

DOING BUSINESS IN INDONESIA

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1. INTRODUCTION

GEOGRAPHY

Indonesia, with its capital city of Jakarta, is the largest archipelago in the world, located between mainland South-East Asia and Australia. The country consists of approximately 17,000 islands, of which approximately 6,000 are inhabited, stretching some 5,000 km from east to west and 1600 km from north to west where 80% of this area is covered by sea. Because of its complex geographical make-up and unique bio-geographical position, Indonesia has enormous ecosystem diversity as well as a fascinating history and heritage.

CULTURE

With more than 210 million inhabitants, Indonesia is the 5th most populous country in the world and is among the most culturally rich countries on earth. Indonesia has more than 300 ethnic with some 250 distinct languages and dialects throughout the nation. Despite of these differences, however, Bahasa Indonesia has been adopted as the national language as well as the language of unity which is spoken by almost everyone. English is generally spoken by businessmen, government officials, and foreign graduates. For the last ten years, Chinese or Mandarin language has been commonly used and has become advantage for businessmen doing business with China. As economic development and modern education spread throughout the country, the ethnic and regional differences are being diluted.

ADVANTAGES OF INVESTING IN INDONESIA

Following the experience of economic and financial crisis in 1997, the government of Indonesia recognized that foreign investments have important role in order to reconstruct the Indonesian economy. During the following years, the successive government enacted legal and regulatory reforms which were designed to make Indonesia an attractive and competitive destination for foreign investments.

Indonesia has increased domestic consumption and investment which should compensate for a global slow down in export growth to increase economic growth from 6.3 per cent in 2003 to 6.4 per cent in 2008. This should continue to attract foreign investment and support the focus on increased infrastructure spending and improving the investment climate. Indonesia's developing economy has been largely based upon primary industries notably agriculture and natural resources such as oil and gas, minerals and forestry.

The exploitation of natural resources is the most important source of taxation revenues and foreign exchange for Indonesia. In order to reduce its relative reliance on oil and gas related revenue and therefore its susceptibility to fluctuations in the world demand for oil and gas, the government is encouraging growth and investment in areas such as manufacturing and the exploitation of other natural resources.

The Government also recognizes the need for foreign investment in order to assist the continuing development of the economy. The government is particularly interested in foreign investment in areas where capital, advanced technology and management skills are not readily available internally and in areas where investment will increase export earning and transfer technology to Indonesians.

CONSTITUTION

Indonesia proclaimed its independence and became a republic on August 17, 1945. The State's basic legislation is Undang Undang Dasar 1945 ("The 1945 Constitution").

The Republic of Indonesia is governed by a president who is directly elected by the people through general election once every 5 years. The President of the Republic of Indonesia is the Head of the State as well as the Head of the Government.

LANGUAGE AND CURRENCY

Bahasa Indonesia is the national language, and Rupiah is the Indonesian currency.

English is the second language which mostly practiced amongst the business people and young executives.

LEGAL SYSTEM

The basic ideology of the state is set out in 5 fundamental principles known as "Pancasila". This encompasses a belief in one supreme God, a just and civilized humanity, unity of Indonesia, sovereignty of the people, and social justice. The 1945 Constitution vests the highest authority and provides for a sharing of powers among the executive, legislature and judiciary.

MAJOR EXPORTS AND IMPORTS

Indonesia is the producer of oil and gas, and mining products, such as: coal, nickel, tin and others, agriculture products, and fishery.

GOVERNMENT POLICY ON FOREIGN INVESTMENT IN INDONESIA

The Foreign Investment law stipulates that foreign companies and individuals may invest and operate in Indonesia with 100% foreign ownership. Such investments must be approved by the President

through BKPM. The investor deals, in principle, with BKPM for all the approvals, licenses and permits required to establish or expand production facilities and to receive fiscal facilities, grants and other incentives. Work permits for expatriates are issued by the Chairman of BKPM on behalf of the Minister of Manpower.

