

Doing Business in Indonesia 2021

General Legal Guide for Doing Business in the Omnibus Law Era

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Doing Business in Indonesia 2021: General Legal Guide for Doing Business in the Omnibus Law Era / 2021

English Version

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1. Overview on Indonesia's Economic and Investment Climate

Indonesia is the world's fourth most populous country in the world with 270 million population. It is the world's 10th largest economy in terms of purchasing power parity, and a member of the G-20 with a vast natural resource. The country has a growing domestic economy and an enviable demographic projection.

Indonesia has made enormous gains in poverty reduction by successfully cutting the poverty rate more than half since 1999 to 9.78% in 2020. Indonesia was the second-fastest growing economy in G-20 from 2012 until the COVID-19 outbreak hit in 2020. It is, however, ranked third after China and South Korea in terms of economic growth among G-20 economics according to Bloomberg data collected in September 2020.

Indonesia's economy was disrupted in 2020 with a negative growth of 2.1% from 2019 (5.0% YoY). This is the first contraction experienced by Indonesia since the Asian financial crisis of 1997-1998. The World Bank, however, has forecasted that the Indonesian economy would rebound by 4.4% in 2021.

Backlashes of the COVID-19 pandemic have, undoubtedly, forced the Indonesian government to make efforts to curb such bleak outcomes, one of which by engaging in major economic reforms through the issuance of Law No. 11 of 2020 on Job Creation (**Omnibus Law**). The Omnibus Law and its implementing regulations intend to intensify Indonesia's economic attractiveness and accelerate the economic recovery by lowering corporate taxes, reorganizing rigid employment laws, simplifying business licensing system, and reducing bureaucratic and regulatory barriers to investment. The regulations also provide a basis to promote many sectors, including healthcare services, technology, and telecommunication. In addition, the country's emerging e-commerce is unveiling more entrepreneurial dispositions, also building a basis to overcome challenges of the industry 4.0.

According to the Strategic Investment Planning for 2020 – 2024 of BAPPENAS (the National Development Planning Agency), the government would focus on the expansion and development of several major business sectors, including (i) infrastructure, (ii) agriculture, (ii) manufacturing, (iv) maritime, also (v) tourism, special economic zones, and industrial parks.

2. Legal Overview on Doing Business in Indonesia

2.1 Types of Business Entity

There are many types of business entities recognized under the Indonesian Law. For this legal guide, we will address the most common entities used by foreign businesses to enter the Indonesian market; (i) Representative Offices and (ii) Limited Liability Companies.

A. Representative Offices: Establishing a representative office could be a viable option for a foreign investor to have the local presence in Indonesia. Three general types of representative offices are Foreign Company Representative Office/ *Kantor Perwakilan Perusahaan Asing (KPPA)*, Foreign Trade Representative Office/ *Kantor Perwakilan Perusahaan Perdagangan Asing (KP3A)*, and Construction Service Provider Representative Office/ *Badan Usaha Jasa Konstruksi Asing (BUJKA)*.

KPPA and KP3A are licensed offices set up in Indonesia by foreign companies. They are not construed as legal entities and have limited permitted activities, which include market exploration and liaison activities (i.e., acting as the local contact to connect the overseas head office with the Indonesia parties). It is important to note that KPPA and KP3A are strictly restricted from undertaking trading activities and generating revenues in Indonesia.

BUJKA is established for the specific purpose of entering into a joint operation agreement to engage in construction and construction consulting services with an Indonesian entity. Unlike KPPA and KP3A, BUJKA is allowed to carry out profit-making operations. Consequently, the regulatory requirements for establishing BUJKA are comparable to that of a licensed Indonesian construction service company, with some differences in the licensing process.

B. Limited Liability Companies: In terms of direct investment, Indonesian companies are categorized as follows:

- i. **Foreign Capital Investment Company/ *Perusahaan Modal Asing* (“PMA Company”):**
A company that has foreign shareholding.
- ii. **Domestic capital investment company/ *Perusahaan Modal Dalam Negeri* (“PMDN Company”):** A company that only has domestic shareholding.

PMA and PMDN companies are registered to the Ministry of Law and Human Rights (**MOLHR**) and the Online Single Submission (**OSS**) system. The OSS system, currently managed by the Ministry of Investment, previously known as BKPM (the Indonesian Investment Coordinating Board), provides an integrated business licensing system unifying the relevant licensing authorities under the central government.

In practice, a foreign company planning to carry out business activities that are open for foreign investment could establish a PMA Company, or acquire shares of an Indonesian company. In limited areas such as the upstream oil and gas, and construction services, a foreign entity should be licensed to carry out business in Indonesia.

Minimum Required Shareholders: Please note that the Company Law require any PMA or PMDN company to have, at least, two shareholders. However, the Omnibus Law exempts micro and small enterprises from the requirement and allows them to establish a limited liability company with only one shareholder. Please note that a micro or small enterprise can only be established as a PMDN. A PMA Company will be considered as a large-scale company, which must fulfill the minimum requirement of two shareholders.

2.2 Establishing Business Entity

A. General Procedure and Requirement for Establishing a Representative Office

General procedure: The following are steps to be undertaken in order to establish a representative office in Indonesia:

- (i) Preparing the documents for the representative office's establishment (legalized by the Indonesian Embassy of the principal office);
- (ii) Renting the office in Indonesia;
- (iii) Appointing the Head of Representative Office;
- (iv) Applying to the Online Single Submission ("**OSS**") system to obtain the Business Identification Number/ *Nomor Induk Berusaha*, and relevant licenses;
- (v) Applying for the taxpayer identification number/ *Nomor Pokok Wajib Pajak* ("**NPWP**") to the relevant tax office;
- (vi) Opening an Indonesian bank account for the operational purposes; and
- (vii) Submitting the licensing application to the Minister of Public Works and Housing ("**MPWH**") for a BUJKA representative office.

