

Country Guide

Indonesia

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GUIDE TO DOING BUSINESS IN INDONESIA

Ali Budiardjo, Nugroho, Reksodiputro

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I. The Country at a Glance

Situated between Malaysia and the Philippines to the north and Australia to the south, the Republic of Indonesia covers a total area of approximately 1,919,931 square kilometers comprising more or less 17,504 islands (of which an estimated 957 are inhabited) and forming part of the world's largest archipelago. Indonesia is a tropical country with year-round sunlight all over the year. Indonesia's national language is Indonesian, locally simply referred to as *Bahasa Indonesia*. In total, approximately 500 languages and dialects are spoken throughout Indonesia. English is widely used and taught in most secondary schools.

Indonesia, as the largest island country in the world, relies heavily on transport connections to link the islands and regions. Indonesia has 508,000 kilometers of road network, which including 949 kilometers of toll road; 4,069 active railways; 295 airports and 78 active commercial sea ports.

With a population of over 250 million, Indonesia is the 4th most populous nation in the world. It is the largest economy in Southeast Asia, and by 2030 it is projected to be the seventh largest in the world. Indonesia is among the top emerging markets with the best middle class potential, with strong demands for consumer goods and services, particularly in education, finance, healthcare, ICT and tourism.

Indonesia has a mix of various cultures and different social patterns. It is also home to the largest Muslim population in the world (86%). Religion plays an important role within Indonesian society and in the daily lives of the people, including the business activities. During the Ramadhan month (fasting month) for instance, business hours are shortened as there is no lunch recess. Employees are allowed prayer times and at least one Haj pilgrimage during their service.

II. General Considerations

Diplomatic Relations

Indonesia has diplomatic relation with most of the countries in the world. As at the writing of this report it has no diplomatic relation with Israel and Taiwan. There are currently no prohibitions or restrictions in business dealings with the country; nor are there travel warnings to or within the country.

Government

Election system and schedule. Indonesia uses the Direct Election System for the election of both its Legislative Members and its President. These elections are held every five year.

Political history in the last decade. For the past 10 years, for the first time in 2004, Indonesia's legislative members and president have been directly elected by the Indonesian people. This change marks the development of the country's more democratic systems, also in its economic and business sectors.

Judicial system. Indonesia's current judicial system has been built under a separation-of-power concept. As such, it is an impartial system with no specific political method for resolving disputes. Disputants may choose to resolve their dispute before the court or by taking the alternative dispute resolution (ADR) procedure, and they are free to choose the law that governs their matter/dispute. The ADR also allows disputing parties to choose a domestic or a foreign forum for the resolution of their dispute. The Indonesian court system comprises the Common Court, the Corruption Court, the Industrial Relation Court, the Administration Court and the Commercial Court. Indonesian court decisions are not enforceable outside of Indonesia and on the other hand decisions of foreign courts are not enforceable in Indonesia. Court proceedings in Indonesia are generally lengthy and cumbersome - they may take months or even years.

Legislative system. The country's parliamentary system comprises three chambers. The first is the *Dewan Perwakilan Rakyat* (DPR), which comprises representatives of the political parties and which is tasked with enacting laws together with the President. The second is the *Dewan Perwakilan Daerah* (DPD), which comprises representatives of the country's provinces. The last one is the *Majelis Permusyawaratan Rakyat* (MPR), which comprises members of both the DPR and the DPD, which is tasked with, among others, amending the Constitution.

Environmental Considerations

Issues concerning the environment are regulated by Law No. 32 Year 2009 concerning Protection and Maintenance of the Environment. Under this law, the Environmental License is a mandatory prerequisite for a Business License. Indonesia actively participates in the world wide movement to stop global warming.

Intellectual Property

Indonesia is a party to the various international treaties/conventions relating to IPRs, such as the Berne Convention, the Paris Convention, the Convention Establishing the World Intellectual Property Organization, the WIPO Copyrights Treaty, the Patent Cooperation Treaty, and the World Trade Organization (“WTO”) Agreement including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

The country’s laws for the protection of intellectual property are:

- Law No. 13 of 2016 on Patents
- Law No. 20 of 2016 on Marks and Geographical Indications
- Law No. 30 of 2000 on Trade Secrets
- Law No. 31 of 2000 on Industrial Designs
- Law No. 32 of 2001 on Integrated Circuit Lay-out Designs
- Law No. 28 of 2014 on Copyrights

Notable points:

- No substantive prior approvals by national investment boards are required.
- Notarization is required for document assignments.
- There are no regulatory guidelines for licenses.
- There are no specific exceptions or requirements relation to a particular product(s).
- There are no stipulations that limit royalties from licenses. There are no stipulation for the determination of ‘excessive’ royalties.
- Generally, the Indonesian competition law does not apply to intellectual property licenses.
- Typical agreements entered into by foreign corporations with their wholly owned subsidiaries are: license agreements, IP related agreements and Technical Assistance agreements.

III. Investment Incentives

Export Incentives or Guarantees

Export Financing. Law No. 2 of 2009 regarding The Indonesian Export Financing Institution (“Law No.2/2009”) regulates the granting of financing facilities to business entities or individuals that conduct export activities. The facilities can be applied for to the The Indonesian Export Financing Institution or *Lembaga Pembiayaan Ekspor Nasional* (LPEI), which is the agency in charge of this matter under the Ministry of Finance (“MoF”).

Based on Law No.2/2009 the facilities provided are as follows:

- a. Financing (*pembiayaan*), including provision of working capital and/or investment financing;
- b. Guarantees, including:
 - Guarantees provided to Indonesian exporters for the payment to be received from overseas buyers;
 - Guarantees provided to Indonesian importers domiciled outside Indonesia for the payment to be received from Indonesian exporters;
 - Guarantees provided to banks that provide financing to Indonesian exporters; and/or
 - Guarantees provided to participants of tenders for projects that support export activities.
- c. Insurances, including:
 - Risk insurances for export failure;
 - Risk insurances for payment failure;
 - Investment Risk insurances for Indonesian companies located overseas;
 - Political Risk insurances in export country destinations.

Tax and Customs Incentives for Capital Investment

Indonesia also provides certain tax and customs incentives for capital investment. These incentives are regulated in Law No. 25 of 2007 regarding Capital Investment. Investments that are eligible for these facilities are investments:

- a. that are labor intensive;
- b. that fall under the category of highly prioritized investments;
- c. in infrastructure construction;
- d. that involve technology transfers;
- e. in a pioneer industry;

- f. that are located in a remote area, a less-developed area, a contiguous area, or another area deemed necessary;
- g. that keep the environment sustainable;
- h. that involve research, development, and innovation activities;
- i. that are made in partnership with micro, small and medium enterprises or cooperatives; or
- j. in an industry that uses domestically-produced capital goods or machinery and equipment.

Investment Facilities

Facilities available to investors are as follows:

- a. reduction of net income tax, depending on the total investment amount made within a specified period;
- b. import duty exemption or relief for production capital goods, machinery, or equipment not yet produced in Indonesia;
- c. import duty exemption or relief on import duty for production of raw materials or components for a specified period upon fulfillment of specified requirements;
- d. Value Added Tax exemption or deferment for a specified period for importation or production of capital goods or machinery or equipment not yet produced in Indonesia;
- e. accelerated depreciation or amortization; and
- f. Land and Buildings Tax relief for specified business fields in specified regions or areas or zones.

Corporate Income Tax Reduction

The corporate income tax reduction was governed under Regulation No. 159/PMK.010/2015 regarding the Granting of Corporate Income Tax Reduction Facility as amended by Regulation No. 103/PMK.010/2016 issued by the Minister of Finance (“MoF Regulation 159”).

The corporate income tax reduction is available for selected “pioneer industries”, which is defined as “industries having extensive interconnection, giving high value added and externality, introducing new technology, and having strategic value for the nation-wide economy. It can be granted for a maximum 100% and a minimum 10% of the amount of corporate income tax.

At this stage, the pioneer industries covered under the MoF Regulation 159 are:

- Upstream metal industry;
- Oil refinery industry or oil refinery industry and infrastructure, including the Government and Business Entity Cooperation (*Kerjasama Pemerintah dan Badan Usaha*) scheme;
- Basic organic chemicals industry originating from oil and natural gas;
- Machinery industry producing industrial machinery;

- Agricultural, forestry and fishery product based processing industry;
- Telecommunication, information and communication industry;
- Marine transportation industry; and/or
- Economic infrastructure other than those using the Government and Business Entity Cooperation (*Kerjasama Pemerintah dan Badan Usaha*) scheme.

In an effort to encourage further investment in Indonesia, a corporate income tax reduction may be granted for 5 up to 15 years as of the fiscal year where the commercial operation starts. The MOF may grant an additional period of concession up to maximum 20 years in the interests of maintaining the competitiveness of national industry and the strategic value of certain industries.

In order to take advantage of the corporate income tax reduction, the following conditions must be met:

- The taxpayer is a new taxpayer;
- The investment is in a “pioneer” industry;
- The approved new investment plan must be at least Rp 1 trillion;
- Compliance to the provision on the debt to equity ratio under the prevailing regulation of the MOF that governs the debt to equity ratio for income tax calculation;
- At least 10% of the investment capital must be placed in an Indonesian bank, and it cannot be withdrawn prior to the commencement of the realization of the investment;
- The taxpayer must be in the form of Indonesian legal entity, and its legalization must be stipulated as of or after August 15, 2011.

The approved new investment plan of pioneer industry in the field of telecommunication, information and communication that has complied with requirement of introducing high technology can be lowered to a minimum Rp 500 billion. In this case, the maximum corporate income tax reduction granted is 50% with an investment plan of maximum Rp 1 trillion and minimum Rp 500 billion.

The taxpayer may utilize the corporate income tax reduction if: (i) it has conducted the commercial production; (ii) it has realized its investment plan during the commercial production; and (iii) its line of business is covered as “pioneer industry”.

The request for the corporate income tax reduction is to be made to the Head of the Investment Coordinating Board (“BKPM”), who will coordinate with the relevant ministries. After conducting certain analysis on the documents of the applicant and the compliance as a “pioneer industry”, the Head of the BKPM must submit proposal on the granting of corporate income tax reduction to the MOF, enclosing the required supporting documents.

The MOF will further appoint a verification committee with task to review and verify the proposal. The verification committee will submit the result of the review and verification along with certain

consideration and recommendation to the MOF. Upon such consideration and recommendation, the MOF will determine the granting of corporate income tax reduction.

Taxpayer that has been granted with income tax facility pursuant to article 31 (a) of the Income Tax Law (tax allowance for certain industries or regions) is not allowed to obtain the corporate income tax under MoF Regulation 159. While, taxpayer that has been granted with corporate income tax under MoF Regulation 159 is not allowed to obtain income tax facility pursuant to article 31 (a) of the Income Tax Law.

Application for corporate income tax reduction under MoF Regulation 159 must be submitted by the Head of BKPM within 3 years as of the validity date of MOF Regulation 159 (i.e., August 16, 2015).

A taxpayer who has received the corporate income tax reduction must submit periodical reports to the Directorate General of Tax and verification committee comprising a report regarding the use of the fund placed in the Indonesian Banking, an audited report of the realization of the investment, and a realization report of the production during the facility period. Upon the request of the Director General of Tax, the taxpayer must also provide transaction date of companies that have special relationship as stipulated under article 18 paragraph (4) of the Income Tax Law.

Regional Tax Incentives for Foreign Investors

On April 15, 2016, the government issued Government Regulation (“GR”) No. 9 of 2016 that revises GR No. 18 of 2015 concerning Income Tax Facilities for Investments in Designated Business Fields and/or Designated Regions. Under this GR, 71 business fields and 74 business fields in certain regions receive tax incentives. Companies investing in the listed business fields or listed business fields in the designated regions may be granted with income tax facilities, such as:

- a. Reduction of net income tax by 30% of the total investment amount, deducted for 6 years, each of which by 5%;
- b. Accelerated depreciation or amortization, as follows:
 - Accelerated depreciation on fixed tangible asset:

Category: Fixed Tangible Asset		Useful Life	Rate of depreciation and amortization under methods of	
			Straight Line	Declining Balance
I.	Nonbuilding Category I	2 years	50%	100% (charged directly to income)

Category: Fixed Tangible Asset	Useful Life	Rate of depreciation and amortization under methods of	
		Straight Line	Declining Balance
Category II	4 years	25%	50%
Category III	8 years	12,5%	25%
Category IV	10 years	10%	20%
II. Building:			
Permanent	10 years	10%	-
Nonpermanent	5 years	20%	-

- Amortization on fixed intangible asset:

Category: Fixed Intangible Asset	Useful Life	Rate of depreciation and amortization under methods of	
		Straight Line	Declining Balance
Category I	2 years	50%	100% (charged directly to income)
Category II	4 years	25%	50%
Category III	8 years	12,5%	25%
Category IV	10 years	10%	20%

- c. Imposition of 10% income tax on dividends paid to overseas taxpayers other than a permanent business form in Indonesia, or otherwise a lower rate subject to the prevailing agreement for the avoidance of double taxation;
- d. Extended loss carry forward of more than 5 years but less than 10 years, as follows:
- additional period of 1 year if:
 - newly investing in the fields of business conducted in industrial estates and bonded zones;

- investing/expending at least Rp. 10 billion in economic and/or social infrastructure in business locations;
- using at least 70% of raw materials and/or components of domestic products since the fourth year;
- employing at least 500 Indonesian workers for 5 consecutive years;
- additional period of 2 years if:
 - employing at least 1000 Indonesian workers for 5 consecutive years;
 - within 5 years, expending at least 5% of the investments in domestic research and development costs for product development or production efficiency;
 - part of source of financing of an expansion investment derives from earning after tax of the taxpayer within 1 fiscal year prior to the issuance of the expansion principle license;
 - conducting export of at least 30% from total sales value for fields of business conducted in bonded zones.

