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Indonesia: Law & Practice
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INDONESIA

Law and Practice

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1. Legal System and Regulatory Framework

1.1 Legal System

The Indonesian jurisdiction adheres to a civil law system, which is based on statutory law. This requires a judge in an Indonesian court to observe and render a judgment based on the prevailing law and regulations in Indonesia. Unlike common law jurisdictions, an Indonesian judge will not be bound by case law or precedent – although in practice, some judges do refer to precedent in rendering a decision.

Business operations are governed by a variety of laws and regulations, including:

- the Company Law (Law No 40 of 2007 on Limited Liability Companies, as amended), which sets out requirements for the lawful establishment and operation of an Indonesian entity;
- the Investment Law (Law No 25 of 2007 on Investment, as amended), which regulates foreign direct investment (FDI) in Indonesia;
- the Capital Markets Law (Law No 8 of 1999 on Capital Markets); and
- other laws and regulations, depending on the industry.

1.2 Regulatory Framework for FDI

FDI Authority and Licensing

In general, FDI in Indonesia is overseen by the Ministry of Investment/Investment Co-ordinating Board (BKPM). The BKPM stipulates requirements for FDI, operates an online integrated licensing portal (the online single submission (OSS) system), and monitors investment by business undertakings.

In order to operate in Indonesia, business undertakings are required to register with the OSS system and apply for a business licence. The OSS system will issue a licence based on the authorisation granted by other governmental ministries/agencies for the sector concerned.

For certain sectors, however, the business will be monitored directly by the ministries/agencies concerned, and the requisite licence will also be issued by them (instead of via the OSS system), such as for banking or financial services, which are under the supervision of the Financial Services Authority (OJK) and the central bank, Bank Indonesia. Nonetheless, undertakings engaging in these business sectors would still be required to register with the OSS system.

Foreign Investment Limitations

Businesses must observe limitations on foreign ownership that may be applicable.

In principle, pursuant to Presidential Regulation No 10 of 2021 on Business Fields for Investment, as amended by Presidential Regulation No 49 of 2021 (the "Investment List"), all business fields are open to FDI, except for those:

- declared closed to investment as per the Investment Law and the Investment List; or
- that are reserved for the central government.

Business sectors open to investment are also divided into:

- priority sectors, which are entitled to specific fiscal or non-fiscal facilities;
- those reserved for or that require partnership with a co-operative, micro, small or medium enterprise;
- those subject to certain requirements, such as a limitation on foreign ownership; and
- others (meaning they are 100% open to FDI).

2. Recent Developments and Market Trends

2.1 Recent Developments and Market Trends

Despite the ongoing COVID-19 pandemic and uncertainty about the global economy, the investment climate in Indonesia seems to have improved compared with 2021. The Indonesian government targeted annual investment realisation for 2022 of IDR1,200 trillion. As of June 2022, the BKPM claimed to have realised IDR584.6 trillion (53.1% of which was attributable to FDI), an increase over the same period in 2021 of 32%. Furthermore, realisation in the third quarter of 2022 was IDR307.8 trillion.

After hosting the G20 Summit during November 2022, the government purportedly secured investment commitments from several foreign investors, including the US, China, and other countries. It is hoped that in the long run these commitments will contribute to the investment climate development in Indonesia.

Recently, on 6 December 2022, the government passed a new criminal code, which is seen as quite controversial due to its widely perceived illiberal stance on a number of social and political issues. The law's enactment, it is feared, might affect inward FDI to Indonesia, particularly the tourism sector.

As regards FDI regulation, in 2021 the Indonesian government issued Regulation No 5 of 2021 on Risk-Based Business Licensing (GR 5/2021), which became the basis for the OSS system (known as risk-based business licensing).

Under the new regime, business licences issued by the OSS system will be dependent on a risk-based analysis of the business as stipulated in GR 5/2021, which classifies risk as one of four levels: low, medium-low, medium-high, and high. The level of business risk will affect the requirements and procedures relevant to the business, as well as the type of licensing required.

As the OSS system (which operates the risk-based approach) was launched in August 2021, many investors are still encountering technical difficulties when registering a company with it. Continuous improvements and developments to the system are still eagerly anticipated from the BKPM.

3. Mergers and Acquisitions

3.1 Transaction Structures

The most common structure used for transactions in Indonesia is share acquisition. This allows a foreign investor to invest directly in Indonesia and control its investment in an Indonesian company that it acquired by way of share ownership. There are two approaches:

- indirect acquisition – achieved through subscription to new shares in the company by a foreign investor; and
- direct acquisition – by way of sale and purchase of shares in a company between an existing shareholder and a foreign investor.

In practice, foreign investors would most likely opt for direct acquisition, as it is a much simpler process.

The above structures are also the most common method used in public companies.

Another option would be assets acquisition, but this requires the foreign investor to already have an FDI company to hold the assets. Assets acquisition is preferred if the target company has huge liabilities.