Foreign direct investment in the manufacturing, industrial or non-financial services sector is licensed by BKPM. The Investment Coordinating Board (BKPM) is responsible for promoting foreign and domestic investment and approving most project proposals in Indonesia. Investment in the areas of banking, insurance, general mining, oil and natural exploration, production and related activities are licensed by other regulatory bodies.

EXCHANGE CONTROLS

The rupiah, the local currency, is freely convertible, although approval of Bank Indonesia (central bank) must be obtained before carrying more than IDR 100 million out of the country. Any person carrying IDR 100 million or more into the country must verify the authenticity of the funds with Indonesian custom upon arrival. Indonesia does not restrict the transfer of foreign currency funds to or from foreign countries, but incoming investment capital requires approval. Offshore loans must be registered with Bank Indonesia, with subsequent movements reported monthly so that the Bank Indonesia may monitor the country's foreign exchange exposure. Domestic commercial banks must submit monthly reports to Bank Indonesia on their foreign exchange transactions.

2. BUSINESS STRUCTURE

A. COMPANIES

(Limited Liability Company or Perusahaan Terbatas ("PT"))

Limited Liability under Indonesian Law is a legal person with a fixed capital divided into shares and with the liability of each shareholder limited to the extent of the par value of the shares held. The Indonesia Commercial Code provides only basic regulations with respect to the most important aspects, from incorporation up to dissolution. As a legal basis, the law is fairly accommodative to various deregulatory policies and measures to date, and those that will be taken by the government in the foreseeable future.

A. 1. GOVERNING DOCUMENTS

Companies must have a constituent document which is the memorandum and article of association. This document governs company operations. It must indicate the name of company, its shareholdings, the liability of its members, and the amount of share capital authorized.

A public company must have at least three organs. The three organs are general meeting of shareholders (RUPS), board of directors (Dewan Direksi), and board of supervisors (Dewan Komisaris). Except for approved Foreign Investment (PMA) companies, all shareholders, Dewan Direksi and Dewan Komisaris must be Indonesian nationals or wholly Indonesian-owned entities. Members of the Dewan Direksi and Dewan Komisaris are prohibited from acting on behalf of the shareholders at the shareholders meetings. The corporate law requires that an annual General Meeting of Shareholders must be held at the latest six months after the end the company's fiscal year. The day-to-day management of the P.T. is in the hands of the Board of Directors. However, the corporate law states that a PT has a Board of Supervisors, which means that a PT must have this Board.

A.2. DIRECTORS

Foreign shareholders should take particular note of the prohibition on members of the Boards of Directors or Supervisors representing shareholders at shareholders meetings. Also, an expatriate resident in Indonesia may not be a director of a PMA company unless he has a work permit sponsored by that company.

A.3. AUDIT REQUIREMENTS AND PRACTICES

Audit is required for companies listed on the stock exchange, banks, underwriters, stock brokers and leasing companies, including those established under the Foreign Capital Investment Law. While for filing the corporate tax return the availability of statutory accounts may become necessary requirement, however, audited accounts may only be optional.

Foreign accountants are not allowed to practice in Indonesia, accordingly audit opinions must be issued by an Indonesian registered public accountant.

A.4. SHAREHOLDINGS BY NON-RESIDENTS

Foreign individuals and corporations may buy shares up to 100% of the foreign investment company operating in Indonesia.

B. FOREIGN BRANCHES

The investment law requires that a foreign owned enterprise operating wholly or mostly in Indonesia as a separate business unit must be organized under Indonesian law and domiciled in Indonesia. Branches are not normally permitted, except for foreign banks and oil and gas companies.

C. PARTNERSHIPS

Companies operating in Indonesia need to be aware of the legal status of partnership as they are a common operating structure. There is a collection of recognized legal entities for setting up a business in Indonesia :

- a. Persekutuan Perdata (PP) is a partnership between two or more people in one agreement to make a profit.
- b. Firma (Fa) is an open partnership established to continuously hold a business name which is generally used by commercial partnerships such as trading and service enterprises. Each partner has the right to act in the name of the Firma within the scope of its activities and bind the partnership to third person unless he has been expressly denied that right.
- c. Persekutuan Komanditer (Commanditaire Vennootschap – CV) is a limited partnership governed by the provisions of the Commercial Code. One partner is allowed to invest money into the partnership without having to manage the company.