Capital Requirement: The prevailing law does not stipulate any capital investment requirement for the establishment of KPPA or KP3A, while MPWH specifies the annual sales and capital requirement for a BUJKA establishment.

Approximate Time Frame: The establishment of a representative office takes approximately one to two months from the document preparation until it is ready for operation.

B. General Procedure and Requirement for Establishing a PMA Company

General Procedure: A foreign investor needs to carry out the following steps:

- (i) Reserving the company name to MOLHR;
- (ii) Analyzing proposed business activities of the PMA Company;
- (iii) Preparing drafts of the deed of establishment and articles of association, and the deed execution of the PMA Company before a public notary;
- (iv) Obtaining MOLHR's ratification through the electronic filing system;
- (v) Applying to the OSS system to obtain NIB;
- (vi) Applying for NPWP to the relevant tax office;
- (vii) Opening an Indonesian bank account for the company operation and share capital deposit;
- (viii) Obtaining the Taxable Entrepreneur Confirmation/ *Surat Pengukuhan Pengusaha Kena Pajak (SPPKP)*
- (ix) Obtaining the business licenses and fulfilling the business requirement, as applicable.

Minimum Capital Requirement: Pursuant to BKPM Regulation No. 4 of 2021 on Guidance and Procedure on Risk-Based Business Licensing Services and Investment Facility, a PMA Company must have a minimum paid-up capital of IDR 10 billion, also fulfill the investment commitment (excluding the lands and buildings) of IDR 10 billion (or around USD 700,000).

Approximate Time Frame: The establishment of a PMA Company takes approximately two to three months from the document preparation until it is ready for operation. However, the time frame may vary depending on the business, subject to the document processing as required by the relevant authorities.

2.3 Government Authorities

Generally, BKPM is responsible for the processing and issuance of the approvals and/ or licenses for all foreign investments, except those in the banking and financial sector. Under the new regime, the business licenses are issued through the integrated OSS system.

2.4 Business Licensing Changes Under the Omnibus Law

The Indonesian government has promulgated Law No. 11 of 2020 on the Job Creation (**Omnibus Law** or **Law 11/2020**) since 2 November 2020. The Omnibus Law has made significant changes to the Indonesia investment ecosystem and licensing regime by establishing new provisions and amending 78 (seventy-eight) existing laws (*see the complete list of the amended laws [here](#)*).

A. General Overview of Risk-Based Business Licensing

The Omnibus Law introduces substantial changes to reorganize and simplify the licensing requirement and procedure. The law has even removed the licensing prerequisites for certain businesses, further stipulated under Government Regulation No. 5 of 2021 on Investment Business Fields (**GR 5/2021**).

Unlike the previous regime, the requisite licenses for each business are based on the risks and potential risks posed by the activities. Business activities are now categorized into three risk categories, (i) Low Risk, (ii) Medium Risk (*i.e.*, Medium-Low and Medium-High Risk), and (iii) High Risk.

Business licensing requirements based on the risk classifications are detailed as follows:

Risk Level	Business Licensing Document
Low Risk	<ul style="list-style-type: none">▪ Businesses are required to obtain Business Identification Numbers/ <i>Nomor Induk Berusaha</i> (NIB) to commence their operational and commercial activities.▪ NIB also applies as, among others: (i) the Indonesian National Standards/ <i>Standar Nasional Indonesia</i> (SNI); and/or (ii) the halal guarantee statements (for low-risk, small and medium enterprises); the Identification Number/ <i>Angka Pengenal Impor</i>, the Customs Access Right/ <i>Hak Akses Kepabeanan</i>, and the Environmental Management and Monitoring Capability Statement Letter/ <i>Surat</i>

	<i>Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup.</i>
Medium-Low Risk	<ul style="list-style-type: none"> ▪ Businesses are required to obtain (i) NIB; and (ii) a Standard Certificate/ <i>Sertifikat Standar</i> prior to commencing their business operation. ▪ The Standard Certificate is an independent statement of compliance with the standard requirements submitted through the Online Single Submission (“OSS”) system (Art. 13 (1) jo. Art. 13 (2) of GR 5/2021).
Medium-High Risk	<ul style="list-style-type: none"> ▪ Businesses are required to obtain (i) NIB; and (ii) Unverified Certificate of Standards to commence their preparation stage operations (e.g., procurement of the property, recruitment of employees, fulfillment of pre-business requirements, etc.). ▪ The company can begin their commercial stage of operations once the central or relevant regional government has issued a verified standard certificate, based on the compliance with the standards of business activity implementation (Art. 14 (1) jo. Art. 14 (2) of GR 5/2021).
High-Risk	<ul style="list-style-type: none"> ▪ Businesses are required to obtain (i) NIB, (ii) Business License; and, if necessary, (iii) Standard Certificate. ▪ The license is issued once the business has fulfilled certain conditions and verifications set out by the central or regional government, which may include an environmental impact analysis.

