderal Pajak,
Jalan Gatot Subroto, Kavling 40-42, Jakarta 12190, Kotak Pos 124
Phone : +62 21 5250208, 5251509
Fax : +62 21 584792
E-mail : pengaduan@pajak.go.id
Website : <http://www.kemenkeu.go.id/en>

Social Security Agency (BPJS)

Jl. Jendral Gatot Subroto No. 79
Jakarta Selatan Indonesia 12930
Phone : +62 21 520 7797
Fax : +62 21 520 2310
E-mail : biro.humas@bpjsketenagakerjaan.go.id
Website : <http://www.jamsostek.co.id/>

Bank Indonesia

Jl. MH. Thamrin 2 Jakarta 10350 Indonesia
Phone : +62 21 2981 7187
Fax : +62 21 350 1867
E-mail : humasbi@bi.go.id

Constitutional Court of the Republic of Indonesia

Road West of Medan Merdeka No. 6, Jakarta 10110
Phone : +62 21 23529000
Fax : +62 21 3520177
E-mail : humas@mahkamahkonstitusi.go.id

Ministry of Manpower

Jl. Jend. Gatot Subroto Kav. 51, Jakarta 12950
Phone : +62 21 522 9285
Fax : +62 21 797 4488
E-mail : redaksi_balitfo@depnakertrans.go
Website : www.depnakertrans.go.id

Ministry of Justice And Human Right

Jl. H.R. Rasuna Said Kav. 6-7 Kuningan, Jakarta 12940
Phone : +62 21 525 3004
Fax : +62 21 526 3082
Websites : www.depkumham.go.id, <http://www.kemenkumham.go.id/>

Directorate General of Immigration

Ministry of Justice And Human Right
Jl. H. R. Rasuna Said Kav.X-6 Kuningan-Jakarta Selatan
Phone : +62 21 5224658 ext. 2922, +62 21 5224658 ext. 2919
E-mail : humas@imigrasi.go.id

Directorate General of Intellectual Property Rights

Ministry of Justice And Human Right
Jl. H.R. Rasuna Said Kav. 8-9, Jakarta Selatan, Indonesia
Phone : +62 21 57905619
Fax : +62 21 57905619
Website : <http://www.dgip.go.id/>

REFERENCES

- AmCham Indonesia, *Labour Unrest In Indonesia: An Overview*. 2013. Available at:
<http://www.amcham.or.id/nf/features/4209-labor-unrest-in-indonesia-an-overview>
- ASEAN IPR SME Helpdesk, *IP Country Factsheet – Indonesia 2014*. Available at:
<http://www.southeastasia-iprhelpdesk.eu/sites/default/files/publications/Indonesia%20Factsheet.pdf>
- Asian Legal Business, *Indonesia IP: Moving towards AEC*, 2015. Available at:
<http://www.legalbusinessonline.com/features/indonesia-ip-moving-towards-aec/67986>
- Atradius, *Trade Successfully With Indonesia – Resolve any disputes over payment efficiently*, 2013. Available at:
<https://group.atradius.com/reports-and-advice/trade-successfully-with-indonesia.html>
- BSA, *The Compliance Gap*, 2014. Available at:
<http://www.nationmaster.com/country-info/stats/Crime/Software-piracy-rate>
- Cameron D. M. & Borenstein R., *Key Aspects of IP License Agreements*, 2013. Available at:
<http://www.jurisdiction.com/lic101.pdf>
- CIA, *The World Factbook*, 2015. Available at:
<https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>
- Deloitte, *Taxation and Investment in Indonesia 2014*, Reach, relevance and reliability, 2014. pp. 8-9. Available at:
<http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-indonesiaguide-2014.pdf>
- Eddtmurthy I. & Smith D., *A Legal Primer on Joint Venture Agreements in Indonesia*, *UP.DATE Journal of BritCham*, 2013. Available at:
http://www.ssek.com/download/document/BritCham_-_Up_Date_-_MarchApril_2013_78.pdf
- Ernst & Young, *Asia-Pacific R&D Incentives*, 2013. Available at:
[http://www.ey.com/Publication/vwLUAssets/2013_Asia-Pacific_R_and_D_incentives/\\$FILE/2013_Asia-Pac_RD_Incentives_Guide.pdf](http://www.ey.com/Publication/vwLUAssets/2013_Asia-Pacific_R_and_D_incentives/$FILE/2013_Asia-Pac_RD_Incentives_Guide.pdf)
- Ernst & Young, *Indonesian Social Security System Changes Require Expatriate Participation*, 2014. Available at:
<http://www.ey.com/GL/en/Services/Tax/Human-Capital/HC-Alert--Indonesian-Social-Security-System-changes-require-expatriate-participation>