However, the above business types apply only to local citizens.

3. TAXATION

INCOME TAXATION LAW AND ADMINISTRATION

INTRODUCTION

The current framework of Indonesia's tax laws initiated in 1983 which has been subsequently amended, most recently in 2008. Companies doing business in Indonesia are subject to income tax, withholding tax, value added tax (VAT) and various other indirect levies, such as tax on land and building, and stamp duty. Individual articles contained in the laws may be supported by the implementing regulations and decrees, such as: Government Regulations, Minister of Finance Regulations, and Decrees of the Director General of Taxation. The government is committed to a greater intensification of tax collection as well as increasing the number of registered taxpayers.

FISCAL YEAR: YEARLY AND MONTHLY TAX PERIODS

Tax collection is based on a self-assessment system which requires the taxpayer to calculate, pay and report its tax obligations.

The tax year is basically the calendar year. However, the taxpayer may choose its tax year based on the book year which may differ from the calendar year, subject to obtaining approval from the tax office. As from fiscal year 2008, annual corporate tax return must be filed by the end of the 4th month following the book year, with provision for extended filing for two months. The annual employee income tax return must be filed by March 31 of the following year.

Any shortfall of tax should be settled by the 25th day of the third month following the end of the book year. Overpayments of tax may be recovered, but only after a tax audit has been completed

The monthly tax period is similar as monthly calendar. The monthly tax is due on the 10th day of the following month of the monthly tax period for most types of taxes, and on the 15th of the following month of the monthly tax period for Value Added Tax. While monthly tax returns must be filed by the 20th of month following the monthly tax period.

TAXPAYERS

The tax law defines a tax subject to include :

- a. an individual
- b. an undivided estate as a unit
- c. a corporation, including a limited liability corporation, a limited partnership, other forms of limited liability entity, a state-owned or regional enterprise in whatever name and form, a partnership, an association, a firma, a kongsi, a cooperative, a foundation or similar organization, an institution, a pension fund and other forms of business entity
- d. a permanent establishment is any establishment that is regularly used to carry on business in Indonesia by an organization not set up or domiciled in Indonesia.

TAXABLE INCOME

Taxable income is calculated after allowable deductions. For individuals there are income tax exclusions which are set at relatively low income levels. Individuals are broadly liable to income tax on cash income. Benefits in kind provided by employers to employees are not taxable to individuals but are non-deductible against corporate taxable income. Employers are required to withhold income tax from employees and deposit each month with the State Treasury.

PAYMENT OF CORPORATE INCOME TAX

Taxes are paid by monthly installments on a current year basis. The regular installment amount is based on the previous year's filings after taking credit for withholdings at source. Any shortfall should be settled by the 25th day of the third month following the end of the financial year.. The self-assessment principle, however, underpins Indonesian Income Tax Law. A substantial part of individual income is collected by way of withholding by third parties.

RESIDENCE AND SOURCE

The law distinguishes between resident tax subjects and non resident tax subjects. A resident tax subject includes:

- a. Any individual present in Indonesia for more than 183 (not consecutive) days in any 12 month period, or any individual present in Indonesia during a tax year and intending to reside in Indonesia, and
- b. Any organization registered or domiciled in Indonesia

RESIDENCE OF INDIVIDUALS

Resident individual tax payers are taxed on their worldwide gross income less allowable deductions and nontaxable income. A resident individual who has no income other than related to his employment, on which tax is withheld by the employer, has no obligation to have income other than that related to his employment or who works for more than one employer is required to register as a taxpayer and lodge an annual tax return together with a payment for any tax due.

RESIDENCE OF COMPANIES

Resident Organizations and permanent establishments are required to register as tax payers, pay tax on their own income, withhold tax on payments to employees and third parties, and lodge the relevant tax return.