Sectors to Implement Risk-Based Licensing: The following are 16 (sixteen) business sectors that implement risk-based business licensing:

- i. Maritime affairs and Fishery;
- ii. Agriculture;
- iii. Environment and Forestry;
- iv. Energy and Mineral Resources;
- v. Nuclear Power;
- vi. Industry;
- vii. Trade;
- viii. Public Works and Housing;
- ix. Transportation;
- x. Health, Drugs, and Foods;
- xi. Education and Culture;
- xii. Tourism;
- xiii. Religious affairs business;
- xiv. Post, Telecommunication, Broadcasting, and Electronic System businesses and transactions;

xv. Defense and Security; and

xvi. Manpower

Impacts on the Existing Businesses: Any existing business already obtaining an effective business license **will not be affected**. However, businesses **not** yet fulfilling their commitments and having non-effective licenses will have to adjust their compliance, as their license applications will now be processed in accordance with GR 5/2021.

B. Positive Investment List

The Indonesian government has issued Presidential Regulation (“PR”) No. 10 of 2021 on the Investment Business Field amended by PR No. 49 of 2021 (“PR 10/2021” or “Positive List”) as the implementing regulation of Omnibus Law.

PR 10/2021 replaced and revoked PR No. 44 of 2016 on Lists of Business Fields That Are Closed and Open with Conditions to Investment known as the Negative Investment List. The Positive List features a significant change by opening up numerous business sectors previously closed or restricted for foreign investment.

Under the Positive List, all business sectors are now open for investment except certain businesses that are completely closed to investments or specifically reserved for the central government with no third-party cooperation allowed. PR 10/2021 classifies business activities into the following categories:

- i. **Closed business sectors:** This category, which consists of business activities that are closed for investment, includes, among others, cultivation of narcotics, any form of gambling and/or casino business, fishing of CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) species, chemical weapon manufacturing, and coral extraction business.

Additionally, public service or strategic defense-and-security businesses can only be carried out by the central government and is closed to any cooperation with either domestic or foreign parties.

- ii. **Investment priority sectors listed in Appendix I of PR 10/2021:** A total of 246 prioritized business activities are listed under the investment priority sectors. As confirmed by the relevant government authorities, the business sectors listed under this category are open for 100% foreign direct investment.

Each business in the list can enjoy fiscal and non-fiscal incentives, including tax allowances/holidays; import-duty exemption; ease of business licensing, immigration, and employment matters; as available under the applicable laws.

- iii. **Businesses reserved for, or, requiring partnership with Cooperatives and Micro, Small, Medium Enterprise (“CMSME”):** A total of 106 business activities in this category are listed in Appendix II of PR 10/2021. All businesses reserved for CMSMEs are restricted from foreign ownership. Meanwhile, a PMA Company can conduct a partnership with a CMSME on several businesses the government intends to include in the global value chain.
- iv. **Businesses conditionally open to investment:** In general, businesses in this list are those (i) entirely reserved for domestic investors; (ii) restricted from foreign capital ownership; (iii) requiring special licensing; or (iv) closely monitored and stringently regulated, subject to other regulations in the management and monitoring of alcoholic beverages.

Notwithstanding the ease of doing business introduced by the Omnibus Law, prospective investors are strongly suggested to obtain professional advices on how the business field of a particular proposed investment is categorized.

3. General Taxation

Tax in Indonesia is generally regulated under the following laws and regulations:

- i. Law No. 6 of 1983 on General Provisions and Guidelines on Tax, as amended several times, most recently by Law No. 11 of 2021 (“**KUP Law**”);
- ii. Law No. 7 of 1983 regarding Income Tax, as amended several times, most recently by Law No. 11 of 2021 (“**Income Tax Law**”);

- iii. Law No. 8 of 1983 on Value Added Tax (“**VAT**”) for Services and Goods, and Sales Tax for Luxury Goods, as amended several times, lastly by Law No. 11 of 2021 (“**VAT Law**”);
- iv. Law No. 12 of 1994 on Land and Building Tax Law; and
- v. Law No. 28 of 2009 on Regional Tax and Retribution Law, as amended by Law No. 11 of 2021.

3.1 Tax Authorities

Most of Indonesian taxes are centrally administered by the Directorate General of Taxes (“**DGT**”) under the Minister of Finance (“**MoF**”), except the regional taxes that are administered and collected by the regional governments.

DGT formulates the technical guidelines and procedures for the implementation of the Indonesian fiscal policy. In this regard, DGT has various units that administer taxpayer obligations (**i.e.**, monitoring tax compliance, collecting tax, counselling, and conducting tax audits). An account representative from the tax office will be assigned to serve each taxpayer.

3.2 Business Taxation

The principal taxes applicable to Indonesian Permanent Establishment (PE) of foreign companies doing business in Indonesia consist of CIT, branch profit tax, Withholding Tax (**i.e.**, PPh 21, PPh 22, PPh 23, PPh 26, and the Final PPh (“**Withholding Tax**”)), Value Added Tax (“**VAT**”) and Luxury-Goods Sales Tax (“**LGST**”), and various other indirect levies including Land and Building Tax, the regional taxes, and duty stamp.

It is important to note that any foreign company intending to invest in Indonesia should obtain detailed tax advices from accredited Indonesian tax consultants.

3.3 Taxes on Individual

Taxes applicable for individual taxpayers consist of, among others, Withholding Tax, the land-and-building tax/ *Pajak Bumi dan Bangunan* (“**PBB**”), Land and Building Acquisition Duty/ *Bea Perolehan Hak atas Tanah dan Bangunan* (“**BPHTB**”), VAT, LGST, and duty stamp.

3.4 Tax Facilities during COVID-19 Pandemic

The Coronavirus Disease 2019 (COVID-19) pandemic has affected the Indonesia economy. In response to the economic effect of the pandemic, the Indonesian government has issued various

regulations to provide income tax and VAT incentives to taxpayers to support businesses and individuals.