3.2 Regulation of Domestic M&A Transactions

An M&A transaction at a private company must observe the requirements and procedures under the Company Law, as follows.

- In a merger or indirect acquisition, the board of directors (BOD) of the company would be required to produce a merger/acquisition plan for approval by the board of commissioners (BOC) and a general meeting of shareholders (GMS) of the company.
- The merger/acquisition plan must be announced to the creditors in a newspaper with nationwide circulation, and to the employee. This announcement is intended to provide an opportunity to creditors of the company to file objections over the merger/acquisition plan. The company must settle claims before the transaction can proceed, if there is a creditor which objects to the transaction. Meanwhile, employees of the company would also have the option to either continue or terminate their employment following the transaction.
- The result of the merger/acquisition transaction must be further announced in a newspaper with nationwide circulation.

Depending on the industry, an M&A transaction might also require approval from the relevant government authority. As an example, the acquisition of a mining company would require approval from the Ministry of Energy and Mineral Resources.

Should the M&A transaction meet an assets/sales value threshold, additional reporting would also be required from the company to the Business Competition Supervisory Agency (see **Section 6. Antitrust/Competition**).

The GMS of a public company (as a target) is not required for an acquisition that causes a change of control. However, the new controller is required to make a mandatory tender offer (MTO). In an MTO, the new controller must offer to purchase all shares from the shareholders, other than those owned by:

- a shareholder that has taken part in the takeover transaction with the new controller;
- a person that has already received an offer with the same terms and conditions from the new controller;
- another person who, at the same time, is making either an MTO or voluntary tender offer for the same company's shares;
- a shareholder who owns at least 20% of the company's shares; or
- another controller's shares of said public company.

For a merger (as for a non-public company) the merger plan must be approved by the BOC and the GMS. However, where the merger may result in a conflict of interest that could potentially cause economic loss to a public company, the merger must obtain prior approval from the independent shareholders.

4. Corporate Governance and Disclosure/Reporting

4.1 Corporate Governance Framework

An FDI company in Indonesia must be a limited liability company, which is a legal entity established by at least two shareholders by way of capital pooling, in which the shareholders' liability is limited to the amount paid up for the shares subscribed to. The establishment of the company must be carried out with due observance of the provisions under the Company Law and the Investment Law. Limited liability is also the requisite legal format for public companies.

The general requirements for establishment of an FDI company are as follows.

- The company must have at least two shareholders.
- The minimum issued and paid-up capital is IDR10 billion (approximately USD647,000).
- The minimum investment value is IDR10 billion (approximately USD647,000), excluding land and building value, per line of business and project location.
- The company must have a two-tier management system, comprising:
  - (a) a BOD, which will manage day-to-day operations of the company; and
  - (b) a BOC, which will supervise the management of the company carried out by the BOD.
- A foreign investor can only invest in a limited liability company.

4.2 Relationship Between Companies and Minority Investors

Rights of Minority Investors

Minority investors in an Indonesian company should be treated in the same way as other investors, and they enjoy the same rights as are vested in the shares that they own under the Company Law, unless otherwise stipulated in the articles of association of the company.

The Company Law also stipulates certain provisions that specifically protect the rights of minority investors in an Indonesian company. Pursuant to the Company Law, one or more shareholders who jointly represent at least one tenth of the total number of issued shares with valid voting rights (or any smaller amount as provided for in the articles of association) would be entitled to:

- request the holding of a GMS;
- act on behalf of the company to file a lawsuit with a district court against a member of the BOD or BOC, whose fault or negligence has caused a financial loss to the company;
- request a district court to investigate the company, a director, or a commissioner, if the shareholders believe that the company, director or commissioner has committed an unlawful act that has caused a financial loss to the company, the shareholders, or a third party; and
- submit a request to the GMS to dissolve the company.

These rights are also applicable to minority shareholders of a public company. Typical minority shareholders' rights for a public company include the right to participate in a mandatory tender offer (in the event of an acquisition) and be classified as independent shareholders. Certain transactions, including conflict-of-interest or affiliated-party transactions deemed material (ie, which amount to more than 50% of the public company's equity) must obtain prior approval by the independent shareholders at a shareholders' meeting.

4.3 Disclosure and Reporting Obligations

During the establishment of an Indonesian company, the founders are required to disclose information and documentation related to the shareholders of the company (including foreign investors) and related to the ultimate individual beneficiary owner of the company to the Ministry of Law and Human Rights, which oversees the legalisation of companies in Indonesia.

Once operational, the company must report periodically to the BKPM on the realisation of its investment in Indonesia.

5. Capital Markets

5.1 Capital Markets

The main legal source concerning the Indonesian capital market is the Capital Markets Law.

Capital market activities in Indonesia are regulated and supervised by the OJK, which oversees capital market activities and participants, including the Indonesian Stock Exchange (IDX), Indonesian Central Securities Depository (KSEI), Indonesian Clearing and Guarantee Corporation (KPEI), brokers, and other participants involved in Indonesian capital markets. The OJK also approves initial public offerings in Indonesia.