- Elsevier Business Intelligence, *Insider Analysis From Baker & McKenzie on Terminating Distribution Agreements in Indonesia*, Pharma Asia News, November 11 2013. Available at:
http://www.bakermckenzie.com/files/Uploads/Documents/AP%20Newsroom/PAN_28131107007.pdf
- Financial Times, *Indonesia's Ecommerce Awakens*, Feb 21 2014. Available at:
<http://www.ft.com/cms/s/0/bc234dc4-9903-11e3-a32f-00144feab7de.html#axzz3qb9Qq3F2>
- TechInAsia, *How foreign VCs Are Sneaking Past Indonesia's E-Commerce Laws*, September 22 2015. Available at:
<https://www.techinasia.com/how-to-get-around-indonesia-ecommerce-ban/>
- IFA Educational Foundation, *An Introduction to Franchise*, 2010. Available at:
http://www.trade.gov/sabit/static/Introduction%20to%20Franchising-IFA-Eng_Latest_tg_sabit_005404.pdf
- Indonesia Invests, *What are the Minimum Wages in Indonesia in 2015?*, 2014.
<http://www.indonesia-investments.com/news/today-s-headlines/what-are-the-minimum-wages-in-indonesia-in-2015/item2633>
- Indosight, *Opening a Representative Office in Indonesia*. 2014. Available at: <http://www.indosight.com/company-registration/>
- Indosight, *Foreign Owned Company Registration In Indonesia*, 2014. Available at: <http://www.indosight.com/blog/how-to-register-company-in-indonesia/>
- Indosight, *Foreign Ownership Restrictions and Negative Investment*, 2014. Available at:
<http://www.indosight.com/blog/foreign-ownership-restriction-negative-investment-list/>
- Indosight, *Company Restructuring in Indonesia*, 2015. Available at:
<http://www.indosight.com/blog/company-restructuring-indonesia/>
- Indosight, *Investment Activity Report To Investment Coordinating Board*, 2013. Available at:
<http://www.indosight.com/blog/investment-activity-report-to-bkpm-lkpm/>
- Indosight, *Labor Costs And Employment Culture In Indonesia*,. 2013. Available at:
<http://www.indosight.com/blog/labor-costs-culture-indonesia/>
- KPMG, *Investing In Indonesia*, 2013. Available at:
<https://www.kpmg.com/Ca/en/External%20Documents/investing-in-indonesia-2013.pdf>

McKinsey Global Institute, *The Archipelago Economy: Unleashing Indonesia's Potential*, 2012. Available at: http://www.mckinsey.com/insights/asia-pacific/the_archipelago_economy

PLC, *Employment And Employee Benefits In Indonesia: Overview*, 2015. Available at: <http://uk.practicallaw.com/0-508-0242?source=relatedcontent>

Price Waterhouse Coopers, *Doing Business In Indonesia*, 2011. Available at: <https://www.pwc.de/de/internationale-maerkte/assets/doing-business-in-indonesia.pdf>

Price Waterhouse Coopers, *Indonesian Pocket Tax Book*, 2015. pp. 2-3
<https://www.pwc.com/id/en/indonesian-pocket-tax-book/assets/indonesian-ptb-2015-en.pdf>

Price Waterhouse Coopers, *Paying Taxes 2015*, 2015. p. 151. Available at: <http://www.pwc.com/gx/en/services/tax/paying-taxes.html>

Presidential Regulation 39/2014 provides also a list of business fields closed, open and partly open to foreign investment <http://www.bkpm.go.id/img/Presidential%20Regulation%2039%20year%202014.pdf>

Stewart M.R. & Maughn R. D., *International Joint Ventures, A Practical Approach*, Davis Wright Tremaine, 2011. Available at: http://www.dwt.com/files/Publication/1b841dbe-3453-4983-97cd-d6f5b44e5b2f/Presentation/PublicationAttachment/47d38fc0-1cc3-4c3e-b91f-d8aacd2ce6d1/International%20Joint%20Ventures%20Article_Stewart.pdf

The Financialist, *Indonesia's Winning Demographic Hand*, June 2015. Available at: <http://www.thefinancialist.com/indonesias-winning-demographic-hand/>