No	Regulation	Remark
1.	MoF Regulation No.9/PMK.03/2021 as amended by MoF Regulation No.82/PMK.03/ 2021 (“PMK-09”)	<p>The tax incentives valid until December 2021 are as follows:</p> <ul style="list-style-type: none"> ▪ PPh 21 for employees earning an annual regular income not exceeding IDR 200 million will be borne by the government. ▪ PPh 22 on imports by eligible taxpayers will be exempted. ▪ PPh 25 monthly Income Tax instalment of eligible taxpayers will be reduced by 50%. ▪ The 0.5% final tax regime under Government Regulation No.23 Year 2018 will be borne by the government. ▪ Final Income Tax on the construction income of taxpayers under the Acceleration Program to Improve Utilisation of Irrigation Water will be borne by the Government. ▪ Preliminary VAT refund will be available to eligible taxpayers requesting a refund in a maximum amount of IDR 5 billion.
2.	MoF Regulation No.103/PMK.010/2021 that revokes the previous MoF Regulation No. 21/PMK.010/2021 (“PMK-103”)	<ul style="list-style-type: none"> ▪ The government will bear VAT applicable to (i) any landed house or residential unit with selling price under IDR 5 billion; or (ii) any new landed house or residential unit delivered first-hand by the developer in a ready-to-use condition. ▪ The period of the facility period is extended to December 2021 (it lasted from March to August 2021).
3.	MoF Regulation No.102/ PMK. 010/2021 (“PMK-102”)	<ul style="list-style-type: none"> ▪ The Indonesian government will bear any VAT applied to retail merchants for renting business spaces or buildings in 2021 Fiscal Year. ▪ This incentive is enjoyed by entrepreneurs who deliver goods/services to final consumers as part of their retail business. This includes stand-alone shops/outlets located in shopping centres, shopping complexes, apartment facilities, hotels, hospitals, educational facilities, public transportation facilities, office facilities, and public markets. The landlords of

		tenants enjoying the incentive must (i) provide the specific VAT invoices; and (ii) provide the realization report submitted to DGT.
4.	MoF Regulation No.83/PMK.03/2021 (“PMK-83”)	<ul style="list-style-type: none"> ▪ Tax facilities for medical field businesses, (<u>i.e.</u>, VAT, Articles 21, 22, and 23 Income Tax). ▪ Additional tax deduction for suppliers of COVID-19 products, deductible donations, 0% tariff under Article 21 of Final Income Tax on additional income of health workers, and 0% tariff under Final Income Tax on rental income. ▪ The extension of the incentive period to 31 December 2021 (it previously lasted up to June 2021).
5.	MoF Regulation No.68/PMK.010/2021 (“PMK-68”)	<ul style="list-style-type: none"> ▪ The import duty of specific industry sectors including that of aircraft maintenance, repair, and overhaul (MRO) will be borne by the government. ▪ The detailed list of goods and materials is available in the appendix of PMK-68 covering the food-and-beverage, chemical, pharmaceutical, textile, metal, machinery, transportation, and electronics industries. ▪ This incentive is applicable from 22 June to 31 December 2021

3.5 Amendment of Tax Provisions under the Omnibus Law

The Omnibus Law amends several tax-related provisions including the Income Tax Law, KUP Law, and VAT Law. Below are some takeaways on tax reforms under the Omnibus Law:

A. Income Tax Law

- Exemption of Income and Withholding Taxes on dividends and PE’s net-profit after-tax if it is re-invested in Indonesia within a certain period of time; and
- An Indonesian citizen residing abroad for more than 183 days may be treated as a foreign taxpayer. A foreign individual who is an Indonesian tax resident may be taxed only on the income sourced from Indonesia (changing from a worldwide to territorial income basis).

B. VAT Law

- The Omnibus Law now excludes the delivery of taxable goods under consignment from the definition of taxable goods delivery;

- The delivery of taxable goods as equity contribution for paid up capital in the new shares of a company shall not be regarded as a taxable delivery, if both the transferor and transferee are registered for VAT; and
- Subject to certain conditions, all business-related inputs of VAT incurred prior to the production stage can be compensated to the next period and claimed for a refund at the end of the year.

C. KUP Law

- Sanctions for tax underpayment are revised from a general fixed rate of 2% per month to a fluctuating rate linked to the MoF's predetermined monthly interest rate. The same also applies to interest compensation for tax overpayment. In addition, the penalty for the incorrect or late issuance of VAT invoice is reduced from 2% to 1% of the VAT imposition base; and
- Statute of limitation for the issuance of a tax collection letter is now valid for five years.

4. General Guidance on Corporate Compliance under Indonesia's Company Law

4.1 Corporate Governance

Law No. 40 of 2007 on Company Law as amended by Law No.11/2020 ("**Company Law**") requires PMA and PMDN companies to be governed by three bodies, which are Shareholders, Board of Directors ("**BoD**"), and Board of Commissioners ("**BoC**").

- Shareholders:** Under the Company Law, a company must have, at least, two shareholders (individuals or entities). Generally, a shareholder has the rights to: (i) attend and cast a vote in the general meeting of shareholders ("**GMS**"); (ii) receive dividend payments and distribution of remaining assets after liquidation; (iii) subscribe to newly issued shares in proportion to his or her shareholding for the equivalent class of shares.
- BoD:** A company must have, at least, one director as member of the BoD, who will be responsible for the daily management of the company and submit an annual report to a General Meeting of Shareholders ("**GMS**") within six months of the closing of the company's books.