Integrated Economic Development Zone (KAPET)

Companies conducting business in an Integrated Economic Development Zone (*Kawasan Pengembangan Ekonomi Terpadu/KAPET*) are also eligible for the above mentioned tax facilities. The application for the facilities is to be submitted to the Directorate General of Taxation.

Bonded Zone

Companies with a Bonded-Zone status (KB status) are also entitled to customs facilities such as:

- Postponement of import duty and exemption from customs on capital goods and equipment and goods and materials for processing;
- Exemptions from Value Added Tax (VAT) or VAT and sales tax on their transactions involving certain luxury goods;
- Exemption from income tax (Article 22) on importation of capital goods and other equipment directly related to production activities.

The KB status may be applied for to the MoF by export-oriented manufacturing companies. The aim is to minimize idle investments in input VAT and Luxury Sales Tax (LST) overpayments resulting from the existence of refunds pending approval for export activities. As a result, the KB status brings about a non-collection of VAT and VAT exemption facilities, for instance, in respect of:

- Importation of capital goods and supporting goods for further processing;
- Importation and domestic purchases of capital goods from other KB company to be used in the area of KB company;

- Importation of office equipment to be used only by the KB company concerned;
- Importation and/or domestic purchases of packaging and packaging tools from other KB company to become the same unit with production of the KB company.

The same tax facilities also apply to traffic of goods between KB companies as well as between a KB company and its supporting contractors. Hence, no VAT and LST are collected, for instance, for the following traffic of goods:

- Shipments of products from other area within the customs area into the area of KB company for further processing;
- Reshipment of machinery and/or moulding for the purpose of lending from other KB company or company located within the customs area into the area of KB company;
- Shipment of production goods of other KB company or company located within the customs area in which capital goods comes from other location within the Customs Area, for further processing by the KB company;
- Shipments of packaging and packaging tools from other location within the Customs Area into the area of the KB company to become the same unit with production of the KB company.

In addition to the above, shipments of goods from other location within the customs area into the area of KB company for further processing by the KB company are eligible for customs exemption.

The postponement of import duty, exemption of customs, exemption of VAT or VAT and LST, non collection of import income tax (Article 22) are granted for shipments of goods from KB company to be further processed and/or combined with the production of the KB company. In order to obtain such facility, KB company must obtain an approval from the Management of KB.

KITE

Instead of obtaining a KB status from the MoF, an export-oriented company may request a KITE (*Kemudahan Impor Tujuan Ekspor*) from the DGCE. Unlike the KB facility, this facility is applicable only for importation of goods that will be processed further or goods that will be assembled or for affixed to other goods for further exportation. The facility includes:

- Refund of import duty that has been paid (“Refund Facility”);
- Exemption of import duty and/or Non-collection of VAT or VAT and LST (“Exemption Facility”).

To acquire the Refund Facility or Exemption Facility, a company must obtain the so-called Company Master Number (*Nomor Induk Perusahaan/NIPER*) from the DGCE on behalf of the MoF.

Free Trade Zones in Batam, Bintan and Karimun

Goods entered into and goods delivered amongst companies inside a *Kawasan Perdagangan Bebas/KPB* or Free Trade Zone (FTZ) are exempted from import duty and excise. In addition, no import taxes (i.e., VAT, LST and Income Tax Article 22) are collected on these goods.

Goods that originate from a FTZ that enter an Indonesian Customs area are liable to import duties and taxes.

Some administrative requirements in FTZ:

1. Business License from the Management Board of FTZ (*Badan Pengusahaan Kawasan/BPK*).
2. Master list (type of goods and quantity) from the Management Board of FTZ, the goods should relate to the business activities.
3. Consumable goods for the FTZ residence should be entered by registered entrepreneurs.
4. Customs procedures (including customs audit, customs penalties) are applicable in FTZ.
5. No requirement to be registered as a Taxable Enterprise (*Pengusaha Kena Pajak/PKP*) for VAT purposes.

IV. Financial Facilities

Financial Institutions

Indonesia recognizes two forms of financial institutions:

- a. Banking Financial Institutions; and
- b. Non-Banking Financial Institutions.

A Banking Financial Institution, or simply known as “Bank”, is generally defined by Indonesian law as “a business entity that collects accumulates funds from the public in the form of savings and that channels those funds back to the public in the form of credits and/or in other forms”.

A Non-Banking Financial Institution is defined as “a financial institution established in the form of insurance company, pension fund, securities, venture capital, financing companies, and other non-bank entities that manage public’s funds”.

While Banks are supervised by Bank Indonesia (the central bank of Indonesia), non-Banking Financial Institutions are supervised by the Minister of Finance and the so called Capital Market-Financial Institutions Supervisory Agency or *Badan Pengawas Pasar Modal-Lembaga Keuangan (BAPEPAM-LK)*.

In the Indonesian financial system there are two supervisory institutions:

- a. The Central Bank, whose duties are to: (i) formulate and implement monetary policies, (ii) regulate and maintain a flowing of payment system and (iii) regulate and supervise banks that operate within the territory of the Republic of Indonesia; and
- b. BAPEPAM – LK together with the Minister of Finance, whose duties are to regulate, develop, supervise and maintain stability in the capital market and Non-Banking Financial Institutions activities.

Banks

The banking system. Indonesia recognizes three (3) types of banks:

- a. The Central Bank (Bank Indonesia), which function is to provide and maintain the stability of the Rupiah and to supervise the value of the Rupiah and the activities of banks in Indonesia. It does not conduct conventional banking activities;
- b. Commercial banks, which conduct conventional banking business activities and/or banking activities based on the Syariah principle. Commercial banks provide payment traffic services and services such as providing loans and savings.
- c. Rural Banks (*Bank Perkreditan Rakyat*), which conduct similar activities as the activities of Commercial Banks, but are more focused on the provision of loans to small and

medium enterprises (SME). Unlike Commercial Banks, Rural Banks do not provide payment traffic services.

Requirements for opening a bank account. Companies in Indonesia which have a foreign shareholder are required to maintain a bank account. The account must be established with a bank which is licensed to handle foreign currencies (known as Foreign-Exchange Bank or *Bank Devisa*).

Indonesian law requires every bank to conduct certain “know your customer” procedures. In practice, banks may apply different requirements; however they are required to at least have the following information on their customers:

For a natural person:

- a. Copy of identity card or passport; and
- b. For foreigners, copy of staying permit in Indonesia/temporary resident permit.

For a corporate entity:

- a. Memorandum and/or Articles of Association;
- b. Business licenses (for Indonesian companies); and
- c. Taxpayer identification number (for Indonesian companies).

There are no specific restrictions on the use of a bank account by its holder, with the exception of its use for money laundering, terrorism funding, and the like.

Bank loans for investors. Bank Indonesia regulations prohibit Indonesian banks from providing loans to foreigners, unless the loans are syndicated loans that meet the certain criteria determined by Bank Indonesia. Therefore, with the exception of loans that meet the criteria above, a foreign investor can only receive a loan through an Indonesian company in which it is participating.

Stock Market

The Indonesian Stock Exchange (PT Bursa Efek Indonesia) organizes and provides the system, regulations and facilities for all securities activities.

V. Exchange Controls

In general, there is no foreign exchange control in Indonesia. A person may freely hold, use and transfer funds in foreign currencies. However, the transfer of funds in foreign currencies to and from abroad is subject to a reporting obligation to Indonesia's central bank, Bank of Indonesia. The reporting obligation is on the side of the Indonesian party.

Law No. 24 of 1999 on the Flow of Foreign Exchange Flow and the Exchange Rate System dated May 17, 1999, imposes reporting requirements to Bank Indonesia on the flow of foreign exchange currency movements, to and from abroad which is made by Indonesian banks, non-bank financial institutions, and non-financial companies. With regard to non-financial companies, Bank Indonesia issued the following implementing regulations apply: Bank Indonesia Regulation No. 16/22/PBI/2014 dated December 31, 2014 concerning the Reporting of the Flow of Foreign Exchange Activities and Implementation of Prudent Banking Principles in the Management of Offshore Loans of Non-Financial Companies, and Circular Letter of Bank Indonesia No. 17/26/DSta dated October 15, 2015 concerning the Reporting of Foreign Exchange Activities Outside the Offshore Loans of Non-Financial Companies ("**Regulation 16/22**").

For certain transactions, Bank Indonesia also restricts the use of Indonesian currency. For export financing and offshore loans, Bank Indonesia also requires (Bank Indonesia Regulation No. 16/10/PBI/2014 as amended by Bank Indonesia Regulation No. 17/23/PBI/2015) that any export and offshore borrowing proceeds (in foreign currency) must be drawn down through domestic banks appointed by Bank Indonesia licensed as a foreign exchange bank. Bank Indonesia does not require the proceeds in foreign currency to be converted into Indonesian Rupiah or to be kept for a specified time period. The rule seeks to bring the Indonesian export's proceeds into an Indonesia banking system, but maintains the free foreign exchange movement policy.

Business Transactions with Nationals, Residents or Non-Residents

Definitions of nationals, residents and non-residents. The definitions discussed in this case are definitions in the context of Foreign Exchange Flow (as defined as "movement of assets and financial obligations between a resident and a non-resident, including movement of foreign financial assets and foreign financial liabilities between residents"):

"Resident" is a person, corporate body and any other body, which is domiciled or is planning to be domiciled in Indonesia.

"Non-Resident" is a person, corporate body and any other body which is not domiciled or does not plan to be domiciled in Indonesia.

"National" is defined by Law No. 12 of 2006 regarding Indonesian Citizenship as a citizen of a country based on the prevailing laws and regulations.

Restrictions and/or requirements in conducting business with nationals, residents or non-residents. No specific restrictions are imposed on foreign parties in the use of foreign currencies in their business with nationals, residents or non-residents. However, in transactions that use foreign currencies the local counterparties are required to report the transactions to Bank Indonesia. For certain transactions, Bank Indonesia also restricts the use of Indonesian currency. For export financing and offshore loans, Bank Indonesia also requires (Bank Indonesia Regulation No. 16/10/PBI/2014 as amended by Bank Indonesia Regulation No. 17/23/PBI/2015) that any export and offshore borrowing proceeds (in foreign currency) must be drawn down through commercial banks that acquires approval from the competent authority to conduct banking business in foreign currencies, including a branch office of a foreign bank in Indonesia, but not including an overseas branch office of a bank headquartered in Indonesia (“**Foreign Exchange Banks**”).

An obligation to receive export proceeds through foreign exchange banks is not applied for:

- a. Export proceed owned by the government that is received through Bank Indonesia; or
- b. Exports proceed that is received in cash domestically as long as evidenced by a sufficient supporting documentation.

An obligation of the offshore borrowing proceeds withdrawal by the offshore borrowing debtor through foreign exchange banks applies to foreign exchange from offshore borrowing proceeds in the form of cash derived from:

- a. Offshore borrowing based on loan agreement in the form of non-revolving that is not used for refinancing;
- b. The difference in refinancing facility with the total previous offshore borrowing; and
- c. Offshore borrowing based on debt securities in the form of Bonds, Medium Term Notes (MTN), Floating Rate Notes (FRN), Promissory Notes (PN), and Commercial Paper (CP).

An obligation of the offshore borrowing proceeds withdrawal by the offshore borrowing debtor through foreign exchange banks applies from offshore borrowing proceeds in the form of fund derived from:

- a. Offshore borrowing based on loan agreement in the form of non-revolving;
- b. Offshore borrowing based on debt securities.

Foreign exchange from offshore borrowing proceed withdrawal shall be reported to Bank Indonesia.

Transactions that must be reported to Bank Indonesia. Under Regulation 16/22, transactions which result in the movement of financial assets and liabilities between a resident and a non resident, including movement of foreign financial assets and foreign financial liability between residents, must be reported to Bank Indonesia. “Foreign Financial Assets” are assets of the residents to non-residents, either in foreign currency or in rupiah, among others in the form of foreign exchange cash, savings, trade receivables, commercial papers and capital participation.

“Foreign Financial Liability” is the liability of the resident towards non-residents, either in foreign currency or in rupiah, among others in the form of offshore loans and equity from non-resident.

The report on foreign exchange flow consists of information and data on the following:

- Goods, services trading transaction and other transactions between residents and non-residents;
- Position and movement of the Foreign Financial Assets and/or the Foreign Financial Liability; and/or
- Plan and/or realization of offshore borrowing.