U.S. Department of Commerce, *Doing Business in Indonesia: 2013 Country Commercial Guide for U.S. Companies*, 2013. Available at: http://www.export.gov/indonesia/build/groups/public/@eg_id/documents/webcontent/eg_id_089369.pdf

ABBREVIATIONS

APBN	State Budget (<i>Anggaran Pendapatan dan Belanja Negara</i>)
API	Importer Identification Number (<i>Angka Pengenal Impor</i>)
API-K	Import Identification Number for Importers Acting as Contractors (<i>Angka Penegal Import Khusus</i>)
API-P	API for Businesses Acting in Industrial or Manufacturing Activities (<i>API Produsen</i>)
API-T	Importer Identification Number for Importers That Require Goods for Production Supported By BKPM Facilities (<i>Angka Penegal Import Terbatas</i>)
API-U	Importer Identification Number for importers involved only in trade (<i>API Unum</i>)
ASEAN	Association of Southeast Asian Nations
BAPPENA	Ministry of National Development Planning (<i>Badan Perencanaan Pembangunan Nasional</i>)
BI	Indonesian Central Bank (<i>Bank Indonesia</i>)
BKPM	Investment Coordinating Board (<i>Badan Koordinasi Penanaman Modal</i>)
BPJS	Social Security Agency (<i>Badan Pertanahan Jaminan</i>)
BPN	National Land Agency (<i>Badan Pertanahan Nasional</i>)
BPOM	National Agency for Food and Drug Control (<i>Badan Pengawas Obat dan Makanan</i>)
BUJKA	Representative Office of a Foreign Construction Company (<i>Badan Usaha Jasa Konstruksi Asing</i>)
CEO	Chief Executive Officer
CEPA	Comprehensive Economic Partnership Agreement
CLA	Collective Labour Agreement
DGCE	Directorate General of Customs and Excise
DGIPR	Directorate General of Intellectual Property Rights
DGT	Directorate General of Tax
DNI	Negative Investment List (<i>Daftar Negatif Investasi</i>)
EIBN	EU-Indonesia Business Network
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
HGB	Right to Use a Building (<i>Hak Guna Bangunan</i>)
HGU	Right of Exploitation (<i>Hak Guna Usaha</i>)
HM	Right of Ownership (<i>Hak Milik</i>)
HP	Right to Use (<i>Hak Pakai</i>)
HS	Right to Lease
HS Code	Harmonized Commodity Description and Coding Systems
IDR	Indonesian Rupiah
IFRS	International Financial Reporting Standards
IMTA	Work Permit (<i>Izin Mempekerjakan Tenaga Kerja Asing</i>)
IP	Intellectual Property
IPR	Intellectual Property Rights
IRU	Investor Relations Unit (of BKPM)

ITPT	Registered Importer Number (<i>Importir Terdaftar Produk Tertentu</i>)
IUT	Permanent Business License (<i>Izin Usaha Tetap</i>)
JV	Joint venture
KAPET	Integrated Economic Development Zone (<i>Kawasan Pengembangan Terpadu</i>)
KBLI	Standard Classification of Indonesian Business Sectors (<i>Klasifikasi Baku Lapangan Usaha Indonesia</i>)
KITAP	Permanent Stay Permit Card (<i>Kartu Izin Tinggal Tetap</i>)
KITAS	Temporary Stay Permit Card (<i>Kartu Izin Tinggal Terbatas</i>)
KPPA	Representative Office Kantor (<i>Perwakilan Perusahaan Asing</i>)
K3PA	Representative Office of Foreign Trade Company (<i>Kantor Perwakilan Perusahaan Perdagangan Asing</i>)
KSBSI	Confederation of Indonesian Prosperous Trade Unions (<i>Konfederasi Serikat Buruh Sejahtera Indonesia</i>)
KSPI	Indonesian Trade Union Confederation (<i>Konfederasi Serikat Pekerja Indonesia</i>)
KSPSI	Confederation of Indonesian Workers (<i>Konfederasi Serikat Pekerja Seluruh Indonesia</i>)
LKPM	Investment Activity Report (<i>Laporan Kegiatan Penanaman Modal</i>)
LPJK	National Construction Agency (<i>Lembaga Pengembangan Jasa Konstruksi</i>)
MOM	Ministry of Manpower
MOT	Ministry of Trade
NIK	Customs Registration Number
NPIK	Special Importer Identification Number
NPWP	Tax Registration Number (<i>Nomor Pokok Wajib Pajak</i>)
OECD	Organisation for Economic Cooperation and Development
OJK	Financial Service Authority (<i>Otoritas Jasa Keuangan</i>)
PKP	Taxable Entrepreneur (<i>Pengusaha Kena Pajak</i>)
PKWT	Definite Employment Agreement (<i>Perjanjian Kerja Waktu Tidak</i>)
PKWTT	Indefinite Employment Agreement (<i>Perjanjian Kerja Waktu Tidak Tertentu</i>)
PPAT	Land Deed Registrar (<i>Pejabat Pembuat Akta Tanah</i>)
PPP	Public-Private Partnership
PSA	Production Sharing Agreement
PSAK	Indonesia's Generally Accepted Accounting Principles (<i>Pernyataan Standar Akuntansi Keuangan</i>)
PT	Limited liability company (<i>Perseroan Terbatas</i>)
PT PMA	Limited liability company funded by a foreign investment (<i>Perseroan Terbatas Penanaman Modal Asing</i>)
RPTKA	Expatriate Manpower Utilization Plan (<i>Rencana Penggunaan Tenaga Kerja Asing</i>)
SME	Small and Medium-Sized Enterprise
SPIPISE	Electronic Platform for Investment Licenses and Non-Investment Licenses (<i>Sistem Pelayanan Informasi dan Perizinan Investasi Secara Elektronik</i>)
SPPT	Tax Due Notification Letter (<i>Surat Tanda Pendaftaran</i>)