In addition, BoD is required to establish and maintain a special register of shareholders (*Daftar Khusus Pemegang Saham*) that contains information regarding the shares in the

company, and in other companies owned by members of the BoD, BoC, and their families, and the dates the shares were obtained.

- iii. **BoC:** The BoC is responsible for the supervision of the management of the company and provides necessary advices to the BoD with respect to the policies and effectiveness of the company management.

Appointment of BoD and BoC: The BoD and BoC are appointed by the shareholders through GMS for a specified period and may be re-appointed for subsequent terms. Any appointment, dismissal, or alteration of BoD and BoC must be notified to the Ministry of Law and Human Rights.

Foreign Directors and Commissioners of PMA Company: All directors, except the one (and other personnel) in charge of human resources, of a PMA Company may be foreigners. Meanwhile, the BoC of PMA Company can be entirely occupied by foreigners.

4.2 Prohibition on Nominee Arrangements

Law No. 25 of 2007 on Investment as amended by Law No. 11 of 2020 (“**Investment Law**”), explicitly forbids nominee arrangements, a practice where a person or company holds shares for the benefit of another person, in PMA and PMDN companies. Any such arrangement will be null and void by the operation of law.

4.3 General Reporting Obligations

A. Investment Activity Report to BKPM

Under BKPM Regulation No. 5 of 2021 on Guidelines and Procedures of Supervision of Risk-Based Licensing, all business actors are required to submit the investment activity report/ *Laporan Kegiatan Penanaman Modal* (“**LKPM**”), except those (i) with investment value of IDR 50 million or less; or (ii) engaged in upstream oil-and-gas, banking, non-bank financial services, or insurance activities.

The LKPM reports should be submitted to BKPM through the OSS system, within the following reporting periods:

- i. A BUJKA must submit an annual LKPM report every 10 January of the following year;

- ii. A company with an investment value of just over IDR 50 million up to IDR500 million, also KPPA or KP3A company must submit the report twice a year, on 10 July and 10 January of the following year; and
- iii. A company with an investment value of more than IDR 500 million must submit the report quarterly on 10 April, 10 July, 10 October, and 10 January of the following year.

B. Company's Mandatory Manpower Report to the Minister of Manpower ("MoM")

Law No. 7 of 1981 on Mandatory Employment Report of the Company requires all companies to submit a Manpower Report/ *Wajib Lapo Ketengakerjaan di Perusahaan* ("WLTK") to MoM. This report shall be made on an annual basis, every December of the ongoing year. Under the OSS system, the issuance of a company's NIB is regarded as the acceptance of the company's first report.

4.4 Corporate Social Responsibility

Under the Company Law and related regulations, companies on natural resources businesses are required to have an annual Corporate Social Responsibility ("CSR") program. The report on the CSR program must be incorporated in the company's annual report and disclosed to the shareholders.

4.5 Currency

Pursuant to Law No. 7 of 2011 on Currency, the use of Rupiah is mandatory in any payment transaction, settlement of other monetary obligations, and other financial transactions within the territory of the Republic of Indonesia.

However, certain transactions are exempted from the requirement, including those (i) for implementing the state budget; (ii) in the form of grants received from or given to (state-related institutions) overseas; (iii) in international trade transactions; (iv) in bank deposits denominated in foreign currencies; and (v) in international financing transactions.

4.6 Language

Law No. 24 of 2009 on National Flag and Language, State Symbols, and National Anthem, and its implementing regulation mandates the use of Indonesian language for, among others, memoranda of understanding or agreements involving government agencies of the Republic of Indonesia, Indonesian private entities, or Indonesian individuals.

For a commercial contract where a foreign party is a counterpart, the agreement may be prepared in dual languages (Bahasa Indonesia and the language of the foreign party or English). In practice, parties may agree which language will govern in case of a conflict, except in cases of mandatory utilization of Bahasa Indonesia as the governing language, such as in a deed granting a fiduciary security interest.

5. Employment

Indonesia's employment sector is governed under Law No. 13 of 2003 on Manpower, lastly amended by Law No. 11 of 2020 on Job Creation ("**Manpower Law**"), and its implementing regulations.

The Manpower Law applies to both Indonesian and foreign manpower/ *Tenaga Kerja Asing* ("**TKA**") working in Indonesia.

5.1 Employment Contract

In general, the Manpower Law acknowledges two types of employment based on its underlying agreement, which are (i) indefinite employment agreement or *Perjanjian Kerja Waktu Tidak Tertentu* ("**PKWTT**"); and (ii) fixed-term employment agreement or *Perjanjian Kerja Waktu Tertentu* ("**PKWT**").

As an additional note, the Manpower Law requires that, the employment of a TKA must be made with PKWT arrangement, it is not possible for a TKA to be employed under PKWTT arrangement.

A. Contract Period

PKWT may be made based on a specific time or the completion of a certain job or work that is temporary in nature. It cannot be used for permanent jobs. It is important to note that the Omnibus Law has removed the previous restriction on PKWT period of not exceeding two years that could be extended once for a maximum period of one year, or renewed once for a maximum period of two years. The new Manpower Law authorizes the employer and employee to agree on the employment period. Meanwhile, it is clear that PKWTT agreements are made for an indefinite time.

B. Form of Employment Agreement

Employment agreements may be made verbally or in writing. A verbal employment agreement must be supported by an appointment letter to the employee, which includes, at least, the name and address of the employee, date of employment, type of employment, and salary.