Self-governing bodies on capital market activities in Indonesia include the following.

- The IDX – monitors trading, settlement, and listed company compliance with its regulations. It also receives corporate action notifications from companies and announces them to the market.
- The KPEI – a clearing and guarantee institution for clearing and stock exchange transaction settlement guarantees.
- The KSEI – a central depository for equity and corporate bonds in the Indonesian market, set up as a private limited liability company.

Since the enactment of the Capital Markets Law, scripless trading has been used where the KSEI was established to facilitate this. Despite Indonesia being a civil law jurisdiction that generally does not recognise the distinction between legal and beneficial ownership, the Capital Markets Law does acknowledge such a separation.

An investor holds its securities beneficially in a security account maintained by the KSEI through the investor's custodian, with the KSEI acting as the legal owner of the securities. For equities, the KSEI acts as a global custodian and is recorded in the register of members of the relevant issuer. Investors also maintain a cash account, into which payments related to their securities are made (such as dividend distributions, coupon payments, or payments related to the sale of securities).

Capital market funding has been recognised by Indonesian companies as a funding alternative to bank financing. As of November 2022, 820 companies had listed their shares on the IDX.

There is no limit to the funds that can be obtained from initial public offerings (IPOs). The funds obtained by the company will depend on the number of shares offered to investors and the share price. The company may take into account the funding needs for a company's business plan and how much the founding shareholders are willing to reduce their ownership percentage.

A company that wishes to carry out an IPO must submit a registration statement to the OJK, supported by documentation that includes the following.

- A cover letter.
- A prospectus.
- An audited financial statement.
- A letter of comfort from an accountant.
- A financial forecast statement.
- A due diligence report and legal opinion.
- Underwriting agreements (if any).

- A corporate structure that describes the position of the company vertically, starting from the individual shareholders to the subsidiaries at the latest level, and the position of the company horizontally.
- A statement on the completeness and validity of the submitted public offering documents from:
  - (a) the company;
  - (b) the underwriter; and
  - (c) capital market support professionals.
- Other information requested by the OJK as deemed necessary, and that can be made available to the public without adversely affecting the interests of the company.

Registration may become effective in the case of either of the following.

- Where it is based on elapsed time, which is:
  - (a) 45 days from the date that a complete registration statement has been received by the OJK; or
  - (b) 45 days from the date the latest amendments were submitted.
- Where it is based on a declaration of effectiveness by the OJK that no further disclosures are required.

In practice, it takes four to six weeks from the first IPO submission for an IPO to receive a statement on effectiveness from the OJK.

5.2 Securities Regulation

Securities Exchange

General provisions on the listing of shares on the IDX include the following:

- equity securities that may be listed on the IDX include shares and equity securities other than shares accompanying the public offering, including warrants and other share derivatives issued by the listed company to be converted into shares of the listed company;
- the listed company is required to list all the shares issued and to have fully paid (company listing) unless otherwise stipulated by laws and regulations;
- shares that can be traded on the IDX are scripless;
- a listed company is prohibited from carrying out a stock split or reverse stock split for at least 12 months after the shares of the listed company are listed on the IDX;
- the share price at the time of initial listing must be at least IDR100; and
- prospective listed companies are required to register equity securities with the KSEI.

To remain listed, a listed company must meet the following requirements:

- the total free-float shares must be at least 50 million and at least 7.5% of the total number of registered shares; and
- the total shareholders must be at least 300 customers who hold single investor identification.

FDI

Generally, a foreign investor in a business in this jurisdiction is not subject to requirements under applicable securities laws and regulations, and may purchase shares in Indonesian-listed companies. However, there are limitations on ownership by foreign investors in certain industries such as banking and other financial industries, even where the companies are listed.

5.3 Investment Funds

FDI rules subject funds to foreign investment limitation. There are no exemptions, as the authority would only take into account the nationality of the investor, even if the investor is structured as an investment fund. As an alternative, but subject to the sectoral regulations governing the business of companies, foreign investors can invest through a mutual fund (*reksa dana*) established by a local investment manager.

6. Antitrust/Competition

6.1 Applicable Regulator and Process Overview

Merger Control

Merger control in Indonesia is governed primarily by the following:

- Law No 5/1999 on the Prohibition of Monopolistic Practices and Unhealthy Business Competition, as amended by Law No 11/2020 on Job Creation;
- Law No 11/2020 on Job Creation (the “Job Creation Law”);
- the Indonesian Competition Law (ICL);
- government regulations; and
- KPPU regulations and guidelines.

The KPPU is a quasi-judicial body responsible for enforcement of the ICL, which grants authority to the KPPU to investigate or examine allegations of monopolistic practices or unfair business competition reported by the public or by undertakings, or at its own initiative, and to subsequently issue decisions and impose sanctions. The KPPU enforces the above merger control legislation.

All types of FDI trigger a notification if all the criteria for notification of the KPPU are met. There are no exemptions available for specific categories of foreign investors or investments.