The reporter of foreign exchange flow shall submit the report on foreign exchange flows to Bank Indonesia and the report is made through online. The reporter of foreign exchange flow consists of:

- a. Based on the types of the institution:
 - Financial institution
 - Non financial institution
- b. Based on ownership:
 - State owned entities;
 - Regional owned entities;
 - Private owned entities;
 - Other entities;
 - Individual

In addition, prudential principles implementation activities must be made by non-bank corporation in managing its offshore borrowing. The report on prudential principles implementation consists of:

1. Report on prudential principles implementation activities undertaken by non-bank corporation in implementing prudential principles to mitigate exchange rate risk, liquidity risk and over-leverage risk over its offshore borrowing (“**Report on Prudential Principles Implementation**”);
2. Report on Prudential Principles Implementation that has been through Attestation Procedures. Attestation Procedures means procedures which is performed by an independent public accountant to provide consideration that the assertions or statements made by the reporter is in conformity with the specific criteria that has been determined;
3. Information concerning the fulfillment of Credit Rating. Credit Rating means the evaluation which is performed by credit rating agency to describe the financial condition of the company or the company’s ability to meet its obligations in a timely manner (credit worthiness); and
4. Financial statement.

The Report on Prudential Principles Implementation consists of information and data on the Foreign Financial Assets and Foreign Financial Liability that would due up to 3 and/or 6 months.

The reporter of Prudential Principles Implementation consists of:

- a. Based on the types of the institution:
 - Non-bank financial institution;
 - Non financial institution.
- b. Based on ownership:
 - State owned entities;
 - Regional owned entities;
 - Private owned entities;
 - Other entities.

There are administrative sanctions for the reporting obligation failure.

Investment Controls

Prior to investing in an Indonesian company, an investor must apply for a principle license from the BKPM, and inform the BKPM of the nature of the intended investment (such as the investment source, line of business of the target company, production capacity, etc.).

Restriction on direct investment. Not all business fields are open to investment/foreign investment. Investors should check the Investment Negative List, which lists the business fields that are closed or open or open with conditions to foreign investment. Under the Negative List, the following lines of business are not open to direct foreign investment in Indonesia:

- a. The lines of business that are reserved or partnership for micro, small, medium enterprises and cooperatives;
- b. The lines of business that are open with certain conditions:
 - the lines of business for which certain shareholding arrangements are required;
 - the lines of business that may be conducted only in certain locations;
 - the lines of business for which a special license is required;
 - the lines of business for which 100% domestic capital is required;
 - the line of business for which certain shareholding arrangements in the form of cooperation with the Association of Southeast Asian Nations (ASEAN) is required.

Applicability of the Negative List

Investment Law No. 25 of 2007 (“Investment Law”) defines “investment” as “direct investment with the exception of indirect or portfolio investment”, which means that the Negative List does

not apply to indirect or portfolio investment that is made through the capital market. The Investment Law, however, does not define the term “portfolio investment”. Prior to August 2008 it was understood that the term ‘portfolio investment’ includes transactions that are made through the capital market and that publicly listed companies are exempted from the Negative List, with the above mentioned exceptions. This follows the longstanding practice whereby publicly listed companies have been regulated by the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) which was previously known as the Capital Market-Financial Institutions Supervisory Agency or *Badan Pengawas Pasar Modal-Lembaga Keuangan (BAPEPAM-LK)* and not by the Capital Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”). Pursuant to the Regulation of the President of the Republic Indonesia No. 44 of 2016 concerning List of Business Fields that are Closed to Investment and Business Fields that are Conditionally Open for Investment, in the event that activities of investment in business fields that are conditionally open are carried out through indirect or portfolio investment in domestic capital markets transactions, then such business fields that are conditionally open shall be considered as open business fields.

Restrictions on indirect investments in the country. For the purpose of this Guide, “indirect investments” are portfolio indirect investments, of which the transactions are made through the domestic capital market/stock exchanges.

Investment in the Banking Sector

In the commercial banking sector, the foreign share ownership limit is 99% and at least 1% of the Bank’s unlisted shares must be owned by an Indonesian citizen(s) and or entity(s) as stipulated in Government Regulation Government Regulation No. 28 of 1999, dated May 7, 1999 concerning Bank Mergers, Consolidations and Acquisitions (“**Regulation 28/1999**”). A number of banks have delisted 1% of their total issued shares, resulting in 100% foreign ownership possibility based on their outstanding shares in the listed market.

Listed banks’ compliance of the foreign ownership limitation is monitored through the Indonesian Stock Exchange (“**IDX**”) and the share registrar. Any listed Bank is required to submit a monthly report to **IDX** on, among others, its shareholding composition; while the share registrar is also under obligation to submit a monthly report on the shareholding of publicly listed companies it maintains to the Indonesian Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”). When a foreign investment limit has been reached, foreign buyers may buy only from foreign sellers. In addition, the aforementioned compliance is also monitored by Bank Indonesia as the supervisory agency by requiring banks to submit periodical reports regarding their foreign ownership. Pursuant to Bank Indonesia Regulation No. 14/8/PBI/2012 regarding the Shares Ownership of Commercial Bank (“**Regulation 14/2012**”) the maximum limitation to have shares in a bank are regulated as follows:

- a. 40% (forty percent) of the bank capital, for the shareholders category in the form of bank financial institution and non- bank financial institution;

- b. 30% (thirty percent) of the bank capital, for the shareholders category in the form of non- financial institution;
- c. 20% (twenty percent) of the bank capital, for the individual shareholders.

The above limitation shall not be applicable to:

- Central Government; and
- Institution functioning to handle and/or salvage the bank.

Any bank financial institution could have shares more than 40% (forty percent) of the bank capital to the extent it is being approved by OJK and fulfill the following requirements:

- a. Obtain the Bank Rate with a composite rate of 1 (one) or 2 (two) or other equal rate for the bank financial institution domiciled abroad;
- b. Fulfill the Minimum Capital Provision Obligation (*Kewajiban Penyediaan Modal Minimum* or “**KPMM**”) based on the risk profile;
- c. Core capital (tier 1) at least 6% (six percent);
- d. Obtain the recommendation from the relevant financial supervisory authority;
- e. A financial institution that has been go public;
- f. Commitment to purchase the equity notes issued by the Target Bank;
- g. Commitment to have the bank in certain period of time;
- h. Commitment to support the economic development in Indonesia.

As for the bank which is being acquired of more than 40% (forty percent) of the capital bank shall fulfill the following criteria:

- a. conduct a go public to achieve the public ownership at the minimum of 20% (twenty percent) of the bank capital within 5 (five) years as of the bank financial institution acquires the shares upon the OJK approval;
- b. have an approval to issue a equity notes.

Further, any party may only become a Controlling Shareholders in 1 (one) bank. The exceptional is only given if such party:

- a. becomes a Controlling Shareholders in 2 (two) banks, which has different principal to conduct a business, i.e. conventional bank and sharia bank;
- b. becomes a Controlling Shareholder in 2 (two) banks, which one of them is a joint venture bank.

In the event any party has become a Controlling Shareholder or purchasing shares in more than 1 (one) bank, then such party shall perform the following:

- a. merger or consolidation of the controlled banks;
- b. form a parent company in banking; or
- c. form a Holding Function.

Purchase of Banks' Shares and Requirements

Investors are required to obtain Bank Indonesia (Indonesia's central bank)'s approval prior to executing any purchase of 25% or more of a bank's total issued shares or in the case of a purchase of less than 25% of the bank's total issued shares if the purchase would affect the control of the Bank. This regulation applies to both direct and indirect investments in bank. This Bank Indonesia's approval, however, is not required if the purchaser of the shares is not intended to be registered in the bank's share registrar.

Bank Indonesia also imposes additional requirements regarding ownership of a bank's shares. Any purchase of 5% up to less than 25% of the shares of a bank must be reported to Bank Indonesia by the board of directors of the Bank within 10 days as of the registration of the shares in the share register.

Investment in Broadcasting Institutions

A private broadcasting institution can list its shares on the stock exchange up to the maximum of 20% of its total issued and paid up capital by taking into account the total shares that have already been acquired by foreign citizens/entity(ies). Foreign citizen/entity can only acquire the shares of such publicly listed broadcasting institution by way of purchasing those listed shares in the stock exchange up to 100% of the total of listed shares, provided that the listed shares must be owned by at least two foreign shareholders¹.

Reporting Requirements

A foreign citizen and/or entity that purchases the shares of the publicly listed broadcasting institution through an Indonesian stock exchange is obliged to submit a report regarding the transaction concerned to OJK in a manner prescribed under the prevailing capital market regulations, with a copy to the Minister of Communications and Information and Technology.

Money Transfer

No exchange rate restrictions. Parties are free to determine the exchange rate that will be applicable to their transactions, and they are free to use a certain reference, such as Bank Indonesia middle rate.

¹ Art. 27 par. 1, 2, 3, and 4, GR 50/2005.

No restrictions on transfers of foreign currencies into or out of the country. There are no regulations restricting the transfer of funds in a foreign currency into or out of Indonesia. However, Bank Indonesia Regulation No. 16/17/PBI/2014 as amended by Bank Indonesia Regulation No. 17/7/PBI/2015, PBI No. 17/14/PBI/2015 and lastly amended by Bank Indonesia Regulation No. 17/16/PBI/2015 and Circular Letter of Bank Indonesia No. 16/15/DPM/2014 as amended by Circular Letter of Bank Indonesia No. 17/16/DPM/2015, Circular Letter of Bank Indonesia No. 17/21/DPM/2015, Circular Letter of Bank Indonesia No. 17/50/DPM/2015, dated 21 December 2015 concerning Foreign Exchange Transactions Against Rupiah between Banks and Foreign Parties stipulates that Banks may perform foreign exchange transaction against Rupiah with foreign parties based on contract. In performing foreign exchange transaction against Rupiah, Bank must:

- a. Banks must have a written internal guidelines as intended under the provisions of banking authorities governing the banking derivative transactions and implementation of risk management;
- b. Comply with the provisions of banking authorities governing the category of the bank to perform foreign exchange transactions activities;
- c. Implement effective management risk as referred to in the provisions of the banking authorities governing the implementation of risk management;
- d. Conduct a self assessment on the readiness of the bank's risk management as referred to in the provisions of banking authorities concerning derivative transaction and Commercial Bank Level of Soundness;
- e. Conduct a mark-to-market for derivative transactions as stipulated under the provisions of banking authorities concerning derivative transaction and implementation of the bank's risk management;
- f. Provide education concerning foreign exchange derivative transactions against Rupiah; and
- g. Comply with the provisions of Bank Indonesia governing the obligation to use Rupiah.

Foreign exchange transactions against Rupiah conducted by banks with foreign party which exceed certain threshold must have an underlying transaction that includes the following activities:

1. Trade in goods and services domestically and overseas; and/or
2. Investment in the form of foreign direct investment, portfolio investment, loans, capital and other investment inside and outside the country;
3. The abovementioned activities also include the estimation of income and expenses.

The underlying transaction as mentioned above does not include:

- a. the use of Bank Indonesia Certificates for foreign exchange derivative transaction against Rupiah;
- b. placement of funds in the bank (vostro) among others, savings, current account and Negotiable Certificate of Deposit (NCD); and
- c. credit facilities which are still undrawn, among others standby loan and undisbursed loan.

For the sale of foreign exchange against Rupiah through forward transaction and to transfer the amount to the account owned foreign party, underlying the ownership of foreign exchange funds domestically and overseas, among others in the form of savings, current accounts, and Negotiable Certificate of Deposit (NCD).

The following is the threshold for foreign exchange transaction against Rupiah conducted by Banks with foreign parties:

1. For the selling and buying of derivative transaction between the banks and foreign parties is each US\$ 1,000,000 or its equivalent per transaction per foreign party and per outstanding position per bank;
2. For the selling of foreign exchange against Rupiah through forward transaction is US\$ 5,000,000 or its equivalent per transaction per foreign party and per outstanding position per bank;
3. For the selling of foreign exchange between banks and foreign parties and the buying of foreign exchange between banks and foreign parties as mentioned points 1 and 2 are prohibited to exceed the nominal value of the underlying transaction. If the nominal value of the underlying transaction is not in multiples of US\$ 10,000, then the value of the underlying transaction may be rounded up in multiples of US\$ 10,000;
4. The time period of the derivative transaction is prohibited to be over than the time period of the underlying transaction;
5. For the buying of foreign exchange against Rupiah by foreign party to bank through spot transaction is US\$ 25,000 or its equivalent per month per foreign party and shall not exceed the nominal of underlying transaction. In case the nominal value of the underlying transaction is not in multiples of US\$ 5,000, then the nominal value of the underlying transaction may be rounded up in multiples of US\$ 5,000.

The term “foreign parties” include foreign citizens, foreign legal entities/institutions, Indonesian citizens having a permanent resident status overseas and not domiciled in Indonesia, and offices of Indonesian banks or Indonesian legal entities domiciled outside of Indonesia. Violations of these regulations are subject to administrative sanctions.

Even though the above restrictions apply only to Indonesian banks, in practice the restriction affect the counter parties to the transactions as well as because they cannot transfer funds in Rupiah currency via Indonesian banks abroad.

No restrictions on sending funds abroad in a foreign currency. A party may freely hold, use and transfer funds in a foreign currency. However, the transfer funds in foreign currencies to and from abroad are subject to a reporting obligation to Bank Indonesia as mentioned above.