Furthermore, the Manpower Law stipulates that every written employment agreement must include, at least:

- i. the name, address, and line of business of the company;
- ii. the name, sex, age, and address of the employee;
- iii. the type of job;
- iv. the place where the job will be carried out;
- v. the amount of salary and how it shall be paid;
- vi. job requirements stating the rights and obligations of both the employer and employee;
- vii. the effective dates and period of the work agreement;
- viii. the place and date where the work agreement is made; and
- ix. the signatures of both parties involved in the work agreement.

5.2 Outsourcing

The Omnibus Law took out the provisions on outsourcing addressed under the Manpower Law. Under the previous regime, outsourcing can only be carried out for non-primary/core jobs. There is no limitation on the types of outsourced work under the Omnibus Law.

In addition, the Omnibus Law introduces new obligation on the outsourcing company, which must employ its employees under a fixed-term or PKWTT arrangement that includes a provision on the transfer of undertaking for employment protection (TUPE). The main purpose is to protect and guarantee the outsourced employees' interest.

5.3 Employee's Wages

An employee's wage consists of the following components: (i) basic wage; (ii) fixed allowances; and (iii) non-fixed allowances. If the components are just a basic wage and fixed allowances, the amount of basic wage shall be, at least, 75% of the total amount of basic wage plus fixed allowances.

Manpower Law does not stipulate any national minimum wage. However, each province has a set of minimum wages. A minimum wage must be based on an extent that will meet the costs of

all basic needs of a decent living. As such, it is important to note that every employer is prohibited from compensating wages less than the minimum wage specified for each province, regency, or region.

5.4 Pension and Social Insurance

All employers are obligated to register their employees into the Social Security Program, i.e., (i) the healthcare social security administered by BPJS Healthcare; and (ii) the employment social security administered by BPJS Employment. Foreign employees who work in Indonesia for less than six months and Indonesian citizens who live abroad for, at least, six consecutive months are exempted from the requirement to be registered in these social security programs.

It is noteworthy that the Omnibus Law provides a new social security program, namely Job Loss Security/ *Jaminan Kehilangan Pekerjaan* administered by BPJS Employment and the central government. This security is given to employees whose contracts have been terminated by the company. The benefits of job loss security include cash, and access to job market information and job trainings, with a maximum claimed amount worth six months of the relevant employee's wage.

5.5 Termination of employment

The Employment Law stipulates that an employment agreement shall be terminated if one of the following events occurs:

- i. death of the employee;
- ii. expiration of the employment agreement;
- iii. completion of a certain job;
- iv. issuance of a legal and binding court decision and/or decision of the institution for the settlement of industrial relations dispute; or
- v. a certain condition as determined under the employment agreement, company regulation/ *Peraturan Perusahaan* (“**PP**”), or Collective Labor Agreement/ *Perjanjian Kerja Bersama* (“**PKB**”).

If a PKWT agreement is terminated for reasons other than those listed above, the party that ends the employment contract must pay a compensation to the other, which amount is equal to the wages the employee is entitled to receive, until the expiration of the employment agreement.

It is important to note that the Omnibus Law now allows the employer to include certain conditions other than those listed under the Employment Law, which may result in the termination of employees. Such reasons can be accepted as long as they do not violate the Manpower Law.

A. Basis of Employment Termination

As mentioned in the preceding section, pursuant to Art. 154A of Manpower Law, employment terminations are due to one or more of the following reasons:

- i. the company carries out a corporate action (**i.e.** merger, acquisition, consolidation or spin-off) and the employee does not want to continue the employment;
- ii. the company is in a restructuring scheme due to losses;
- iii. continual losses for two consecutive years;
- iv. force majeure;
- v. suspensions of debt payment obligations;
- vi. bankruptcy;
- vii. the employee's request for termination due to the employer's action;
- viii. an order is issued by the institution for the settlement of industrial relations;
- ix. the employee's resignation;
- x. the employee's absence for five days with two summons;
- xi. the employee violates the employment agreement, PP, or PKB;
- xii. the employee is detained for six months or more for committing a crime;
- xiii. the employee's prolonged illness;
- xiv. the employee's retirement; and
- xv. death of the employee

Notwithstanding the above permissible causes, employers must put all efforts to prevent the termination. If they fail, the termination of employment must be negotiated between the employer and the affected employee, or with the labor union, if the affected employee is a member. Should the negotiation fail, the employer may only terminate the employment after receiving a decision from the Industrial Relations Dispute Settlement Court.

B. Severance payment

If the employer terminates the PKWTT agreement, the employer is obliged to pay the severance pay, service pay, and compensation payments (as applicable) to the employee. The following are the calculation of an employee's severance package.

Severance Pay		Service Pay		Compensation Pay
Service Period	Payment/ monthly salary	Service Period	Payment/ monthly salary	<p>The components of compensation pay include:</p> <ul style="list-style-type: none"> ▪ annual leave that has not been taken; ▪ travel expenses to the employee's home town; and ▪ other compensations as determined in the employment agreement, PP, or PKB
<1 year	1	3-6 years	2	
1-2 years	2	6-9 years	3	
2-3 years	3	9-12 years	4	
3-4 years	4	12-15 years	5	
4-5 years	5	15-18 years	6	
5-6 years	6	18-21 years	7	
6-7 years	7	21-24 years	8	
7-8 years	8	>24 years	10	
> 8 years	9			

5.6 Industrial Management Relations

The Manpower Law requires that, any company that has, at least, 10 employees, needs to establish a PP (Company Regulation) ratified by the relevant district's Manpower Office. In establishing the PP, the employer shall consider the employee or labor union's recommendation in a democratic manner. The PP shall be valid for a maximum two years upon its ratification.