STP	Registration Certificate (<i>Surat Tanda Pendaftaran</i>)
STLG	Sales Tax on Luxury Goods
STP	Distributor/agent registration certificate
STPW	Franchise registration license certificate (<i>Surat Tanda Pendaftaran Waralaba</i>)
TDP	Business Registration Certificate (<i>Tanda Daftar Perusahaan</i>)
TBK	Publicly-listed company (<i>Perseroan Terbuka</i>)
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UMP	Provincial Minimum Wage (<i>Upah Minimum Provinsi</i>)
UN	United Nations
US	United States (of America)
VAT	Value Added Tax
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation
WALI	Steering Committee for Franchises and Licenses (<i>Perhimpunan Waralaba dan Lisensi Indonesia</i>)

ABOUT EIBN

The EIBN is a partnership project between five European bilateral chambers of commerce in Indonesia (BritCham, EKONID, EuroCham, IFCCI, INA) and two counterparts in Europe (EUROCHAMBRES, CCI Barcelona). The EIBN's aim is to promote Indonesia and ASEAN as high potential trade and investment destinations towards companies from all EU28 member states – particularly SMEs – and support them in their endeavor to explore the full market potential in Indonesia. The project was initiated and is co-funded by the EU.



ACKNOWLEDGEMENTS

The Indonesia Business Guide series is the product of a joint research and editorial effort of the EU-Indonesia Business Network team. EIBN hereby acknowledges with gratitude the contributions of members of the EIBN team: Agrika Puspita, Antaressa Pritadevi, Armyta Rahardhani, Chloe Martinez, Giandomenico Zappia, Giovanni Tutupoly, Firriski Nurtomo, Johannes Kotschenreuther, Joaquim Torrinha, Jonathan Ulrich, Laura Aramo, Triesti Prabawati, Ruzha Likja, Sri Kumala Chandra, Martin Krummeck, Michael Gramlich and Yacinta Esti.

RESEARCH AND WRITING

EIBN Team

EDITING

Jonathan Ulrich

CREATIVE DESIGN CONCEPT AND PRODUCTION

Syafruddin Arief [EKONID]

PUBLISHER

EU-Indonesia Business Network (EIBN), 2017

DISCLAIMER

This publication has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of the EIBN and can under no circumstances be regarded as reflecting the position of the European Union.

The figures in this report correspond to EIBN's best estimate of value of the corresponding variables. Although due care was taken in the preparation of this publication, EIBN makes no warranty as to its accuracy or completeness and is not to be deemed responsible for any errors or loss resulting from its use. Other organizations quoted herein are in no way responsible for the content of the report or the consequences of its use.



www.eibn.org



This book has been produced with the financial assistance of the European Union. Its contents are the sole responsibility of the EIBN and can under no circumstances be regarded as reflecting the position of the European Union.



A project co-funded by the European Union