Restriction on taking hard currency out of the country. Bank Indonesia Regulation No. 4/8/PBI/2002 regarding Requirements in respect of the Carrying of Cash in Rupiah Currency out of or into the Customs Territory of the Republic of Indonesia (“**Regulation No. 4/2002**”)

provides that the carrying of cash of more than Rp. 100.000.000 (one hundred million Rupiah) outside of Indonesia requires a permit from Bank Indonesia. This permit is issued only if the funds are carried for the following purposes:

- a. cash machine testing;
- b. an exhibition overseas;
- c. a purpose other than the above purpose, which in Bank Indonesia's view is beneficial to the public.

Mandatory Obligation to Use Rupiah. In March 2015, Bank Indonesia issued Regulation of the Indonesian Central Bank No. 17/3/PBI/2015 on Mandatory Use of Rupiah within the Republic of Indonesia ("PBI 17/2015"), as further explained by Circular Letter of Bank Indonesia No. 17/11/DKSP on Mandatory Use of Rupiah within the Republic of Indonesia ("Circular 17/11"). PBI 17/2015 and Circular 17/11 lay down the rule that any transaction carried out in Indonesia, both by residents or non-residents, must be effected in Indonesian Rupiah, and parties are prohibited from refusing to accept the Indonesian Rupiah as payment if rupiah must be used for such transaction. PBI 17/2015 and Circular 17/11 also prohibit the use of dual price denomination using Indonesian Rupiah and another currency.

The following types of transactions are specifically exempted under PBI 17/2015 and the Circular 17/11:

- a. transactions that implement the State Budget;
- b. acceptance or disbursement of grants from or to overseas, where the payer or recipient is located outside Indonesia;
- c. certain international trade transactions;
- d. bank savings in foreign currency;
- e. international financing transactions;
- f. foreign currency transactions entered into under laws and regulations applying to specific business or industry sectors; and
- g. infrastructure project finance approved by Bank Indonesia where the project is a strategic project endorsed as such by the central or regional government, as evidenced by a statement letter issued by the relevant government body.

According to, capital contribution in a Foreign Investment Company is exempted from the obligation to use Rupiah. The same applies to transfer of shares in a Foreign Investment Company, either by a local or foreign shareholder.

However, expatriates salary paid by a Foreign Investment Company is subject to the mandatory obligation to use Rupiah. Expatriates salary can only be exempted from the mandatory obligation to use Rupiah if it is paid by the foreign shareholders or investors of the Foreign Investment Company. However, the Bank Indonesia may take a different stance in the future. Circular 17/11

specifies that if there are difficulties for businesses with specific characteristics, it may at its discretion issue policies based on special considerations.

The mandatory use of the Indonesian Rupiah for all cash and non-cash transactions and other requirements under PBI 17/2015 and the Circular 17/11 took effect on 1 July 2015.

VI. Import/Export Regulations

Customs Regulations

Indonesia is a member of General Agreement on Tariffs and Trade (GATT) and ASEAN Free Trade Agreement (AFTA).

Valuation of goods. Basically this is conducted by exporters/importers. The Customs Department will only value goods if in their view the importer/exporter's assessment is inaccurate.

How goods are cleared through customs. The goods' import declaration should be submitted manually or by through the electronic data interchange system; and the customs duty and import taxes should be paid - the tariff is calculated by multiplying the Rupiah value of the cost-insurance-freight value of goods (based on the applicable exchange rate) and the percentage of payable custom duty (for Ad valorem custom duty) or the amount of goods per kilogram and the certain Rupiah value of custom duty per kilogram (for specific custom duty). The customs duty is determined based on the Harmonized System Code.

Exports

Export Restrictions. Indonesian government prohibits the exportation of a number of commodities such as sand.

Export license. Exportation of several commodities can only be conducted by companies that hold a Registered Exporter Certificate.

Export duties. Export duties are determined on the basis of the Harmonized System Code.

Foreign Trade Regulations

Indonesia is a party to International Convention on the Harmonized Commodity Description and Coding System. Indonesia also has entered into several bilateral and multilateral agreements regarding importation and exportation of goods, especially with Japan and the ASEAN countries.

Imports

Import licenses, duties, quotas and barriers. There are several required permits/documents for importers, among others: Importers Identification Number, Custom Identification Number, Registered Importer Certificate (for certain goods), Imported Product Registration Mark (for certain goods), Recommendations (for certain goods), etc. The import duties are calculated on the basis of the Harmonized System Code. To protect domestic producers, there are import

quotas for commodities such as textile, agriculture and farm products. There is prohibition from importing vessels that are more than 20 years old.

Manufacturing Requirements

Indonesian government obliges some industries to have a percentage of local content in their products. An industry under this obligation is among others the electronic and telematic industry.

Product Labeling

Indonesia requires that certification label to be affixed to all telecommunication equipment and instrument to indicate that the the products have been certified. Various products (e.g.: electronic home appliance, telecommunications and information technology, building materials, motor vehicle spare parts) to be imported into and traded in Indonesia must also be labeled in Indonesian. Further, every telematic and electronic goods must be equipped with a manual of use and warranty/guaranty card that is written in Indonesian.

VII. Structures for Doing Business

Government Participation

The government of Indonesia has the right to take ownership participation in strategic business fields such as general mining.

Divestment Requirement

In certain business fields there is a foreign ownership divestment requirement. In the field of general mining, for instance, the foreign investment company (*Perseroan Terbatas Penanaman Modal Asing* or “PT PMA”) is required to ensure that certain percentage of its total shares, which gradually increased in stages (20%-51%), are held by Indonesian persons/entity during the period of 10 or 15 years (depending on the mining methods utilized <underground/open-pit) and whether the processing/refining/smelting activities are done in-house or outsourced to a third party) after the commencement of its production operation. In such case, the shares to be divested to Indonesian partner must first be offered to the following in sequential order, to: (i) Central Government through Minister of Energy and Mineral Resources (“Minister”), Provincial Government and the relevant district/city government; (ii) State-owned entities and Region-owned entities; and (iii) National private entities.

Investor's potential liability to partners, investors or others. Under Law No. 25 of 2007 regarding Investment (“Investment Law”), foreign direct investment must be conducted through the formation of a limited liability company (locally known as *Perseroan Terbatas* or “PT”), in which the investor goes into partnership with an Indonesian person or entity as the shareholders.

Under Law No. 40 of 2007 regarding Limited Liability Companies (“Company Law”), the shareholders of a PT are not personally liable for agreements that are entered into in the name of the PT and for the losses of the PT that is in excess of the value of the shares of the PT, unless:

- a. the PT has not fulfilled the requirements as a legal entity;
- b. the shareholder concerned has directly or indirectly acted in bad faith such as using the PT for his/her personal interest;
- c. the shareholder is involved in an unlawful act committed by the PT;
- d. the shareholder directly or indirectly utilizes the assets of the PT in an unlawful manner, resulting in the PT's inability to repay its debts;
- e. the shareholder of a PT that has obtained legal entity status become less than 2 (two) persons and this condition continues for more than 6 (six) months after such occurrence.

Restrictions on capitalization. Foreign ownership restrictions are regulated under Government Regulation No. 44 of 2016 regarding Lists of Business Fields that Are Closed to

Investments and Business Fields that are Conditionally Open for Investments (“GR 44”). Exhibit III of GR 44 specifies certain sectors and line of business which are open to foreign investment with certain foreign capital investment restrictions. The general rule is that, unless the BKPM has a different policy, the lines of business which are not listed in GR 44 are open for foreign ownership up to 100%. In addition, Regulation of Head of Investment Coordinating Board No. 14 of 2015 concerning the Procedure for the Application of Investment Principle License (the “Regulation No. 14/2015”) stipulates the following minimum investment and capital requirement for foreign investment companies (“PT PMA”):

- a. The minimum total investment value requirement is Rp 10,000,000,000 (ten billion Rupiah) or its equivalent in US Dollars, excluding the value of the land and buildings. The capital may be financed by equity or a combination of equity and loans. The other requirement is that the issued capital amount must be the same as the amount of the paid capital which is at least Rp 2,500,000,000 (two billion five hundred million Rupiah) or its equivalent in US Dollars;
- b. The capital participation for each shareholder must be at least Rp 10,000,000 (ten million Rupiah) or its equivalent in US Dollars, and the percentage of the share ownership is calculated based on the nominal value of the shares.

In addition, the Investment Coordinating Board (known by its Indonesian acronym as BKPM) as the government agency which has the authority to approve foreign direct investment also has imposed a policy requiring companies in certain sectors, such as construction and manufacturing, to have a minimum capital investment in the amount of up to 5 (five) times Rp 10,000,000,000 (ten billion Rupiah).

Investors' tax consequences. The existence of governmental participation in an investment does not have any impact on the investor’s tax consequences of the investor. The tax consequences vary, depending on the activities in Indonesia of the investor.

Joint Ventures

Joint ventures involving foreign party in Indonesia must be established in the form of a PT PMA (a foreign investment limited liability company).

The procedures for the establishment of a joint venture company are regulated in the Company Law; but joint venture companies are also subject to the provisions of the Investment Law and its implementing regulations as well as the provisions of Government Regulation No. 44 (GR 44) regarding foreign ownership.

The establishment of a PT PMA takes around 1 to 2 months. The process, in general, involves the following steps/acts:

1. Approval for the name

The first step is to obtain approval for the PT PMA’s name, by submitting an application to the MOLHR containing the name and the domicile of the PT PMA. The application is to

be submitted electronically to the MOLHR through a legal entity administration system administered by the MOLHR that is known as *Sistem Administrasi Badan Hukum* or “SISMINBAKUM”, and it should be submitted by the founders through a notary.

2. Obtain Principle License (*Izin Prinsip*) from BKPM

The application for Principle License will be conducted through BKPM online system (<https://online-spipise.bkpm.go.id>) along with all of the required supporting documents. Foreign investors are required to create a “Company Folder” as their corporate data base for the BKPM online licensing system, into which all of the PMA company documents must be uploaded, including the required documents for the Principle License application.

Timeline: The relevant regulation states that BKPM will issue the Principle License within 3 (three) working days after the submission of the complete and correct application. However, in practice, the application process can take up to 1 - 2 weeks to complete. For certain line of business, a presentation by the foreign investor with the BKPM officers may be required.

3. Signing of the Deed of Establishment

The next step following the issuance of the Principle License from the BKPM is the execution of the Deed of Establishment which also contains Articles of Association of the PT PMA before a notary in Indonesia. The Deed must be written in the Indonesian language.

Timeline: Provided that text of the Deed of Establishment is ready, the Deed of Establishment can be executed within 1 to 2 days following the issuance of the Principle License, depending on the availability of the Notary.

2. Certificate of Company Domicile (*Surat Keterangan Domisili Perusahaan* or “SKDP”)

The application for this SKDP is to be submitted to the Head of Sub-District of the relevant jurisdiction over the domicile of PT PMA. The SKDP is a certification of the domicile of PT PMA.

Timeline: Approximately 5 (five) days as from the receipt of the complete application.

3. Taxpayer Registration Number (*Nomor Pokok Wajib Pajak* or “NPWP”)

The application for the NPWP is to be submitted to the Tax Office which jurisdiction covers of the domicile of the PT PMA.

Timeline: Approximately 5 (five) business days as of the receipt of the complete application.

4. Opening of the Bank Account and Capitalization

Under the Company Law, a PT PMA must issue and pay-up in full its authorized capital, which must be evidenced by a proof of the payment transfer from the relevant founders/shareholders to the PT PMA’s bank account. The proof of the payment transfer

must be submitted electronically to the MOLHR within not later than 60 (sixty) days as of the signing date of the Deed of Establishment.

Timeline: Approximately 1 – 2 weeks as of the submission of the complete application documents to the bank, depending on the KYC (know-your-customer) procedure of the relevant bank.

5. The Minister of Law and Human Rights (“MOLHR”) Approval of the Deed of Establishment

Following its execution, the Notary can proceed to submit the Deed of Establishment to the MOLHR for approval. Submission of the Deed of Establishment to the MOLHR for its approval. This must be done at the latest 60 (sixty) days as of the signing date of the Deed of Establishment. The application is to be submitted electronically to MOLHR through the SISMINBAKUM. The PT PMA obtains its legal entity status on the date of the issuance of the approval of MOLHR.

Timeline: The processing of the MOLHR approval of the Deed of Establishment takes more or less 2 (two) days to complete, following the submission of the complete documents.

6. Registration at the Company Registry Office

The PT PMA is also required to register itself with the relevant Company Registry Office of the Ministry of Trade As evidence of the registration, the PT PMA will receive a Company Registration Certificate (Tanda Daftar Perusahaan or “TDP”) that is issued by the Company Registry Office.

Timeline: Approximately 3 weeks as of the submission of the correct and complete application.

7. Announcement in the State Gazette of the Republic of Indonesia

The last step is the publication the PT’s Deed of Establishment in the State Gazette of the Republic of Indonesia. The process of the establishment of a PT is in general considered complete when its establishment has been announced in the State Gazette.

Timeline: Pursuant to the regulation at the latest 14 (fourteen) days as of the issue of the MOLHR Approval, but in practice it may take more than 6 months.