SOURCE OF INCOME

Resident companies deriving income from foreign source are entitled to a unilateral tax credit with respect to foreign tax paid on the income. The credit is limited to the amount of Indonesia tax otherwise payable on the relevant foreign income. Indonesia has a reasonably broad tax treaty network. To establish eligibility for the treaty rates, the nonresident payee should provide the payer with a certificate of domicile from the tax authority in the payee's country of residence. A copy of this statement is filed with the Directorate-General of Taxation

TAXATION OF COMPANIES

TAXATION OF PROFIT

Taxable income for corporation is taxed at the rate of 28%.

Some expenses not related to normal business expenses are not allowed for tax purposes and such expenses must be taken out in order to arrive at the amount of taxable income. Rates of depreciation are regulated, although taxpayers may elect either the straight line or double declining method. Companies may choose to be taxed on the basis of a financial year other than the calendar year. Books of account may be kept in English based on the tax office approval.

Taxable business profits are computed 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 in respect of when an expenditure recorded as an expense for accounting can be claimed as a deduction for tax.

DIVIDEND IMPUTATION

Dividends received from Indonesian companies are subject to a 15% withholding tax. Payments to nonresident individuals or companies in the form of dividend are subject to a 20% withholding tax, subject to any reduces rates under an applicable tax treaty.

INTEREST DEDUCTION

Under Indonesian tax law, withholding tax of 20% is imposed on the gross amount of interest including guarantee fees paid or payable to non-resident tax subjects. This is a final tax and no further assessment of Indonesian tax occurs in relation to interest derived by non-residents from an Indonesia source where withholding tax applies

ROYALTIES

Withholding taxes on royalties are 15% on domestic payments and 20% on remittances abroad, unless the latter rate is reduced under a tax treaty and the recipient submits a tax residence certificate from the tax authorities of its country of residence. The term Royalties is defined differently in each of Deferred Tax Asset and where applicable, its definition takes precedence over the domestic law. The definition usually en compasses both royalties for the use of property, and for information concerning industrial, commercial and scientific experience.

TAXATION OF PERMANENT ESTABLISHMENT (PE)

A permanent establishment is any establishment that is regularly used to carry on business in Indonesia by an organization not set up or domiciled in Indonesia. A Permanent establishment is taxed on Income from business activities of the Permanent Establishment and from property controlled or owned, Income of the parent company where the income is from business activity or sales of goods and provision of services in Indonesia of the same type as those carried out by the permanent establishment in Indonesia, and Income in the form of dividends, royalties, interest payments and fees for services received by the parent company.

A Permanent Establishment is therefore taxed on income from its own business activities, and on any income received by the parent company from the sale of products and services in Indonesia of the same type. It is also taxed on income received by its parent company in the form of dividends, royalties, interest payments and fees and services if an effective relationship exists between the PE and the property or separations producing the income. A Permanent Establishment is also required to pay additional tax at the rate of 20% on its after-tax taxable income in Indonesia.

TAXATION OF CAPITAL GAINS

Capital gains are taxable as ordinary income, and capital losses are tax-deductible. The taxable gain is defined as net proceeds less book value at the time of disposal. Capital gains from the sale of Indonesian assets held by foreigner are taxable at 5% of gross proceeds (but the only assets now taxable are shares held by foreign entities). Applicable tax treaties usually override this provision of domestic tax law.

Sales of shares listed on the Indonesian Stock Exchange are subject to a tax of 0.1% of the transaction value. Founder shares are also subject to a final tax 0,1% of the transaction value. Founder shares are also subject to a final tax 0.5% on the share value at the time of an initial public offering.

INTERACTION WITH INTERNATIONAL TAX REGIME

Indonesia has agreements for the avoidance of double taxation signed. There are currently 59 tax treaties in force with other countries. Indonesia has a reasonably broad tax treaty network to establish eligibility for the treaty rates, the non residence payee should provide the payer with a certificate of domicile from the tax authority in the payee's country of residence. A copy of this statement is filed with the Directorate-General of Taxation. In general, these agreements follow the principles of the OECD Model Taxation Convention on Income and Capital. The basic principle is that the country of source has the prior right to tax and the other country provides either a tax exemption. In a tax regulation issued by the Indonesian Tax Office, that in order that a non-resident may enjoy the benefits of treaty protection including reduced withholding tax rate, for an application form to be lodged with the Indonesian tax Office seeking confirmation of the non-resident's right to take treaty relief. Until such time that the Indonesian Tax Office approve applications, full withholding tax rates apply.