However, note that an employer is not required to establish a PP if the employer already has a PKB (Collective Labor Agreement). In this regard, the PKB must be established based on the negotiation with, and consent of the labor union.

5.7 Utilization of Foreign Manpower

These are the required paperwork for an employer planning to hire a foreign worker, pursuant to the Manpower Law and Government Regulation No. 34 of 2021 on Foreign Manpower Utilization:

- i. the Foreign Workers Utilization Plan/ *Rencana Penggunaan Tenaga Kerja Asing* (“**RPTKA**”) ratified by the central government through the OSS System, valid as a work permit; and
- ii. notification to the Ministry of Manpower, valid as the document to process the issuance of the Limited Stay Visa and Permit.

Notwithstanding the above, Manpower Law exempts these parties from RPTKA obligation: (i) directors or commissioners with certain share ownerships; (ii) diplomatic and consular officers at representative offices of foreign state missions, and (iii) foreign manpower required for a production process halted due to an emergency, vocational programs, technology-based start-ups, business meetings, or research for a certain time.

It is important to note that foreign employees are prohibited from occupying positions related to personnel management, including personnel director, industrial relation manager, human resources manager, and other similar positions.

6. Dispute Resolution

In any international investment, the choice of dispute resolution forum and governing law is important to ensure the certainty, stability, and enforceability of contractual rights and obligations.

6.1 Choice of law

Indonesian civil law allows the parties to decide on the governing law of their agreements. The Indonesian courts shall respect such decision given the parties choose a foreign governing law. If an agreement involving Indonesian parties does not stipulate a choice of law, Indonesian law will automatically apply in proceedings in Indonesian courts.

6.2 Language requirements

It is essential to conduct a risk assessment when considering the choice of language in agreements with Indonesian parties. Factors to consider in the risk assessment include the nature of the agreement, governing law, dispute resolution mechanism, identity of the Indonesian counterparty, and whether the contract would likely require any performance or enforcement in Indonesia. Typically, where an agreement is perceived to have a higher degree of risk, parties would agree for a dual-language execution. The foreign language version (usually English) will prevail to the extent of any inconsistency between the two versions.

Two ways of signing of a dual-language agreement:

- i. **Dual-Language Execution:** An agreement may be drafted and executed in both English and Bahasa Indonesia. But in practice, it is often difficult to negotiate and finalize both versions simultaneously, particularly when facing tight timelines.

- ii. **Translation Following Signing:** Alternatively, the agreement may be drafted and executed in English, but include a provision requiring the parties to provide the Indonesian translation within a specified time period (**e.g.**, 30 to 90 days after the English version is executed), or, as and when such translation is requested by a party or is required for any purpose.

6.3 Civil Court Proceedings

If the parties agree to choose Indonesian court as its dispute resolution forum, in the event of a dispute, one of the parties must file a civil claim to the relevant district court to begin the civil court proceedings. Under the Indonesian law, the disputing parties must first make an effort to settle the dispute through mediation, prior to entering the court proceeding. If the mediation fails, the judge will set a date for the hearing, and the litigation can begin.

Any documents must be drawn up or being translated to Bahasa Indonesia for the admission to the court. Additionally, representation of parties in court can only be undertaken by an Indonesian advocate holding a license issued by the Indonesian Bar Association.

It is important to note that foreign court judgments will not be enforced in Indonesia. New court proceedings have to be commenced and the whole matter has to be re-litigated under Indonesian law. However, a foreign judgment may serve as supporting evidence in the Indonesian court proceeding.

6.4 Arbitration

The legal basis of arbitration in Indonesia is provided for in Law No.30 of 1999 on Arbitration and Alternative Dispute Resolution (“**Arbitration Law**”). The Arbitration Law was established to diminish the interference of courts, reduce the judicial burden, and assure the enforceability of arbitral awards.

It is important to note that Indonesia is a participant of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”). As such, it has exercised the reciprocity and commerciality of arbitral reservations.

Three main arbitral institutions in Indonesia are:

- i. Indonesian National Board of Arbitration/ *Badan Arbitrase Nasional Indonesia* (**BANI**);

- ii. Indonesian Capital Market Arbitration Board/ *Badan Arbitrase Pasar Modal Indonesia (BAPMI)*; and
- iii. National Sharia Arbitration Body/ *Badan Arbitrase Syariah Nasional (BASYARNAS)*.

Under the Arbitration Law, any legal entity may become a party to arbitration proceedings. The parties in dispute initiate the arbitration proceedings based on an arbitration agreement that must be made in writing.

A. Tribunal Selection

The Arbitration Law provides for conditions where the parties agree to appoint a single arbitrator or two arbitrators with the authority to appoint the third. However, nothing in the law explicitly disallows the parties from arranging a tribunal with an alternative composition.

B. Arbitral Rules

Parties to a dispute may, however, choose an ad hoc or institutional arbitration, subject to such rules as agreed between the parties. The parties can also decide modifications of arbitral rules in writing, given that any such modifications do not contravene mandatory provisions of Arbitration Law or rules of the arbitral governing institutions.

6.5 Enforcement of Arbitral Awards

A. Domestic Arbitral Awards

Based on the Arbitration Law, the arbitral award made by arbitrations conducted through a domestic arbitration forum shall be considered as final and binding. Appeal against the arbitral award may not be filed. The arbitrator, or their proxies, must subsequently submit and register the award to the relevant District Court. If the unsuccessful party refuses to comply with the award, the winning party may request the Chief Judge to issue an enforcement order within 30 days after the request is submitted.