8. Other Supporting Licenses (Post-Establishment Phase)

After the issuance of MOLHR approval for the Deed of Establishment, PT PMA must obtain other supporting licenses for its operations, which are, among others:

- Manpower Plan, which describes its workforce needs;
- Mandatory Manpower Report (*Wajib Laport Ketenagakerjaan* or WLTK);
- Employment Permits for the Expatriate Directors/Employees, in the form of:
 - Expatriate Manpower Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing*), if the PMA Company employs employees or foreign directors and commissioners, and the foreign director and commissioners will be residing in Indonesia;

- Individual Work Permit for Expatriate directors/ commissioners/ employees.
- Registration of the Employees in the Manpower Social Security and Health Security program run and managed by Social Security Management Board (*Badan Penyelenggara Jaminan Sosial* or BPJS);
- Validation of Company Regulation by the relevant manpower institution (if the Company employs more than 10 (ten) employees);
- Business License;
- All other operational licenses/permits required for the relevant line of business (among others, as may be relevant, import related licenses (API-P/API-U, Customs Registration Number (NIK), etc).

Timeline: This will differ from one license/permit to another, as it will deal with separate government institutions, depending on the type of permit PT PMA is seeking for. Generally, the licenses can be obtained within a range of a couple of days to a number of months, depending on the line of business. Please note that the timeframe for the processing as certain licenses can be extensive, as one license may be a prerequisite to obtaining other licenses.

Costs and Fees

The following costs and fees are involved in the establishment of a PT. PMA:

1. Legal counsel fees (if any investor appoints a legal counsel);
2. Notary fees: for making the Deed of Establishment, and for liaising with the governmental agencies in the processing of the MOLHR approval. The notary also can assist in the processing of certain licenses related to establishment of PT, such as the SKDP, NPWP, and TDP;
3. Fees of the agent. The services of an agent could be used in the processing of the various permits and licenses. The agent will liaise with the various governmental agencies offices; and
4. Administrative costs and fees payable to the governmental agencies.

Management Structure of a PT. PMA

There are not regulations which specifically regulate on the nationality of the persons who hold a seat in the management board of a Joint Venture Company.

Under the Company Law, a PT's management structure is a two-tier management structure that comprises the Board of Directors ("BOD") as the executive board and the Board of Commissioners ("BOC") as the supervisory board. The BOC does not have an executive function or authority, except in the absence of all of the members of the BOD or in the event that all of the members of the BOD have a conflicting interest with that of the company.

The BOD is fully responsible for the management of the company in the interests of the company and in accordance with the purposes and objectives of the company. It is the organ that

represents the company in and out of court in accordance with the provisions of its articles of association. The BOC is defined as the company's organ that has the duty to conduct supervision and provide advice to the BOD.

Under Presidential Decree No. 72 of 2014 on the Use of Expatriate Manpower and Empowerment of Education and Training of Supporting Manpower, foreign nationals from any nationality can serve as members of the BOD or BOC in a foreign wholly owned or joint venture or PT. PMA. However, there are general restrictions for certain positions relating to manpower/personnel which is closed to foreign nationals as stipulated under Article 46 of Law No. 13 of 2003 on Labor as further implemented by Decree of Minister of Manpower and Transmigrations No. 40 of 2012 on Specific Positions that May Not Be Occupied by Foreign Nationals.

VIII. Requirements for the Establishment of a Business

Governing Law

In general, businesses (which are usually reflected in a business agreement) in Indonesia are governed by Indonesian law. However, if one of the parties to the business agreement is a foreign party, the parties to the business agreement have the liberty to choose a law other than Indonesian law as the governing law. There is no registration or reporting requirement for this.

Antitrust Laws

All business operations within the territory of the Republic of Indonesia are obliged to comply with anti-trusts laws and regulations. In general, business actors (either individual or entity) are prohibited from conducting activities, making any arrangements or entering into agreements that can result in unfair business competition and harm public interest.

The Indonesian antimonopoly law and its implementing regulations requires every merger, consolidation or acquisition that results in assets that exceed 2.5 trillion rupiahs and/or which sales value exceeds 5 trillion rupiahs must be notified to the Indonesian Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha* or “KPPU”) at the latest 30 days as of the effectiveness of such merger, consolidation or acquisition. Before conducting merger, consolidation or acquisition, business actors shall be entitled to voluntary consult with the KPPU whether in writing or verbally regarding the merger, consolidation, or acquisition plan. The KPPU is a commission which task is to ensure that business actors do not conduct monopolistic practices and/or unfair business competition. KPPU is authorized to assess the merger, consolidation, or acquisition at the consultation stage (pre-evaluation) and/or notification stage (post-evaluation).

Environmental Regulations

All businesses in Indonesia are required to comply with the prevailing environmental laws and regulations and are obliged to make sure that their operations will not cause environmental damage and/or environmental pollution.

Companies with business activities that potentially have an impact to the environment are required to undergo an environmental audit and to obtain Environmental Permit, AMDAL, UKL and UPL and Environmental Management Report and Environmental Monitoring Report.

Insurance

The law requires certain business fields such as construction and insurance to be covered by insurance for risks such as fire, flood, earth quake, riot and war.

There is no state monopoly on insurance.

Licenses/Permits

In principle, all business activities intended to be conducted in the Republic of Indonesia is subject to government approvals, which are granted through permit/license mechanism. The type of permit/license is dependent on the type of the business activities. For instance, for general trading and services activities the license required is the so called Trading Business License (*Surat Izin Usaha Perdagangan - SIUP*); for construction activities it is Construction Services Business License (*Izin Usaha Jasa Konstruksi - IUJK*), for mining activities it is Mining Business License (*Izin Usaha Pertambangan - IUP*), and for land acquisition it is Location Permit (*Izin Lokasi*).

As a pre-requisite of the above permits/licenses, ancillary licenses must first be obtained, such as Certificate of Company's Domicile (*Surat Keterangan Domisili Perusahaan* or SKDP), Company Registration Certificate (*Tanda Daftar Perusahaan - TDP*) and Taxpayer Identification Number (*Nomor Pokok Wajib Pajak - NPWP*).

Advertisement

Business advertisement in Indonesia must be done by giving due regard to the Indonesian Advertisement Ethics. There are specific restrictions in the advertisement of alcoholic beverages, cigarettes, medicine, food, vitamin or supplement, cosmetics, health equipments, slimming center, clinic and hospital, alternative medicine, organ transplantation, limited products, professional services, properties and business opportunities.

Legal Counsels

Only Indonesian lawyers may practice Indonesian law. Local law offices are listed in local law firm directories. ABNR is a member of international law firm associations like Lex Mundi and Pacific Rim Advisory Council (PRAC). The lawyers' fees vary and are charged either on an hourly basis or on a project basis.

Bookkeeping Requirement

Investors are required to maintain local books of accounts in a form which in accordance with the Indonesian Generally Accepted Accounting Principles ("GAAP"), either in Indonesian or in English language and whether by using foreign currencies other than Rupiah. Indonesian company law also requires all limited liability companies to submit annual financial reports.

Business Ethics/Codes

Indonesia has business ethics or codes such as GAAP for Accountants; and Good Corporate Governance and Know Your Customer Principle for the banking sector.

Consumer Protection Laws

Indonesia has Law No. 8 of 1999 on Consumer Protection and its implementing regulations. This law regulates government supervision on the production of goods/services, and on the labeling, promotion, advertisement and sale of goods/services.

The Business of Construction

The licenses/permits required in this business field (other than the title to the land title on which the property will be constructed). An important license in this business field is the Building Construction Permit (*Izin Mendirikan Bangunan - IMB*). For the IMB, the applicants must pay a Building Construction Permit Fee (*Retribusi Izin Mendirikan Bangunan*). The processing of an IMB takes around 2-3 weeks subject to the correct and complete submission.

Construction costs vary, depending on type of the construction. They usually consist of:

- a. Land acquisition cost;
- b. The property construction cost;
- c. Consultant/professional fee (if any); and
- d. Other administration cost.

Contracts

In general, investors are free to enter into local contracts/agreements. Under the Indonesian Civil Law (“**ICC**”), an agreement is valid if it has the following four elements:

1. the consent of the parties;
2. capacities of the parties to conclude the agreement;
3. a certain subject;
4. a lawful purpose.

If one of the parties is not an Indonesian citizen or legal entity, the agreement or contract may have the law of the foreign party as the governing law.

Other than the ICC, certain laws also stipulate specific requirements which are generally applicable to all agreements made under Indonesian laws, among other:

- a. Language Law Requirement

Article 31 paragraph 1 and 2 of Law No. 24 of 2009 on Flag, Language, National Emblem, and National Anthem (“**Law 24/2009**”) stipulates that “(1) *The Indonesian language must (wajib) be used in memorandums of understanding or agreements involving State institutions, government institutions, Indonesian private institutions or Indonesian citizens*”; and (2) *Memorandums of understanding or agreements referred to in paragraph 1 which involve foreign parties shall also be written in the national language*

of those foreign parties and/or the English language.” Although this article contains legal obligations, the Law 24/2009 is silent on any sanctions against the contravention of such legal obligations. However, there is a precedent where Indonesian Supreme Court decides that an agreement made between an Indonesian party and a foreign party is null and void since the Agreement was made in English without Indonesian text and therefore deemed as a violation to Law No. 24/2009.

b. Mandatory to use Indonesian Rupiah

Based on the Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah in the Territory of Indonesia (“**BI Regulation**”), Bank Indonesia has required every business actor to set a price of a good and/or service in Rupiah. In addition to BI Regulation, Bank Indonesia has issued a circular letter No. 17/11/DKSP as implementing regulation of the BI Regulation in 1 June 2015 (“**Circular Letter**”). Article 2 point A of said Circular Letter clearly mentions that every business actor in Indonesia must set the price of a good and/or service only in Rupiah and is prohibited to set the price in other currency (dual quotation).

Price Controls

There is price control for certain goods such as timber, sugar, salt, coal, oil palm and other strategic commodities, as regulated by the government agency in charge of the respective good. For instance, the bench mark price for coal is stipulated by the Directorate General of Coal and Geothermal, while th benchmark price for sugar is stipulated by Ministry of Trade.

Product Registration

There is an obligation to register particular products, such as food, medical equipment, cosmetics, medicine and products containing nuclear, with the government agency in charge. For food, cosmetic and medicine products, the registration is with the Food and Drugs Supervisory Agency; medical equipment with the Ministry of Health and Nuclear Products to Nuclear Energy Regulatory Agency. The registration process takes approximately 1-2 months to complete, depending on the type of the product. There is an official fee for the registration.

Capital Reduction or Return

The Indonesian investment law allows investors to repatriate their capital while their corporation is still in operation. The repatriation may be in the form of after-tax profits, reimbursement of expatriate manpower expenses, depreciation of fixed assets, and other similar forms.

Sale of Goods

There are no restrictions on the manner, time or place of the sale of goods. However, foreign investors are prohibited from doing retail business in Indonesia.

The Indonesian Chamber of Commerce

A trade association that is open to investors is the Indonesian Chamber of Commerce. There is generally no obligation for investors to be a member of the Indonesian Chamber of Commerce; however, certain licenses require a certification or membership of the Indonesian Chamber of Commerce. For certification or membership purpose, there are certain fees required by Indonesian Chamber of Commerce.

Termination of Business

Tax Obligation and Other Obligations. The termination of a business operation does not eliminate the taxation obligations that are still outstanding. All outstanding tax payment obligations must be settled and, as long as the business entity concerned has not been dissolved, the business operator is still obliged to submit the tax report/form to the tax office. Other obligations to be settled include payment obligations to the creditors and severance package payment to the employees.

Cost. The costs incurred include the fee of liquidator for the company's liquidation and costs for the settlement of all of the company's outstanding obligations and liabilities to the government, the employees and third parties.

Time frame. This depends on the complexity of the business activities to be terminated. The termination process involves the revocation of the licenses, termination of the employees' employment, and settlement of disputes if any.

Revocation of the licenses. The termination of a business operation entails in the revocation of the operational licenses, such as the investment license and the Taxpayer Identification Number (*Nomor Pokok Wajib Pajak* - NPWP). Following the decision to close down the business, a request must be submitted to the respective government agencies for the revocation of the permits and licenses.

Investor's Liability in the Insolvency of Restructuring of the Business

In the event of the insolvency or bankruptcy of a joint venture limited liability company, the investors' liability is only as much as their share ownership portion.

In the event of the restructuring of the business as a way out to overcome insolvency or bankruptcy, investors have the option to participate in the capital injection or in the other steps taken such as merger or consolidation.

IX. Labor & Employment

Employer/Employee Relations

The law which governs employer/employee relations is Labor Law No. 13 of 2003 (“Labor Law”) and its implementing regulations. There are no explicitly stated obligations to train employees. However, under the Labor Law an employer is responsible for the improvement and /or development of its workers’ competence – this obligation is in essence similar to the obligation to train employees. Indonesia has ample skilled and unskilled labor.

Provisions on Employment

- There is no formal obligation for investors to hire Indonesian citizens. However, expatriate employees may only hold certain positions.
- Each province in Indonesia has its minimum wage stipulation, which is reviewed annually by the regional government.
- The maximum number of working hours for an employee is 40 hours per week.
- An employee who has worked with a company for at least 12 consecutive months is entitled to a minimum vacation of 12 work days per annum. There are no rules/regulations regarding the hiring of personnel. For dismissing personnel, there is Law No. 2 of 2004 concerning Industrial Relations Disputes and Settlements that contains the rules and regulations as well as the Labor Law. Under the Labor Law, employees are entitled to a severance package payment if their employment is terminated.
- Employees’ work safety is regulated under Law No. 1 of 1970 regarding Work Safety and its implementing regulations.