TAXATION OF INDIVIDUALS

RESIDENTS

A resident tax subject is defined as any individual present in Indonesia for more than 183 days in any twelve month period, or any individual present in Indonesia and intending to reside in Indonesia. Resident individuals are taxed at the normal rates on taxable income, being world-wide gross income less allowable deductions and non-taxable income. Individual income taxes in Indonesia are levied only at the national level. Personal tax rates are:

Income (IDR)	Percentage (%)
Up to Rp 50,000,000	5%
From Rp 50,000,001 to Rp 250,000,000	15%
From Rp 250,000,001 to Rp 500,000,000	25%
Above Rp 500,000,000	35%

NON-RESIDENTS

A non-resident individual, being an individual present in Indonesia for less than 183 days with no intention to reside, is deemed to be a non-resident tax subject under the law if he or she receive or accrues any income from Indonesia. Payments to nonresident individuals in the form of dividends, interest, royalties, rents for property, prizes or awards, and payment for technical, management and other services wherever performed are subject to a 20% withholding tax, subject to any reduced rates under an applicable tax treaty.

OTHER TAXES**VALUE ADDED TAX (VAT)**

Indonesia operates a VAT system, which taxes the supply goods and the provision of services at a standard rate of 10%. Certain goods and services are exempt. Insurance and banking are not subject to VAT. VAT on exports is charged at a zero rate, so the payment of VAT on inputs is refunded. VAT applies to intangible goods (including royalties) and to virtually all services provided outside Indonesia to Indonesian business. VAT applies equally to all manufactured goods, whether produced locally or imported. Manufacturing is defined as any activity that changes the original form or nature of a good, creates a new good or increases its productivity. The VAT on inputs is creditable against the VAT on outputs. VAT has become a major source of revenue for the government.

SALES TAX ON LUXURY GOODS

A luxury goods tax is levied on a variety of goods at rates ranging from 10% to 75%. The tax is levied upon importation. This tax applies at the point of import or manufacture and is additional to VAT. It is a non-creditable one-off tax and applies to a wide range of goods.

EXCISE DUTIES

A number of excise duties are levied, primarily on alcohol and tobacco products.

STAMP DUTY

Stamp duty applies to financial transactions, deeds and receipts, at rates ranging from IDR 3,000 to IDR 6,000 depending on the amount of the transaction or type document. Sanctions levied on non or under-paid stamp duty is penalty of 200% of the duty payable or underpaid. Criminal sanctions may also be imposed for certain actions such as stamp forgery, storing of equipment to forge stamps.

FISCAL TAX

A fiscal tax of, currently, Rp 2,500,000 is payable by permanent residents, including both nationals (don't have NPWP) and expatriates, upon departure from Indonesia, at the point of embarkation. Indonesian permanent residents who have tax identification number (NPWP), foreign diplomats,

foreign employees of specified international organizations, foreign consultant holding service visas and certain overseas students excluded from fiscal tax.

LAND TAX

A land and building tax payable annually on land, buildings and permanent structure. The rate is typically not more than 0.5% of the value of the property, although higher rates apply to certain high value housing and large states

4. GRANTS AND INCENTIVES

GENERAL INTRODUCTION

By special concession, Indonesian nationals are allowed the full use of non-taxable income allowances and the full benefit of the lower bands of tax rates. The following paragraphs list some of the significant grant and incentives opportunities.

GOVERNMENT INCENTIVES

EMPLOYEE'S REMUNERATION

Indonesia has ratified the law 13/2003 governs the bargaining power of workers, specifies minimum standards for working condition, and sets rules for severance and compensation payments. The government has issued several regulations that expand or modify labour laws, including the decrees on the employment of foreigners, occupational health and safety, work competency standards and overtime standards and pay.