Mergers, consolidations and acquisitions are subject to notification of the KPPU.

“Merger” is the juridical act of one or more undertakings merging with another undertaking, resulting in assets and liabilities being transferred by operation of law to one undertaking, and the legal status of the other ceasing by operation of law.

“Consolidation” is the juridical act of two or more undertakings joining together to establish a new undertaking that obtains the assets and liabilities from the consolidating undertakings by operation of law, with the legal status of the consolidating undertakings ceasing by operation of law.

“Acquisition” is the juridical act of an undertaking that acquires shares or assets of another undertaking, resulting in a change of control of the undertaking or assets of the undertaking. It is generally assumed that a change of control could also involve a change from sole to joint control.

The regulations issued by the KPPU stipulate that a merger, consolidation or acquisition between non-affiliated parties, in which any or all of the non-affiliated parties are engaged in business activities in (or in sales to) Indonesia, and that fulfils the specified thresholds, is subject to mandatory notification to the KPPU, even though the transaction occurs outside Indonesia. The specified thresholds include that the combined worldwide value of assets exceeds IDR2.5 trillion, or IDR20 trillion if all undertakings involved in the transaction are active in the banking sector, or where the combined sales value exceeds IDR5 trillion in Indonesia. A transaction needs to be notified to the KPPU if all these criteria are met.

A transfer of assets (tangible or intangible) is tantamount to acquisition of shares and, accordingly, should be notified to the KPPU if there is:

- a transfer of their managerial or physical control; or
- an increase in the ability of the acquirer to control a relevant market.

The following asset transfers are exempt.

- A non-bank asset transfer transaction valued at less than IDR250 billion.
- A bank asset transfer transaction valued at less than IDR2.5 trillion.
- A transfer of assets that is carried out in the ordinary course of business – this depends on the business profile of the acquiring party and the purpose of the acquisition. Transactions in the ordinary course of business include:
  - (a) the transfer of finished goods from one undertaking to another for resale to consumers by an undertaking that is active in the retail sector (eg, the sale of consumer goods by retailers); and
  - (b) the transfer of supplies to be used within three months in the production process (eg, the purchase by an undertaking of raw materials and basic components from various sources for production).
- A transfer of assets specifically in the property sector that meets one of the following criteria:
  - (a) space for use by the buyer; or
  - (b) social facilities or facilities proposed for general use.
- Assets that are not intended for business use by the acquirer (eg, land for corporate social responsibility or not-for-profit activities, or to comply with statutory requirements).

A transaction that meets the relevant criteria should in principle be filed with the KPPU within 30 business days of the date that the transaction becomes legally effective. Upon submission of the notification, the KPPU has 150 business days in which to issue its opinion (in practice, the KPPU often needs more time to issue its opinion).

Where the KPPU is of the opinion that the transaction does not meet the thresholds, is a transaction between affiliates, does not result in a change of control, concerns the formation of a greenfield joint venture or an exempted transfer of assets or is carried out to implement prevailing laws and regulations, the KPPU will issue a "statement of no notification required" in respect of the transaction.

As Indonesia has a post-merger system, there are no waiting periods, and implementation of the transaction is not required to be suspended prior to clearance.

6.2 Criteria for Review

The KPPU applies the Herfindahl-Hirschman Index (HHI) or concentration ratio. The KPPU carries out a comprehensive assessment and looks at other aspects if:

- the HHI is between 1,500 and 2,500, and the change in the HHI is above 250; or
- the HHI is above 2,500, and the change in the HHI is above 150.

Where the market concentration test is positive, the KPPU will consider barriers to entry. The KPPU will look at:

- the ease with which new players may enter the market;
- the strength of new players;

- the time needed to enter the market;
- switching costs;
- homogeneity of products; and
- brand loyalty.

6.3 Remedies and Commitments

Where the KPPU has concerns about a transaction, the parties are able to negotiate structural remedies (ie, divestiture) or behavioural remedies, for example:

- access to intellectual property rights related to essential facilities or elimination of competition barriers, such as exclusive contracts;
- consumer switching costs;
- tie-in or bundling; or
- supply or purchase barriers.

The KPPU may require an undertaking to provide information on price, production, costs and other data to ensure that the undertaking applies a justifiable price strategy.

6.4 Enforcement

As Indonesia has adopted a post-merger system, the KPPU has no authority to block or otherwise challenge FDI. The KPPU cannot prohibit or otherwise interfere with a transaction within the framework of merger control; however, it may initiate a formal investigation into violations of cartel or abuse of dominance rules under the ICL.

7. Foreign Investment/National Security

7.1 Applicable Regulator and Process Overview

Foreign Investment/National Security Review

Indonesia does not have a foreign investment/national security review regime applicable to FDI that may scrutinise or potentially block an investment in sectors or locations deemed sensitive and that might affect national security.