Labor Unions

Indonesia has this Law No. 21 of 2000 regarding Labor Unions (“Labor Union Law”). Under the Labor Union Law, ten or more employees working for an employer in *any* business are entitled to establish a labor union.

A labor union does not have a political affiliation. This is in line with the Labor Union Law’s principle that a union, federation of union, and confederation of union must be established on the workers/employees’ free will and without any coercion/pressure or interference from the employer/entrepreneur, or from the government, a political party or any other party or person whatsoever.

There is no obligation on the part of the employer to organize unions. The employer is only obliged to refrain from obstructing the formation of a labor union or the decision of its employees

to become or members of the union's management board, or the employees' activities in the labor union by (i) dismissing, temporarily dismissing, demoting or transferring the employees concerned; (ii) not paying or reducing the wages of the employees concerned; (iii) intimidating in whatever way, the employees concerned; (iv) campaigning against the establishment of the union. Moreover, there are also no mandatory collective bargaining agreements. A labor union may request the execution of collective labor agreements with the employer.

Labor Legislation, Relation, and Supply

The following is a list of the required permits for the employment of foreign nationals in Indonesia:

1. RPTKA - Foreign Manpower Utilization Plan

The RPTKA is a foreign worker utilization plan which specifies the number, function and employment period of foreign workers the employer plan to use/hire. To obtain this RPTKA, the employer (also referred to as the "Sponsor" – sponsoring the expatriate concerned) must submit an application to the Manpower Department;

2. VITAS - Limited Stay Visa (Index Category 312)

VITAS application may be submitted to the Indonesian Immigration office in the city in Indonesia where the foreign worker concerned will be residing. If the VITAS application is accepted, the Indonesian Immigration office will send a telex conveying the approval to the Indonesian Embassy / Consulate General where the foreign worker is to pick up the approval and to get the VITAS stamped on his / her passport. Foreign workers of certain countries of origin intending to work in Indonesia can only pick up their VITAS in the Indonesia Embassy / Consulate General in their country of origin.

3. Entry Permit

Upon arrival in Indonesia, the VITAS holder will obtain an Entry Permit at the Immigration Check-Point (stamped by the immigration officer on the Passport).

4. KITAS - Limited Stay Permit Card and Immigration Control Book (*Pengawasan Orang Asing*)

The foreign worker should submit the application for the Limited Stay Permit to the Directorate General of Immigration (DGI) within not later than seven days upon his/her arrival in Indonesia (proven by the Entry Permit), along with his/her photo and fingerprint. Following the KITAS, an immigration control blue book will be given to the foreign worker. The blue book records the foreigner's immigration status and any subsequent changes in the status.

5. Foreign Manpower Compensation Funds (*Dana Kompensasi Penggunaan Tenaga Kerja Asing/ DKP-TKA*) Tax/Fee

The Sponsor must pay DKP-TKA in the amount of US\$ 100 per month per foreign employee to offset the costs of training Indonesian nationals, and the amount must be paid for one year upfront or amounting to US\$ 1,200, before the work permit is approved.

6. IMTA (Izin Memperkerjakan Tenaga Asing or IMTA)- Work Permits for Expatriate

The IMTA is a permit to employ a foreign worker for a certain function and for the period of time stated in the IMTA. The IMTA and the KITAS expire one year from the date of the issuance, but they are extendable. In practice, the KITAS and IMTA may be applied for/processed simultaneously. After obtaining all of the above mentioned required documents, the foreign worker can legally conduct working activities in Indonesia.

In certain regional areas, after obtaining KITAS and IMTA, foreign workers are also required to obtain the following (depending upon the respective regional regulations):

- a. Report Letter (*Surat Tanda Melapor* or “STM”);
- b. Certificate of Police Registration (*Surat Keterangan Laport Diri* or “SKLD”);
- c. Identity Card for Foreign Citizen (*Kartu Identitas Pendatang* or “KIP”);
- d. Report on Foreign Citizen Existence (*Surat Keterangan Melapor* or “SKT”).

Expatriate Employees

Work Contracts. A foreign worker is required to have a work contract with the company that is providing the job in Indonesia. The duration of the contract is normally 1 year, with extension possibility. Only certain job positions are available to foreign workers.

Other related issues worth knowing

- There is no mandatory requirement for an expatriate to obtain a driver's license. However, the driver's license can be obtained by applying for it to the Indonesian Police Office. The cost is around US\$ 25.
- There are a number of international schools in Indonesia's big cities.
- Expatriates can lease a house or an apartment in Indonesia.
- An expatriate can own property, but the types and ownership titles that are available to foreign nationalities are limited.
- Investors do not get tax benefits from providing their employees with housing allowance.
- National health care is provided under the social security law. Expatriate workers in Indonesia are subject to Indonesian income tax, unless there is a tax treaty between the expatriate's country of origin and Indonesia – in which case the tax amount will be reduced/less. Foreign investors that establish a company in Indonesia are entitled to deferred payments of their import duties.

- There is value added tax on goods and services.

Immigration & Visa Requirements

Foreign individuals intending to visit Indonesia must apply for an entry permit (visa). In general the visa must be obtained before entering the country. Citizens of South East Asian countries may enter into each other's country for a certain limited period of time without a visa. No vaccinations and medical certificates are required.

Single and multiple visit visas are usually valid for a maximum of 60 days. The application may be submitted to the Indonesian embassy or representative office in the visitor's country of origin, or at the immigration office at the airport upon arrival in Indonesia. The processing at the Indonesian embassy or representative office normally takes around 1 week. If the visitor is employee, a sponsor letter from the employer is required.

X. Tax

General Tax Considerations

- Indonesia has a number of anti tax-avoidance regulations, such as regulation on thin capitalization, deemed dividends, controlled foreign corporation, anti tax treaty abuse, and standard salary for expatriates.
- There is an advance tax ruling that can be used to validate or invalidate the chosen form of doing business, but the ruling does not bind the tax authority.
- There is no general anti-tax avoidance system in Indonesia.
- No chosen form of business can be treated as a deferent form for tax purposes.
- The world income of the resident taxpayers are subject to Indonesian tax.
- Fiscal losses can be used as deduction against future taxable income up to 5 years.

Allowances

Capital Allowances Depreciation. Expenditure incurred in relation to assets with a beneficial life of more than one year are categorised and depreciated from the month of acquisition by the consistent use of either the straight-line or the declining-balance method, as follows:

1. Category 1 – 50% (declining-balance) or 25% (straight-line) on assets with a beneficial life of four years. Examples of assets in this category are computers, printers, scanners, furniture and equipment constructed of wood/rattan, office equipment, motorcycles, special tools for specific industries/services, kitchen equipment, manual equipment for agriculture, farming, forestry and fishery industries, light machinery for the food and drink industries, motor vehicles for public transportation, equipment for the semi-conductor industry, tools and accessories for deep water anchor equipment rentals, and base station controller for the cellular telecommunication services.
2. Category 2 – 25% (declining-balance) or 12.5% (straight-line) on assets with a beneficial life of eight years. Examples of assets in this category are furniture and equipment constructed of metal, air conditioners, cars, buses, trucks, speed boats, containers and the like. The category also covers machinery for agriculture, plantations, forestry activity, fisheries, and for food and drink, and light machinery, logging equipment, equipment for construction, heavy vehicles for transportation, warehousing and communication, telecommunications equipment, equipment for the semi-conductor industry, tools for deep water anchor equipment rentals, and tools for cellular telecommunication services.
3. Category 3 – 12.5% (declining-balance) or 6.25% (straight-line) on assets with a beneficial life of 16 years. Examples of assets in this category are machines for general

mining other than in the oil and gas sector, machines for the textile, timber, chemical, and machinery industries, heavy equipment, docks and vessels for transportation and communication, and other assets not included in the other categories.

4. Category 4 – 10% (declining-balance) or 5% (straight-line) on assets with a beneficial life of twenty years. Examples of assets in this category are heavy construction machinery, locomotives, railway coaches, heavy vessels, and docks.
5. Building category – 5% (straight-line) on assets in the permanent building category with a useful life of 20 years; or 10% (straight-line) on assets in the non permanent building category with a useful life of ten years. Included in the cost of the buildings is the Duty on the Acquisition of Land and Building Rights (*Bea Pengalihan Hak atas Tanah dan Bangunan/BPHTB*).

More comprehensive lists of the assets included in each category are set out in certain Minister of Finance (MoF) regulations. Separate lists of assets and depreciation rates for the oil and gas sector are also specified in a MoF regulation.

Intangible property or costs, including the cost of extending building use rights, rights for business use, rights for use and BPHTB with a useful life of more than one year, should be amortised on the following bases, as appropriate:

- a. By using the straight-line or the declining-balance method at the rates specified in categories 1, 2, 3, and 4 under Depreciation (above), based on the useful life of the property:

Category 1: 4 years

Category 2: 8 years

Category 3: 16 years

Category 4: 20 years

- b. The costs of incorporation and expansion of the capital of an enterprise are claimed in full in the year in which the expenditure is incurred or are amortised using either the declining-balance or straight-line method at the following rates:

Category 1: 50% declining-balance; 25% straight-line

Category 2: 25% declining-balance; 12.5% straight-line

Category 3: 12.5% declining-balance; 6.25% straight-line

Category 4: 10% declining-balance; 5% straight-line

- c. Costs incurred for acquiring the right to oil and natural gas concessions with a beneficial life of longer than one year are amortised using the production-unit method.
- d. Costs incurred in the acquisition of mining rights, forest concessions, and other rights to exploit natural resources and natural products with a beneficial life of longer than one year are amortised using the production-unit method but may not exceed 20% per annum.

- e. Costs incurred before the commencement of commercial operations with a useful life of longer than one year are capitalised and amortised according to the rates set out in point b (above).

Major deductible items. Resident Taxpayers and permanent establishments are entitled to claim the deductions in the form of expenses to earn, to collect and secure income from their gross income, including:

- a. Costs which are directly or indirectly related to business, among others:
- costs of materials;
 - costs in relation with employment or services including wages, salaries, honoraria, bonuses, gratuities and remuneration in the form of money;
 - interest, rents and royalties;
 - travel expenses;
 - waste processing expenses;
 - insurance premiums;
 - advertisement and selling expenses as stipulated by or based on the Minister of Finance Regulation;
 - administrative expenses;
 - taxes other than income tax;
- b. Depreciation of tangible asset and amortization of rights and other expenditures which have useful life of more than 1 (one) year;
- c. Contributions to a pension fund which its establishment is approved by the Minister of Finance;
- d. Losses incurred from the sale or transfer of properties owned and used in business or used for the purpose of earning, collecting and securing income;
- e. Losses from foreign exchange;
- f. Costs related to research and development carried out in Indonesia;
- g. Scholarships, apprenticeships and training expenses;
- h. Debts which are actually uncollectible, provided that:
- it has been expensed in commercial profit and loss statement;
 - the Taxpayer shall submit the list of bad debts to the Directorate General of Taxes;
 - the case has been filed to court or government agencies which handle state's receivables or there is a written agreement on the discharge of indebtedness between the debtor and creditor; or it has been published in media; or there is creditor's which states certain amount of bad debts have been written off;

- the requirement stated in number 3 does not apply for small debtors;
 - the procedure of which shall be stipulated by or based on Minister of Finance Regulation.
- i. Donation for national disaster which is stipulated by a Government Regulation;
 - j. Donation for research and development conducted in Indonesia which is stipulated by a Government Regulation;
 - k. Costs of social infrastructure development which is stipulated by a Government Regulation;
 - l. Donation in the form of education facilities which is stipulated by a Government Regulation;
 - m. Donation for sport enhancement which is stipulated by a Government Regulation.

Disallowed deductions. These include:

- a. Benefits-in-kind (BIKs) (e.g., free housing, 50% of the acquisition and maintenance costs of certain company provided cars), except food and drink provided to all employee benefits required for job performance such as protective clothing and uniforms, transportation costs to and from the place of work, accommodation for ship crews and the like, the cost of providing BIKs in remote areas, and 50% of the acquisition and maintenance costs of cellular phones;
- b. Private expenses;
- c. Non-business gifts and aid, except zakat (Islamic alms);
- d. Provisions: However, certain types of provision are claimable as deductible expenses: provision for doubtful accounts for banking and financing companies, insurance claims provision for insurance companies, deposit security provision for the Deposit Insurance Corporation (*Lembaga Penjamin Simpanan/LPS*), reclamation provision for mining companies, forestation provision for forestry companies, and area closure and maintenance provision for industrial waste processing businesses;
- e. Income tax payments;
- f. Tax penalties;
- g. Profit distributions;
- h. Employer contributions for life, health and accident insurance and contributions to unapproved pension funds, unless the contributions are treated as part of the taxable income of employees;
- i. Expenses relating to income which is taxed at a final rate, e.g., interest on loans relating to time deposits;

- j. Expenses relating to income which is exempt from tax, e.g., interest on loans used to buy shares where dividends to be received are not subject to income tax;
- k. Salaries or compensation received by partnership or firmas members where their participation is not divided into shares.