B. Foreign Arbitral Awards

The enforcement procedure for foreign arbitral awards starts with award registration at the office of the relevant District Court. Under the Arbitration Law, a foreign arbitral award may only be enforced after the Indonesian court has recognized such award through the issuance of 'exequatur' under the Central Jakarta District Court (except when the Republic of Indonesia is a party to the arbitrated dispute).

If the losing party does not fulfil its obligations under the exequatur, the party enforcing the order may request the Chief Judge of the District Court to issue an enforcement order (a writ of execution) of such award.

Notwithstanding the sufficient regulatory framework, the disputing parties enforcing arbitral awards are practically confronted with challenges due to varied judgements of Indonesian courts, particularly on the validity of the arbitral agreements and enforcement of foreign arbitral awards.

7. Restructuring, Bankruptcy, and Liquidation

7.1 Bankruptcy & Suspension of Debt Payment

Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (“**Bankruptcy Law**”) recognizes two types of proceedings:

- i. Bankruptcy proceeding, under which the debtor loses its power to manage and dispose of its assets; and
- ii. Suspension of Obligation for Payment of Debts/ *Penundaan Kewajiban Pembayaran Utang* (“**PKPU**”) proceeding, under which the debtor, upon request by the creditor or the debtor itself, is given temporary relief to restructure its debts and continue in business, ultimately to satisfy its creditors.

The table shows the key distinctions between Bankruptcy and PKPU

	Bankruptcy	PKPU
Purpose	Liquidation or restructuring	Restructuring
Management of Debtor’s Assets	Managed by a curator, supervised by the judge	Jointly managed by the administrator and debtor
Voting Rights	Unsecured creditors (Note: <i>Secured creditors are entitled to vote on matters in bankruptcy only to the extent of any unsecured debt</i>)	All creditors

Appeal	Declaration of bankruptcy may be subject to direct review by the Supreme Court	the court termination process results in the debtor being declared bankrupt with no further right to review
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A corporation shall be considered “insolvent” if, (i) it has two or more creditors and, (ii) it fails to pay, at least, one debt when it is due. Once a company or individual fails to pay, at least, one of its due debts, one or more of its creditors, the public prosecutor, or the individual or company could file a bankruptcy petition to the Commercial Court.

Under specific circumstances, a bankruptcy petition may only be filed by the following parties:

- i. Central Bank of Indonesia if the debtor is a bank;
- ii. the Indonesian Capital Market Supervisory Agency/ *Badan Pengawas Pasar Modal (BAPEPAM-LK)* if the debtor is a securities company, a stock exchange, a clearing and guarantee agency, or a depository and settlement agency;
- iii. the public prosecutor if the bankruptcy petition involves public interests; or
- iv. MoF if the bankruptcy petition is against an insurance, reinsurance, pension fund, or a state-owned company in the form of a *persero*.

7.2 Termination of Suspension of Debt Payment

The administrator, the supervisory judge or any of the creditors, or the Commercial Court under its own discretion, may request for the termination of PKPU if:

- i. during the PKPU process, the applicant takes any action detrimental to its assets or the interests of its creditors under a bad faith;
- ii. the applicant carries out management actions, or transfers the rights to any part of its assets without authorization of the PKPU administrator during the debt suspension period;
- iii. the applicant neglects the court order at the time or after the suspension of payment is granted, or neglects to do what the Administrator requires in the interests of the debtor’s assets;
- iv. the applicant’s assets are in such a state that a suspension of payments would no longer be feasible; or
- v. the applicant is in such a condition that it cannot be expected to fulfil its obligations towards the creditors on time.

7.3 Effects on Bankruptcy Declaration

A. Impact to Debtors

After the court issues the debtor's bankruptcy status, the debtor will lose its capacity to manage and dispose of the bankruptcy assets. The powers to undertake any legal action in respect of such assets extend to the appointed curator. The bankruptcy assets consist of all of the debtor's assets at the time of the declaration of bankruptcy.

Under the general rule, the bankruptcy of a limited liability company does not extend to its shareholders, as they are "safeguarded" under the limited liability concept. The maximum contribution expected from them would be payment of the remaining unpaid amount of their capital contributions.

In addition to the above, if the bankruptcy is due to the fault or negligence of the BoD and the company's assets are insufficient to cover the debt, every member of the BoD shall be collectively responsible for the remaining liabilities/debts not settled within the period of five years.

B. Impact to Creditors

Preferred or secured creditors have the priority to claim the proceeds derived from the sale of assets that have been pledged as security, in a pledge (*gada*), fiducia (*fidusia*), mortgage (*hipotek/ hak tanggungan*), or privilege (*hak istimewa*). Meanwhile, unsecured/concurrent creditors share the distribution of the remaining assets and obtain repayment of their debts in a proportionate percentage. The unsecured/concurrent creditors can obtain repayment of their claims through the bankruptcy procedure, instead of individual enforcement proceeding.

Please note that only the creditors making the claim during the bankruptcy declaration period shall be eligible to claim payment of proceeds from the sales of bankruptcy assets. Payment obligations of the debtor occurring after the bankruptcy declaration cannot be paid using the proceeds. But it is possible to do that if such payment is beneficial to the overall bankruptcy assets.

In addition, the Bankruptcy Law acknowledges "*Actio Pauliana*" principal, in which any legal action of the debtor and its counterparties before the declaration of bankruptcy may be annulled if such action jeopardizes the creditor's interests.

The burden of proof in such action would lie in the hands of the debtor if the voluntary act is carried out within one year before the date of bankruptcy declaration, otherwise, the burden of proof would be in the hands of the creditor.



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