The Investment Law, however, sets out several business fields that are closed for investment in Indonesia, including:

- cultivation of narcotic crops and manufacturing of Group I narcotic drugs;
- all forms of gambling and/or casino activities;
- fishing of species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- coral and sponge utilisation or harvesting for construction/lime/calcium materials, aquariums, and souvenirs/jewellery, including living coral or recently dead coral from the wild;
- manufacture of chemical weapons; and
- manufacture of industrial chemicals or ozone-depleting substances.

In 2021, the Indonesian government issued the Investment List, adding the manufacture of alcoholic hard liquor, alcoholic beverages of wine, and malt beverages to the list. Other than the foregoing, some business fields are reserved for the government (thus, closed for investment), including the activity of certain services or in the framework of strategic defence and security.

The Investment List also limits or restricts several business fields for FDI. For instance, the manufacture of traditional cosmetics, traditional medicines for human consumption, batik textiles and ships are currently reserved for domestic investment and closed to FDI.

7.2 Criteria for Review

This is not applicable for this jurisdiction.

7.3 Remedies and Commitments
This is not applicable for this jurisdiction.

7.4 Enforcement
Other than the restriction or limitation of business fields under the Investment Law and the Investment List, the prevailing regulations do not grant the government the ability to block or otherwise challenge FDI, particularly after an investment has been made. In general, foreign investors would be able to invest in Indonesia as long as they comply with all the requirements under Indonesian law, and there is no restriction or limitation on the intended business under the prevailing regulations.

8. Other Review/Approvals

8.1 Other Regimes
Other Regimes related to FDI
Other regimes that may be relevant to foreign investors in Indonesia include the following.

Zoning requirements
The project/business location for the FDI must align with the spatial planning and zoning requirement in the relevant location. The conformity of the business location with spatial planning will be evidenced by confirmation or approval issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (MOA) via the OSS system, which is a prerequisite for obtaining a business licence.

There is also a requirement under the prevailing regulations on the industrial sector for a manufacturing industry to be located within an industrial estate or an area designated for industry. This requirement may be exempted upon approval from the MOA.

Environmental matters
Business undertakings are required to obtain environmental approval for every business they carry out in Indonesia. The type of environmental approval would depend on the impact level of the business to the environment, as follows:

- environmental impact analysis (AMDAL), for a business with significant impact on the environment;
- an environmental management efforts and environmental monitoring efforts (UKL-UPL) report, for a business with no significant impact on the environment; and
- a letter of undertaking of environmental management and monitoring (SPPL), for a business that has no significant impact on the environment and is not included in the criteria of mandatory UKL-UPL.

Environmental approval also constitutes a prerequisite for business licensing in the OSS system.

Assets and land acquisition
Should land acquisition be necessary for FDI, the types of land title that can be registered under the name of the company pursuant to the Indonesian Agrarian Law (Law No 5 of 1960 regarding Basic Regulations for Agrarian Affairs) are as follows:

- right to build – the right to the holder to utilise the land by building a new establishment or using anything that has been previously built on the land on an exclusive basis;
- right to cultivate – the right to cultivate a plot of state land for agricultural purposes, including benefiting from the proceeds derived from the agricultural activities on the land; and
- right to use – a subsidiary right upon land that may be granted by the holder of the

aforementioned land title (HGB and HGU) to another party.

The procedure for acquiring a plot of land in Indonesia would depend on whether or not the land is certified (land that has been registered with the land office and issued with land title) or uncertified (land that has not been registered with the land office, nor issued with land title).

In general, for uncertified land, the process would involve acquisition of the land from the original landowner by the purchaser, and registration of the acquired land with the national land agency. For certified land, the process would involve transfer of title from the original registered landowner to the purchaser, followed by the registration of the transfer with the land agency.

Sanctions

Business undertakings that fail to comply with obligations under the Investment Law and its implementing regulations (eg, reporting obligations) are liable to administrative sanctions, ranging from a written warning, limitation on business activity, suspension of business activity and/or investment facilities to revocation of business activity and/or investment facilities. These sanctions would be imposed by the BKPM to the business undertakings sequentially. In addition to administrative sanctions, business undertakings may still be subject to other sanctions under the prevailing law and regulations.

9. Tax

9.1 Taxation of Business Activities

The following view on tax-related matters must be seen as a general overview and understanding on the subject, and not be deemed tax advice. ABNR is not a tax consultant, and thus is not qualified to provide detailed advice on tax matters.

The tax imposed on a company doing business in Indonesia depends on the line of business carried out by the company.

A company is treated as a resident of Indonesia for tax purposes if its incorporation or domicile is in Indonesia. A foreign company carrying out business activities through a permanent establishment (PE) in Indonesia will generally have to assume the same tax obligations as a resident taxpayer. Generally speaking, companies are obliged to pay income tax at a flat rate of 22%. Corporate income tax applies to corporate taxpayers, including limited liability companies, limited partnerships, firms, joint ventures, foundations, or other entities that are established or domiciled in Indonesia.