Calculation of Taxes

Taxable business profits are calculated on the basis of normal accounting principles as modified by certain tax adjustments. Generally, a deduction is allowed for all expenditure incurred to obtain, collect, and maintain taxable business profits. A timing difference may arise if an expenditure recorded as an expense for accounting cannot be immediately claimed as a deduction for tax.

Resident taxpayers and Indonesian PEs of foreign companies have to settle their tax liabilities either by direct payments, third party withholdings, or a combination of both. Foreign companies without a PE in Indonesia have to settle their tax liabilities for their Indonesia-sourced income through withholding of the tax by the Indonesian party paying the income.

Monthly tax installments (Article 25 income tax) constitute the first part of tax payments to be made by resident taxpayers and Indonesian PEs as a prepayment of their current year corporate income tax liability. A monthly tax installment is generally calculated using the most recent corporate tax return. Special installment calculations apply for new taxpayers, finance lease companies, banks and state-owned companies.

The tax withheld by third parties on certain income (Article 23 income tax) or tax to be paid in advance on certain transactions (e.g., Article 22 income tax on imports) also constitute prepayments for the current year corporate tax liability of the income recipient or the party conducting the import.

If the total amounts of tax paid in advance through the year (Articles 22, 23, and 25 income taxes) and the tax paid abroad (Article 24 income tax) are less than the total corporate tax due, the company concerned has to settle the shortfall before filing its corporate income tax return. Such a payment is referred to as Article 29 income tax.

Certain types of income earned by resident taxpayers or Indonesian PEs are subject to final income tax. In this respect, the tax withheld by third parties (referred to a Article 4(2) income tax) constitutes the final settlement of the income tax for that particular income.

For foreign companies without a PE in Indonesia, the tax withheld from their Indonesia-sourced income by the Indonesian party paying the income (Article 26 income tax) constitutes a final settlement of their income tax due.

Capital Gains

There is only the national tax rate for Capital gains. Sales of a company's assets (other than land and building) may result in capital gains or losses, calculated as the difference between the sales proceeds and the tax written-down value of the assets concerned. Capital gains are assessable whilst a capital loss is tax-deductible only if the asset concerned is used in the running of the business, i.e., for obtaining, collecting, and securing assessable income.

Generally, taxes on capital gains are calculated by using the general tax rate mentioned above. However, there are the following special tax treatments.

A. Transfers of the Shares of an Indonesian Company by a non-resident

Where the seller is not an Indonesian tax subject, the resident buyer must withhold 20% of the estimated net income (i.e. the capital gain amounting to 25% of the transaction value) of the seller from the sale of the shares, except where the taxation of the capital gains is reserved to the treaty partner by an applicable tax treaty. Where the buyer is a non-resident, the Indonesian company whose shares are traded must account for the tax of the non-resident buyer before it registers the buyer as its new shareholder replacing the seller.

B. Land and/or Building

Proceeds from transfers of land and/or buildings are generally taxed at a final flat tax rate of 2,5%.

C. Revaluations of fixed assets and its penalty

Subject to the approval of the Directorate General of Taxation ("DGT"), corporate taxpayers and PEs who maintain rupiah accounting may undertake a revaluation of their non-current tangible assets for tax purposes. The revaluation must be conducted on a market or fair value basis. The market values must be determined by a government-approved appraiser. These are subject to DGT adjustments if the values, in DGT's view, do not represent the fair or market values of the assets. Once approved, the depreciation applied to the depreciable assets must be based on the new tax book values (approved values).

The revaluation is made in accordance with prevailing market values for the assets and may not be conducted if those assets have been revaluated within five years. The difference between the new market value and the old book value will be taxed at 10 percent. After revaluating fixed assets, the calculation for the depreciation expense of the revaluated assets will be based on the new market value. Subject to DGT approval, taxpayers facing financial difficulties may pay this tax in installments over 12 months.

If the taxpayer transfers the revaluated fixed assets before the new useful life elapses, an additional income tax at the highest corporate income tax rate minus 10 percent will be imposed.

D. Listed Shares

Sales of shares in companies listed on an Indonesian stock exchange are subject to final withholding income tax at 0.1% of the gross transaction value. Once an IPO takes place, additional income tax is also due on founder shares. Founder shareowners have the option of paying final income tax at 0.5% of the company share value within a month after trading has begun in the shares on an Indonesian stock exchange. If the final tax is not paid, the gains from the sales of the founder shares are assessable in accordance with the general income tax rates.

E. Luxurious Goods

Under Minister of Finance Decree No. 82/PMK.03/2009, the deemed taxable gain derived from the disposal of certain types of assets is at 25 percent of the transaction value, which effectively subjects nonresident sellers to a final tax of 5 percent (the 20 percent capital gains tax rate times 25 percent) based on the transaction. The regulation entered into force on April 22. The 25 percent rate applies to assets located in Indonesia valued at more than Rp.10,000,000,- (ten million Rupiah), including jewelry, diamonds, gold, luxury watches, antique goods, paintings, cars, motorcycles, cruise vessels, and light aircraft.

The tax is based on a deemed gain as stipulated by the finance minister. Thus, the tax is payable whether gain is actually realized. The regulation does not apply if an applicable tax treaty gives the seller's resident country an exclusive right of taxation. Tax is to be withheld by the purchaser of the assets if the purchaser is tax resident in Indonesia.

F. Special Purpose Vehicle

Based on Minister of Finance Decree No. 258/PMK.03/2008, 25 percent of the transaction value is deemed taxable gain derived from the disposal of shares in a foreign company domiciled in a tax haven country that acts merely as a special purpose vehicle and holds shares of an unlisted Indonesian company. As such, the nonresident seller of the shares of the interposing company abroad will be subject to a final effective tax of 5 percent (that is, 20 percent multiplied by 25 percent), based on the transaction value. It is not specified, however, how to determine whether a country is a tax haven. Further, this regulation does not apply if an applicable tax treaty gives the resident country of the seller an exclusive right of taxation.

The tax is based on a deemed gain as stipulated by the finance minister. Thus, it is payable regardless of whether the gain is actually realized. It is to be withheld by the purchaser of the shares if the purchaser is a tax resident of Indonesia. If the purchaser is a

nonresident, the Indonesian company must account for the tax even if the transaction takes place abroad and may not be disclosed to the Indonesian company (as there is no change in the company's shareholders).

Tax Treaties

Indonesia's tax treaties provide for tax benefits in the form of withholding tax exemptions for service fees and for reduced withholding tax rates on dividends, interest, royalties, and branch profits received by residents of a country with which Indonesia has signed a tax treaty. Tax exemption on the service fees is typically granted only if the foreign party earning the income does not have a permanent establishment (PE) in Indonesia.

To claim the reduced rates, the foreign party must, at a minimum, present its certificate Certificate of Domicile (CoD) to the DGT through the Indonesian party paying the income. Without this document, either in the form prescribed by the ITO or in the form of the treaty partner country (subject to certain conditions), the party is not entitled to the tax benefit and tax is withheld at a rate of 20%.

For interest, dividends, and royalties, usually only the beneficial owner is acknowledged as the party entitled to the tax treaty benefits. The beneficial ownership requirement is only applied to foreign taxpayers' income if the relevant tax treaty refers to beneficial ownership. In order to be the "beneficial owner", the following criteria should be satisfied:

- a. For individuals, that they are not receiving income as an agent or nominee.
- b. An institution that is explicitly named in the tax treaty or one that has been agreed to by the Competent Authority in Indonesia and its treaty country partner.
- c. An offshore company which earns income through a custodian from share or bond transactions made on the Indonesian Stock Exchange (except interest and dividends), that is not an agent or nominee.
- d. A company whose shares are listed on the stock exchange and traded regularly.
- e. A bank, or
- f. Any other company which meets the following requirements:
 - the establishment of the company in the tax treaty partner country and the way the transaction is structured/undertaken are not merely done to enjoy tax treaty benefits, the business activities are managed by the company's own management which has sufficient authority to carry out transactions.
 - the company has employee(s).
 - the company has activities or an active business.
 - income derived from Indonesia is taxable in the recipient's country.
 - the company does not use more than 50% of its total income to fulfill its obligations to other parties, such as interest, royalty, or other payments.

NO.	COUNTRY	INTEREST	ROYALTIES	DIVIDEN		BRANCH PROFIT TAX
				PORTFOLIO	SUBSTANSIAL HOLDING	
1	Algeria	15%	15%	15%	15%	10%
2	Australia	10%	10%/15%	15%	15%	15%
3	Austria	10%	10%	15%	10%	12%
4	Bangladesh	10%	10%	15%	10%	10%
5	Belgium	10%	10%	15%	10%	10%
6	Brunei Darussalam	10%	15%	15%	15%	10%
7	Bulgaria	10%	10%	15%	15%	15%
8	Canada	10%	10%	15%	10%	15%
9	Czech	12,5%	12,5%	15%	10%	12,5%
10	China	10%	10%	10%	10%	10%
11	Croatia	10%	10%	10%	10%	10%
12	Denmark	10%	15%	20%	10%	15%
13	Egypt	15%	15%	15%	15%	15%
14	Finland	10%	10%/15%	15%	10%	15%
15	France	15%	10%	15%	10%	10%
16	Germany	10%	10%/15%	15%	10%	10%
17	Hungary	15%	15%	15%	15%	N/A
18	Hong Kong	10%	5%	10%	5%	5%
19	India	10%	15%	15%	10%	10%
20	Iran	10%	12%	7%	7%	7%
21	Italy	10%	10%/15%	15%	10%	12%
22	Japan	10%	10%	15%	10%	10%
23	Jordan	10%	10%	10%	10%	N/A
24	Korea, Republic of	10%	15%	15%	10%	10%
25	Korea, Democratic People's Republic of	10%	10%	10%	10%	10%
26	Kuwait	5%	20%	10%	10%	10%
27	Luxembourg	10%	12,5%	15%	10%	10%
28	Malaysia	10%	10%	10%	10%	12,5%
29	Morocco	10%	10%	20%	10%	10%
30	Mexico	10%	10%	10%	10%	10%
31	Mongolia	10%	10%	10%	10%	10%
32	Netherlands	10%	10%	10%	10%	10%
33	New Zealand	10%	15%	15%	15%	N/A
34	Norway	10%	10%/15%	15%	15%	15%
35	Pakistan	15%	15%	15%	10%	10%
36	Papua New Guinea	10%	10%	15%	15%	15%
37	Philippines	15%	15%/25%	20%	15%	20%
38	Poland	10%	15%	15%	10%	10%
39	Portuguese	10%	10%	10%	10%	10%
40	Qatar	10%	5%	10%	10%	10%

NO.	COUNTRY	INTEREST	ROYALTIES	DIVIDEN		BRANCH PROFIT TAX
				PORTFOLIO	SUBSTANSIAL HOLDING	
41	Romania	12,5%	12,5%/15 %	15%	12,5%	12,5%
42	Russia	15%	15%	15%	15%	12,5%
43	Saudi Arabia *	N/A	N/A	N/A	N/A	N/A
44	Seychelles	10%	10%	10%	10%	N/A
45	Singapore	10%	15%	15%	10%	15%
46	Slovak	10%	10%/15%	10%	10%	10%
47	South Africa	10%	10%	15%	10%	10%
48	Spain	10%	10%	15%	10%	10%
49	Sri Lanka	15%	15%	15%	15%	According to domestic income tax law
50	Sudan	15%	10%	10%	10%	10%
51	Suriname	15%	15%	15%	15%	15%
52	Sweden	10%	10%/15%	15%	10%	15%
53	Switzerland	10%	12,5%	15%	10%	10%
54	Syria	10%	15%/20%	10%	10%	10%
55	Taipei / Taiwan	10%	10%	10%	10%	5%
56	Thailand	RI = 15% THAI = 10%/25% **	15%	20%	15%	According to domestic income tax law
57	Tunisia	12%	15%	12%	12%	12%
58	Turkey	10%	10%	15%	10%	15%
59	UAE (United Arab Emirates)	5%	5%	10%	10%	5%
60	Ukraine	10%	10%	15%	10%	10%
61	United Kingdom	10%	10%/15%	15%	10%	10%
62	United States of America	10%	10%	15%	10%	10%
63	Uzbekistan	10%	10%	10%	10%	10%
64	Venezuela	10%	20%	15%	10%	10%
65	Vietnam	15%	15%	15%	15%	10%

Notes:

- * Tax treaty between Indonesia and Saudi Arabia only governs aviation transportation within the international routes.
- ** Pursuant to provision of Article 11 paragraph 2 of the tax treaty between RI and Thailand, there are differences in tariff on interest.
- N/A means the tax treaty does not govern the Tariff on Income Tax Article 26.