WAGES

Wages include a minimum wage, overtime pay, sick pay and holiday pay. Cash wages must constitute minimum 75% of the minimum wage, with the remainder typically allocated for food and transport.

- a. Bonuses, Income in the form of a production bonus, director's remuneration, Lebaran and New Year bonuses and any other income which is regularly received is included in taxable income and taxes at normal rates. Non-taxable allowances and other deductions are not allowed to be applied against this type of income. The amount of tax to be withheld is determined by calculating the tax payable on normal income plus the bonus, and subtracting from the amount of tax payable on normal income only.
- b. Honorarium or other payments received as remuneration for services performed in Indonesia by resident taxpayers as a subject to income tax at the normal scale rates on the gross amount of the payments.

FRINGE BENEFITS

Generally, the full cost of benefits in-kind are excluded from the taxable income of an employee, and at the same time are not an allowable deduction from gross income in determining the taxable income of the employer. Benefits-in-kind are considered to be any benefits received by the employee or his or her family from his employer not in the form of cash. For example, the medical expenses of an employee paid directly by the employer to a hospital are excluded from taxable income because the benefit was not received as cash and was paid directly to a third party. Such benefits also including housing (except in isolated areas), home leave, motor vehicles, children's education expenses and tax borne by an employer on behalf of an employee.

SOCIAL INSURANCES

A workers insurance scheme including occupational accident, health and life insurance, exists for companies with more than 10 employees or a monthly payroll exceeding IDR 1 million. Jamsostek, the state-run workers insurance fund, administers the scheme. Other than the retirement plan, employer contributions entirely fund benefits. For healthcare coverage through Jamsostek, employers contribute 6% for married employees and 3% for unmarried workers. For the retirement scheme, the employer contributes 3.7% of wages, and the employee contributes 2%. If the participant dies before retirement for any reason except occupational accident, beneficiaries may claim a life-insurance benefit and a burial allowance.

5. PROTECTION OF INTELLECTUAL AND INDUSTRIAL PROPERTY _____

PROPERTY RIGHTS

Foreign entities have no freehold rights to land ownership in Indonesia. Foreign investors' land holdings are usually obtained through long-term lease agreements (normally for 30 years) with the government or private parties. Government regulations allow mortgages to be registered against real property and seagoing vessels in their appropriate registries. And also Indonesia is a member of The World Intellectual Property Organization.

PATENTS

The current patents law dates from 2001, which amended and consolidated in a single text all previous legislation. Inventions that are contrary to Indonesian laws and regulations are excluded from patent ability, and the standard for excluding inventions without domestic content appears to be inconsistent.

TRADEMARKS

Indonesia enacted its new trademark law on August 1, 2001. Like the new patent law, the latest version consolidated into one text a series of trademark laws enacted over the past 20 years. The new law raised

the maximum fine for trademark violation to Rp 1 billion (USD 95,000) and slightly reduced the maximum possible prison term. The trademarks law provides for the determination of trademark rights by priority of registration.

6. IMMIGRATION AND EMPLOYMENT

PERMANENT RESIDENCE

WHO IS ELIGIBLE

Indonesia wants to attract people whose business, entrepreneurial, trade or professional skills will contribute to its economic growth

LABOUR MANAGEMENT RELATIONS

Labor contracts are common, and typically cover employees who enter a firm within a certain time period. Contracts can be renewed for one to three years. Collective bargaining is typically conducted at the company level if a union represents or gains the approval of at least 51% of the workforce. Labour disputes are addressed by a special provincial-level Commercial Court.

VISAS

Indonesia issues a range of different classes of visa depending on the purpose of a foreigner's visit. Short visit visas valid for 60 days may be issued on arrival at an official entry point to passport holders from most developed and neighboring countries. The passport's validity should be at least six months

WORK PERMITS

All foreigners planning to work in Indonesia must obtain a work permit in addition to a KITA visa. Work permits are issued by the Department of Manpower approximately concurrently with the KITA visa. The BKPM will approve a certain number of positions for expatriates as contained in the investment application.