PEs as non-resident taxpayers are taxed only on income sourced from Indonesia. Taxable objects of a PE include:

- income from business or activities of the PE and held or controlled property;
- income of the head office from business or activities, sale of goods or provision of services in Indonesia that are similar to those conducted or carried out by the PE in Indonesia; and
- income referred to in Article 26 of the Income Tax Law received or accrued by the head office, provided that there is an effective relationship between the PE and the property or activities giving rise to the income.

Public companies that meet a minimum listing requirement of 40% and consist of at least 300 shareholders, each holding less than 5% of the paid-in shares, and where conditions are maintained for at least 183 days in a tax year, are entitled to a tax cut of 3% off the standard rate, giving them an effective tax rate of 19%.

Small companies, and corporate taxpayers with annual turnover of no more than IDR50 billion, are entitled to a 50% discount off the standard tax rate which is imposed proportionally on taxable income of part of the gross turnover up to IDR4.8 billion. Certain enterprises with gross turnover of not more than IDR4.8 billion are subject to final tax at 0.5% of turnover.

9.2 Withholding Taxes on Dividends, Interest, Etc

Dividends or other income are not subject to withholding tax by third parties (Article 4(2), Income Tax Law) if the following applies.

- Domestically sourced dividends are received or accrued by:
  - (a) an individual taxpayer, provided the dividends are invested in Indonesia within a certain period; or
  - (b) a corporate taxpayer.
- Foreign-sourced dividends and income after tax from an overseas PE are received or accrued by a corporate taxpayer or an individual taxpayer that fulfils the requirements set out in Article 4 (3) (f2) of the Income Tax Law.

Indonesian tax residents are generally taxed on a worldwide income basis. However, the following offshore income may be exempted from income tax if it is reinvested or used for business activities in Indonesia within a certain period:

- income received by an Indonesian taxpayer from a PE abroad;
- dividends paid by companies abroad; and
- active business income received by an Indonesian taxpayer from abroad (not from a PE or foreign subsidiary).

For after-tax income from the PE and dividends paid from a non-listed subsidiary, the minimum reinvestment is 30% of profit after tax. Otherwise, the difference between the 30% threshold and the reinvested portion will be subject to income tax.

9.3 Tax Mitigation Strategies

ABNR is not qualified to provide detailed views on tax mitigation strategies.

9.4 Tax on Sale or Other Dispositions of FDI

See **9.2 Withholding Taxes on Dividends, Interest, Etc**.

9.5 Anti-evasion Regimes

ABNR is not qualified to provide detailed views on anti-evasion regimes.

10. Employment and Labour

10.1 Employment and Labour Framework

The primary employment legislation in Indonesia is Law No 13 of 2003 on Manpower, as amended by Law No 11 of 2020 on Job Creation (the “Manpower Law”), and Law No 2 of 2004 on Industrial Relations Dispute Settlement (the “IRDS Law”). In 2021, the Indonesian government also issued four government regulations, the key aspects of which cover expatriates, fixed-term employment contracts, outsourcing, working hours and rest entitlement, termination of employment, wages and job loss security.

Indonesian employment law provides protection to employees who are performing, or about to perform, work for employers existing in Indonesia. The Manpower Law recognises two types of employee based on the period of the employment agreement: permanent and fixed-term employees. Expatriates are employed under a fixed-term employment agreement subject to their work permit.

In principle, in any employment relationship, the employment terms and conditions are determined by agreement of both the employer and employee. Employment terms and conditions, however, may not be less than those regulated under the prevailing manpower laws and regulations. Moreover, employment can only be terminated in accordance with procedures and for reasons stipulated under the Manpower Law, the employment agreement, a collective labour agreement (CLA) or the company regulation (CR).

The Manpower Law recognises the CLA as an instrument of collective bargaining between a registered labour union or several registered labour unions with an employer or several employers/employer organisations. The CLA contains the rights and obligations of the employer, labour union and employees, but in greater detail than those regulated by the prevailing laws and regulations. More specific employment terms and conditions may be agreed in an individual employment agreement.

The Manpower Law also recognises a CR for companies that do not yet have a registered labour union. A CR is obligatory for companies employing at least ten employees, and its formulation is the responsibility of the employer. As a general rule, the quality and quantity of the content regulated in the CLA and the CR must not be less than that regulated under the prevailing laws and regulations.

Essentially, rules related to labour unions are stipulated under Law No 21 of 2000 on Employee/Labour Unions (the "Labour Union Law"). Under the Labour Union Law, a labour union will be recognised if, following its establishment:

- it notifies of its establishment in writing to the local office of the Manpower Agency, for registration purposes; and
- it notifies of its establishment and registration number to its employer, to which the employer has no right to object.

A recognised labour union is entitled to:

- negotiate a CLA with management;
- represent employees in industrial relations dispute settlements;
- represent employees in manpower institutions;
- establish an institution or carry out activities related to efforts to improve employee welfare;
- carry out other manpower or employment-related activities that do not violate prevailing laws or regulations;
- establish and become a member of a labour union federation; and
- affiliate or co-operate with an international labour union or other international organisation.