Permanent establishment time

Certain activities may give rise to the creation of a PE if they are conducted in Indonesia for more than a certain period of time. The following is a summary of these periods for the activities specified in the relevant tax treaties:

No.	Country	Construction	Installation	Assembly	Construction Supervision	Other Services
1	Algeria	3 months	3 months	3 months	3 months	3 months/12 months
2	Australia	120 days	120 days	120 days	120 days	120 days/12 months
3	Austria	6 months	6 months	6 months	6 months	3 months/12 months
4	Bangladesh	183 days	183 days	183 days	183 days	91 days/12 months
5	Belgium	6 months	6 months	6 months	6 months	3 months/12 months
6	Brunei Darussalam	183 days	3 months	3 months	183 days	3 months/12 months
7	Bulgaria	6 months	6 months	6 months	6 months	120 days/12 months
8	Canada	120 days	120 days	120 days	120 days	120 days/12 months
9	Czech	6 months	6 months	6 months	6 months	3 months /12 months
10	China	6 months	6 months	6 months	6 months	6 months/12 months
11	Croatia	6 months	6 months	6 months	6 months	3 months/12 months
12	Denmark	6 months	3 months	3 months	6 months	3 months/12 months
13	Egypt	6 months	4 months	4 months	6 months	3 months/12 months
14	Finland	6 months	6 months	6 months	6 months	3 months/12 months
15	France	6 months	N/A	6 months	183 days/12 months	183 days/12 months
16	Germany	6 months	6 months	N/A	N/A	7,5%
17	Hongkong	183 days	183 days	183 days	183 days	183 days/12 months
18	Hungary	3 months	3 months	3 months	3 months	4 months/12 months
19	India	183 days	183 days	183 days	183 days	91 days/12 months
20	Iran	6 months	6 months	6 months	6 months	183 days/12 months
21	Italy	6 months	6 months	6 months	6 months	3 months/12 months
22	Japan	6 months	6 months	N/A	6 months	N/A

No.	Country	Construction	Installation	Assembly	Construction Supervision	Other Services
23	Jordan	6 months	6 months	6 months	6 months	1 month/12 months
24	Korea, Republic of	6 months	6 months	6 months	6 months	3 months/12 months
25	Korea, Democratic People's Republic of	12 months	12 months	12 months	12 months	6 months/12 months
26	Kuwait	3 months	3 months	3 months	3 months	3 months/12 months
27	Luxembourg	5 months	5 months	5 months	5 months	10%
28	Morocco	6 months	6 months	6 months	6 months	60 days/12 months
29	Malaysia	6 months	6 months	6 months	N/A	3 months/12 months
29	Malaysia	6 months	6 months	6 months	N/A	3 months/12 months
30	Mexico	6 months	6 months	6 months	6 months	91 days/12 months
31	Mongolia	6 months	6 months	6 months	6 months	3 months/12 months
32	Netherlands	6 months	6 months	6 months	6 months	3 months/12 months
33	New Zealand	6 months	6 months	6 months	6 months	3 months/12 months
34	Norway	6 months	6 months	6 months	6 months	3 months/12 months
35	Pakistan	3 months	3 months	3 months	3 months	15%
36	Papua New Guinea	120 days	120 days	120 days	120 days	120 days/12 months
37	Philippines	6 months	3 months	3 months	6 months	183 days/12 months
38	Poland	183 days	183 days	183 days	183 days	120 days/12 months
39	Portuguese	6 months	6 months	6 months	6 months	183 days/12 months
40	Qatar	6 months	6 months	6 months	6 months	6 months/12 months
41	Romania	6 months	6 months	6 months	6 months	4 months/12 months
42	Russia	3 months	3 months	3 months	3 months	no time test
43	Saudi	N/A	N/A	N/A	N/A	N/A

No.	Country	Construction	Installation	Assembly	Construction Supervision	Other Services
	Arabia*					
44	Seychelles	6 months	6 months	6 months	6 months	3 months /12 months
45	Singapore	183 days	183 days	183 days	6 months	90 days/12 months
46	Slovak	6 months	6 months	6 months	6 months	91 days/12 months
47	South Africa	6 months	6 months	6 months	6 months	120 days/12 months
48	Spain	183 days	183 days	183 days	183 days	3 months /12 months
49	Sri Lanka	90 days	90 days	90 days	90 days	90 days/12 months
50	Sudan	6 months	6 months	6 months	6 months	3 months/12 months
51	Suriname	6 months	6 months	6 months	6 months	91 days/12 months
52	Sweden	6 months	6 months	6 months	6 months	3 months/12 months
53	Switzerland	183 days	183 days	183 days	183 days	5%
54	Syria	6 months	6 months	6 months	6 months	183 days/12 months
55	Taipei / Taiwan	6 months	6 months	6 months	6 months	120 days/12 months
56	Thailand	6 months	6 months	6 months	6 months	6 months/12 months
57	Tunisia	3 months	3 months	3 months	3 months	3 months/12 months
58	Turkey	6 months	6 months	6 months	6 months	183 days/12 months
59	UAE (United Arab Emirates)	6 months	6 months	6 months	6 months	6 months
60	Ukraine	6 months	6 months	6 months	6 months	4 months/12 months
61	United Kingdom	183 days	183 days	183 days	183 days	91 days/12 months
62	United States of America	120 days	120 days	120 days	120 days	120 days/12 months
63	Uzbekistan	6 months	6 months	6 months	6 months	3 months/12 months

No.	Country	Construction	Installation	Assembly	Construction Supervision	Other Services
64	Venezuela	6 months	6 months	6 months	6 months	10%
65	Vietnam	6 months	6 months	6 months	6 months	3 months/12 months

On 5 November 2009, the Director General of Taxation (“DGT”) revoked, through its DGT Regulation No. 61, SE-03/1996 (“Regulation 61”) and issued two standard Certificate of Domicile (“CoD”) forms for non-resident taxpayers, as follows:

- a. Form-DGT 1 - for non-banks;
- b. Form-DGT 2 - for banks and custodians.

After its completion, the CoD must be certified by the competent authority from the country where the non-resident taxpayer resides. Attached are copies of the standard CoD forms.

Non-resident banks or persons who receive income from a custodian relating to publicly traded stocks or bonds should use the Form-DGT 2 (the simpler CoD form), which is valid for 12 months. Other non-resident recipients of Indonesia sourced income must use the Form-DGT 1. This Form-DGT 1 requires the disclosure of the amount and type of the income earned from Indonesia. As can be seen from the attached copy and the instructions, it is quite sophisticated.

A tax withholder can utilize the treaty relief stipulated in the tax treaty if:

- a. The income recipient is a non-resident;
- b. The “administrative qualifications” are met; and
- c. The non-resident is not abusing the tax treaty.

The “administrative qualifications” are the fulfillment of the following requirements:

- a. Use of the CoD form;
- b. Completion by and signature of the non-resident taxpayer;
- c. Certification by the competent tax authority; and
- d. Submission before the deadline of the monthly tax return for the period the tax is payable.

The CoD is to be attached to the monthly tax return for the month the tax is payable is lodged. If the CoD is submitted after the submission deadline, it cannot be used to support the treaty relief. If obtaining certification from the overseas tax authority is difficult or not a straight forward process, it may not be possible to use tax treaty benefits in certain situations.

However, on April 30 2010 a new DGT regulation (No. 24) was issued, revising Regulation 61 (“Regulation 24”). This new regulation provides that non resident taxpayers may use a certificate

of domicile that is issued by their resident country if the certificate meets the following requirements:

- a. it is written in English;
- b. it is issued on or after January 1, 2010;
- c. it is in the form of originals or photocopies of documents that have been legalized by the tax office where the tax agent (withholder) or collector is registered as a taxpayer;
- d. it includes, at least, the name of the taxpayer; and
- e. it has been signed by an authorized officer, his authorized representative, or a tax office official who is authorized in the relevant treaty partner country, or carries a mark equal to the signature in the treaty partner country and the name of the related officials.

Further, Regulation 24 also clarifies that the non-resident taxpayer is not required to fill the subsequent questions in the CoD if it only earns income of the type that the tax treaty does not address “beneficial ownership”.

Anti Abusive Rule

In an attempt to prevent abuse of tax treaty benefits, the Indonesian tax authority included an unusual and complicated definition of the term “beneficial owner” in article 26 paragraph (1a) of the recently amended income tax law (Law number 36 of 2008). The new law took effect as of January 1, 2009.

Based on the new income tax law, the country of domicile is to be determined not only based on the Certificate of Domicile, but also based on the residence or domicile of the beneficial owner of the said income. In the event that the beneficial owner is an individual, his/her country of domicile shall be the country where the individual resides or lives, whereas if the beneficial owner is a corporate entity, the country of domicile shall be the country where the owner of more than fifty percent (50%) shares both individually or jointly domiciled or where the effective management is located.

Pursuant to DGT Regulation No. 62 dated 5 November 2009 (“Regulation 62”), none of the tax treaty provisions can be applied if there is evidence of abuse. Abuse may be deemed to have occurred if any of the following exists:

- a. A transaction is without economic substance and is used merely to obtain a benefit from a tax treaty.
- b. There is a difference between the economic substance of a transaction and the legal form of its structure and it is used merely to obtain a benefit from a tax treaty.
- c. The recipient of the income is not the beneficial owner (i.e., an agent, nominee or conduit company).

A company will not to be deemed a ‘vehicle for abuse’ if it meets all of the following criteria:

- a. Its establishment is not solely for the purpose of utilizing a tax treaty benefit;
- b. It has its own management;

- c. It has employees;
- d. It has active business;
- e. Its Indonesia sourced income is subject to income tax in the recipient country; and
- f. It does not use more than 50% of its income to meet its obligations to other parties (interest, royalty or other compensation).

On April 30, 2010 the Indonesian tax authority issued Regulation No. 25, which revises Regulation 62. One of the main revisions limits the beneficial ownership requirement imposed on nonresident taxpayers by imposing the requirement only if the relevant tax treaty mentions the term "beneficial owner".

The revisions also make the following clarification:

- a. The phrase "active operation or business" must be interpreted based on the taxpayer's actual situation and may be indicated by the costs incurred, the efforts exerted, and the directly related expenditures undertaken to acquire, collect, and maintain revenue, including the expenditures to maintain the taxpayer's going concern.
- b. Indonesian-source income will be subject to tax in the recipient's country in accordance with that country's domestic laws, provided that the recipient is a tax subject in that country and the income derived from the foreign country is taxable there. This rule does not apply if the tax subject does not legally owe taxes because, for example, the income is subject to a 0 percent tax rate, is exempted from taxation by certain provisions, or is economically not subject to tax because, for example, the tax liability is borne by the government abroad, is suspended, or is otherwise not collected.
- c. No more than 50 percent of the taxpayer's total income of any kind or from any source as disclosed in its own (nonconsolidated) financial statement, can be used to satisfy an obligation to another party, excluding reasonable benefits provided to employees in the context of their employment, other expenses commonly incurred by the taxpayer in operating its businesses, and profit sharing in the form of dividends to shareholders.

The Rate of Withholding Taxes

Dividends

- 15% (fifteen percent) of the gross amount if the dividends are paid to resident taxpayers other than individual resident taxpayers;
- 10% (ten percent) of the gross amount if the dividends are paid to individual resident taxpayers;
- 20% (twenty percent) of the gross amount if the dividends are paid to non-resident taxpayers unless any applicable tax treaty requires a lower rate;

- Dividends are exempted from Indonesian income tax if (i) they come from positive retained earnings and (ii) are paid to resident corporate taxpayers who hold 25% or more shareholding.

Royalties

- 15% (fifteen percent) of the gross amount if the royalties are paid to resident taxpayers;
- 20% (twenty percent) of the gross amount if the royalties are paid to non-resident taxpayers, unless any applicable tax treaty requires a lower rate.

Interest

- 15% (fifteen percent) of the gross amount if the interests are paid to resident taxpayers;
- 0% (nil) of the gross amount if the interests are paid to resident taxpayers who are running a banking and/or other financial services business;
- 20% (twenty percent) of the gross amount if the interests are paid to non-resident taxpayers, unless any applicable tax treaty requires a lower rate.

Profits realized by a foreign corporation

Resident taxpayers, organizations, and representatives of foreign companies are required to withhold tax at a rate of 20% from the following payments to non-residents:

- a. On gross amounts:
 1. Dividends;
 2. Interest, including premiums, discounts and guarantee fees;
 3. Royalties, rents and payments for the use of assets;
 4. Fees for services, work, and activities;
 5. Prizes and awards;
 6. Pensions and any other periodic payments;
 7. Swap premiums and other hedging transactions;
 8. Gains from debt write-offs;
 9. After-tax profits of a branch or PE.

- b. On Estimated Net Income (ENI), being a specified percentage of the gross amount:

	ENI	Effective tax rate
Insurance premiums paid to non-resident insurance companies:		
by the insured	50%	10%
by Indonesian insurance companies	10%	2%

	ENI	Effective tax rate
by Indonesian reinsurance companies	5%	1%
Sale of non-listed Indonesian company shares by non-residents	25%	5%
Sale by non-residents of a conduit company where this company serves as an intermediary for the holding of Indonesian company shares or a PE	25%	5%

Where the recipient is resident in a country which has a tax treaty with Indonesia, the withholding tax rates may be reduced or exempted.



Ali Budiardjo, Nugroho, Reksodiputro

Head Office:

Graha CIMB Niaga, 24th Floor
Jl. Jenderal Sudirman Kav.58
Jakarta 12190, Indonesia
Tel: +62 21 250 5125/5136
Fax: +62 21 250 5001/5121
Email: info@abnrlaw.com

Singapore Office:

Clifford Centre #12-05
24 Raffles Place
Singapore 048621
Tel: +65 6236 0282
Fax: +65 6532 2972
E-mail: infosg@abnrlaw.com

www.abnrlaw.com