Work councils are recognised as bipartite co-operation bodies (BCBs) under the Manpower Law. Companies that employ more than 50 employees are obliged to establish a BCB, which functions as a communication and consultative forum between employer and representatives of labour unions and/or employees within the framework of improving industrial relations. Members of a BCB consist of representatives of the employer and the employees/labour union in a 1:1 composition, and with at least six members.

10.2 Employee Compensation

Employees that undertake work are entitled to receive wages. The amount paid is by agreement between an employer and the employees, but it should not be less than the minimum wage stipulated in the applicable laws and regulations (minimum wages vary between provinces).

Further, incentives, bonuses or reimbursement of work facilities must be based on an agreement between an employer and employees, as well as the employer's policy. Employers, however, are obliged to enrol their employees with the social security programme administered by the BPJS of Manpower and BPJS of Health.

The Manpower Law recognises a mandatory religious holiday allowance of one month's wages for employees with 12 months of consecutive service. For those with service periods of one to 12 months, the allowance is paid pro rata. The allowance must be paid at least seven days before the religious holiday.

Normal working hours are:

- seven hours per day and 40 hours per week for six working days per week; or
- eight hours per day and 40 hours per week for five working days per week.

Flexible working hour arrangements are possible, subject to agreement between the parties.

Overtime can only be performed by order of an employer and with consent of the employee. For overtime work, employees shall be entitled to receive overtime wages, the amount of which shall be calculated using an overtime wages formula as stipulated under the prevailing law and regulations.

Employees are entitled to paid annual leave of at least 12 days upon completion of 12 consecutive months of service. They are also entitled to special paid leave (sick leave, maternity leave, leave for marriage of an employee, etc).

In the event of termination of a permanent employee (including termination due to an employee reaching the specified pension age), the employer is obliged to pay a severance package, which comprises:

- severance pay;
- service appreciation pay; and
- compensation of entitlements.

The calculation of each of these must be made by using the formulas stipulated under Government Regulation No 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Work and Rest Hours, and Termination of Employment (GR 35), as a minimum.

The amount for this pay will vary depending on the reason for termination, length of service, latest salary, fixed allowance and balance of annual leave. The employer may opt to use its own formula as regulated in the employment agreement, CR or CLA, provided that it is more beneficial to the employee than that stipulated in GR 35.

In the event of termination of a fixed-term employee, the employer must compensate them in an amount equivalent to the remaining salary of the employee until expiry of the fixed-term employment agreement. In addition, the employer is also obligated to pay additional compensation, which will be calculated proportionately, based on the employee's period of service. This latter compensation is not applicable to foreign employees.

In acquisition of a company or change of control over a company, the employment relationship between the acquired company and the employees will automatically continue, unless they are terminated.

10.3 Employment Protection

If the employer enters into a merger, consolidation, acquisition, or spin-off, this corporate action will not necessarily affect the employment relationship between the employer and the employee. Nevertheless, if in connection with a corporate action an employee is not willing to continue the employment, or vice versa, the employer can terminate the employee. In this type of termination, the employee shall be entitled to receive a severance package using the formulas stipulated under the prevailing manpower laws and regulations.

In accordance with GR 35, if an employer wishes to terminate an employee, it must serve on the employee written notification of its intention and the reason(s) for termination, at least 14 business days before the intended termination date (or seven business days if termination is during a probationary period).

Where the employment agreement, CR or CLA requires a longer notice period, the employer must comply with the notice period required under that agreement, CR or CLA. If, after being notified, the employee rejects termination, settlement must be reached by way of bipartite negotiation and, further, the industrial relations dispute settlement mechanism under the IRDS Law.

The Manpower Law and GR 35 are silent in relation to employment termination due to a business sale (other than a spin-off transaction). Therefore, if the sale is only related to a business or part of the businesses managed by the company, the above reasons for termination will not be applicable. In practice, employees who are attached to the business will be offered either:

- a new position in the seller's company;
- transfer of employment to the purchaser (new owner of the business); or
- mutual termination by the seller.

If a business sale is carried out due to the employer experiencing losses, or to prevent losses, the employer may terminate the impacted employees for reasons of business efficiency. For termination due to the employer experiencing losses, the employer must be able to prove the losses via internal or external financial audit reports.

To terminate for reasons of efficiency to prevent losses, the employer must be able to prove that there is potential for reduced productivity or profit that will impact the employer's operations (the primary requirement for this type of termination). GR 35 does not provide examples of proof that must be produced by the employer. This allows each employer to self-evaluate their circumstances and provide proof that is relevant to their business and operations.

In the acquisition of a company, the employment relationship between the acquired company and the employees will automatically continue, unless terminated. In a business sale, employees do not automatically transfer to the buyer. They are entitled to be given an option to continue working for the buyer or to have their employment terminated. In the case of the latter, employees are entitled to a severance package.

In any of the corporate actions just described, the labour union shall be entitled to represent its members during the negotiation with the employer – eg, negotiation on employee transfer or severance packages in the event of termination. This negotiation process with the labour union, however, will not hinder the employer from proceeding with the intended corporate actions.

11. Intellectual Property and Data Protection

11.1 Intellectual Property Considerations for Approval of FDI

Intellectual Property

Intellectual Property in Indonesia is divided into six aspects, each of which is regulated by its respective law:

- trade marks – stipulated in Law No 20 of 2016 on Marks and Geographical Indication;
- patents – stipulated in Law No 13 of 2016 on Patents;
- copyright – stipulated in Law No 28 of 2014 on Copyright;
- industrial design – stipulated in Law No 31 of 2000 on Industrial Design;
- trade secrets – stipulated in Law No 30 of 2000 on Trade Secrets; and
- layout designs of integrated circuits – stipulated in Law No 32 of 2000 on Layout Designs of Integrated Circuits.

All of these are referred to as intellectual property rights (IPRs) and the associated legislation referred to as intellectual property law ("IPR Law").

IPR Law is an important aspect of FDI, as it protects the ownership of intellectual property of any party in Indonesia. In order to obtain protection of an intellectual property asset, a foreign investor must register or record the assets with the Directorate General of Intellectual Property of the Ministry of Law and Human Rights (DGIP), except for copyright (for which protection is not based on recordation but on declaration).

However, it is strongly recommended that a copyright owner also records copyright and obtains notification of recordation evidencing ownership of the copyright, in case future proof is required. Notification of copyright ownership from the DGIP would be strong evidence of ownership for the copyright owner.

For trade marks and patents, the DGIP will examine the matter (administratively and substantively) before granting IPR protection.

11.2 Intellectual Property Protections

Provided owners have duly registered their intellectual property with the DGIP (except for copyright), the intellectual property will be protected by the IPR Law and relevant authority based on evidence of IPRs registration or recordation in the DGIP.

Some difficulties experienced by owners in obtaining protection for their intellectual property are caused by similarities between registration or recordation of IPRs in the DGIP that were taken prior to a submission made by the owners.

An intellectual property owner that wishes to obtain IPRs in Indonesia must file a cancellation lawsuit with the commercial court of the IPRs registration under the name of the registered party, and prove intellectual property ownership to a panel of judges. If the lawsuit is successful, the registered IPRs will be cancelled, and the new owner can apply for IPRs to replace the cancelled ones.

There are no limitations on protection or enforcement of IPR Law in Indonesia, provided the IPRs are registered or recorded in accordance with the applicable IPR Law.

11.3 Data Protection and Privacy Considerations

Personal data protection in Indonesia should follow the provisions in Law No 27 of 2022 on Personal Data Protection (the "PDP Law") and Law No 11 of 2008 on Electronic Information and Transactions, as amended by Law No 19 of 2016 (the "EIT Law"), as well as its implementing regulations, including Government Regulation No 71 of 2019 on the Provision of Electronic Systems and Transactions (GR 71/2019).

Pursuant to the PDP Law and GR 71/2019, personal data is defined as data on a person that is identified or identifiable, either separately or in combination with other information, either directly or indirectly, through an electronic system or via non-electronic means. Given this definition, the term "personal data" can be interpreted broadly, and would include any data attributable to an individual and capable of use to identify an individual.

The PDP Law acknowledges several lawful bases for personal data processing:

- express consent;
- contractual necessity;
- compliance with a data controller's legal obligations;
- protection of the vital interests of the data subject;
- public interest for the provision of public services or for the exercise of lawful authority; and
- legitimate interest.

The processing of personal data in Indonesia must be based on any of these lawful bases.

The PDP Law applies to public entities, and to international organisations that carry out legal actions as regulated in the PDP Law, and are located:

- within the jurisdiction of Indonesia; and/or
- outside the jurisdiction of Indonesia, but with legal consequences in the jurisdiction of Indonesia, or for the personal data of an Indonesian citizen.

The EIT Law applies to any person (ie, an individual, whether an Indonesian citizen, foreign national or legal entity) that carries out legal actions as stipulated in the EIT Law, both within and outside the jurisdiction of Indonesia, which has legal consequences within or outside said jurisdiction and harms/affects Indonesian public interest.

12. Miscellaneous

12.1 Other Significant Issues

This is not applicable for this jurisdiction.

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ABNR is Indonesia's longest-established law firm (founded in 1967), and pioneered the development of international commercial law in the country following the reopening of its economy to foreign investment after a period of isolationism in the early 1960s. With over 100 partners and lawyers (including two foreign counsels), ABNR is the largest independent, full-service law firm in Indonesia and one of the country's top three law firms by number of fee earners, giving it the scale needed to simultaneously handle large and complex transnational deals across a range of practice areas. It also has global reach as the exclusive Lex Mundi (LM) member firm for Indonesia since 1991. LM is the world's leading network of independent law firms, with members in more than 100 countries. ABNR's position as LM member firm for Indonesia was reconfirmed for a further six-year period in 2018. Further information about ABNR can be found at www.abnrlaw.com.

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